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HUMAN RIGHTS
FOR 1961

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YEARBOOK ON HUMAN RIGHTS FOR 1961

INTRODUCTION

The *Yearbook on Human Rights for 1961* contains three parts, dealing with States, Trust and Non-Self-Governing Territories, and International Agreements. Part I describes constitutional, legislative and judicial developments in ninety-eight States; this number — a record for the *Yearbook* — reflects the advance towards independence of territories previously in a dependent status which has been a feature of the international scene in recent years.

New constitutions or constitutional amendments which are represented in this *Yearbook*, mainly by extracts, were adopted in 1960 in India and Mongolia, and in 1961 in Bolivia, Brazil, Cameroun, Ceylon, Congo (Brazzaville), Costa Rica, Cuba, Dominican Republic, Gabon, Mauritania, Morocco, Sierra Leone, Syria, Tanganyika, Togo, Turkey and Venezuela, in the Swiss Canton of Vaud and in British Guiana and the State of Malta.

The extent of the rights provided for in constitutions differs greatly; certain constitutions include provisions on economic, social and cultural rights as well as the more traditional civil and political rights, while others concern themselves mainly with the latter category of rights. Some constitutions limit themselves to providing for only a few rights. With a view to protecting rights not specifically provided for in the constitution, article 34 of the 1961 Constitution of Bolivia states that: "The declarations, rights and guarantees enumerated in this constitution shall not be regarded as excluding other rights and guarantees, not mentioned, which are inherent in the sovereignty of the people and in the democratic form of government." Likewise, article 50 of the 1961 Constitution of Venezuela provides that: "The enunciation of rights and guarantees contained in this constitution shall not be construed as a denial of others which, being inherent in the human person, are not expressly mentioned herein."

While certain constitutions include provisions on human rights only in their operative part, such provisions appear in both the preamble and the body of other constitutions, for instance the 1961 constitutions of Congo (Brazzaville), Gabon, Mauritania, Togo, Turkey and Venezuela. Article 156 of the 1961 Constitution of Turkey makes clear the legal status of the preamble to that constitution by providing, *inter alia*, that: "The preamble, which sets forth the basic views and principles on which this constitution rests, is an integral part of the text of the Constitution".

Constitutions containing provisions on human rights usually specify the kind of limitations which may legitimately be placed on the exercise of the rights provided for. These limitations are essentially of two types — namely, those of continuing application, and those which may be imposed during a state of emergency as defined in the constitution.

Different constitutions employ different approaches in respect of the limitations of continuing application. In some the permissible extent of limitations to the rights guaranteed is embodied in each article or section dealing with human rights, whereas others contain one general article defining the limitations which may apply to all human rights provisions. Other constitutions both provide for specific limitations in each human rights provision and contain a general limitations article applicable to all human rights provisions.

Separate limitations contained in individual human rights provisions may be found in the 1961 constitutions of Gabon and Sierra Leone and others. The language of the limitation embodied in the human rights provisions of these constitutions varies greatly in that certain of the constitutions make the exercise of the rights and freedoms subject to "the law", to "the principles of democracy and national sovereignty", to the "requirements of public order", to the "requirements of morality and public policy" (constitutions of Cameroun, Congo (Brazzaville), Gabon, Mauritania, Togo), while section 14 (3) (*a*) of the 1961 Sierra Leone Constitution makes the kind of limitation which may be placed on the exercise of a particular right subject to such provision of law as "is *reasonably*

required in the interests of defence, public safety, public order, public morality, public health. . . ."

Provisions concerning the declaration of a state of emergency and the extent of the limitations that such a declaration may impose on constitutional rights and freedoms are contained in the following provisions quoted in this volume: articles 110-114 of the Constitution of Bolivia, articles 123-124 of the Constitution of Turkey, section 25 of the Constitution of Sierra Leone (which is to be read with sections 13 (5), 15 (2) (*d*), 19 (*a*) and 23 (4) (*e*)), articles 240-244 of the Constitution of Venezuela and article 14 of the Constitution of British Guiana. According to certain of these constitutional provisions the declaration of a state of emergency may be made only by the legislative authority, whereas in others it may be made by the executive power. In some, after the lapse of a specified period of time, the declaration ceases to be in force unless it is renewed, whereas in others it may continue as long as it is not revoked. In some of the provisions, the kind of limitation which may be placed on the exercise of the rights during a declaration of a state of emergency or siege is defined, whereas in others the extent of limitation is subject to the provisions of laws to be passed for the purpose of the period of emergency.

Certain constitutions include provisions aimed at safeguarding constitutionally guaranteed rights against essential alteration by laws regulating their implementation. Article 11 of the Constitution of Turkey provides that:

"The fundamental rights and freedoms shall be restricted by law only in conformity with the letter and spirit of the constitution.

"The law shall not infringe upon the essence of any right or liberty, even when it is applied for the purpose of upholding public interest, morals and order, social justice and national security."

Article 30 of the Constitution of Bolivia states:

"The principles, guarantees, rights and duties recognized in this constitution may not be altered by the laws regulating their implementation."

Some constitutions define the relationship between constitutional provisions on the one hand and other types of law on the other. Instances of such definitions appear in articles 24 and 60 of the Constitution of Togo and article 8 of the Constitution of Turkey, both of 1961.

Some constitutions include provisions for the adoption of legislation for the implementation of the constitutional provisions on human rights. Article 10 of the 1961 Constitution of Turkey for instance provides that:

"Every individual is entitled, in virtue of his existence as a human being, to fundamental rights and freedoms, which cannot be usurped, transferred or relinquished.

"The State shall remove all political, economic and social obstacles that restrict the fundamental rights and freedoms of the individual in such a way as to be irreconcilable with the principles embodied in the rule of law, individual well-being and social justice. The State prepares the conditions required for the development of the individual's material and spiritual existence."

Article 50 of the Constitution of Venezuela of 1961 provides that the absence of a law regulating the rights dealt with in that article "shall not impair the exercise thereof". Two judicial decisions included in this *Yearbook* make reference to the self-executing character of certain human rights provisions embodied in constitutions. In the case of *Kyriakides and The Republic*, the Supreme Constitutional Court of Cyprus held in 1961 that the right safeguarded under article 29 of the Constitution of Cyprus, dealing with the right of petition, embraced all cases where a person applied in writing to competent authority, whether under the provisions of any specific law or otherwise. Likewise, the Federal Court of Justice of the Federal Republic of Germany in 1961 awarded damages for reparation of moral injury suffered by a professor whose scientific authority was invoked, without any foundation, in an advertisement for a sexual potency tonic. Although the Civil Code makes no provision for reparation in such cases of moral injury, the court awarded reparation by basing its decision on articles 1 and 2 of the Basic Law of the Federal Republic, dealing with respect for the dignity of man and with the right of the individual to the free development of his personality.

A number of constitutions quoted from herein include provisions concerning remedies available to the individual for the purpose of enforcing his constitutional rights. These provisions are section 24

of the Constitution of Sierra Leone, article 49 of the Constitution of Venezuela, article 13 of the Constitution of British Guiana and section 16 of the Constitution of Malta.

Some of the constitutions represented in this volume include provisions according to which a legislative or executive action may be declared unconstitutional by a judicial organ in cases of inconsistency with constitutional provisions. Some provisions permit bills to be challenged as to their constitutionality before their promulgation as law and some permit such challenge after promulgation. The provisions in question are article 124 of the Constitution of Bolivia, article 14 of the Constitution of Cameroun, article 60 of the Constitution of Gabon, article 41 of the Constitution of Mauritania, articles 147 and 149-152 of the Constitution of Turkey and articles 173 and 215 of the Constitution of Venezuela.

A certain number of constitutions included in this *Yearbook* limit the extent to which constitutional provisions on human rights may be amended. Article 70 of the Constitution of Gabon provides, *inter alia*, that: "The republican and democratic form of the State shall not be subject to revision." Article 72 of the Constitution of Congo (Brazzaville) states that: "The republican form of the government shall not be subject to revision." Similar protection is accorded the republican form of government by article 54 of the Constitution of Mauritania and the republican form of the State by article 9 of the Constitution of Turkey. Article 43 of the Constitution of Sierra Leone entrenches the chapter on protection of fundamental rights and freedoms of the individual by requiring that a bill to alter any of the provisions of that chapter shall have "been passed by the House of Representatives in two successive sessions, there having been a dissolution of Parliament between the first and second of those sessions" and that at each session the bill shall have been passed "by the votes of not less than two-thirds of all the members of the House".

Two constitutions quoted from in this *Yearbook* include provisions according to which the beneficiaries of rights and privileges provided for in the constitutions may not renounce the rights and benefits therein provided. Article 179 of the Constitution of Bolivia provides, *inter alia*, that: "The rights and benefits recognized by law in favour of workers and employees may not be renounced; agreements to the contrary, or agreements designed to make them of no effect, shall be null and void." According to article 10 of the Constitution of Turkey, "Every individual is entitled, in virtue of his existence as a human being, to fundamental rights and freedoms, which cannot be . . . transferred or relinquished."

Some constitutions or laws represented in this *Yearbook* provide for the right of individuals to present or address petitions or complaints to the competent authorities. Article 62 of the Constitution of Turkey provides:

"*Article 62.* Citizens are entitled to petition the competent authorities and the Grand National Assembly, in writing, singly or collectively, concerning requests and complaints involving themselves or the public.

"The action taken as a result of petitioning involving the applicants in person shall be communicated to them in writing."

Article 67 of the 1961 Constitution of Venezuela provides that: "Every person shall have the right to present or address petitions to any public entity or official, concerning matters that are within their competence, and to obtain the appropriate reply thereto." Similarly the right of complaint is protected by article 322 (1) (*b*) of the Penal Code of Hungary which states, in relation to the military, that: "A superior who, exceeding his powers, or in any unlawful manner: . . . restricts him [his subordinate] in the exercise of his right of complaint; . . . shall be punished, provided no offence of greater gravity was committed, with imprisonment for a term of up to one year."

Some of the constitutions and legislation quoted from in this volume include provisions on the responsibility of the state or its agents for violation of constitutional rights and freedoms. Such provisions appear in articles 12, 13 and 32 of the Constitution of Bolivia, article 11 of the Constitution of Morocco, article 114 of the Constitution of Turkey, articles 46, 47 and 121 of the Constitution of Venezuela, articles 82, 115 and 117 of the Penal Code of the Central African Republic, article 370 of the Penal Code of Lebanon, article 5 of royal decree No. 88 of 1961 on the responsibility of ministers, of Saudi Arabia, an act of 16 May 1961 of the Canton of Vaud, Switzerland, and arti-

cles 88 and 89 of the Principles of the Civil Law of the USSR and the union republics. The State Proceedings Act, 1961, of Ghana made provisions for legal proceedings by and against the Republic of Ghana.

In addition to the material discussed above, which is of concern to rights in general, the present volume contains much constitutional, legislative and judicial information on specific rights. Since the Universal Declaration of Human Rights is the yardstick for the selection of material for inclusion in the *Yearbook*, this publication covers a wide range of personal, civil, political, economic, social and cultural rights. The index to the *Yearbook* is so organized as to facilitate the task of the reader interested in tracing developments relating to specific rights.

Part III (International Agreements) of the present volume contains the texts of, or extracts from, the Convention on the Reduction of Statelessness, 1961, adopted by the United Nations Conference on the Elimination or Reduction of Future Statelessness, the Workers' Housing Recommendation, 1961, adopted by the International Labour Conference, the Convention against Discrimination tion in Education, 1960, and the Recommendation against Discrimination in Education, 1960, adopted by the General Conference of UNESCO, the European Social Charter, 1961, the General Convention Relating to Personal Status and Conditions of Establishment, signed in Tananarive, on 12 September 1961, and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, signed in Rome on 26 October 1961. There also appears in this part a statement on the status of certain international agreements.

References to the Universal Declaration of Human Rights of 10 December 1948 are found in a certain number of constitutions included in this *Yearbook*. The preambles of the constitutions of Congo (Brazzaville), Gabon, Mauritania and Togo declare the belief, devotion, adherence or reaffirmation by the peoples of the country concerned in the principles and fundamental rights laid down in the Universal Declaration of Human Rights. Article 1 of the Constitution of Cameroun states, *inter alia*, that: "The Federal Republic of Cameroun . . . affirms its adherence to the fundamental freedoms set out in the Universal Declaration of Human Rights and the Charter of the United Nations." In the Federal Republic of Germany, the Bavarian Constitutional Court held in 1961 that the rights provided for in the Universal Declaration of Human Rights were not directly enforceable in Member States, but that they served as general guide-lines. Accordingly, it held that a constitutional complaint against a sentence could not be grounded on the Universal Declaration of Human Rights.

In addition to the national provisions quoted above, this *Yearbook* includes international instruments which refer to the Universal Declaration of Human Rights. The preamble to Recommendation No. 115 of the ILO on Workers' Housing states, *inter alia*, that: "Whereas the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations recognizes that 'everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including . . . housing' . . ." The UNESCO Convention and the UNESCO Recommendation Against Discrimination in Education, adopted on 14 December 1960, both recall in their preambles "that the Universal Declaration of Human Rights asserts the principle of non-discrimination and proclaims that every person has the right to education". Article 3 of the General Convention relating to Personal Status and Conditions of Establishment signed at Tananarive on 12 September 1961 provides, *inter alia*, that: ". . . citizens of each high-contracting party . . . shall be guaranteed the personal rights and safeguards set forth in the Universal Declaration of Human Rights. . . ."

PART I

STATES

AFGHANISTAN

SUMMARY OF REGULATION RELATING TO THE ESTABLISHMENT OF A CRIMINAL COURT[1]

Whereas an Act on criminal procedure [usûl muḥakâmat jazâ] is proposed, a regulation [lâyiha] taking the place of a legislative decree has already established a criminal court of first instance [mahkama ibtida'îya Jazâ] in the capital on 1 Asad in the year 1340 of the solar hegira (23 July 1961).

The court is composed of one judge, who is the president, and of two member judges, and is assisted by a legal adviser and five clerks.

The court applies the Islamic law of the Hanafite school, which is officially in force in Afghanistan.

Article 6 of the regulation provides that the legal adviser, on the request of the president of the court, must submit a "report" on each case, in which he states his opinion on the following points:

1. Has the inquiry been conducted in good and due form?

2. What laws of the Kingdom of Afghanistan apply to the proceedings, and to what extent are they applicable?

3. To what general principles recognized in the various systems of criminal law can reference be made?

The legal adviser is required to comment upon the texts and general principles to which he is thus obliged to refer.

Article 6 further requires that a copy of the legal adviser's opinion be communicated to each member of the court and be entered in the record.

[1] Summary communicated by the Government of Afghanistan.

ARGENTINA[1]

I. LEGISLATION

A. 1958

1. Act No. 14445 repeals Act No. 4144, under which the Executive Authority was able to order the deportation or prevent the entry of aliens who had been convicted or prosecuted for crimes under the general law, or whose conduct might endanger safety or prejudice law and order. The repealed Act, besides implying unequal treatment for aliens, might have given rise to arbitrary acts, since it permitted the application of a penalty without any ruling by the judicial authorities and for reasons which were left to the discretion of the Executive Authority.

By repealing this Act, Argentina has guaranteed to aliens the principles set forth in articles 1, 2 and 8 of the Universal Declaration of Human Rights.

The text of Act No. 14445 is given below:

"*Art. 1.* Act No. 4144 concerning the deportation of aliens is hereby repealed.

"*Art. 2.* Deportation decrees issued up to the present date under Act No. 4144 for reasons of political or trade-union affiliation are hereby annulled.

"*Art. 3.* The Executive Authority shall take the necessary measures to enable aliens affected by the preceding article to return to Argentina.

"*Art. 4.* This Act shall be communicated, [etc.]"

Adopted: 27 June 1958.

Promulgated: 1 July 1958.

2. The Universal Declaration of Human Rights confirms the freedom of association in articles 20 and 23 (sub-paragraph 4). In some of its articles, Act No. 14455 expressly establishes the right of association, as well as the right not to become affiliated to an association.[2]

3. Act No. 14557 permits the establishment by private initiative of universities which are entitled to issue academic degrees and/or diplomas. This Act guarantees the freedom to teach set forth in article 18 of the Universal Declaration of Human Rights.

B. 1959

Decree No. 1404/49 issues regulations under Act No. 14557. This decree provides a definite guarantee for private university education.

The most pertinent articles of decree No. 1404/49 are given below:

Art. 2. Private universities are authorized by decree of the National Executive Authority to issue academic degrees and/or diplomas when they have complied with the condition laid down in Act No. 14557 and those stated below, subject to an opinion, given with supporting reasons, by the Inspectorate-General of Private University Education:

(*a*) They must be constituted as bodies corporate.

(*b*) They must prepare a constitutive statute which prescribes:

1. Their purpose, set forth clearly and precisely.
2. Their intention to carry on their activities in accordance with the republican and democratic institutions of the country.
3. In general, a suitable organization for the nature of the scientific work and studies.

(*c*) They must have a suitable teaching body, whose members hold university degrees in their speciality or, failing that, possess a scientific reputation or adequate education as evidence of their qualifications to hold a chair.

(*d*) They must have a reasonable number of enrolments for each course or teaching period in each faculty, school or department.

(*e*) They must have adequate resources, premises and equipment for their establishment and operation.

(*f*) They must submit plans of study and development for the respective courses to the Inspectorate General of Private University Education.

(*g*) They must provide information concerning the names and previous experience of their teaching staff and university authorities.

Art. 4. In order to qualify for the exercise of their profession, the graduates of private universities must take a final examination which will be subject to the following rules:

(*a*) This examination shall be given by boards composed of persons who are professional workers

[1] Information furnished by the Government of Argentina.

[2] The Government of Argentina drew particular attention in this connexion to articles 1-6 and 15 of the Act, and, as provisions regulating the rights set forth in those articles, also to articles 16, 18-21, 26-28, 32-33 and 39-41. See the translation of the Act into English and French which has been published by the International Labour Office as *Legislative Series* 1958 — Arg.1, and the summary of the Act published in *Yearbook on Human Rights for 1958*, p. 3.

and professors in the speciality in question, appointed by the National Executive Authority; these boards shall be composed of equal numbers of professors of the national universities, specialized civil servants or high State officials, professors of recognized private universities and members of academies, colleges or professional associations. The board shall also include a professor appointed by the private university attended by the graduate presenting himself for examination.

(*b*) The members of examining boards whether appointed in their capacity as professors of national universities, recognized private universities or members of academies, colleges or professional associations, shall be chosen from a group of three candidates proposed to the Executive Authority by the aforementioned bodies; those to be appointed directly by the State will be proposed to the Executive Authority, in groups of three, by the Inspectorate-General of Private University Education.

(*c*) If the recognized private universities are situated in the provinces, the groups of three candidates, whether specialized civil servants or high officials of the provinces or members of local colleges or professional associations, will be proposed to the National Executive Authority by the provincial executive authorities and the local colleges or associations.

(*d*) The qualifying examination shall be public, and the Ministry of Education and Justice shall be responsible for fixing the dates, and selecting the subjects, the procedure and the place where they will be held.

II. JUDICIAL DECISIONS

Beginning in 1958, the Argentine courts in numerous decisions laid down premises for recourse to an exceptional remedy: the remedy of amparo [protection of the rights of the citizen]. Reference is made to this here since it is in conformity with the provisions of article 8 of the Universal Declaration of Human Rights.

In accordance with these rulings, the remedy of amparo may be invoked in the following cases:

(1) When there is no other legal way to protect the right in question.

(2) When the action against which the remedy is being invoked causes a serious and irreparable injury.

(3) When the action in violation of the right in question is obviously illegal.

(4) When the right which has been violated is one of those guaranteed under the National Constitution.

Summing up, Argentine law permits an action for the effective protection of constitutional rights and guarantees, which are available to all the inhabitants of Argentina.

AUSTRALIA

HUMAN RIGHTS IN AUSTRALIA IN 1961[1]

I. Legislation

1. RIGHT TO WORK WITHOUT DISTINCTION OF ANY KIND

The Post and Telegraph Act 1961 (Commonwealth) repeals section 16 of the Post and Telegraph Act 1901, which provided that a contract for the carriage of the mails could only be entered into on behalf of the Commonwealth if it contained a condition that only white labour shall be employed in such carriage.

2. RIGHT TO EQUAL PAY FOR EQUAL WORK

The Industrial Conciliation and Arbitration Act 1961 (Queensland) is a re-enactment with amendments of the Industrial Conciliation and Arbitration Acts 1932 to 1959. Section 12(1)(a)(i) provides that the Industrial Conciliation and Arbitration Commission constituted under the Act may make an award with reference to a calling or callings, but in fixing rates of wages of employees in any calling "the same wages shall be paid to persons of either sex performing the same work or producing the same return of profit to their employer." This provision had previously appeared as section 8(1)(i)(*a*) of the 1932 Act, now repealed.

3. RIGHT TO PERIODIC HOLIDAYS WITH PAY

The Hospitals Act 1961 (Tasmania) deals with long service leave of public hospital employees. They are to be entitled to long service leave in accordance with the provisions of the State Employees (Long Service Leave) Act 1950 (Tasmania).

4. RIGHT TO MARRY

The Marriage Act 1961 (Commonwealth) will come into force on 1 September 1963. It makes provision for uniformity throughout Australia in vital matters affecting solemnization of marriages in Australia by authorized celebrants, including the following:

Marriageable age (age of legal capacity to make a valid marriage);

Prohibited degrees of consanguinity and affinity; consent to marriage of minors;

Requirement in all cases of written notice of intended marriage;

Marriage certificates.

Under the Act, the marriageable age for male persons is 18 years and for female persons 16 years. However, male persons between 16 and 18 years of age and female persons between 14 and 16 years of age may apply to a court for authorization of marriage. On receiving an application, the judge or magistrate may make the order sought only if the circumstances of the case are so "exceptional and unusual" as to justify the making of the order.

In the case of a minor — that is to say, a person under the age of 21 years — the consent of the parents or guardian is required. If their consent is refused, the minor may apply to a magistrate for his consent; an appeal lies to a judge from the Magistrate's decision.

In regard to legitimation, the Act provides that a child born out of wedlock becomes legitimate for all purposes by virtue of the subsequent marriage of the parents. The legitimacy of the children of certain void marriages is also provided for.

The Matrimonial Causes Act 1959 (Commonwealth), referred to in the 1959 *Yearbook*, p. 12, came into force on 1 February 1961.

5. FREEDOM OF EXPRESSION

The Printing and Newspaper Ordinance 1961 (Australian Capital Territory) replaces previous legislation operating in the Territory relating to the registration of printers and newspapers.

Section 9 of the ordinance provides that a person shall not have in his possession, custody or control a printing press unless (*a*) he is a registered printer; and (*b*) the printing press is kept at an address at which he is registered to print. On receipt of an application in the prescribed form, the Registrar of Printers and Newspapers appointed under the ordinance is required to enter in the register the name of the applicant as a registered printer and the address or addresses at which the applicant proposes to print (section 11).

Section 15 of the ordinance reads as follows:

"15 (1) A registered printer shall cause his name, preceded by the words "Printed by", and followed by the word "at" and the address at which a paper is printed by him, to be printed in legible characters upon the front of the paper or, where the paper has more than one leaf, on the first and last pages of the paper.

[1] Note furnished by Mr. Patrick Brazil, Attorney-General's Department, Canberra, government-appointed correspondent of the *Yearbook on Human Rights*.

"(2) A person who produces a paper by a typewriter or a roneo or other multigraph process shall cause his name, preceded by the words "Printed by", and followed by the word "at" and the address at which the paper is so produced by him, to be endorsed in legible characters upon the front of the paper or, where the paper has more than one leaf, on the first and last pages of the paper.

"Penalty: One hundred pounds."

"Paper" is defined in section 4(1) to include a book, pamphlet or sheet.

There are special provisions dealing with newspapers. Section 20 provides:

"20 (1) A person shall not, after the expiration of one month from the commencement of this ordinance, print or publish, or cause to be printed or published, a newspaper unless the newspaper is registered under this part.

"(2) The proprietor or the printer of a registered newspaper shall not print the newspaper or cause it to be printed except at the address entered in the register as the address for the printing of the newspaper.

"(3) The publisher of a registered newspaper shall not publish the newspaper unless it has been printed at the address entered in the register as the address for the printing of the newspaper.

"Penalty: One hundred pounds."

On receipt of an application in the prescribed form, the Registrar is required to register the newspaper in question by entering in the register (*a*) the name of the newspaper; (*b*) the address at which the newspaper is to be printed as the address for the printing of the newspaper; and (*c*) the names of the proprietor, the printer and publisher of the newspaper.

Section 26 of the ordinance provides as follows:

"26. A person shall not print or sell, deliver, offer for sale or delivery, post, affix to an object or structure in, or leave in, a public place, or otherwise expose to public view a newspaper that does not contain printed in legible characters in some part of the newspaper the names of the printer and the publisher of the newspaper and the address at which it is printed.

"Penalty: One hundred pounds."

6. Right to Social Security

The Welfare and Assistance Act 1961 (Western Australia) provides for the rendering of financial assistance to or on behalf of indigent persons and for payment of funeral expenses of persons dying in necessitous circumstances.

"Indigent person" is defined in section 4 of the Act as follows:

"(*a*) Any woman who satisfies the Minister that she is without adequate support and has not sufficient means of subsistence;

"(*b*) Any child who in the opinion of the Minister is without adequate support and has not sufficient means of subsistence;

"(*c*) Any destitute child within the meaning of the Child Welfare Act, 1947, or any ward within the meaning of that Act;

"(*d*) Any person entitled to moneys by way of compensation or damages, or in settlement of a claim under a policy of insurance or life assurance, or to any assets as a beneficiary in the estate of a deceased person; or

"(*e*) Any person who is in such necessitous circumstances as in the opinion of the Minister warrant assistance being rendered that person under this Act;"

Section 8 provides as follows:

"8. The Minister may for the purpose of rendering and affording financial assistance (*a*) to or on behalf of indigent persons; (*b*) for the transport of indigent persons; or (*c*) for payment of funeral expenses not exceeding thirty-five pounds in any one instance in respect to the burial of persons dying in necessitous circumstances, make advances at his discretion to persons who apply for such assistance and satisfy the Minister that in the circumstances of the case such assistance should be given."

Provision is made in the Act enabling the Minister to recovery moneys from certain persons who are under a legal liability to pay moneys to an indigent person assisted under the Act. Any moneys so recovered are to be applied towards satisfaction of advances made to the indigent person in question.

The Children's Institutions Subsidies Act 1961 (South Australia) provides for the granting of financial aid to approved persons, institutions and authorities for the purpose of assisting them to provide, acquire or construct buildings and equipment for the accommodation, care and training of children who are destitute or otherwise in need. A grant shall not be made unless the Children's Welfare and Public Relief Board has furnished a report to the Minister, and unless the Minister is satisfied that the accommodation, care or training of children, for which the buildings and equipment are intended, will not be conducted for profit.

7. Health

The Alcohol and Drug Addicts (Treatment) Act 1961 (South Australia) makes provision for the treatment, care, control and rehabilitation of persons who are addicted to the consumption or use of alcoholic or intoxicating liquors or certain drugs to excess. "Alcoholic centres" may be established for the admission of patients for a period not exceeding six months. The admission may be brought about by application of the person himself or by a relative,

a probation officer or a member of the police force. Persons convicted of certain offences may be committed by the court to an alcoholic centre. The Act replaces previous legislation on the subject.

8. Right to Education

The Student Hostels (Advances) Act 1961 (South Australia) provides for the making of advances by the government of the state for the provision of assistance to student hostels. "Student hostel" is defined by the Act to mean a boarding house or other institution established and maintained for the accommodation of students; and "student" means any graduate, under-graduate, or pupil, of any age engaged for the whole of his time upon a course of study at the University of Adelaide, the South Australian Institute of Technology or at any technical, secondary, primary or other college, school or educational institution.

9. Limitations on Personal Rights in the interests of Public Order and General Welfare

The Crimes (Breath Test Evidence) Act 1961 (Victoria) inserts a new section, section 408A, in the Crimes Act of that state.

Sub-section 1 of the new section provides that, where the question whether any person was under the influence of intoxicating liquor at the time of an alleged offence is relevant —

(*a*) Upon any trial for manslaughter or negligently causing grievous bodily harm arising out of the driving of a motor car; or

(*b*) Upon any trial for reckless driving or driving while under the influence of intoxicating liquor to such an extent as to be incapable of having proper control of the motor car; or

(*c*) Upon any hearing of an offence of being under the influence of intoxicating liquor while in charge of a motor car to such an extent as to be incapable of having proper control of the car;

then, evidence may be given of the percentage of alcohol indicated to be present in the blood of that person by a breath analysing instrument operated by a person authorized by the Chief Commissioner of Police, and the percentage of alcohol so indicated shall, subject to compliance with sub-section 2, be evidence of the percentage of alcohol present in the blood of that person at the time his breath is analysed by the instrument.

Sub-section 2 provides as follows:

"(2) As soon as practicable after a sample of a person's breath is analysed by means of a breath analysing instrument the person operating the instrument shall sign and deliver to the person whose breath has been analysed a statement in writing of the percentage of alcohol indicated by the analysis to be present in his blood (which may be by way of an indication on a scale) and of the date and time at which the analysis was made."

Sub-sections 4 and 5 empower the police to require persons to submit to breath tests in certain circumstances. They read as follows:

"(4) (*a*) Where a member of the police force believes on reasonable grounds that a person has been while driving a motor car or while in charge of a motor-car within the meaning of section eighty-two of the Motor Car Act 1958 under the influence of intoxicating liquor to such an extent as to be incapable of having proper control of the motor car he may require that person to furnish a sample of his breath for analysis by a breath analysing instrument and that person shall, subject to the provisions of paragraph (*b*) of this sub-section, furnish a sample of his breath by exhaling directly into the instrument.

"(*b*) A person who is required as aforesaid to furnish a sample of his breath for analysis shall not be obliged to do so except —

"(i) Within two hours after the driving or being in charge of the motor car in respect of which the member of the police force has such belief as aforesaid; and

"(ii) At or in the vicinity of the place where his said driving or his said being in charge of the motor car occurred or at the police station nearest to that place.

"(5) (*a*) A person who is required pursuant to sub-section 4 of this section to furnish a sample of his breath for analysis and who refuses to do so shall, unless the court is satisfied that there was some reason of a substantial character for his refusal other than a desire to avoid providing information which might be used as evidence against him, be guilty of an offence against this section and liable upon summary conviction to a penalty of not more than twenty pounds.

"(*b*) A person shall not be convicted of an offence under this sub-section if it is proved that within the time specified in sub-section 4 of this section for the furnishing of a sample of breath he elected to have a sample of blood taken from him in accordance with the provisions of section four hundred and eight of this Act and —

"(i) That a sample of blood was so taken from him; or

"(ii) That he was at all times during the period specified in sub-section 1 of the said section four hundred and eight ready and willing to have a sample of blood so taken from him."

Sub-section 8 (*a*) provides that the Governor in Council may make regulations for the maintenance and use of breath analysing instruments and the methods to be employed for ensuring that such instruments give accurate results.

II. Court decisions

1. RIGHT TO FAIR TRIAL

R. *v.* UMANSKI

(1961) Victorian Reports 242
Supreme Court of Victoria

Criminal law — Comments by trial judge on evidence — Undue emphasis of matters favourable to the prosecution

On an appeal from a criminal conviction, one ground relied on was that the trial judge gave a charge which was unbalanced in that it devoted a disproportionate length of the summing up to the case for the prosecution and unduly emphasized matters favourable to the case for the prosecution and adverse to the accused.

Held that the ground of appeal failed, since the trial judge had made it clear to the jury that they were the judges of the facts and were free to accept or reject his comments as they chose.

Per the Full Court (p. 243):

"A perusal of the charge has satisfied us that the learned chairman did comment strongly on the evidence and did so in a manner which would have left little doubt in the minds of the jury as to his own personal views of the evidence. But is this in itself a sufficient ground for our setting aside the verdict?

"The right of the trial judge to comment and indeed to comment strongly on the evidence and otherwise offer such observations as he thinks fit is well established by authority provided that — and this is vital — he makes it quite clear to the jury that it is they who are the judges of the facts and that they are free to accept or disregard his comments as they choose: see *R.* v. *Kerr* (No. 2), [1951] V.L.R. 239 at pp. 247–8.

"As appears throughout his charge the learned chairman was at pains to remind the jury that it was their function and not his to decide the facts and it was for them to accept or reject any comments of his according as they found them of assistance or not. This Court should assume that the jury performed their duty in the absence of indications to the contrary. There are no such indications in this case."

R. *v.* THOMPSON

(1961) 78 Weekly Notes (New South Wales) 1006

Court of Criminal Appeal of New South Wales

Criminal law — Confession — Induced by untrue representation

Appeals were brought by four appellants against convictions on charges of armed robbery arising from the same circumstances. A matter raised on behalf of one of the appellants was that the confession made by him to the police was induced by a statement by the police that two of his alleged accomplices had implicated him, a statement which was untrue in that only one had done so.

So far as is relevant, section 410 of the Crimes Act 1900 (New South Wales) provides as follows:

"(1) No confession, admission, or statement shall be received in evidence against an accused person if it has been induced — (*a*) by any untrue representation made to him by the prosecutor, or some person in authority; . . .

"(2) Every confession, admission, or statement made after any such representation . . . shall be deemed to have been induced thereby, unless the contrary be shown."

Held, that the expression "untrue" representation in section 410 means wilfully untrue — untrue, that is, to the knowledge of the person making it, and made with the object of extorting a confession. The object of the section, coupled as it is with the older common law upon the subject of inducements, was to prevent accused persons from being entrapped into making an admission or statement by being led to believe that there was a stronger case against them than that which actually existed.

Held that, as the statement in question was not wilfully untrue or made with the object of extorting a confession, the ground of appeal failed. Further, the confession was not in fact induced by the untrue statement but by a later statement by the police relating to another matter, and this constituted an additional reason why the ground of appeal must fail.

BREBNER *v.* PERRY

(1961) South Australian State Reports 177

Supreme Court of South Australia

Criminal law — Witness — Incriminating questions

On the hearing of charges against the defendant for offences against the Lottery and Gambling Act 1936–1956 (South Australia), the prosecutor in opening stated that he proposed to call S. as a witness. From the prosecutor's outline of the evidence that S. would give, it was clear that S. had already made a statement to the police implicating himself and the defendant in the offences charged. There was nothing to suggest that the statement made was privileged or not capable of being used in evidence in any proceedings that might be brought against S.

On being sworn as a witness, S. declined to answer a number of questions put to him on the ground that the answers might incriminate him.

Held that S. was not entitled to refuse to answer questions. He had already made himself liable to any prosecution that might be laid and his objection to answer could not be treated as made *bona fide* for

the protection of himself. He was not concerned with his own protection; his conduct was in the interest of the defendant.

Per Mayo, J. (pp. 180–1):

"What is the general proposition in regard to the compulsion of a witness to answer where he objects? The matter was discussed and principles stated and elaborated in *J. H. Sherring & Co.* v. *Hinton* [1932] S.A.S.R. 233; 7 Austn. Digest 755 and in *Matthew* v. *Flood* [1938] S.A.S.R. 312; 26 Austn. Digest 232. Where a witness who is on oath objects that the answer to a question put to him may incriminate him, and there is good reason to accept the objection as well founded he will be excused. "The danger . . . must be real and appreciable, with reference to the ordinary operation of law in the ordinary course of things — not a danger of an imaginary and unsubstantial character, having reference to some extraordinary and barely possible contingency, so improbable that no reasonable man would suppose it to influence his conduct": *R.* v. *Boyes* (1861) 1 B. & S.311, at p. 330. (121 E.R. 730, at p. 738); *Ex parte Reynolds*; *In re Reynolds* (1882) 20 Ch. D. 294. Where the risk is removed by a pardon or by a lapse of time, certainly if there be a statutory limitation upon proceedings, the privilege of the witness no longer remains: *Roberts* v. *Allatt* (1828) Moo. & Malk. 192 (173 E.R. 1128); *Dover* v. *Maestaer* (1803) 5 Esp. 93 (170 E.R. 749); *Attorney-General* v. *Cunard Steamship Co.* (1887) 4 T.L.R. 177. The claim by the witness, although on oath, even if there be no doubt as to his credibility, is not sufficient. It must be shown to the court, from the circumstances, and the nature of the testimony that is sought to be educed, that there is reasonable ground he may be implicated in some offence by his answer. The fact that an offence (if any) would be of a trifling nature might be treated by the court as precluding reliance on privilege. On the other hand, the rarity of prosecutions of a nature that might be framed will not be regarded as an answer to an objection by the witness: *Triplex Safety Glass Co.* v. *Lancegaye Safety Glass* (1934) *Ltd.* [1939] 2 K.B. 395.

R. *v.* RYAN

(1961) Queensland Weekly Notes No. 2

Court of Criminal Appeal of Queensland

Criminal law — Previous conviction of Crown witness — Not disclosed at trial

On an appeal against convictions of stealing with actual violence in company, it was conceded by the Crown that the main witness relied upon by the Crown at the trial had been convicted on forty-four occasions between 1943 and 1960 and that he had been sentenced to a total of nine years and four months in gaol. In cross-examination at the trial, the witness had not admitted any convictions.

Held that the convictions appealed against should be quashed and no new trial ordered. It was beyond doubt that if the tally of the witness's convictions had been admitted to before the jury his credibility would have been destroyed and with it the Crown case.

BUNGE (AUSTRALIA) PTY. LTD. *v.* CREST MILLS PTY. LTD.

(1961) 78 Weekly Notes (New South Wales) 691

Supreme Court of New South Wales

Arbitrators' award— submissions by one party withheld from other party — Natural justice

A dispute between the vendor and the purchaser of certain barley was referred to arbitration. Certain written submissions were made by the vendor to the arbitrators, without informing the purchaser of their contents. The arbitrators considered these submissions, but refused to disclose their contents to the purchaser. The arbitrators also interviewed the vendor in the absence of the purchaser, and the purchaser in the absence of the vendor. The arbitrators made an award in favour of the vendor. The purchaser applied to have the award set aside.

Held, that the arbitrators' actions were a denial of natural justice and constituted "misconduct" within the Arbitration Act 1902–1957 (New South Wales), s. 13. The award should be set aside.

2. RIGHT TO BE PRESUMED INNOCENT UNTIL PROVED GUILTY

COUGHLIN *v.* GAYNOR, EX PARTE GAYNOR

(1961) Queensland Reports 351
Supreme Court of Queensland

Criminal law — Onus of proof — Miscarriage of justice

The defendant was convicted by a stipendiary magistrate of being under the influence of liquor or a drug whilst in charge of a motor vehicle. The written reasons for the magistrate's decision contained the following remark:

"I consider that a *prima facie* case of guilt has been established for the complainant and such case has not been weakened by the evidence led for the defence. . . ." The defendant appealed.

Held, that the appeal should be allowed and the conviction quashed.

Per Townley, J., with whom the other two judges agreed (p. 354):

". . . the magistrate, after hearing evidence for the defence, considered first whether the prosecution had made out a *prima facie* case and, next, whether the defendant had rebutted or rather weakened it. It was not a case where he was called upon, at the conclusion of the evidence for the prosecution, to

decide whether there was a case to answer. At the stage when he was giving his reasons what he was required to decide was, whether on the whole of the evidence, he was or was not satisfied beyond reasonable doubt of guilt. The words used by the magistrate — and we must presume he meant what he said — appear to me to evince the adoption by him of an incorrect process in arriving at his conclusion. On this ground — the first taken — I am of the opinion that the conviction should be quashed."

Townley, J. referred to the evidence given before the magistrate, which, he said, exhibited unsatisfactory features. He went on to say (pp. 355–6):

"In view of the state of the evidence I think it was a case where the magistrate was required to bear clearly in mind that he was bound to consider whether or not he was satisfied beyond reasonable doubt. From what he said, I think he failed sufficiently to appreciate this requirement.

"I do not think that, where this requirement of the administration of the criminal law has not been observed, it can be said that no substantial miscarriage of justice has occurred, even though there may appear in the deposition evidence upon which the magistrate could have convicted.

"I therefore am of opinion that the appeal should be allowed, and the conviction and order disqualifying the appellant from holding or obtaining a driver's licence should be quashed."

3. FREEDOM OF EXPRESSION

Attorney-General for N.S.W. *v.* Mirror Newspaper Ltd.

(1962) 79 Weekly Notes (New South Wales) 56
Supreme Court of New South Wales

Publication in newspaper of photograph of accused person — Likelihood that identity of accused may come in question — Contempt of court

After three months of intensive police investigations into the abduction and murder of a schoolboy, one B. was arrested and charged with the murder. On the day following his arrest, the front page of the respondent company's newspaper carried a large photograph of B. under bold headlines which read "Man held. First photo".

Held (i) that the test to be applied in order to determine whether the publication of the photograph of an accused person, in such a way as to state or suggest that it is he who is accused, is a contempt of court calling for summary action, is to see whether, as at the time when the photograph was published, there was a likelihood that the identity of the accused would come in question in some aspect of the case, so that the publication of the photograph would be likely to prejudice a fair trial.

(ii) No reasonable man in the position of the editor in the present case could have failed at the time of publication of the photograph to realize that the question of the identification of B. with the crime must arise at his trial.

(iii) The absence of any intent or purpose in the respondent company to do injustice to B. or the Crown was not a decisive consideration.

(iv) The facts that regret and apology had been expressed by the editor and that the case aroused the greatest public interest were mitigating circumstances.

(v) The publication of the photograph constituted a grave and serious contempt, but, in fixing the penalty, the mitigating circumstances should be taken into consideration. The respondent company and the editor of the newspaper should each be ordered to pay a fine of £250, and the costs of the Attorney-General's application.

Per the court (pp. 57, 58):

"The phrase contempt of court as applied to the facts of this case is a little misleading. It does not refer to a contemptuous attitude to the court itself but to the mischief created by a publication tending to prejudice the position of an accused person or of the Crown in its role as prosecutor. . . .

"There can be no doubt that the publication in a newspaper of a matter which is calculated to embarrass the normal administration of justice is, in our community, an abhorrent thing and courts must be vigilant to preserve inviolate the ordinary process of law."

Ex parte Dawson; Re Australian Consolidated Press Ltd.

(1961) 78 Weekly Notes (New South Wales) 221
Supreme Court of New South Wales

Contempt of court by newspaper — Matter of public interest

D. was discharged from employment with the New South Wales Department of Road Transport on the ground of misconduct. Before D. had lodged notice of appeal to the Appeal Board constituted under the Transport Act 1930–1957 (New South Wales), the respondent newspaper company published an article critical of D. and supporting his dismissal. The article was one of a number of newspaper articles published dealing with a matter of public interest, which was being debated in the State Parliament, relating to industrial unrest in the public transport services in Sydney. Neither the executive of the company nor its reporters knew of the existence of the right of appeal against dismissal given by the Act. D. applied for and was granted a rule *nisi* calling upon the company and its editor to show cause why they should not be dealt with for contempt of court.

Held that the rule *nisi* should be discharged on

the grounds (i) that when the article was published there were no proceedings pending; (ii) that the possibility of prejudice to the applicant on his appeal, if he was to be regarded as a litigant, must give way to the wider public interest involved in a free discussion of matters of public interest and importance.

Per Street, C. J. (p. 222):

"It is essential to the establishment of the offence of criminal contempt that there should be proceedings pending when the comments appear or are published . . . In civil cases all the authorities to which we have been referred . . . establish that proceedings are at an end in an action after judgment has been delivered, even though the time for the hearing of an appeal has not yet elapsed."

Owen and *Herron* JJ., adopted and applied the following passage from the judgment of *Jordan*, C. J., in Ex parte *Bread Manufacturers Ltd.*; *re Truth and Sportsman Ltd.* (1937) 37 State Reports (New South Wales) 242 at pp. 249–50:

"It is of extreme public interest that no conduct should be permitted which is likely to prevent a litigant in a court of justice from having his case tried free from all matter of prejudice. But the administration of justice, important though it undoubtedly is, is not the only matter in which the public is vitally interested; and if in the course of the ventilation of a question of public concern matter is published which may prejudice a party in the conduct of a law suit, it does not follow that a contempt has been committed. The case may be one in which as between competing matters of public interest the possibility of prejudice to a litigant may be required to yield to other and superior considerations. The discussion of public affairs and the denunciation of public abuses, actual or supposed, cannot be required to be suspended merely because the discussion or the denunciation may, as an incidental but not intended by-product, cause some likelihood of prejudice to a person who happens at the time to be a litigant.

"It is well settled that a person cannot be prevented by process of contempt from continuing to discuss publicly a matter which may fairly be regarded as one of public interest, by reason merely of the fact that the matter in question has become the subject of litigation. . . ."

Wells Organizations Pty. Ltd. *v.* Fitzgerald

(1962) 79 Weekly Notes (New South Wales) 311
Supreme Court of New South Wales

Defamation action against periodical — Order to supply name of wirter

Section 25 of the Defamation Act 1958 (New South Wales) reads as follows:

"The proprietor of a periodical may upon the written request of a person who has commenced an action in respect of defamatory matter contained in an article, letter, report, or writing in the periodical supply to that person the name and address of the person who supplied the article, letter, report, or writing to the periodical, and in default of compliance with the request the person who has commenced the action may apply to a judge of the Supreme Court who may, if he sees fit, after hearing the proprietor, direct that the name and address be so supplied."

Held that a plaintiff is not entitled as of course to be supplied by the proprietor with the name and address of the writer of an article under section 25. Some positive reason must be adduced in favour of the application.

The plaintiff in an action in respect of defamatory matter published in a periodical applied for an order under section 25. The order was asked for on the ground that the defendant would probably plead fair comment or qualified privilege and it might be necessary to rebut such a plea by showing express malice — a course which might be facilitated if the name of the person who supplied the article in question were known to the plaintiff.

Held that the application should be refused.

Per Maguire, J. (p. 313):

"In the present case there is no material before me to indicate that the article complained of was written by an outsider who was using the columns of [the periodical] to disseminate opinions of the plaintiff company. The article does not bear the name of any person nor any *nom de plume*. Indeed, if any inference can be drawn from the nature of the article itself, it is that it was written by an editorial or other member of the staff to express the views of the periodical on the activities of the plaintiff company. It seems to me that in such cases the discretion of the judge should be less readily excercised in favour of a plaintiff.

"At any rate I cannot feel satisfied that any positive reason has been adduced in support of the application which would justify me in making the order sought."

4. RIGHT OF CHILD TO MAINTENANCE WITHOUT DISTINCTION BASED ON BIRTH OUT OF WEDLOCK

Trojanowski *v.* Trojanowski

(1961) Western Australian Reports 52
Supreme Court of Western Australia

Maintenance of children — Illegitimate child

In the course of proceedings for judicial separation under the Matrimonial and Personal Status Code

1948–1957[1] (Western Australia), an order for maintenance was made by the Registrar in Divorce for two children who were in custody of the wife. One a boy, was an illegitimate child born to her prior to the marriage of the parties, the second, a girl, was a child of the marriage. The Registrar awarded £1 5s. per week in respect of the boy's maintenance and £2 5s. per week in respect of the maintenance of the daughter of the marriage. The husband appealed on the ground that the Registrar had no jurisdiction in respect of the boy and the wife cross-appealed on the ground that the amount awarded for the boy should have been the same as that awarded for the girl.

Held that the Registrar had jurisdiction to make the order and that the appropriate amount for the boy was the same as that awarded in respect of the girl — namely, the sum of £2 5s. per week.

Per Virtue, J. (pp. 53–4):

"It is claimed on behalf of the husband in the first place that an illegitimate child is not a 'child' within the meaning of s. 44 of the *Matrimonial Causes and Personal Status Code*, which is the only section conferring on the Court power to entertain applications for the maintenance of children.

"The meaning of the word 'children' in that section is no doubt covered by the definition of 'child' in s. 4. That definition is as follows: '"Child" means a child of a marriage, a child legally adopted by one or both parties to a marriage, or anybody to whom one or both of the parties to a marriage stand *in loco parentis*'.

"I agree with the conclusion reached by the magistrate that the words 'child' and 'children' in ss. 4 and 44 (1) respectively include illegitimate children.

"The presumption that such words when used in a statute refer only to legitimate children should not be held to apply to the use of 'children' in the definition in s. 4, where it is clear having regard to the inclusion in the definition of infants to whom the parties are *in loco parentis*, that no legal relationship to the parties or to anyone else is necessary.

"I have no doubt that the meaning of 'child' in s. 4 governs the meaning of 'children' in s. 44 and, accordingly, that an order for maintenance may be made in respect of an illegitimate child to whom either spouse or both are *in loco parentis*."

Having found that the father was *in loco parentis* to the boy at the relevant time, Virtue J., went on to say (pp. 54–5):

"In view of my conclusion that the father was *in loco parentis* it is unnecessary to deal with the other questions raised and dealt with by the Registrar, namely, as to whether a natural mother could or should not be regarded as *in loco parentis* to her own illegitimate child under s. 4. I would say, however, that I think the conclusion to which the Registrar came in that regard was correct. I do not consider that it would be a misuse of terms to refer to the natural mother as being *in loco parentis* to her natural child, who after all is in law '*filius nullius*', if in fact the child is in her actual care and control. Any other conclusion, too, could result in the possibility that an illegitimate child of the wife could be in a worse position for obtaining maintenance from the husband than the child of a stranger to whom the mother was *in loco parentis*.

"Accordingly, the husband's appeal fails.

"The wife appeals on the grounds that the maintenance for the son was wrongly fixed at substantially less than the maintenance to which she was reasonably entitled for his support. The Registrar so decided not because he thought that the boy's needs were in any way less than those of his younger sister, but because he thought that in the circumstances it was just that the amount ordered to be paid in respect of the boy should be in the nature of assistance rather than full maintenance. . . .

"I cannot see why the award in respect of the illegitimate child who is entitled under the statute to claim maintenance from his father should be fixed on any other basis than that appropriate in the case of a child of the marriage or any other child entitled to claim under s. 44."

[1] See, now, the *Matrimonial Causes Act 1959* (Commonwealth), referred to in 1959 *Yearbook*, p. 12, which came into force on 1 February 1961.

AUSTRIA

PROTECTION OF HUMAN RIGHTS IN LEGISLATION AND JUDICIAL DECISIONS, 1961[1]

A. Legislation (Acts and Ordinances)

I. FUNDAMENTAL FREEDOMS

1. RIGHT TO OWN PROPERTY

(*a*) Federal Act, *BGBl.* No. 100/1961, made federal resources available for the establishment of a fund to provide compensation for loss of property by victims of political persecution.

(*b*) The Fourth Compensation Claims Act, *BGBl.* No. 133/1961, empowers the collection agencies established under article 26 of the Austrian State Treaty to investigate claims in respect of requisitioned property.

(*c*) The Ordinance of the Federal Ministry of Finance, *BGBl.* No. 162/1961, sets commencement dates for the periods upon expiry of which persons who have suffered damage or are otherwise entitled to make claims may appeal to the Federal Compensation Commission.

2. RIGHT TO A PROPER HEARING

(*a*) The five-day week giving rise to a work-free Saturday has become in recent years the widespread practice in Austria, and therefore Federal Act, *BGBl.* No. 37/1961, provides that statutory periods shall be exclusive of Saturdays and of Good Friday, since the latter has become in practice a day of rest.

(*b*) Ordinance of the Federal Government, *BGBl.* No. 96/1961, regulates in detail the organization of the Linz division of the federal police, in order accurately to define the powers of the administrative authority.

(*c*) Federal Tax Ordinance, *BGBl.* No. 194/1961, establishes procedural rules for taxes administered by the Federal taxation authorities, with a view to laying down detailed statutory regulations governing procedure.

(*d*) The Judicial Service Act, *BGBl.* No. 305/1961, establishes comprehensive new regulations governing the conditions of service of judges and candidate judges, thus contributing appreciably to the preservation of the independence of the judiciary, which is guaranteed by the Constitution.

[1] Note furnished by the Government of Austria.

II. SOCIAL RIGHTS

1. The Machinery and Industrial Safety Ordinance, *BGBl.* No. 43/1961, specifies the machines which may be placed on the domestic market provided that they are fitted with suitable safety devices to protect the operators.

2. Federal Act, *BGBl.* No. 98/1961, provides that female civil servants shall be allowed compensation while on leave of absence for maternity reasons.

3. An amendment to the Salaries and Wages Attachment Act, *BGBl.* No. 118/1961, increases the amounts which employees must be allowed to retain if their salary or wages are subject to an attachment order.

4. The Foreign Pensions Transfer Act, *BGBl.* No. 290/1961, lays down regulations concerning claims to benefit and qualifying periods for purposes of pension and accident insurance arising out of employment abroad.

B. INTERNATIONAL AGREEMENTS

I. RIGHT TO PERSONAL LIBERTY

1. The ratification of the convention concerning forced or compulsory labour (*BGBl.* No. 86/1961) constituted a significant contribution to the international guarantee of human rights.

2. The declarations of the Federal Government recognizing the right of individual petition (article 25) and the compulsory jurisdiction of the court (article 46) under the provisions of the European Convention for the Protection of Human Rights were extended for a further period of three years.

3. In the interest of preserving the right to protection of intellectual property, the term of copyright for literary and artistic works was extended by an exchange of notes between the Austrian Embassy at Madrid and the Spanish Ministry of Foreign Affairs (cf. *BGBl.* No. 256/1961).

II. CULTURAL RIGHTS

1. The European Convention on the equivalence of academic degrees and secondary school diplomas entered into force with respect to Austria on 16 April 1961 (cf. *BGBl.* No. 143/1961).

2. Austria acceded on 22 June 1961 to the Statute of the International Study Centre for the Preservation and Restoration of Cultural Property (cf. *BGBl.* No. 202/1961).

III. ECONOMIC RIGHTS

The entry into force with respect to Austria on 28 June 1961 of the Convention on the International Development Organization (*BGBl.* No. 201/1961) represents a further contribution to international economic co-operation.

IV. SOCIAL RIGHTS

In the interest of promoting the economic security of children, the Agreement on the recognition and enforcement of judgements concerning maintenance obligations in respect of children was ratified by Austria (cf. *BGBl.* No. 294/1961).

C. JUDICIAL DECISIONS

The decisions of the Constitutional Court showed no signs of any substantial change with regard to human rights and fundamental freedoms. The following decisions are nevertheless worthy of mention:

1. According to the decision of the Constitutional Court of 18 February 1961 (B 247/60), the right to a hearing by the competent tribunal may also be violated by illegal failure to recognize the rights of the parties to a case.

2. Not only censorship of the press, but also censorship of plays and of films are prohibited under the fundamental rights and freedoms guaranteed by the Austrian Federal Constitution. (Decision of the Constitutional Court of 11 March 1961, B 82/60).

3. According to the decision of the Constitutional Court of 8 March 1961 (B 168/60), even an order to wait in a room reserved for parties in legal proceedings must be regarded as unconstitutional restraint.

4. A violation of the constitutionally guaranteed *right to a hearing by the competent tribunal* occurs if the authorities exercise punitive power with respect to an act which, under the law, is not in any manner subject to criminal proceedings since it does not contravene any valid rule embodying penal sanctions. (Decision of the Constitutional Court of 27 May 1961, B 30/61).

5. According to the decision of the Constitutional Court of 22 June 1961, B 260/60, the *principle of equality* is an essential factor in enforcing prohibition of arbitrary exercise of administrative functions.

6. Under article 18 of the State Fundamental Act respecting the general rights of citizens, no person may be hampered or restricted by a rule of law in exercising *the right to the free choice of employment* and of training therefor. (Decision of the Constitutional Court of 9 October 1961, B 163/61.)

7. To order a person to limit a telephone conversation to certain matters must be regarded as a restraint subject to determination of constitutionality if such action, taken by an official authority, gives the impression that the person affected is to lose his personal liberty. (Decision of the Constitutional Court of 14 October 1961, B 245/61.)

8. By its decision of 18 November 1961 (B 269/61) the Constitutional Court ruled that the European Convention for the Protection of Human Rights has the same status in Austria as a simple Federal law.

9. The principle "*nulla poena sine lege*" is contained indirectly in the constitutionally guaranteed right to a hearing by the competent tribunal. (Decision of the Constitutional Court of 18 November 1961, B 269/61.)

BELGIUM

NOTE[1]

1. Article 10 of the Act of 14 February 1961 concerning economic expansion, social advancement and financial recovery (*Moniteur belge*, 15 February 1961), considerably broadens the functions of the National Employment Office [*Office national de l'emploi*]. The latter is made responsible, in conditions to be determined by the King, for:

(*a*) Promoting and organizing the recruitment and placement of workers;

(*b*) Promoting and organizing the recruitment and placement of involuntarily unemployed persons;

(*c*) Promoting and organizing the accelerated vocational training of adults, either by establishing its own centres for that purpose or by subsidizing centres having legal personality and approved for the said purpose;

(*d*) Contributing to the wages of involuntarily unemployed persons who are elderly, handicapped or for other reasons deemed not readily employable and have been recruited through its services;

(*e*) Contributing to the costs involved in the selection, vocational training or reinstallation of staff recruited by employers for the purpose of establishing, expanding or reconverting enterprises;

(*f*) Contributing to the reinstallation costs of unemployed workers;

(*g*) Contributing to the wages of workers affected by the reconversion of their enterprise;

(*h*) Promoting and organizing the vocational training and retraining and the social rehabilitation of handicapped persons;

(*i*) Arranging, with the help of the organs established or to be established for the purpose, for the payment to involuntarily unemployed persons and their families of the benefits to which they are entitled.

Articles 18 and 19 of the same Act contain provisions for regulating the labour market:

Where the conditions of the labour market so require, the King may, by an order accompanied by a statement of grounds and discussed in the Council of Ministers, make the hiring, dismissal and laying off of workers or of certain categories thereof and the introduction or modification of short-time work subject to prior authorization or declaration.

The King may also, in the same circumstances, require employers to notify the National Employment Office of some or all of the vacancies in their enterprises.

2. Various royal orders relating to labour policy have been made on the basis of the Act of 14 February 1961 concerning economic expansion, social advancement and financial recovery:

I. The royal order of 24 March 1961 concerning the accelerated vocational training of adults and the vocational retraining of unemployed persons (*Moniteur belge*, 28 March 1961). The purpose of this order is to encourage the occupational flexibility of labour by: (*a*) remedying the lack of occupational skills among the unemployed which is the underlying reason for the instability of their employment; (*b*) organizing the accelerated vocational training of workers who though not unemployed must acquire new skills owing to changes in the structure of the country's economy. The measures giving effect to this royal order are contained in the ministerial orders of 30 and 31 July 1961 (*Moniteur belge*, 7 August 1961).

II. The royal order of 20 March 1961 concerning the payment by the National Employment Office of a contribution to the re-installation costs of unemployed persons moving to new homes (*Moniteur belge*, 23 March 1961). The purpose of this order is to promote greater labour mobility. While certain areas in the kingdom have to deal most of the time with a local labour shortage, others experience a chronic labour surplus. Workers from the latter areas who, on the one hand, are attached to their traditional environment and, on the other, cannot easily pay the cost of installation elsewhere, are generally obliged to commute daily over long distances. Since a sufficient number of new jobs cannot be created very rapidly in the areas with a permanent labour surplus and since long daily journeys seriously affect the workers' health, other short-term remedies have had to be sought. The royal order referred to above empowers the National Employment Office to make a financial contribution to the reinstallation costs of unemployed persons moving house in order to take up new jobs. This royal order was supplemented by the ministerial order of 4 August 1961 (*Moniteur belge*, 9 August 1961).

III. The royal order of 25 February 1961 concerning the payment by the National Employment Office

[1] Note furnished by Mr. Edmond Lesoir, Honorary Secretary-General of the International Institute of Administrative Science, Brussels, government-appointed correspondent of the *Yearbook on Human Rights*.

of a contribution to the wages of persons who are not readily employable and who have been recruited through its services (*Moniteur belge*, 1 March 1961). Unemployment statistics show that a large proportion of the available labour force has a reduced working capacity because of old age or physical handicaps. The purpose of this royal order is to promote the recruitment and employment of these unemployed and not readily employable persons through the payment by the National Employment Office of a financial contribution towards their wages. It seeks to induce employers, through the payment of part of the wages involved, to recruit these workers and to waive the age-limits generally applied hitherto and overlook the disadvantages which they consider such workers to present. Thus, on the one hand, this measure aims at rescuing unemployed persons of this kind from their state of inferiority and enabling them to resume their place in the production process; on the other hand, it rewards the employer for his initiative and for any initial retraining difficulties he may have to overcome.

IV. The royal order of 20 March 1961 concerning the payment of a contribution to the wages of workers affected by the reconversion of their enterprises (*Moniteur belge*, 23 March 1961). For economic reasons the reconversion of certain enterprises has become an absolute necessity. It usually involves a transitional period during which the enterprises concerned reduce their operations or suspend them altogether so that the necessary changes can be made. Reconversion often entails very high capital costs and, in most cases, necessitates the laying-off or dismissal of some of the employees or the transfer of certain workers to less well-paid jobs. The royal order referred to above makes provision for the payment of a financial contribution to the wages of workers who, because of the reconversion of their enterprises, are temporarily laid off or employed in less well-paid jobs.

V. The royal order of 24 March 1961 concerning the payment by the National Employment Office of a contribution to the costs involved in the selection, vocational training or re-installation of staff recruited by employers for the purpose of establishing, expanding or reconverting enterprises (*Moniteur belge*, 28 March 1961). A policy of economic expansion implies the establishment of new enterprises or the expansion of existing ones. Its application, however, creates difficulties relating to the skills, number and local availability of workers. With a view to eliminating these difficulties so far as possible, the royal order of 24 March 1961 makes provision for financial assistance in the selection and vocational training of workers and the re-installation of workers who move to new homes.

The provisions of these orders are such as to exert a favourable influence on the labour market and to afford workers better employment opportunities.

3. The Act of 11 July 1961 concerning minimum safety standards applicable to machines, machine parts, equipment, tools, appliances and containers (*Moniteur belge*, 24 July 1961) empowers the King to define the conditions which must be met before machines, machine parts, equipment, tools, appliances and dangerous containers may be imported, manufactured, held, offered for sale, transferred, delivered after repair, rented, lent, handled, exported, transported or used.

4. The Act of 20 July 1961, which amends the Act of 10 March 1900 on the labour contract, the labour contract legislation consolidated on 20 July 1955 and the legislative order of 9 June 1945 to issue rules for joint committees, with a view to facilitating the entry of workers into enterprises (*Moniteur belge*, 1 September 1961), deals with the problem of the psychological preparation of young persons on taking up employment at factories and of their reception in their work environment. It makes it the duty of the joint committees to furnish guidance and directives regarding the organization of the reception of young workers into enterprises, to encourage the training of apprentices in the trade in question and to seek to establish close and permanent relationships with vocational guidance institutions and trade schools.

5. The royal order of 23 November 1961, concerning the continued payment of full wages to workers absent for family reasons or for the performance of civic duties or civil assignments (*Moniteur belge*, 29 November 1961), cancels and replaces by more specific provisions the royal order of 25 October 1960 on the same subject the text of which had given rise to certain difficulties of interpretation.

6. Various decisions of joint committees have been made enforceable by royal order, reducing the length of the working week in the following sectors: laundries and dyeing establishments (royal order of 18 January 1961; *Moniteur belge*, 23 January 1961); foreign trade and shipping offices (royal order of 15 May 1961; *Moniteur belge*, 22 May 1961); construction (royal order of 13 December 1961; *Moniteur belge*, 23 December 1961); metal construction (royal order of 7 March 1961; *Moniteur belge*, 25 March 1961); dress-making (royal order of 12 October 1961; *Moniteur belge*, 20 October 1961); leather and hides (royal order of 5 October 1961; *Moniteur belge*, 13 October 1961); horticultural enterprises (royal order of 15 March 1961; *Moniteur belge*, 31 March 1961); furs and pelts (royal order of 7 August 1961; *Moniteur belge*, 17 August 1961); garages (royal order of 7 February 1961; *Moniteur belge*, 17 February 1961); department stores (royal order of 29 March 1961; *Moniteur belge*, 11 April 1961); flax (royal order of 24 February 1961; *Moniteur belge*, 4 March 1961).

ACT ON THE RIGHT OF REPLY

of 23 June 1961[1]

Art. 1. Without prejudice to other legal remedies, any person or corporate body explicitly or implicitly referred to in a periodical is entitled within three months to demand the insertion, without payment, of a reply.

Scientific, artistic, or literary criticism shall not, however, be subject to the right of reply except for the purpose of correcting mis-statements of fact or repudiating allegations of lack of integrity.

If the person referred to is deceased, the right of reply may be exercised by all relatives in the direct line or by the spouse or, in default of such, by the nearest relatives; it may be exercised once only, and by the party instituting the proceedings; if, on the day of decease of the person mentioned or referred to, any part of the three months' interval provided for in the first paragraph has elapsed, only the remaining part of that period shall be available to the interested parties.

Art. 2. The reply may not exceed 1,000 written letters or twice the space occupied by the text giving rise to the right of reply.

The person referred to may exercise the right of reply once only in relation to texts published in several consecutive issues.

In this case, his reply may not exceed 1,000 written letters or twice the space occupied by the longest of these texts.

The request for insertion shall contain a precise indication of the texts, references or quotations to which the reply refers.

Art. 3. The insertion of any reply may be refused if:

1. It has no direct connexion with the text in dispute;
2. It is insulting or contrary to the law or to morality;
3. It unnecessarily implicates a third party;
4. It is written in a language other than that of the periodical.

Art. 4. The reply must be inserted *in toto*, without intercalation, at the same place and in the same type as that of the text to which it relates.

The reply must be inserted in the first number published after the expiry of two clear days, excluding Sundays and holidays, reckoned from the receipt of the reply at the office of the periodical.

. . .

Art. 6. Proceedings can be instituted only on the complaint or accusation of the person who claims to have been injured. That party may withdraw his action for any reason; his withdrawal extinguishes the proceedings.

Art. 7. If the name of the editor is not indicated in the periodical, in the absence of proof to the contrary the printer is assumed to be the editor.

Art. 8. Prosecution or civil action arising from an infringement of article 4 of this Act shall be barred after three months reckoned from the day on which the insertion should have been made.

. . .

[1] Published in *Moniteur Belge*, 131st year, No. 162, of 8 July 1961.

BOLIVIA

POLITICAL CONSTITUTION OF THE STATE

of 31 July 1961[1]

SECTION I

THE NATION

Art. 1. Bolivia, a free, independent and sovereign nation, constituted as a unitary republic, adopts the democratic representative form of government.

Art. 2. Sovereignty is vested in the people; it is inalienable and cannot be removed by law; its exercise is delegated to the legislative, executive and judicial powers. The independence and co-ordination of these powers is the basis of government.

Art. 3. The State recognizes and upholds the Roman Catholic apostolic religion and guarantees the public exercise of all religions.

Relations with the Church shall be governed by agreements between the State of Bolivia and the Holy See.

Art. 4. The people shall not deliberate or govern except by means of their representatives and by the authorities created by law.

Any armed force or association of persons usurping the rights of the people commits the crime of sedition.

SECTION II

RIGHTS, DUTIES AND GUARANTEES

Art. 5. Slavery does not exist in Bolivia. No kind of servitude is recognized and no one shall be obliged to render personal service without just remuneration and without his full consent.

Personal services may be exacted only in cases determined by law.

Art. 6. Everyone has the following fundamental rights, in conformity with the laws that regulate their exercise:

(*a*) To preserve his health and his life;

(*b*) To express his ideas and opinions freely by any means of communication;

(*c*) To meet and associate for various purposes not contrary to the security of the State;

(*d*) To engage in work, commerce or industry under conditions that are not harmful to the common good;

(*e*) To receive instruction;

(*f*) To teach under the supervision of the State;

(*g*) To enter the national territory, remain in it, travel in it and leave it;

(*h*) To submit petitions;

(*i*) To own private property provided that it fulfils a social function.

Art. 7. Everyone has the following fundamental duties:

(*a*) To obey the law;

(*b*) To work, according to his capacity and ability, in some socially useful occupation;

(*c*) To acquire at least a primary education;

(*d*) To help to defray the expenses of the State, proportionately to his financial capacity;

(*e*) To assist, support, educate and protect his children while they are minors;

(*f*) To protect and support his parents if they are ill or in poverty;

(*g*) To perform any civil or military service which his country requires for its defence or protection;

(*h*) To co-operate with the Government and the community for purposes of social welfare and social security.

Art. 8. No one shall be arrested, held for trial or committed to prison except in the cases and according to the forms established by law.

A warrant for these purposes shall be executed only if it is issued by the competent authority and is served in writing.

Art. 9. Anyone who believes that he has been illegally held for trial, prosecuted or committed to prison may himself or through some other person acting on his behalf, with or without power of attorney, have recourse to the Higher District Court or to the Partido Court, as he prefers, with a plea that the legal formalities be respected. The judicial authority shall decree immediately that the individual be brought before it and its decree shall be obeyed, without objection or excuse, by those in charge of the jail or place of detention. Informed of the antecedents, the judicial authority shall order the individual to be released, cause the legal defects to be remedied or place the individual at the disposal of the competent judge within twenty-four hours. The decision that is pronounced shall be subject to an appeal for annulment before the Supreme Court

[1] Text published in *Gaceta Oficial de Bolivia*, No. 48, of 16 August 1961.

of Justice, an appeal that shall not suspend execution of the sentence.

Public officials or private individuals who resist the judicial decisions in the cases covered by this article shall at all times be guilty of an offence against constitutional guarantees, and the plea of having obeyed superior orders shall not serve as an excuse.

Art. 10. Any offender *in flagrante delicto* may be apprehended, even without a warrant, by any person for the sole purpose of bringing him before the competent judge, who shall take his deposition within not more than twenty-four hours.

Art. 11. Wardens of prisons shall not receive into custody persons arrested, held for trial or committed to prison without copying the relevant warrant into the register. Nevertheless, they may receive within the precincts of the prison persons who have been conducted there for the purpose of being brought before the competent judge within not more than twenty-four hours.

Art. 12. Attacks upon personal security involve the responsibility of those who instigate them and of those who carry them out, and the plea of having committed them under superior orders shall not serve as an excuse.

Art. 13. Public officials who, without a state of siege having been declared, take and cause to be executed measures for the prosecution, confinement or local banishment of citizens, and those who suspend printing or other means of expression of free thought, shall be liable to pay civil compensation for damages and injury, subject to proof in court that such measures or acts were carried out without just cause and in contravention of constitutional laws guarenteeing the rights of citizens.

The manner of receiving satisfaction for the injury caused shall be determined by a special law.

Art. 14. No one shall be tried by special commissions or sentenced except under a law which existed before the commission of the offence and by the competent judge or court, and unless the defence of the accused has been heard.

Art. 15. No one shall be obliged to testify against himself in criminal cases, nor shall his relatives to the fourth degree of consanguinity inclusive or to the second degree of affinity be so required.

In no case shall torture or any other kind of inhuman punishment be employed.

Art. 16. Confiscation of property shall never be applied as a political punishment.

Written correspondence and private papers shall be inviolable; they may not be seized except in the cases determined by law and by virtue of a written order, giving reasons, issued by the competent authority. Wrongly seized and intercepted letters and private papers shall not produce legal affects.

Art. 17. Every house is an inviolable refuge; no one may enter it at night without the consent of the person living in it, and by day it may be entered only as the result of a written order giving reasons and issued by the proper authority, except in cases of *flagrante delicto.*

Art. 18. The right of diplomatic asylum is recognized within the limits of international standards and conventions. There shall be no extradition except for the commission of offences under the ordinary law and never for political reasons.

Art. 19. Private property is guaranteed, provided that the use made of it is not prejudicial to the public interest. Expropriation may be ordered for reasons of public utility or when the property does not fulfil a social function, after fair compensation and in accordance with the law.

Art. 20. Foreign nationals and enterprises are subject to Bolivian law and can in no case plead an exceptional situation or appeal through diplomatic channels.

Art. 21. Within fifty kilometres of the frontiers, aliens shall not acquire or own soil or sub-soil, directly or indirectly, individually or collectively, by any title, under penalty of forfeiting the property acquired to the State, except in cases of national security stated in a special law.

Art. 22. No tax shall be compulsory unless it has been established in conformity with the provisions of this constitution. Plaintiffs may bring suit before the Supreme Court of Justice against illegal taxes. Municipal taxes are compulsory when, in their institution, the requirements prescribed in this constitution have been observed.

Art. 23. Taxes and other public charges shall be binding on all alike. Their establishment, distribution and abolition shall be general in character and shall accord with the principle of equality of sacrifice by taxpayers, whether the taxes be proportional or progressive.

Art. 24. The property of the Church, the religious orders and congregations, and the institutions engaged in education, welfare or charity, shall enjoy the same rights and guarantees as those of individuals, except in the case of articles of artistic or historical value, jewels and precious objects used in religious services, which may be sold only by the authorization of the Executive and only if the proceeds are intended for socially desirable purposes in Bolivia.

Art. 25. Everyone shall enjoy civil rights; the exercise of these rights shall be regulated by civil law.

Art. 26. Only the Legislature has power to amend and modify the Codes, and to make regulations and enact provisions regarding judicial proceedings.

Art. 27. Capital punishment and punishment by civic degradation or civil death do not exist. In cases of assassination, parricide or treason to the

fatherland, the sentence shall be thirty years of imprisonment with compulsory work, not subject to remission. Treason shall mean complicity with the enemy during a state of foreign war or espionage for other countries in peace-time which seriously endangers the security of the State.

Art. 28. Roads opened by individuals shall be available for public use. A special law shall regulate both the exercise of this right and co-operation between the State and individuals for the maintenance of such roads.

Art. 29. Acts of persons who usurp functions not belonging to them, and acts of persons exercising an authority or power not conferred on them by law, shall be null and void.

Art. 30. The principles, guarantees, rights and duties recognized in this Constitution may not be altered by the laws regulating their implementation.

Art. 31. No one shall be obliged to do anything that the Constitution and the laws do not require, or to obstain from doing anything that they do not prohibit.

Art. 32. Persons who violate constitutional rights and guarantees shall be subject to ordinary jurisdiction.

Art. 33. Every public, civil, military or ecclesiastical official shall, before assuming his office, make an express and specific declaration of any property or income which he may have, such property or income to be verified in accordance with the procedure determined by law.

Art. 34. The declarations, rights and guarantees enumerated in this Constitution shall not be regarded as excluding other rights and guarantees, not mentioned, which are inherent in the sovereignty of the people and in the democratic form of government.

SECTION III
NATIONALITY AND CITIZENSHIP

Art. 35. The following are Bolivians by birth:

(1) Persons born on the territory of the republic, with the exception of the children of foreigners who are in Bolivia in the service of their governments.

(2) Persons born abroad of a Bolivian father or mother, solely by the fact of coming to live on Bolivian territory or of registering at a consulate.

Art. 36. The following are Bolivians by naturalization:

(1) Spaniards and Latin Americans who may, under reciprocal conventions regarding "plural nationality" with their respective governments, acquire Bolivian nationality without renouncing their original nationality.

(2) Aliens who, after residing for two years in the Republic, declare that they wish to acquire Bolivian nationality and obtain naturalization papers in accordance with the law. The period of residence shall be reduced to one year in the case of aliens who:

(*a*) Have Bolivian spouses or children;

(*b*) Are engaged in agriculture or industry as a regular occupation;

(*c*) Carry out educational, scientific or technical functions.

(3) At the request, and without any further requirement, aliens who, at the legally prescribed age, perform military service.

(4) Aliens who, for services rendered, obtain their naturalization from the Senate.

Art. 37. A Bolivian woman married to an alien does not lose her nationality. An alien woman married to a Bolivian acquires the nationality of her husband, provided that she makes a declaration to this effect and resides in the country; she does not lose her Bolivian nationality even by widowhood or divorce.

Art. 38. Bolivian nationality is lost upon acquisition of a foreign nationality; it may be recovered merely by establishing residence in Bolivia, except in the case of persons covered by the régime of "plural nationality" under any relevant conventions that may have been signed.

Art. 39. Citizenship consists in:

(1) Contributing, either as a voter or as a person elected, to the establishment or action of the constitutional authorities of the country.

(2) Eligibility for public office, without other requirement than capacity, save for the exceptions established by law.

Art. 40. All Bolivians aged twenty-one years or more are citizens, regardless of their level of education, occupation or income, provided solely that their names are entered on the Civil Register.

Art. 41. Rights of citizenship shall be suspended:

(1) For the bearing of arms or the performing of service in an enemy army in time of war.

(2) For fraudulent conversion or embezzlement of public funds, or declaration of fraudulent bankruptcy, if an enforceable sentence to corporal punishment has been pronounced.

(3) For accepting employment from a foreign Government without permission of the Senate, except in the case of university or other cultural appointments.

Art. 42. Universal, compulsory, direct and equal suffrage and voting by secret ballot are recognized and guaranteed.

The National Election Board and the departmental election boards shall be the highest authorities in this matter.

. . .

Art. 45. The people shall be represented only

through the political parties the organization, rights and duties of which, as bodies corporate in public law, are regulated by law.

The representation of minorities is guaranteed.

Section IV

THE LEGISLATIVE POWER

Chapter I

Art. 46. The Legislative Power is vested in the National Congress composed of two chambers, one of deputies and the other of senators.

. . .

Art. 50. The following shall not be eligible for election as national representatives:

(1) Serving officials and employees of the civil service, members of the armed forces and police, and priests with civil functions who do not resign and quit their posts and employment at least sixty days before the date of the election. Rectors and professors of universities are excepted.

(2) Persons who have received contracts for public works and services; the managing directors, managers and directors, agents and representatives of companies or enterprises in which the Treasury has a financial interest, or of enterprises subsidized by the State; and persons responsible for the administration or collection of public funds — until they have terminated their contracts or closed their accounts.

. . .

Chapter III

Chamber of Deputies

Art. 63. The deputies shall be elected directly by the people, through universal suffrage. The number of deputies, and the electoral system, shall be established by the Electoral Law.

. . .

Art. 65. In order to be a deputy, it is necessary:

(1) To be Bolivian by birth;

(2) To have performed one's military service;

(3) To be entered on the Civil Register;

(4) To be at least twenty-five years of age;

(5) To be put forward by a political party or coalition of parties;

(6) Not to have been condemned to corporal punishment by the courts, unless one has been rehabilitated by the Senate; not to have judgements or writs of execution pending against one, and not to be covered by the cases of exclusion and incompatibility established by the Electoral Law.

. . .

Chapter IV

Chamber of Senators

Art. 68. The Senate of the Republic shall be composed of three senators for each Department, elected by universal suffrage on the basis of a full list and by a simple majority.

Art. 69. In order to be a senator, it is necessary to be at least thirty-five years of age and to fulfil the same requirements as for a deputy.

. . .

Section V

THE EXECUTIVE POWER

Chapter I

Office of the President of the Republic

Art. 85. The executive power is exercised by the President of the republic jointly with the Ministers of State.

Art. 86. The President and Vice-President of the republic shall be elected by direct universal suffrage and in accordance with the Electoral Law.

. . .

Art. 88. For election as President or Vice-President of the republic, the same qualifications are required as for election as senator.

Art. 89. The following may not be elected President or Vice-President of the republic:

(1) Ministers of State, or presidents or chairmen of economic and social bodies in which the State is concerned, who fail to vacate their offices six months before the date of the election.

(2) Blood relations, and relations to the second degree of affinity, of the persons holding the offices of President and Vice-President of the republic in the year immediately preceding the election.

(3) Members of the clergy and ministers of any religious faith.

Chapter IV

Preservation of Law and Order

Art. 109. The executive power is responsible for preserving and protecting law and order, through the legally established institutions.

Art. 110. In cases of grave danger caused by internal disturbance or foreign war, the Chief Executive, with the approval of the Council of Ministers, may declare a state of siege in any portion of the territory, as may be necessary.

Should the Congress meet in regular or extraordinary session while the republic or part of the republic is in a state of siege, continuation of the state of siege shall be authorized by legislative action. The same procedure shall apply if a state of siege has been decreed by the executive power while the Chambers are in session.

Should the Executive within ninety days not suspend the state of siege, the latter shall expire automatically at the end of that period, unless international war has been declared or civil war is in progress. Any persons who have been placed under

constraint shall be released therefrom unless they have been placed under the jurisdiction of the competent courts.

The Executive may not prolong the state of siege by new decree beyond ninety days, or declare other states of siege within the same year, without the consent of Congress. If Congress is in recess, the Committee of the Legislature shall give its provisional consent and the Executive or the Committee of the Legislature shall immediately convene an extraordinary session of Congress for the confirmation or suspension by Congress of such consent.

Art. 111. The declaration of a state of siege produces the following effects:

. . .

(3) The guarantees and rights proclaimed in this Constitution shall not generally be suspended automatically when a state of siege is declared; but they may be suspended with regard to specific persons of whom it may on good grounds be said that they are conspiring against the peace of the republic, and in that case the procedure set forth in the following paragraphs shall be observed.

(4) The legitimate authority may summon the persons in question to appear or may order their arrest, but within not more than six days it shall place them at the disposal of the competent judge, to whom it shall transmit the document or documents which supplied the motive for the arrest.

If, in the interest of the preservation of law and order, it proves necessary to remove the persons concerned to a distance, they may be assigned to residence in any inhabited centre that is not unhealthy.

The Executive shall provide medical assistance and food for persons so assigned and shall permit them to communicate with the members of their families.

Local banishment for political reasons is prohibited; but if a person who has been assigned to fixed residence, prosecuted or arrested for political reasons applies for a passport to go abroad, such passport shall not be denied him on any pretext, and the authorities shall provide him with the necessary guarantees.

Any persons who give or carry out orders which violate these guarantees may be prosecuted, after the termination of the state of siege, for violating constitutional guarantees; and they may not plead the excuse of having carried out the orders of their superiors.

(5) In addition, censorship may be imposed and provision may be made for the journey of the persons concerned from one part of the country to another.

Art. 112. The Government shall report to the next Congress, stating the reasons which led it to declare the state of siege and explaining what use it has made of the powers conferred upon it under the present section; it shall also state the results of any legal proceedings it has instituted, and indicate what steps must be taken to meet any financial obligations it has contracted by direct loans and by the collection of taxes before the due date.

Art. 113. The Congress shall devote its first meetings to a consideration of the report referred to in the preceding article; it shall either endorse that report or state that the Executive alone is responsible.

The Chambers may in this connexion make any inquiries that they consider necessary and ask the Executive for any explanation or justification of acts relating to the state of siege, even if such acts are not mentioned in the report.

Art. 114. Neither the Congress nor any association or meeting of the people may grant to the Executive extraordinary powers or the full authority of the State, or confer upon it higher powers which place the life, honour and property of Bolivians at the mercy of the Government or of any individual.

The personal and the other immunities of national representatives prescribed in this Constitution shall not be suspended during the state of siege.

Chapter VI
The Judicial Power

Art. 115. The judicial power is exercised by the Supreme Court, the district courts and other courts and tribunals established by law.

The administration of justice in the regular and special courts shall be free of charge.

Art. 116. Judges are independent and are subject only to the law.

Art. 117. No extraordinary courts may be established.

. . .

Art. 119. An essential condition of the administration of justice is that proceedings should be public, except when public morals and decency may be offended thereby.

In the preliminary investigation in criminal proceedings, the evidence shall no longer be secret.

. . .

Art. 124. The powers of the Supreme Court, in addition to those prescribed by law, are the following:

. . .

(5) To take cognizance, without appeal, of issues of pure law in which the decision depends on the constitutionality or unconstitutionality of laws, decrees or any other kind of decision.

. . .

Section VIII
ECONOMIC AND FINANCIAL SYSTEM

Art. 137. The economy shall be organized in such manner as to satisfy in general the principles of social justice, according to which the entire popula-

tion should be provided with an existence worthy of human beings.

. . .

Chapter II

AGRARIAN AND RURAL SYSTEM

Art. 163. Since all land is by origin the property of the State, the State shall be responsible for the distribution, redistribution and consolidation of landed property in accordance with the economic and social needs of the people.

Art. 164. Work shall be the basic source of the right to acquire and retain landed property, and the right to grant land to all peasants is hereby proclaimed.

Art. 165. The State does not recognize latifundia. The existence of community, co-operative and private properties is guaranteed. Forms of ownership and changes in such properties shall be prescribed by law.

. . .

SECTION IX

SOCIAL SYSTEM

Art. 173. Work is a duty and is the basis of the social and economic order.

Art. 174. Labour and capital enjoy the protection of the State. The law shall regulate relations between them and establish standards for individual and collective contracts, the minimum wage, the maximum working day, the work of women and minors, paid weekly rest periods and annual leave with pay, holidays, Christmas and Epiphany gifts, bonuses and profit-sharing schemes, increases in salary by reason of seniority, evictions, vocational training and other social benefits for the protection of workers.

Art. 175. The State shall protect the health of the country's human resources, shall ensure their permanent means of support and shall provide for the rehabilitation of unemployed persons; it shall also promote the raising of the family level of living.

Social security schemes shall be based on the principles of universality, solidarity, uniform management, economy, appropriateness and efficiency, and shall cover such matters and contingencies as sickness, maternity, work accidents, disability, old age, death, involuntary unemployment, family allowances and socially desirable housing.

Art. 176. For the employers, freedom of association is guaranteed; for the workers, the right to form trade unions as a means for their defence, representation, assistance, education and culture is recognized, together with the trade union code as a means of protection for trade union leaders in the legitimate activities in which they may engage during their term of office; and trade union leaders may not be prosecuted or committed to prison.

In addition, the right to strike as a means whereby the workers may exercise the legal right to suspend work, after complying with the formalities prescribed by law, in order to protect their rights is recognized.

Art. 177. The State shall promote, by appropriate legislation, the organization of co-operatives.

Art. 178. Labour disputes shall be settled by the organs of the public labour administration. Legal conflicts concerning the application of social legislation shall be settled by the labour tribunals and the National Labour and Social Security Court in accordance with the law.

Art. 179. Social welfare regulations are a matter of public law. They may be retroactive when the law so specifies.

The rights and benefits recognized by law in favour of workers and employees may not be renounced; agreements to the contrary, or agreements designed to make them of no effect, shall be null and void.

. . .

Art. 181. Social service and social welfare are functions of the State, and the conditions under which they are provided shall be defined by law. Public health regulations are compulsive and compulsory.

SECTION X

THE FAMILY

Art. 182. Marriage, the family and motherhood are under the protection of the State. Man and wife are equal before the law.

Cohabitation and free unions which are stable and exclusive of other unions shall produce the same effects as matrimony, both with regard to the personal relations and property of the persons living together and with regard to their children.

Art. 183. Inequality between children is not recognized; all children have the same rights and duties. Investigation of paternity is permitted, in conformity with the law.

Art. 184. The law shall determine the unattachable and inalienable family property, as well as the family allowances under the social security system.

Art. 185. Protection of the physical, mental and moral health of children is a fundamental duty of the State. The State shall defend the right of the child to a home and to education.

SECTION XI

EDUCATIONAL SYSTEM

Art. 186. The State shall promote the culture of the people; education is the highest function of the State.

State education shall be free and universal; it shall be given on the basis of the single, democratic school.

Art. 187. The State shall promote vocational

education and technical education, in a sense favourable to the economic development of the nation. It shall likewise encourage fundamental education in rural areas, in connexion with the programme of land reform.

. . .

Art. 191. Freedom of religious education is guaranteed.

. . .

Art. 199. All monuments and objects of archaeological interest are the property of the State. Art treasures of a colonial, archaeological and historical nature or connected with religious worship belong to the cultural heritage of the nation; they are under the protection of the State, and may not be exported.

The State shall protect buildings and sites which are declared to be of historical and artistic interest.

BRAZIL

NOTE[1]

1. Constitutional Amendment No. 4 of 2 September 1961 (*Diário Oficial*, part 1, No. 200, of 2 September 1961) established a parliamentary system of government. Article 2 provided for the election of the President by the National Congress.

2. Legislative decree No. 18 of 1961, of 15 December 1961 (*Diário Oficial*, part 1, No. 272, of 18 December 1961) accorded amnesty to persons having committed the crimes referred to therein.

[1] Information furnished by Dr. Carlos Medeiros Silva, Legal Adviser to the Civil Service Administrative Department, Director of the *Revista de Direito Administrativo*, government-appointed correspondent of the *Yearbook on Human Rights*.

DECREE No. 50,840 OF 23 JUNE 1961[1]

Art. 4. Radio broadcasting and television stations shall not be permitted to diffuse in their programmes texts, expressions or images that:

(*a*) Attempt directly or indirectly to endanger morals and decency;

(*b*) May provoke animosity or misunderstanding between the armed forces, or between the latter and the civilian authorities, and the institutions of the country;

(*c*) Instigate disobedience or non-compliance with the law;

(*d*) Incite or might incite strikes or subversive activities affecting public order;

(*e*) Contain contempt, injury or lack of respect for the authorities in power, military institutions, religious cults or political parties;

(*f*) Divulge secret information concerning national security;

(*g*) Divulge information of an alarmist or subversive tendency.

. . .

[1] Published in *Diário Oficial*, part 1, No. 142, of 26 June 1961.

ACT No. 4024 OF 20 DECEMBER 1961 TO ESTABLISH THE GUIDING LINES AND PRINCIPLES OF NATIONAL EDUCATION[1]

Title I

PURPOSES OF EDUCATION

Art. 1. National education, founded upon the principles of liberty and the ideals of human solidarity, shall have the following purposes:

(*a*) Understanding of the rights and duties of the individual, citizen, State, family and of the other groups which make up the community;

(*b*) Respect for the dignity and fundamental liberties of man;

(*c*) Strengthening of national unity and international solidarity;

(*d*) Complete development of the human personality and its participation in the work of the common weal;

(*e*) Preparation of the individual and of society for mastery of scientific and technological resources, enabling them to use the possibilities and overcome the difficulties of the physical world;

(*f*) Preservation and expansion of the cultural heritage;

(*g*) Condemnation of any discriminatory treatment due to philosophical, political or religious beliefs, as well as any class or race prejudices.

Title II

RIGHT TO EDUCATION

Art. 2. Education is the right of all and will be given in the home and in school.

Sole sub-section. — It is the duty of the family to select the type of education to be given to its children.

Art. 3. The right to education is ensured:

I. By the obligation of the public authorities and by the freedom of private initiative to provide in-

[1] Published in *Diário Oficial*, part 1, No. 278, of 27 December 1961; corrigendum in *Diário Oficial* part 1, No. 279 of 28 December 1961. Text furnished by Dr. Carlos Medeiros Silva.

struction at all grades as provided by the legislation in force;

II. By the obligation of the State to provide essential means whereby the family or in default thereof the other members of society may fulfil their educational responsibilities, upon proof of insufficiency of means, so that equal opportunity is ensured to all.

Title III

FREEDOM TO TEACH

Art. 4. The right to transmit knowledge is ensured to all as provided by law.

Art. 5. Public and legally authorized private educational establishments are guaranteed proper representation in the State education councils and recognition for all purposes of the studies carried out in them.

. . .

Title VI

EDUCATION OF PRIMARY GRADES

. . .

Chapter II. — Primary Education

. . .

Art. 27. Primary education is obligatory from the age of seven and shall be provided in the national language only. For those who start after this age special classes or supplementary courses corresponding to their level of development may be formed.

. . .

Art. 29. Every municipality will annually summon the school population of seven years of age for enrolment in the primary schools.

Art. 30. The father or guardian of a child of school age shall not hold public office or employment in a mixed economy or in an undertaking that operates a public service under concession unless he can prove that the child is enrolled in an educational establishment or receiving education at home.

Sole sub-section. — The following cases shall be deemed to be exemptions in addition to those allowed by the law:

(*a*) Where the poverty of the parent or guardian is established;

(*b*) Lack of schools;

(*c*) Enrolment is closed;

(*d*) Illness or grave disability of the child.

. . .

Title XI

SOCIAL SERVICES FOR PUPILS

Art. 90. Educational establishments shall be obliged technically and administratively to provide as well as guide, supervise and encourage social services and medical, dental and hospital care for the pupils, either in conjunction with other bodies or independently.

. . .

Title XIII

GENERAL AND TRANSITIONAL PROVISIONS

Art. 97. Religious teaching shall be part of the curriculum of official schools but it shall be optional and shall be provided without charge to public authorities in accordance with the pupil's religion as declared by the pupil if able, or by his legal representative or guardian.

1. The formation of a class for religious teaching shall be independent of a minimum number of pupils.

2. Teachers of religious instruction shall be registered with the appropriate religious authority.

. . .

Art. 120. This Act shall come into force the year after its publication and all provisions to the contrary are hereby repealed.

BULGARIA

NOTE[1]

The whole judicial system and the new socialist legislation of the People's Republic of Bulgaria which were established by the people's democracy after 9 September 1944 guarantee the effective implementation of the rights of the citizen.

The fundamental rights of the citizen are set forth in the following legislative provisions:

I. Code of Penal Procedure (extracts)

"*Art. 3.* All procedural means shall be available to citizens for the defence of their legitimate rights and interests.

. . .

"*Art. 8.* The defendant shall be considered not guilty until the contrary is proved. He shall have a right to defence.

. . .

"*Art. 41.* The defendant may not be forced to make avowals by means of promises, threats or other coercive measures."

[1] Note communicated by the Government of the Peoples' Republic of Bulgaria. The Government also drew attention to articles 2-5 and 71-89 of the Constitution of the Republic, which appear in the *Yearbook on Human Rights for 1947*.

II. Code of Civil Procedure (extract)

"*Art. 97.* Any citizen may institute proceedings to restore a right belonging to him when it has been infringed, or to restore the existence or the non-existence of a legal relationship or of a right when it is to his advantage to do so."

III. Penal Code (extract)

"*Art. 64.* An offence shall be dealt with under the law which was in force at the time of its commission.

"Where different laws have a bearing on a case up to the rendering of the final judgement, the most clement of the laws shall be applied."

IV. Act concerning Persons and the Family (extracts)

"*Art. 1.* Every person shall from the moment of birth acquire the capacity of assuming rights and obligations."

In addition to these legislative provisions, the entire body of legislation creates other rights of citizens and provides genuine conditions for their fulfilment.

BURMA

The Minister for Foreign Affairs of Burma has informed the Secretary-General of the United Nations that "during the year 1961 there have been no new constitutions, constitutional amendments, legislation, general governmental decrees and administrative orders, and court decisions that would in any way affect the fundamental freedoms and Human Rights as declared by the Universal Declaration of Human Rights and which are already enjoyed by the people of Burma".

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 1961 (EXTRACTS)

I. IMPROVEMENT IN THE MATERIAL PROSPERITY AND CULTURAL LEVEL OF THE PEOPLE

The average number of manual and non-manual workers employed in the national economy of the Byelorussian SSR in 1961 was over 2,020,000, representing an increase of 133,000 for the year.

In 1961, 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 and reduced-rate passes to sanatoria and rest homes, free education and advanced training, and other benefits and advantages.

There was an increase in the average cash earnings of manual and non-manual workers, and in the incomes of collective farm workers from the communal economy of the collective farms.

In conformity with decisions taken at the fifth session of the Supreme Soviet of the USSR, further progress was made in the gradual exemption of manual and non-manual workers from taxes. From 1 October 1961, workers earning less than 60 roubles per month became completely exempt from tax and the rate of taxation for workers earning from 61 to 70 roubles per month was reduced. As a result there was a rise in the take-home pay of manual and non-manual workers.

The volume of state and co-operative retail trade in 1961 amounted to 2,249.8 million roubles, representing an increase of 4 per cent over 1960 in comparable prices. The volume of public catering rose by 7 per cent in the same period.

The retail turnover of consumer co-operatives trading in rural areas amounted to 893.3 million roubles in 1961, representing an increase of 4 per cent over 1960 in comparable prices.

Further successes were achieved in the development of popular education, science and culture.

In the past year, work has continued on the introduction of universal eight-year education. By the end of the year, there were over 1,200 eight-year schools in the republic, or three times as many as in the 1960/61 school year.

The number of pupils attending general education schools was 1,471,000, or 89,000 more than in the previous academic year.

The network of boarding schools was expanded. At the beginning of the 1961/62 school year, there were 103 boarding schools in which 24,500 children were being educated or 50 per cent more than in the previous year.

One hundred and thirty-nine thousand persons were studying at higher and specialized secondary educational establishments, including 66,000 at higher educational establishments. Over 22,500 young specialists graduated from these establishments in the past year, including over 9,000 with higher education.

Correspondence and evening courses were further developed. The number of persons pursuing studies without interruption of employment in higher and specialized secondary educational establishments, and in schools of general education for young workers and rural youth, amounted to 160,000, including about 65,000 in higher and specialized secondary establishments. Of the students enrolled in day courses at higher educational establishments, 5,300 or 61 per cent had completed a period of practical work of not less than two years.

The network of scientific institutions was expanded and improved. The number of scientific workers increased as compared with the previous year.

The cinema industry underwent further expansion and the number of cinema installations was increased. Cinema attendance in 1961 rose by 14 per cent as compared with the preceding year.

Theatrical and musical organizations of the Republic provided entertainment for 5.3 million persons or 7 per cent more than in the preceding year.

There was large-scale construction of housing and

[1] Texts furnished by the Government of the Byelorussian Soviet Socialist Republic.

public amenities. In the past year, a total of 2,138,000 square metres of housing financed both by the state and by the population, was brought into occupancy in towns and workers' settlements. Of this a total of 1,270,000 square metres of housing or 18 per cent more than in 1960 was brought into occupancy under the state housing programme.

In addition, over 21,000 dwellings were built in rural areas by collective farmers and the rural intelligentsia during the past year.

The annual plan for capital investment in housing financed from funds allocated under the state plan was fulfilled to the extent of 100.1 per cent throughout the republic as a whole.

State capital investment in the construction of educational, cultural, scientific, artistic and health institutions increased during 1961.

Medical services to the population were further improved. The number of fully equipped hospital beds increased by 10 per cent, the number of doctors (not counting dentists) by over 8 per cent, and the number of places in permanent crèches by almost 6 per cent. Pioneer camps accommodated 11 per cent more children in the summer of 1961 than in the preceding year.

ACT CONCERNING THE STATE BUDGET OF THE BYELORUSSIAN SSR FOR 1961, ADOPTED ON 29 DECEMBER 1960 AT THE FOURTH SESSION OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR, FIFTH CONVOCATION

EXTRACTS

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

Art. 1. To approve the state budget of the Byelorussian SSR for 1961 submitted by the Council of Ministers of the Byelorussian SSR, together with the amendments (on the new price scale) adopted on the report of the Budget Commission of the Supreme Soviet of the Byelorussian SSR, providing for total revenue and expenditure of 1,293,504,000 roubles.

Art. 2. To establish the revenue from state and co-operative undertakings and organizations — turnover tax, tax on profits, income tax and other revenues from the socialist economy — under the state budget of the Byelorussian SSR for 1961 at the sum of 1,203,451,000 roubles.

Art. 3. To appropriate a total of 604,032,000 roubles under the state budget of the Byelorussian SSR for 1961 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. To appropriate a total of 606,764,000 rou bles under the state budget of the Byelorussian SS- for 1961, including 100,880,000 roubles under the state social insurance budget, for social and cultural development: general-education schools, specialized secondary schools, higher educational establishments, 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.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR CONCERNING THE PROCEDURE FOR BRINGING INTO FORCE THE PENAL CODE AND THE CODE OF CRIMINAL PROCEDURE OF THE BYELORUSSIAN SSR, 13 March 1961

In accordance with the Acts of the Byelorussian SSR concerning the adoption of the Penal Code and the Code of Criminal Procedure of the Byelorussian SSR of 29 December 1960 and the Order of the Presidium of the Supreme Soviet of the USSR of 19 January 1961 concerning measures for bringing into force the Penal Code and the Code of Criminal Procedure of the Byelorussian SSR, the Presidium of the Supreme Soviet of the Byelorussian SSR hereby resolves:

1. To release from punishment (principal or sup-

plementary) any person sentenced before 1 April 1961, under the 1928 Penal Code of the Byelorussian SSR and other penal legislation in force in the Byelorussian SSR, for acts which are not held to be criminal under the Penal Code of the Byelorussian SSR of 29 December 1960.

2. To discontinue all criminal cases before the courts and before the preliminary and other investigation authorities in respect of acts which are not held to be criminal under the Penal Code of the Byelorussian SSR of 29 December 1960.

3. Punitive measures against persons who have been sentenced under earlier legislation and have not served their sentence shall be brought into conformity with the Penal Code of the Byelorussian SSR of 29 December 1960 if the punishment prescribed by the court is more severe than that prescribed by the corresponding article of that Code.

4. The effect of article 3 of this decree shall not extend to persons sentenced for crimes constituting a particular danger to the state and envisaged in chapter VI of the special section of the Byelorussian Penal Code relating to banditry, wilful murder with aggravating circumstances, large-scale misappropriation of state or public property, and robbery, or to particularly dangerous recidivists, if the sentences against such persons entered into legal force before 1 April 1961 — i.e., before the Penal Code of the Byelorussian SSR became effective.

5. Persons released from punishment under article 1 of this Decree, and persons who have already served their sentence or have been released before serving the full sentence, shall be deemed not to have been convicted if they were convicted for acts for which they would not be held criminally liable under the Penal Code of the Byelorussian SSR of 29 December 1960.

6. This decree shall enter into force on 1 April 1961.

ACT CONCERNING THE PROCEDURE FOR THE RECALL OF JUDGES AND PEOPLE'S ASSESSORS OF THE COURTS OF THE BYELORUSSIAN SSR, ADOPTED ON 15 JUNE 1961 AT THE FIFTH SESSION OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR, FIFTH CONVOCATION

Art. 1. In accordance with article 22 of the Act concerning the judicial system of the Byelorussian SSR, judges and people's assessors may be divested of their powers before the expiry of their term only upon recall by the electors or the body by which they were elected, or in virtue of a court sentence passed against them.

Judges and people's assessors may be recalled before the expiry of their term if they have failed to justify the confidence of the electors or the body by which they were elected, or have been guilty of actions unworthy of the high office of judge or people's assessor.

II. Procedure for the Recall of People's Judges of District (Urban) People's Courts

Art. 2. A people's judge may be recalled by decision of the electors resident within the jurisdiction of the people's court concerned.

Art. 3. The right to move the recall of a people's judge 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 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. 4. Public organizations and workers' associations moving the recall of a people's judge shall inform the judge to that effect, stating the reasons for their action.

The people's judge 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. 5. A motion passed by a public organization or a workers' meeting for the recall of a people's judge shall be transmitted to the appropriate executive committee of the district (urban) soviet of working people's deputies.

The executive committee of the district (urban) soviet of working people's deputies shall examine motions passed by public organizations or workers' meetings for the recall of a people's judge and shall transmit them to the executive committee of the

appropriate regional soviet or Minsk urban soviet of working people's deputies.

The executive committee of the regional soviet or Minsk urban Soviet of working people's deputies shall examine the material submitted and, if the recall of the people's judge has been moved in conformity with the requirements of this Act, it shall order a ballot on the matter.

Art. 6. The motion for the recall of a people's judge shall be discussed and made the subject of a decision at meetings of the electors called by the public organizations mentioned in article 3 of this Act, and held in the undertakings, establishments, collective farms, State farms, military units or places of residence of the said electors.

The decision on the motion for the recall of a people's judge shall be taken by show of hands.

Art. 7. After the executive committee of the regional soviet or Minsk urban soviet of working people's deputies has ordered a ballot on the recall of the people's judge, every public organization and every citizen of the Byelorussian SSR shall have the right freely to campaign for or against the recall of the people's judge, in accordance with article 100 of the Constitution of the Byelorussian SSR.

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 people's judge.

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 executive committee of the district (urban) soviet of working people's deputies.

Art. 9. On the basis of the minutes of meetings of electors, the executive committee of the district (urban) soviet of working people's deputies shall count the votes cast for or against the recall of the people's judge and shall determine the results of the ballot.

Art. 10. A people's judge shall be considered to have been recalled if a majority of the electors of the district (urban) has voted for his recall.

Art. 11. The executive committee of the district (urban) soviet of working people's deputies shall be responsible for ensuring compliance with this Act in the conduct of the ballot on the recall of a people's judge.

Art. 12. The results of the ballot on the recall of a people's judge shall be published by the executive committee of the district (urban) soviet of working people's deputies not later than five days after they have been determined.

Art. 13. Complaints of violations of this Act in the conduct of the ballot on the recall of a people's judge shall be examined by the executive committee of the district (urban) soviet of working people's deputies.

III. Procedure for the Recall of People's Assessors of District (Urban) People's Courts

Art. 14. A people's assessor of a district (urban) people's court may be recalled by decision of the electors of the group by which he was elected.

Art. 15. The right to move the recall of a people's assessor 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 or establishments; of peasants, held at their collective farms or in their villages; of manual and non-manual state farm workers, held at their state farms; and of members of the armed forces, held in their units.

Art. 16. Public organizations and workers' meetings moving the recall of a people's assessor shall inform the assessor to that effect, stating the reasons for their action.

The people's assessor 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. 17. A motion passed by a public organization or a workers' meeting for the recall of a people's assessor shall be transmitted to the appropriate executive committee of the district (urban) soviet of working people's deputies.

The executive committee of the district (urban) soviet of working people's deputies shall examine the material submitted and, if the recall of the people's assessor has been moved in conformity with the requirements of this Act, it shall order a ballot on the matter.

Art. 18. The motion for the recall of a people's assessor shall be discussed and made the subject of a decision at a general meeting of the electors of the group by which he was elected.

A meeting shall be considered competent if it is attended by a majority of the electors working at a given enterprise, establishment, collective farm or State farm, or serving in a given military unit, or by a majority of the electors in their place of residence.

The decision on the motion for the recall of a people's assessor shall be taken by show of hands.

Art. 19. After the executive committee of the district (urban) soviet of working people's deputies has ordered a ballot on the recall of the people's assessor, every public organization and every citizen

of the Byelorussian SSR shall have the right freely to campaign for or against the recall of the assessor, in accordance with article 100 of the Constitution of the Byelorussian SSR.

Art. 20. The minutes of each general 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 people's assessor.

The minutes of each general meeting of electors shall be signed by all the officers of the meeting and shall be transmitted within three days to the executive committee of the district (urban) soviet of working people's deputies.

Art. 21. A people's assessor shall be deemed to have been recalled if a majority of those present at a meeting of the electors of the group by which he was elected has voted for his recall.

Art. 22. The executive committee of the district (urban) soviet of working people's deputies shall be responsible for ensuring compliance with this Act in the conduct of the ballot on the recall of a people's assessor.

The executive committee of the district (urban) soviet of working people's deputies shall examine the minutes of the general meeting of electors, determine the results of the ballot and inform the appropriate district (urban) people's court in case the people's assessor is to be recalled.

Art. 23. Complaints of violations of this Act in the conduct of the ballot on the recall of a people's assessor shall be examined by the executive committee of the district (urban) soviet of working people's deputies.

IV. Procedure for the Recall of Presidents, Deputy Presidents, Members and People's Assessors of Regional Courts

Art. 24. A president, deputy president, member or people's assessor of a regional court may be recalled by decision of the appropriate regional soviet of working people's deputies.

Art. 25. The right to move the recall of a president, deputy president, member or people's assessor of a regional court shall be enjoyed by public organizations and workers' associations (Communist Party 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 or establishments; of peasants, held at their collective farms or in their villages; of manual and non-manual state farm workers, held at their state farms; and of members of the armed forces, held in their units.

Art. 26. Public organizations and workers' meetings moving the recall of a president, deputy president, member or people's assessor of a regional court shall inform him to that effect, stating the reasons for their action.

The president, deputy president, member or people's assessor of a regional court 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. 27. A motion for recall passed by a public organization or workers' meeting shall be transmitted to the appropriate executive committee of the regional soviet of working people's deputies, which shall examine the material submitted and, if the recall has been moved in conformity with the requirements of this Act, shall refer it to the next session of the regional soviet.

Art. 28. Decisions for recall taken by regional soviets of working people's deputies shall be adopted by a majority vote of the deputies present at the meeting and shall be published not later than five days after their adoption.

V. Procedure for the Recall of a President, Deputy President, Member or People's Assessor of the Supreme Court of the Byelorussian SSR

Art. 29. A president, deputy president, member or people's assessor of the Supreme Court of the Byelorussian SSR may be recalled by the Supreme Soviet of the Byelorussian SSR.

Art. 30. The right to move the recall of a president, deputy president, member or people's assessor of the Supreme Court 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 central, 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; of manual and non-manual state farm workers, held at their state farms; and of members of the armed forces, held in their units.

Art. 31. Public organizations or workers' meetings moving the recall of a president, deputy president, member or people's assessor of the Supreme Court of the Byelorussian SSR shall inform him to that effect, stating the reasons for their action.

The president, deputy president, member or people's assessor of the Supreme Court of the Byelorussian SSR 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. 32. A motion for recall passed by a public organization or workers' meeting shall be transmitted to the Presidium of the Supreme Soviet of the Byelorussian SSR, which shall examine the material submitted and, if the recall has been moved in conformity with the requirements of this Act, shall refer it to the next session of the Supreme Soviet of the Byelorussian SSR.

Art. 33. A decision for recall taken by the Supreme Soviet of the Byelorussian SSR shall be adopted by a majority vote of the deputies present at the meeting and shall be published not later than five days after its adoption.

STATUTE CONCERNING PEOPLE'S VOLUNTEER BRIGADES FOR THE MAINTENANCE OF LAW AND ORDER, CONFIRMED BY THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF BYELORUSSIA AND THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR on 15 JULY 1961, No. 442

. . . Thanks to the great work accomplished by the Party, the Government and public organizations in the communist education of the population, there has been a marked strengthening of the socialist law and order in our country and a corresponding decline in criminality. Soviet people work with enthusiasm and honestly discharge their obligations to society. However, there are still some individuals who shun socially useful toil, break soviet laws and disregard the principles of socialist society.

Now that the construction of communism is progressing apace, while the consciousness and political activity of the working people are growing and soviet democracy is undergoing further development, the fight against violations of the principles of socialist society and of soviet laws should be conducted principally by enlisting the broad participation of the working people and public organizations in the maintenance of order and observance of the laws. The people's volunteer brigades for the maintenance of law and order shall be organized for these purposes.

I. General

People's brigades shall be formed from among outstanding manual and non-manual workers, collective farmers, university and other students and pensioners, on a voluntary basis and along production-territorial lines, at enterprises, construction sites, transport undertakings, establishments, educational institutions, house managements, collective farms, state farms, and in large workshops of factories and plants, departments of educational establishments, sections of state farms and brigades of collective farms.

The brigades shall engage in explaining to the population the need to respect the principles of socialist society, inasmuch as their primary function is to prevent infringements of the law through education.

The people's brigades and their officers shall be guided in all their activities by the requirements of soviet legislation, function under its protection, and carry on their work in close contact with public organizations and administrative bodies.

II. The People's Volunteer Brigade and its Structure

People's brigades shall be set up at organizational meetings of persons wishing to join the brigade, convened by a founding group comprising representatives of party, trade union, Komsomol and other public organizations of an enterprise, construction agency, state farm, collective farm, establishment, educational institution or house management.

Citizens of the USSR, as a rule not under eighteen years of age, shall be admitted to the people's brigade upon their personal application to a trade union or Komsomol committee or other public organization at their place of work or residence. Citizens wishing to join the brigade shall be admitted at a general brigade meeting or at a meeting of its officers upon the recommendation of the organizational unit (enterprise, construction agency, state farm, collective farm, establishment, educational institution, workshop, shift, subdivision, collective farm production brigade, state farm section, study group, tenants' association etc.), in which they work, study or live. A brigade member shall perform his brigade duties outside of working hours.

. . .

III. Rights and Duties of People's Volunteer Brigades and of District and Urban Brigade Officers

1. People's brigades shall:

Ensure law and order in streets, stadia, parks and other public places, help to maintain law and order

during demonstrations, meetings, sport events, mass outings and other activities, and preserve law and order in the districts assigned to them by means of patrols, raids, the posting of guards and the setting up of duty rosters;

Side by side with the militia, the courts and the procurator's office actively combat hooliganism, drunkenness, anti-social and parasitic elements, misappropriation of socialist and private property, infringement of the principles of soviet trade, speculation, the operation of domestic stills, poaching, illegal timber-felling, damage to green plantations and other infringements of the law and misdemeanours injurious to society;

. . .

Submit to soviet and public organizations proposals for measures to be taken against individuals disturbing law and order;

Transmit material relating to individual offenders to comrades' courts or administrative organs, where necessary appoint brigade members to act as plaintiffs for the general public, inform the press of instances of disturbances of law and order and publish wall newspapers, satirical leaflets, photo-displays and bulletins;

Take part in educational work among the population on respect for the principles of socialist society and the prevention of anti-social acts.

The chief of staff, the head of the brigade, shall report periodically to the working people on the work of the brigade.

. . .

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR OF 10 OCTOBER 1961 CONFIRMING THE STATUTE CONCERNING THE COMRADES' COURTS

(EXTRACTS)

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

1. That the Statute concerning the comrades' courts be confirmed.

2. That the legislative acts listed in the appendix be regarded as no longer in force.

STATUTE CONCERNING THE COMRADE'S COURTS

Function and Organization of the Comrades' Courts

Art. 1. The comrades' courts are elected public bodies responsible for actively promoting the inculcation in soviet citizens of a communist attitude to work and socialist property and of respect for the principles of socialist society, and the development in them of a spirit of collectivism and comradely assistance to others and of respect for the dignity and honour of citizens. The main function of the comrades' courts is to prevent infringements of the law and acts injurious to society, to educate the people by means of persuasion and social pressure, and to create an atmosphere of strong disapproval of all and any anti-social acts. The comrades' courts enjoy the trust of the collective, they express its will and they are answerable to it.

Art. 2. Comrades' courts shall be set up in undertakings, establishments, organizations, and higher and specialized secondary educational institutions by decision of a general meeting of the manual and non-manual workers or students.

Comrades' courts shall be set up on collective farms, in houses serviced by house management offices, superintendents or joint street committees, and also in rural inhabited localities and settlements, by decision of a general meeting of members of the collective farm, tenants of the houses or citizens of the village or settlement, with the agreement of the appropriate executive committees of soviets of working people's deputies.

In large collectives, comrades' courts may be set up in the workshops of undertakings, sections of state farms, the brigades of collective farms, etc.

Comrades' courts may be set up in collectives of not fewer than fifty persons.

Art. 3. Comrades' courts shall be elected by show of hands at general meetings of working people's collectives for a term of one year. Meetings for the purpose of electing comrades' courts shall be called by the appropriate factory, works and local trade union committees, by the management boards of collective farms, and by the executive committees of local soviets of working people's deputies.

A person receiving more votes than any other candidate and over half the votes of those present at a meeting shall be deemed to be elected a member of the court.

The number of members of the court shall be determined by the general meeting. The members of the court shall elect a president, deputy presidents and a secretary by show of hands from among their own number.

Art. 4. Comrades' courts shall report on their activities to general meetings of working people's collectives.

Members of a comrades' court who have failed to justify the confidence placed in them may be recalled by the general meeting before the expiry of their term. New members of the comrades' court to replace those recalled or retired for other reasons shall be elected in accordance with the procedure provided in articles 2 and 3 of this statute.

Cases dealt with by the Comrades' Courts

Art. 5. Comrades' courts shall consider cases relating to:

1. Infringements of labour discipline, such as absence from work without good reason; arriving at work late or leaving early; producing sub-standard work, or an irresponsible attitude on the part of a worker to his duties; failure to observe safety or other labour protection regulations, with the exception of cases entailing criminal responsibility; and damage to stocks, tools and materials resulting from negligence;

2. Drunkenness or unseemly behaviour in public places or at work;

3. Unseemly behaviour towards a woman, failure to fulfil obligations as regards the rearing of children, unseemly behaviour towards parents;

4. Insults and the spreading of falsehoods defamatory to another member of the collective where these acts are first offences; foul language.

5. Minor offences against forestry regulations or damage to crops, trees, and other green plantations;

6. Minor damage to dwellings and other buildings and to communal equipment;

7. Infringements of the house rules of apartments and hostels; tenants' disputes concerning the utilization of ancillary premises, domestic utilities, payment for communal services, and the establishment of arrangements among joint owners of residential property for the use of plots of land;

8. Property disputes among citizens belonging to the same collective involving sums of not more than fifty roubles, if the parties to the dispute agree to refer the matter to the comrades' court;

9. Other anti-social acts not entailing criminal responsibility;

10. Administrative and other minor offences, if the militia, procurator's office or courts see fit to refer such cases to a comrades' court.

Art. 6. Cases shall be considered by the comrades' court competent for the place of work or residence of the offender.

Art. 7. Comrades' courts shall not be competent to consider cases concerning infringements of the law or civil law disputes in respect of which a sentence or court judgement has already been pronounced.

A disciplinary penalty imposed by the management shall not preclude consideration of the same offence in a comrades' court upon the initiative of a public organization or the comrades' court itself.

Procedure for the Consideration of Cases in Comrades' Courts

Art. 8. Comrades' courts may consider cases:

1. Upon the submission of factory, works or local committees of trade unions, people's volunteer brigades for the maintenance of law and order, house or street committees and other public organizations and meetings of citizens;

2. Upon the submission of executive committees of local soviets of working people's deputies and standing commissions of the soviets;

3. Upon notification by government authorities, directors of undertakings, establishments and organizations or management boards of collective farms;

4. On the basis of material transmitted by a court or a procurator and also by investigation authorities, with the procurator's agreement;

5. Upon the declarations of citizens;

6. On their own initiative.

Art. 9. A comrades' court shall consider a case not later than fifteen days after its submission. The time and place of such consideration shall be determined by the president of the comrades' court and shall be made generally known.

Art. 10. Before a case is considered in a comrades' court, the material submitted shall where necessary be verified.

The directors of enterprises, establishments and organizations and other officials and citizens must, upon request by a comrades' court, submit such information and documents as are needed for a case.

The president of a comrades' court or his deputy shall acquaint a person brought before the court with the available material and, if there are grounds for considering the case in such a court, shall determine the persons to be called as witnesses. Persons brought before a comrades' court, and also the parties to a dispute, may request that additional documents be produced and witnesses summoned.

The appearance of witnesses summoned by a comrades' court shall be mandatory.

Art. 11. Comrades' courts shall meet, and members of the courts shall execute commissions connected with the examination of a case, out of working hours. Cases shall be examined publicly by not fewer than three members of a comrades' court.

A person brought before a comrades' court, or the parties to a dispute, may challenge the president or members of the court if they have reason to believe that they may be interested in the outcome of the case. Whether such challenge is to be upheld or rejected shall be decided by the whole membership of the comrades' court examining the case concerned.

The comrades' court shall examine the available material pertaining to the case, shall hear the person brought before the court and the plaintiff, and in cases of disputes between citizens, the parties thereto and the witnesses. Those present at meetings of the court may, with the court's permission, put questions and speak on the substance of the case under consideration.

Art. 13. Decisions of a comrades' court shall be adopted by a majority of votes of the court's members participating in the examination of a particular case. The decision shall indicate the substance of the infringement, and the means of pressure determined on by the court. Decisions of comrades' courts shall be signed by those by whom they are pronounced — the president and members of the court — and shall be publicly declared and made generally known.

Means of Social Pressure employed by the Comrades' Courts

Art. 14. In considering a case and arriving at a decision, a comrades' court shall be guided by the legislation in force, this statute and an awareness of its social duty.

Art. 15. A comrades' court may apply the following means of pressure to the guilty party:

1. Oblige him to make a public apology to the plaintiff or the collective;

2. Deliver a comradely warning;

3. Deliver a public reproof;

4. Deliver a public reprimand, which may or may not be published in the press;

5. Impose a fine of up to ten roubles if the offence does not involve an infringement of labour discipline;

6. Invite the director of the undertaking, establishment or organization concerned to apply one of the following measures in accordance with the labour legislation in force: transfer of the guilty party to less well-paid work, or his demotion;

7. Raise the question of the guilty party's eviction from his dwelling if he has proved impossible to live with, has misused the housing facilities through carelessness or for personal gain, or persistently failed to pay the rent;

8. Oblige the guilty party to make good the damage, caused by his illegal acts in the amount of not more than 50 roubles, at the same time applying any of the means of pressure mentioned by paragraphs 1 to 7 of this article.

Art. 16. A comrades' court may confine itself to public examination of a case and refrain from applying any of the means of social pressure referred to in article 15 if the guilty party sincerely repents, makes a public apology to the collective or the plaintiff and voluntarily makes good the damage he has caused.

Where there are no grounds for conviction, a comrades' court shall acquit the person brought before it.

In the examination of property or other disputes between citizens, a comrades' court shall grant the suit in whole or in part or reject it, or else dismiss the case owing to the reconciliation of the parties.

Comrades' courts shall bring to the knowledge of public organizations and officials any causes or conditions discovered by them which have led to an infringement of the law or other offence.

Art. 18. The decision of a comrades' court is final. If such decision is at variance with the circumstances of the case or the legislation in force, the appropriate factory, works or local trade union committee or the executive committee of the local soviet of working people's deputies may invite the comrades' court to reconsider the case.

Art. 20. The decision of a comrades' court to deliver a comradely warning, public reproof or public reprimand shall be effective for one year. If in the course of this period the person in respect of whom the decision was adopted does not commit a new infringement of the law, the penalty shall be deemed to be revoked.

A comrades' court may, upon application by a public organization, the director of an undertaking, establishment or organization, the management board of a collective farm, or upon the statement of the person found guilty, and also on its own initiative, revoke the penalties referred to above before the expiration of the one-year period. Decisions to this effect shall be brought to the general notice.

GUIDANCE OF COMRADES' COURTS

Art. 21. Comrades' courts in undertakings, establishments, organizations and higher and specialized secondary educational institutions shall be under the guidance of factory, works and local trade union committees. Comrades' courts on collective farms, in houses serviced by house management offices, superintendents or joint street committees, and also in rural inhabited localities and settlements, shall function under the guidance of the executive committees of the local soviets of working people's deputies.

CAMBODIA

NOTE

The Minister of State for Foreign Affairs of the Royal Government of Cambodia has informed the Secretary-General of the United Nations that, during the year 1961, the Royal Government promulgated no new legislation or regulations which would be suitable for inclusion in the *Yearbook on Human Rights.*

CAMEROUN

ACT No. 61/24 OF 1 SEPTEMBER 1961 REVISING THE PRESENT CONSTITUTION WITH A VIEW TO ADAPTING IT TO THE REQUIREMENTS OF RE-UNIFIED CAMEROUN[1]

Title I

THE FEDERAL REPUBLIC OF CAMEROUN

Art. 1. The Federal Republic of Cameroun is formed, as from 1 October 1961, of the territory of the republic of Cameroun, henceforth called East Cameroun, and the territory of the Southern Cameroons formerly under United Kingdom administration, henceforth called West Cameroun.

The Federal Republic of Cameroun is democratic, secular and social. It shall ensure the equality of all citizens before the law. It affirms its adherence to the fundamental freedoms set out in the Universal Declaration of Human Rights and the Charter of the United Nations.

. . .

Nationals of the Federated States shall be citizens of the Federal Republic and shall possess Camerounian nationality.

Art. 2. National sovereignty shall be vested in the Camerounian people, which shall exercise such sovereignty either through its deputies in the Federal Assembly or by way of referendum. No section of the people, nor any individual, may assume the exercise thereof.

The vote shall be equal and secret; all citizens who have attained the age of twenty-one years shall participate therein.

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 and direct or indirect ballot.

Art. 3. The political parties and groups play a part in the electoral process. They shall be free to form and to carry on their activities within the limits established by law and regulations.

They must respect the principles of democracy and national sovereignty.

. . .

Title III

THE PRESIDENT OF THE FEDERAL REPUBLIC

. . .

Art. 9. The President of the Federal Republic and the Vice-President, who must not be natives of the same Federated State, shall be elected, on a single list, by universal suffrage and direct and secret ballot.

Candidates for the offices of President of the Federal Republic and Vice-President must be in possession of their civil and political rights and must have attained the age of thirty-five years on the date of the election;

. . .

The offices of President and Vice-President of the Republic shall be incompatible with any other office.

. . .

Art. 14. The President of the Federal Republic shall refer to the Federal Court of Justice, constituted as provided in article 34,[2] any federal law which he considers to be contrary to the present Constitution or any law of either of the Federated States which he regards as having been adopted in violation of the provisions of the Constitution or of a federal law.

. . .

Title IV

THE FEDERAL LEGISLATURE

Art. 16. The Federal National Assembly, the term of which shall be five years, shall be composed of deputies elected by universal suffrage and direct and secret ballot in each of the Federated States in the ratio of one deputy to 80,000 inhabitants.

. . .

Title VI

THE JUDICIAL AUTHORITY

Art. 32. . . .

The President of the Federal Republic shall be the guardian of the independence of the judicial authority and shall appoint the members of the judiciary of the Federated States.

. . .

[1] Text published in the *Journal Officiel de la République du Cameroun*, 46th year, No. 1459 *bis*, supplementary number of 30 September 1961.

[2] Article 34 relates to the composition of the Federal Court of Justice.

CANADA

NOTE[1]

I. FEDERAL LEGISLATION

1. An amendment to the Criminal Code[2] divided murder into two categories — capital, for which hanging is still the automatic penalty, and non-capital, for which life imprisonment is now the punishment. An accomplice who did not actually cause a death or counsel or procure the very act that caused the death may be found guilty of non-capital murder. Another new provision requires that any jury rendering a decision of guilty in a capital murder case must be asked if it has any recommendations of mercy to make. The amended Code further stipulates that no person under eighteen years may be sentenced to death for either type of murder. It also provides for an automatic review by the provincial court of appeal and for an appeal as of right to the Supreme Court of Canada.

2. Another amendment to the Criminal Code[3] eliminated the mandatory minimum sentence of two years for dangerous sex offenders, leaving only the penalty of preventive detention to be imposed. The sexual offender who is subject to preventive detention is now defined as "a person who, by his conduct in any sexual matter, has shown a failure to control his sexual impulses, and who is likely to cause injury, pain or other evil to any person, through failure in the future to control his sexual impulses or is likely to commit a further sexual offence."

3. A new Penitentiary Act[4] modified the remission provisions to give prisoners an incentive towards self-improvement, provided for the separate confinement of young offenders where facilities are available, and empowered the Commissioner of Penitentiaries or the officer in charge to permit absences previously granted only by the Governor-General on the advice of a Minister of the Crown as an exercise of the prerogative of mercy.

4. The Canadian Bill of Rights Examination Regulations[5] require the Minister of Justice to examine every Bill introduced in or presented to the House of Commons to determine whether any provisions are inconsistent with the purposes and provisions of the Canadian Bill of Rights[6] and to affix a certificate stating that the Bill has been examined. A copy of every proposed regulation must also be submitted for examination and certification. If the Minister finds any provisions of any Bill or of any proposed regulations inconsistent with the purposes and provisions of the Bill of Rights he must make a report in writing and have it deposited with the Clerk of the House of Commons or the Clerk of the Privy Council, as the case may be.

5. The new Civil Service Act,[7] which went into force on 1 April 1962, states a non-discrimination policy with respect to employment in the federal civil service. The provision which authorizes the Civil Service Commission to prescribe qualifications in relation to any position, class or grade that it considers necessary or desirable because of the nature of the duties to be performed states that in so doing it must not discriminate against any person by reason of race, national origin, colour or religion.

6. The Technical and Vocational Training Assistance Act[8] increased federal financial assistance to the provinces for providing technical and vocational training for students at the secondary school level and in more advanced technical training, as well as for adults who require training to develop or increase occupational skill. The Vocational Rehabilitation of Disabled Persons Act[9] provided for federal sharing of the costs of carrying out programmes of vocational rehabilitation for disabled persons.

7. An amendment to the War Veterans Allowance Act, 1952,[10] raised the monthly rate of allowances and liberalized other provisions.

8. The Agricultural Rehabilitation and Development Act[11] makes provision for a national programme of rural development by means of projects for the alternative uses of agricultural lands that are marginal or of low productivity, for the development of new opportunities for increased income and employment in rural areas, and for the development and conservation of soil and water resources. Its purpose is to enable people engaged in agriculture to adjust to technological changes in such a way as to maintain

[1] Note furnished by the Government of Canada.

[2] *Statutes of Canada*, 1960-61, c. 44.

[3] *Statutes of Canada*, 1960-61, c. 43.

[4] *Statutes of Canada*, 1960-61, c. 53.

[5] Canadian Bill of Rights Examination Regulations, SOR/61-16, approved by P.C. 1960-1792, gazetted 25 January 1961.

[6] See *Yearbook on Human Rights*, 1960, p. 461.

[7] *Statutes of Canada*, 1960-61, c. 57.

[8] *Statutes of Canada*, 1960-61, c. 6.

[9] *Statutes of Canada*, 1960-61, c. 26.

[10] *Statutes of Canada*, 1960-61, c. 39.

[11] *Statutes of Canada*, 1960-61, c. 30.

or raise their standard of living, and to ensure the maximum use of land resources.

9. The Act authorizes the Minister of Agriculture to enter into agreements with the provinces under which the Federal Government will provide financial or other assistance or both for approved projects to carry out the purposes of the Act. Where projects for the alternative use of land or for rural development are undertaken, the programme may include projects for the training, relocation and re-establishment of people from lands affected by the projects.

II. PROVINCIAL LEGISLATION

Anti-Discrimination Measures

1. Two new provincial anti-discrimination measures were enacted and two existing statutes were strengthened.

2. British Columbia passed a Public Accommodation Practices Act,[1] which prohibits any person from denying accommodation, services or facilities customarily available to the public to any person because of "race, religion, colour, nationality, ancestry, or place of origin." The publishing or displaying of discriminatory notices or signs, or the use of other media of information, including newspapers, radio or television, to express discrimination on any of the foregoing grounds is also prohibited.

3. In Ontario, an amendment to the Fair Accommodation Practices Act[2] prohibited discrimination in the rental of apartments in buildings with more than six self-contained dwelling units.

4. Another Ontario amendment[3] changed the name of the Ontario Anti-Discrimination Commission to the Ontario Human Rights Commission and enlarged its duties.

5. New Brunswick passed the Female Employees Fair Remuneration Act,[4] bringing the number of provinces with equal pay laws to eight. The Act prohibits an employer 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.

Labour Relations

6. Amendments to the British Columbia Labour Relations Act[5] prohibited unions from making political contributions from union funds obtained through a check-off procedure or paid as a condition of membership in the trade union, required unions to make copies of audited financial statements available annually to members and strengthened the unfair labour practices provisions. Amendments in Quebec[6] provided for the maintenance of bargaining rights and the continuance of a collective agreement when a business is sold or transferred, introduced speedier conciliation procedures and provided for final and binding arbitration of disputes arising out of a collective agreement. In New Brunswick,[7] the provision permitting a municipality to remove its employees from the Labour Relations Act was repealed. A Prince Edward Island amendment[8] prohibited policemen and firemen from engaging in a strike or work stoppage.

Workmen's Compensation

7. Five provinces[9] amended their workmen's compensation laws to provide increased benefits to injured workmen or their dependants. Four provinces — Alberta, Manitoba, Newfoundland and Prince Edward Island — raised the maximum annual earnings on which compensation is based. In Nova Scotia, the minimum compensation for permanent total disability was increased. Monthly pensions to widows were raised in three provinces — Alberta, Newfoundland and Prince Edward Island. Allowances to children of deceased workmen were increased in Alberta and Newfoundland.

Hospital Insurance

8. On 1 January 1961, Quebec joined the federal-provincial hospital insurance programme,[10] with the result that publicly financed hospital plans[11] are now established in all provinces and both territories.

Child Welfare and Education

9. An amendment to the Alberta Child Welfare Act,[12] under which guardianship is provided by the Child Welfare Commission for children who require it, extended the age limit for government wards from eighteen to twenty-one years to provide assistance for wards taking specialized training and others who have not become established at eighteen. Another provided for temporary care of children in the event of a family emergency without the transfer of guardianship from the parents.

10. In Manitoba, an amendment to the Child

[1] *Statutes of British Columbia*, 1961, c. 50.

[2] *Statutes of Ontario*, 1960-61, c. 28.

[3] *Statutes of Ontario*, 1960-61, c. 63.

[4] *Statutes of New Brunswick*, 1960-61, c. 7.

[5] *Statutes of British Columbia*, 1961, c. 31.

[6] *Statutes of Quebec*, 1960-61, c. 73.

[7] *Statutes of New Brunswick*, 1960-61, c. 52.

[8] *Statutes of Prince Edward Island*, 1961, c. 41.

[9] *Statutes of Alberta*, 1961, c. 89.
Statutes of Manitoba, 1961, c. 71.
Statutes of Newfoundland, 1961, c. 47.
Statutes of Nova Scotia, 1961, c. 51.
Statutes of Prince Edward Island, 1961, c. 44, 45.

[10] *Statutes of Quebec*, 1960-61, c. 78.

[11] *Yearbook on Human Rights*, 1957, p. 26.

[12] *Statutes of Alberta*, 1961, c. 11.

Welfare Act[1] permits adoption across religious lines under certain circumstances.

11. In Quebec, the Schooling Allowances Act[2] provided for the payment of a schooling allowance, irrespective of need, to the mother of every student of sixteen to eighteen years who attends school regularly. Other Quebec amendments[3] raised the compulsory school attendance age to fifteen years effective 1 July 1962 and provided for free education up to and including grade 11, the university entrance level.

General Welfare Assistance

12. In Quebec, the Public Charities Act,[4] which in 1960 was amended to give the province rather than the municipalities the major administrative and financial responsibility for public welfare assistance, was, again amended to provide for allowances to needy widows or spinsters sixty to sixty-five years of age, to needy persons not eligible for assistance, under other provisions of the Act, and for supplementary allowances to needy persons receiving old age security, old age assistance or blind or disabled persons' allowances. In Manitoba, the section of the Social Allowances Act[5] providing for appeals by applicants for or recipients of social allowances was brought into force on 1 October 1961. In Saskatchewan, regulations under the Social Aid Act[6] raised some allowances, changed the method of calculating supplemental allowances for recipients of old age security or blind persons' allowances from a means test basis to a needs test basis and increased some of the rates.

Mothers' Allowances

13. The legislation providing for the payment of allowances to needy mothers with dependent children was strengthened in a number of provinces. Prince Edward Island[7] raised the maximum allowance per family and raised the age of children attending school who may benefit. Quebec[8] increased the basic rate for a mother and one child, abolished the requirement of Canadian citizenship and reduced the residence requirement. In Saskatchewan,[9] aid to needy mothers will be provided according to the budget deficit method in use for other social aid recipients.

[1] *Statutes of Manitoba*, 1961, c. 6.

[2] *Statutes of Quebec*, 1960-61, c. 37.

[3] *Statutes of Quebec*, 1960-61, c. 28, 29.

[4] *Statutes of Quebec*, 1959-60, c. 73; 1960-61, c. 79; Regulations under Public Charities Act approved by O.C. 1664 and O.C. 1665 dated 27 July, 1961.

[5] *Statutes of Manitoba*, 1959, c. 57.

[6] Regulations under the Saskatchewan Social Aid Act, approved by O.C. 1939/61; O.C. 618/61; O.C. 829/61 and O.C. 1940/61.

[7] *Statutes of Prince Edward Island*, 1961, c. 26.

[8] *Statutes of Quebec*, 1960-61, c. 77.

[9] Aid to Dependent Families Regulation under the Saskatchewan Social Aid Act, approved by O.C. 673/61 and O.C. 1941/61.

III. JUDICIAL DECISIONS

1. The year 1961 was the first year of operation of the Canadian Bill of Rights[10] and in several instances the Act was invoked in court. As might be expected of a Bill of Rights which is essentially a declaration of existing rights, the Act has so far not greatly affected existing laws and practices.

2. In February 1961, the Bill of Rights was successfully invoked before the Quebec Superior Court in Lafleur *v.* Guay and Minister of National Revenue.[11] The case dealt with an income tax inquiry and the refusal to allow the subject of the inquiry to appear alone or through his solicitors at the inquiry and a failure to give notice of the hearings. Section 2 of the Bill of Rights was invoked, which reads: ". . . no law of Canada shall be construed or applied so as to (*e*) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations"; the Court held that the Canadian Bill of Rights was applicable to every law of Canada, save where the particular law contained a declaration that it should apply, notwithstanding the Bill of Rights, and there was no such declaration in the Income Tax Act. Consequently, by section 2 (*e*) of the Bill of Rights, the Income Tax Act must be construed and applied so as not to deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations. This right to a fair hearing, the Court added, covered hearings before administrative tribunals, and consequently the plaintiff could not be denied the right to be present at the inquiry into his affairs and to make representations through his solicitors.

3. Another instance where the Bill of Rights was successfully invoked was in October 1961 before the Northwest Territorial Court in Re Adoption of Katie E7–1807.[12] The issue was the validity of Eskimo adoptions in accordance with native customs. The court held that the adoption of a child in accordance with Eskimo custom prior to the enactment of the Child Welfare Ordinance[13] was an adoption made "according to the laws of the territories" within the meaning of section 103 (1) of the ordinance and, accordingly, was as effective as if it had been made pursuant to the provisions and requirements of the ordinance. Further, the court added that in any event the requirements and provisions of the ordinance regarding adoption were unrealistic and unworkable with regard to conditions in the Northwest Territories, and, if such ordinance aimed at abrogation of adoptions made according to Eskimo custom, it was

[10] *Statutes of Canada*, 1960, c. 44, reported in the 1960 *Yearbook on Human Rights*.

[11] (1962), 31 D.L.R. (2d), part 8, p. 575.

[12] (1962), 32 D.L.R. (2d), part 9, p. 686.

[13] (N.W.T.) 1961, 2nd Sess., c. 3.

contrary to the Canadian Bill of Rights and therefore ineffective.

4. The Bill of Rights was invoked twice, although not successfully, in cases before the Supreme Court of Canada. Both instances dealt with detention and deportation orders under the Immigration Act.[1]

5. In the case of Rebrin *v.* F. W. Bird and Minister of Citizenship and Immigration[2] a person who, upon expiry of her visitor's visa, sought admission to Canada was ordered to be detained and deported (as being within a prohibited class) after an inquiry was held, at which she was present with counsel. An appeal to the Minister was rejected. Before the courts, section 1 (*a*) of the Bill of Rights was invoked, which declares "the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law." On appeal from dismissal of a motion to quash the deportation order, the Supreme Court of Canada held that there was no infringement of the Canadian Bill of Rights because the person concerned had not been deprived of her liberty save by due process of law. The prescribed form of order was used, and there was statutory authority for the form and for promulgation of supporting regulations. The deportation order was not defective for failure to specify the place to which the person was to be deported. Section 36 (1) of the Immigration Act does not require that the place of deportation be set out in the order.

6. The case of Louie Yuet Sun *v.* Her Majesty the Queen[3] concerned a citizen of China who came to Canada on a non-immigrant visa issued to her in Hong Kong. Her husband and two children remained in Hong Kong. During her stay in Canada, a son, issue of her marriage, was born to her. A deportation order was made against her by a special inquiry officer under the Immigration Act. This order was subsequently quashed by the trial judge, but restored by the court of appeal. The Supreme Court of Canada dismissed the appeal and held that the person concerned fell within the terms of section 5 (*t*) of the Act and sections 18 and 20 of the regulations, and had not been deprived of her liberty except by due process of law. The fact that she was the mother of a legitimate child born in Canada had no bearing on the matter. The court added: "If the appellant chooses to take the child with her, the material indicates that the Hong Kong authorities are willing to receive her and the child. If, on the other hand, she chooses to leave her child here, he is entitled to remain in Canada."

7. Another case of interest which reached the British Columbia Court of Appeal was that of Regina *v.* Gonzales.[4] This case dealt with the status of Canadian Indians. An Indian admitted to possession of intoxicants off a reserve, which is made an offence by section 94 (*a*) of the Indian Act,[5] but claimed that section 94 (*a*) was discriminatory legislation and annulled by section 1 (*a*) of the Canadian Bill of Rights, which declares the right of the individual to life, liberty, security and the enjoyment of property without discrimination by reason of race, national origin, colour, religion or sex. In magistrate's court, it was held that the Bill of Rights in fact does not express any intention to change the law. On the contrary, section 1, by stating that there have existed and shall continue to exist certain rights as enumerated, would indicate that the Act is designed to prevent any adverse change in the existing situation. The magistrate admitted that there was discrimination against Indians, but, in his view, it was favourable discrimination and in no way contrary to the Bill of Rights. He merely applied law as it existed, and as the Indian Act was on the statute books, he found the accused guilty. The case eventually reached the British Columbia Court of Appeal, where the conviction was upheld. The Court of Appeal held that neither the provisions of the Indian Act conferring special rights and privileges on Indians, nor those provisions imposing disabilities, were rendered inoperative by the passage of the Canadian Bill of Rights. None of the said provisions, in the opinion of the Court, imposed "inequality before the law".

8. In Regina *v.* Guertin,[6] the Ontario Court of Appeal held that section 80 of the Criminal Code, in putting the onus of showing lawful excuse upon the accused, does not infringe the presumption of innocence declared by section 2 (*f*) of the Bill of Rights. Allowing an appeal by the Attorney-General from the acquittal by a magistrate's court on a charge of having an explosive substance in possession without lawful excuse, the court of appeal held that, under section 80 of the Criminal Code, the accused is not deprived of the right to be presumed innocent until proved guilty according to law. The law, the court stated, stipulates that, upon proof that the accused has the explosive substance in his possession, he shall be liable to conviction unless his possession can be justified by lawful excuse. Nevertheless, it is only after conclusion of the evidence, if any, for the defence, as well as the evidence for the Crown, that the trial tribunal is in a position to find his guilt or innocence. The presumption of innocence, the Court continued, remains until the whole evidence is before the court. If the accused elects to adduce no evidence, or if the evidence he adduces fails to support the defence of lawful excuse, then in either

[1] R.S.C. 1952, c. 325.

[2] (1961), 27 D.L.R. (2d), part 9, p. 622.

[3] (1961), S.C.R. 70.

[4] (1961), 130 CCC 206; (1961), 35 WWR 703; (1962), 37 WWR, part 6, p. 257.

[5] R.S.C. 1952, c. 149.

[6] (1961) OWN 134.

case he may be convicted according to law. A similar conclusion was reached by the same Court in the case of Regina *v.* Sharpe[1] dealing with a presumption created by the Opium and Narcotic Drug Act[2] against an accused in possession of narcotics.

[1] (1961) OWN 261.

[2] R.S.C. 1952, c. 201.

CENTRAL AFRICAN REPUBLIC

ACT No. 61,239 TO ENACT THE PENAL CODE OF THE CENTRAL AFRICAN REPUBLIC of 18 July 1961[1]

TITLE I
GENERAL PROVISIONS

Chapter I
OFFENCES IN GENERAL

. . .

Art. 2. No crime, correctional offence or petty offence may be punished by a penalty not prescribed by law before the act.

. . .

Art. 5. A crime or offence may be pardoned and a penalty may be mitigated only in those cases and circumstances in which the law states that the act is excusable or permits a less severe penalty to be imposed.

. . .

TITLE II

Chapter I
CRIMINAL, CORRECTIONAL AND POLICE PENALTIES

. . .

Art. 14. . . .

Civic degradation shall consist of:

1. Removal and exclusion of the offender from any public duty, employment or office.

2. Forfeiture of suffrage, of eligibility, of all civic and political rights in general, and of the right to wear any decoration.

3. Disqualification from testifying as an expert witness, from attesting a document, or from testifying in court otherwise than to plain fact.

4. Disqualification from taking part in any family council and from being a guardian, tutor, deputy guardian or administrator, except for the offender's own children with the consent of the family.

5. Forfeiture of the right to bear arms, to be a member of the national guard, to serve in the forces of the Central African Republic, to keep a school, or to teach or be employed in any educational establishment as teacher, master or supervisor.

. . .

Art. 17. When directed or permitted to do so by statute, a correctional court shall or may order, the forfeiture in whole or in part, for such term as it may direct, of the following civic, civil and family rights: (1) suffrage; (2) eligibility; (3) the right to be called or appointed to jury or any other public duty or to administrative employment, or to perform such duty or act in such employment; (4) the right to bear arms; (5) the right of vote or suffrage in family deliberations; (6) the right to be a guardian or tutor, except of the offender's own children with the consent of the family; (7) the right to give expert evidence or to attest a deed; (8) the right to give evidence in court, except plain statements; (9) the right to be an arbitrator or referee.

A criminal sentence shall entail forfeiture for life of the rights aforesaid.

TITLE IV

. . .

Chapter III
INTERNAL SECURITY OF THE STATE

. . .

Art. 77. It is forbidden to diffuse by any means propaganda likely to arouse in citizens or inhabitants contempt or hatred for certain categories of persons, to incite them to violent attack, revolt or subversion against the Constitution, the lawfully constituted authorities of the State, any state official or magistrate in the performance of his functions, military service, tax collection, the economic and social structures of the nation, or the distribution of immovable or movable property. It is likewise forbidden to diffuse propaganda likely to harm the vital interests of the State or the nation.

Propaganda in favour of racial segregation, genocide, and any act condemned by the human conscience is also prohibited.

Any person who diffuses such propaganda or abets possession or use of the means of its diffusion shall be liable to imprisonment of from six months to five years and to a fine of 50,001 to 3,000,000 francs.

All objects used in the commission of the offence shall be seized; and the judgement shall order their confiscation, removal or destruction according to the circumstances. The court may also order forfeiture for ten years of all or part of the civic, civil or family rights specified in article 17 of the Penal Code.

[1] Text published in *Journal Officiel de la République Centrafricaine*, third year, No. 16, 15 August 1961.

Chapter IV

CRIMES AND OFFENCES AGAINST THE CONSTITUTION

Art. 78. Any person who by unlawful assembly, violence or threat prevents one or more citizens from exercising their civic rights shall be liable to imprisonment for not less than six months nor more than two years, and to forfeiture of suffrage and eligibility for not less than five nor more than ten years.

If the offence was committed in pursuance of a concerted plan to be executed in all or part of the Republic, the penalty shall be banishment.

. . .

Chapter V

OFFENCES AGAINST FREEDOM

Art. 82. A public official, agent or servant of the Government who orders or commits any arbitrary act or any act infringing individual freedom, the civic rights of one or more citizens, or the Constitution shall be liable to imprisonment for two months to two years and may be deprived for a like period, reckoned from the day after he completes his sentence, of the rights mentioned in article 17.

Provided that, if he proves that he acted under orders from a superior for a purpose within the superior's competence and for which he was bound by the rule of his service to obey the superior, he shall not be liable to the penalty, which in that case, shall be inflicted only on the superior giving the order.

. . .

Chapter XIII

ABUSE OF AUTHORITY

Art. 115. Any administrative or judicial officer, or officer of the court, or police officer or constable who, in that capacity and in circumstances other than those prescribed by statute and without complying with the statutory requirements, enters the dwelling of a citizen without that citizen's consent shall, without prejudice to the application of the second paragraph of article 82, be liable to imprisonment for one month and one day to one year and to a fine of 50,001 to 200,000 francs.

Any person who by threat or violence enters the dwelling of a citizen shall be liable to imprisonment for one month and one day to three months, or to a fine of 50,001 to 100,000 francs, or to both.

. . .

Art. 117. Any employee or agent of the Government or of the post office who suppresses or opens, or abets the suppression or opening, of a letter entrusted to the post shall be liable to a fine of 50,001 to 200,000 francs and to imprisonment of from three months to five years. In addition thereto the offender shall be excluded from any public function or employment for not less than five nor more than ten years from the date of completion of the prison sentence.

In a case to which the foregoing paragraph does not apply, any person who maliciously suppresses or opens correspondence addressed to another shall be liable to imprisonment for one month and one day to one year, or a fine of from 50,001 to 200,000 francs, or to both.

. . .

Chapter XV

INSULTS

Art. 130. An expression likely by signifying threat, defamation or insult to diminish the respect due to a public authority is an insult to authority [outrage].

Art. 131. Any allegation or imputation of a fact prejudicial to the honour or reputation of the person or body to whom the act is imputed is defamation.

Art. 132. Any term of contempt or abuse not imputing a fact is an insult (*injure*).

Art. 133. Any person who by any means insults a depository of the power of the nation in office, that is to say the President of the Republic, the President of the National Assembly, a minister, or a Secretary of State, shall be liable to imprisonment for three months to one year and to a fine of 50,001 to 200,000 francs: provided that, if the insult was uttered in the presence of the authority insulted, the penalty shall be imprisonment for two to five years. The fine of 50,001 to 200,000 francs shall be awarded only if the insulting matter is written and enclosed.

Art. 134. Any person publicly insulting a foreign head of state, a foreign head of government, a minister of a foreign government or a member of an official mission to the Central African Republic shall be liable to imprisonment for three months to one year and to a fine of 50,001 to 200,000 francs.

Art. 135. Any person publicly insulting an ambassador or minister plenipotentiary, a chargé d'affaires, or any other diplomatic agent accredited to the Central African Republic shall be liable to imprisonment for one month and one day to one year and to a fine of 50,001 to 200,000 francs.

Art. 136. The court is hereby empowered to confiscate the means used to commit the offences specified in this section and need not ascertain whether or not they belong to the offenders.

Art. 137. A person insulting one or more administrative magistrates or judges or one or more jurors during or in connexion with their performance of their functions so as to impugn their honour or integrity shall be liable to imprisonment for one month and one day to two years.

Art. 138. A person insulting any officer of the court or holder of police powers or any citizen bound

to perform a public duty during or in connexion with the performance of his functions shall be liable to imprisonment for one month and one day to three months, or to a fine of 50,001 to 100,000 francs, or to both.

Art. 139. Any person insulting an officer in command of police shall be liable to imprisonment for one month and one day to six months, and may also be sentenced to a fine of 50,001 to 200,000 francs.

. . .

TITLE V

CRIMES AND OFFENCES AGAINST INDIVIDUALS

. . .

Chapter V

OFFENCES AGAINST MORALS

. . .

Art. 202. Any spouse who without substantial cause deserts the marital home shall be liable to imprisonment for not less than three months nor more than two years. The sentence shall be suspended on application by a plaintiff spouse agreeing to resume conjugal life.

. . .

Chapter VI

UNLAWFUL ARREST AND IMPRISONMENT

Art. 205. Any person who, without an order from a competent authority and in a case in which the law does not require the seizure of an accused person, arrests, detains or imprisons any person shall be liable to imprisonment for five to ten years.

. . .

Chapter IX

PERJURY, SLANDER, INSULTS, DISCLOSURE OF SECRETS

. . .

Art. 226. Any physician, surgeon or other health officer or any pharmacist, midwife or other person who, having been by virtue of his status, profession or temporary or permanent function entrusted with a secret, discloses the same in a case in which he is not bound or permitted by law to notify an offence, shall be liable to imprisonment for one month and one day to six months or to a fine of 50,001 to 200,000 francs or to both.

. . .

Chapter XV

BREACH OF PROVISIONS GOVERNING COMMERCIAL AND ARTISTIC PRODUCTION

. . .

Art. 253. Any diffusion or publication of all or part of a writing, musical composition, drawing, painting or any other work, or of a print or engraving, in disregard of the provisions of statute or regulation governing copyright, is a forgery; and every forgery is an offence.

. . .

Art. 256. Any director, producer or association of artists producing dramatic works in their theatres in disregard of the provisions of statute or regulation governing copyright shall be liable to a fine of not less than 50,001 nor more than 200,000 francs and to confiscation of the proceeds.

. . .

Act No. 61.212 ESTABLISHING THE NATIONALITY CODE OF THE CENTRAL AFRICAN REPUBLIC of 27 May 1961[1]

TITLE I

GENERAL PROVISIONS

Art. 1. The persons who possess at birth the nationality of the Central African Republic as their nationality of origin shall be designated by statute.

The nationality of the Central African Republic may be acquired or lost after birth by operation of law or by a decision of a public authority in accordance with the statutory procedure.

Art. 2. For the purposes of this Code majority is attained on the expiry of eighteen years of age.

Art. 3. The provisions relating to nationality contained in duly ratified and published international treaties or agreements shall apply in accordance with article 39 of the Constitution even if they conflict with the provisions of the municipal law of the Central African Republic.

Art. 4. Change of nationality may in no case result from an international convention except in virtue of an express provision thereof.

Art. 5. Where under the terms of a convention a change of nationality is contingent on an act of option, the form of that act shall be determined by the law of the contracting State in which the act is to be performed.

[1] Text published in the *Journal officiel*, third year, No. 11, 1 June 1961.

TITLE II

ATTRIBUTION OF THE NATIONALITY OF THE CENTRAL AFRICAN REPUBLIC AS NATIONALITY OF ORIGIN

Art. 6. Any person born in the Central African Republic shall be a national of that republic.

Art. 7. A person born in the Central African Republic both of whose parents are aliens shall not be a national of that republic.

Art. 8. A person born outside the territory of the Central African Republic one of whose parents is a national of the Central African Republic shall be a national of that republic.

Art. 9. A person who is a national of the Central African Republic by virtue of the provisions of this title shall be deemed to have been a national of that Republic at birth even if the statutory requirements for the attribution of that nationality are not proved to be satisfied until after his birth:

Provided that, in the last-mentioned case, the attribution of nationality of the Central African Republic at birth shall not affect the validity of instruments executed by the person nor rights acquired by third parties in virtue of his apparent nationality.

Art. 10. Birth or parentage shall affect the attribution of the nationality of the Central African Republic only if proved by a certificate of the civil registry or by a judgement.

Provided that a child of unknown parentage found in the Central African Republic shall be presumed, until the contrary is proved, to have been born in the Republic.

Art. 11. The provisions of the preceding articles shall not apply to children born in the Central African Republic of diplomatic agents or of career consuls of foreign nationality.

TITLE III

ACQUISITION OF THE NATIONALITY OF THE CENTRAL AFRICAN REPUBLIC

Chapter I

MANNER OF ACQUIRING THE NATIONALITY OF THE CENTRAL AFRICAN REPUBLIC

Section I. — Acquisition of the nationality of the Central African Republic by operation of law

Art. 22. A child who has been legitimated by adoption shall acquire the nationality of the Central African Republic if one of his adoptive parents is a national of the Republic.

Art. 13. Subject to the provisions of articles 14, 15 and 38, an alien woman who marries a national of the Central African Republic shall acquire the nationality of the Central African Republic upon the celebration of the marriage before a registrar.

Art. 14. A woman who under her national law may retain her nationality shall have the right to declare at the time of the celebration of the marriage that she declines the nationality of the Central African Republic.

She may exercise that right without authorization even if she is a minor.

Art. 15. Within six months from the date of the marriage the Government may, by decree founded on a report of the Minister of the Interior, bar acquisition of the nationality of the Central African Republic.

For that purpose a copy of the marriage certificate shall be transmitted within eight days of the ceremony by the registrar to the Minister of the Interior for registration.

Where the Government makes such a decree, the woman shall be deemed never to have acquired the nationality of the Central African Republic:

Provided that, where the validity of instruments executed before the decree was made depends on the acquisition by the woman of the nationality of the Central African Republic, their validity may not be contested on the ground that she could not acquire that nationality.

Art. 16. Where a marriage is contracted abroad, the period prescribed in the foregoing article shall run from the date on which the particulars of the marriage certificate are entered in the civil status record of a diplomatic or consular agent of the Central African Republic.

Art. 17. A woman shall not acquire the nationality of the Central African Republic if her marriage, even if contracted in good faith, with a national of the Republic is annulled by an order of a court of the Central African Republic, or by an order having effect in the Republic:

Provided that, where the validity of instruments executed before the Court order annulling the marriage depends on the acquisition by the woman of the nationality of the Central African Republic, their validity may not be contested on the ground that she could not acquire that nationality.

Section II. — Acquisition of the nationality of the Central African Republic by declaration

Art. 18. A minor born in the Central African Republic of alien parents may claim the nationality of the Central African Republic by making a declaration in accordance with the provisions of articles 55 *et seq* if he has by the date thereof been resident in the Central African Republic for at least five years.

Art. 19. A minor eighteen years of age may make his declaration without authorization.

A minor over sixteen but under eighteen years of age may claim the nationality of the Central African Republic only if authorized to do so by whichever of his parents exercises parental authority, or in default of such parent by his guardian.

In the event of divorce or legal separation the said authorization shall be given by whichever parent has custody of the child; if custody has been given to a third party, the authorization shall be granted by that party if approved beforehand by the civil Court of the place of residence of the minor, sitting in chambers.

Art. 20. If the child is under sixteen years of age, a person specified in paragraphs 2 and 3 of the preceding article may declare as the legal representative of the child that he claims for the child nationality of the Central African Republic: provided that if he is an alien he shall have resided in the territory of the Central African Republic for at least five years.

Art. 21. Children born in the Central African Republic of diplomatic agents or career consuls of foreign nationality may claim the nationality of the Central African Republic by making a declaration in accordance with the provisions of articles 18, 19 or 20 hereof.

Art. 22. A child adopted by a national of the Central African Republic may at any time before he comes of age claim the nationality of the Central African Republic by making a declaration in accordance with the provisions of articles 18, 19 or 20. The same shall apply to a child who has been for at least five years in the charge of a public or private child welfare institution, or to a child who has been given a home in the Central African Republic and brought up there by a national of the Republic.

Art. 23. The nationality of the Central African Republic shall be acquired on the date on which the declaration was signed.

Art. 24. Within six months from the date of signature of the declaration, the Government may by decree bar acquisition of the nationality of the Central African Republic on any ground whatsoever.

Section III. — *Acquisition of the nationality of the Central African Republic by decision of a public authority*

Art. 25. Nationality of the Central African Republic is acquired by decision of a public authority where naturalization or recovery of nationality is granted to an alien on his application.

Paragraph I. — *Naturalization*

Art. 26. Naturalization as a national of the Central African Republic shall be granted by decree after enquiry.

A person may not be naturalized unless resident in the territory of the Central African Republic when the decree of naturalization is signed.

Art. 27. Save as otherwise provided in articles 28 and 29 naturalization may not be granted to an alien unless he can prove habitual residence in the Central African Republic during the five years preceding the submission of his application.

Art. 28. The period of residence required by article 27 shall be reduced to two years —

1. Where the alien was born in the Central African Republic or is married to a national of the Republic;

2. Where the alien has rendered important services to the Central African Republic, for example through the exercise of distinguished scientific, artistic or literary talent, the introduction of useful industries or inventions, or the establishment in the Central African Republic of industrial or agricultural undertakings.

Art. 29. The following persons may be naturalized without probation:

1. An alien minor born outside the territory of the Central African Republic, if one parent acquires the nationality of the Republic during the lifetime of the other;

2. The minor child of an alien who acquires the nationality of the Central African Republic, not having himself yet acquired that nationality by right in virtue of article 44 hereof;

3. The wife and the children of full age of an alien who acquires the nationality of the Central African Republic;

4. An alien of full age adopted by a national of the Central African Republic;

5. An alien who has rendered outstanding services to the Central African Republic, or whose naturalization would be of exceptional value to the Central African Republic.

Art. 30. Except for minors to whom the provisions of article 29 apply, no person who has not reached the age of eighteen years may be naturalized.

Art. 31. A minor eighteen years of age may apply for naturalization without authorization.

In applying for naturalization, a minor under eighteen years of age to whom the provisions of article 29 apply shall be authorized or represented in accordance with articles 19 and 20 of this code.

Paragraph II. — *Recovery*

Art. 32. Recovery of the nationality of the Central African Republic shall be granted by decree after inquiry.

Art. 33. The nationality of the Central African Republic may be recovered at any age without probation:

Provided that a person may not recover the nationality of the Central African Republic unless he is resident in the Republic at the time of recovery.

Art. 34. A person applying for recovery of nationality shall prove that he formerly possessed the nationality of the Central African Republic.

Art. 35. A person who has been deprived of the nationality of the Central African Republic under article 52 of this code on the ground of a conviction may not recover it unless his full rights have been restored by the court.

Art. 36. A person to whom the preceding article applies may recover his nationality if he has rendered outstanding services to the Central African Republic or his recovery of nationality would be of exceptional value to the Central African Republic.

Section IV. — Provisions common to various ways of acquiring the nationality of the Central African Republic

Art. 37. Where acquisition of the nationality of the Central African Republic is conditional on residence in the Republic, a person may not acquire nationality unless he fulfils the statutory obligations and conditions governing residence of aliens in the Republic.

Art. 38. An alien in respect of whom an expulsion or restricted residence order has been made may not acquire the nationality of the Central African Republic in any manner whatsoever nor recover the same unless the order has been revoked in the terms in which it was made.

Art. 39. Residence in the Central African Republic while a restricted residence order is in effect or during a term of imprisonment shall not be reckoned in the period of probation required by the various provisions governing acquisition of the nationality of the Central African Republic.

Chapter II

Effects of Acquisition of the Nationality of the Central African Republic

Art. 40. A person acquiring the nationality of the Central African Republic shall from the date thereof enjoy all the rights incident to that nationality, subject to the disabilities prescribed in article 41 of this Code or in special statutes.

Art. 41. A naturalized alien shall be subject to the following disabilities:

1. During the period of three years following the naturalization decree he may not vote in an election for which only nationals of the Central African Republic may be registered as electors;

2. During a period of five years following the naturalization decree he may not be appointed to an elective function or office which may be discharged or held only by a national of the Central African Republic;

3. During a period of three years following the naturalization decree he may not be appointed to a public office remunerated by the State, or be called to a bar, or hold ministerial office.

Art. 42. A naturalized person who has rendered outstanding services to the Central African Republic, or whose naturalization would be of exceptional value to the Republic, may be relieved by the naturalization decree of some or all of the disabilities prescribed in article 41.

Art. 43. A minor one of whose parents would acquire the nationality of the Central African Republic on the decease of the other shall become a national of the Central African Republic by right on the same grounds as his parents, provided that his parentage is attested by a certificate of the civil registry or by a judgement.

Art. 44. The provisions of the preceding article shall not apply (1) to a married minor; (2) to a person who is serving or has served in the armed forces of his country of origin.

Art. 45. A minor may not benefit by article 43 if—

1. An expulsion order or a restricted residence order has been made in respect of him and not revoked in the terms in which it was made;

2. He has been sentenced to a term of imprisonment exceeding six months for a crime or offence [délit];

3. He is debarred by the provisions of article 37 from acquiring the nationality of the Central African Republic;

4. A decree barring acquisition of the nationality of the Central African Republic has been made in respect of him under article 24.

Title IV

LOSS AND DEPRIVATION OF THE NATIONALITY OF THE CENTRAL AFRICAN REPUBLIC

Chapter I

Loss of the Nationality of the Central African Republic

Art. 46. A national of the Central African Republic of full age who voluntarily acquires or states that he possesses a foreign nationality shall lose the nationality of the Central African Republic.

Art. 47. A national of the Central African Republic, even if a minor, who possesses a second nationality by right through the operation of a foreign law may be authorized by decree to relinquish the nationality of the Central African Republic.

In a case to which article 19 or 20 applies, the minor shall be authorized or represented in accordance therewith.

Art. 48. A national of the Central African Republic who loses his nationality shall be released from his allegiance to the Republic—

1. In a case to which article 46 applies, on the date on which the foreign nationality is acquired;

2. In a case to which article 47 applies, on the date of the decree authorizing him to relinquish the nationality of the Central African Republic.

Art. 49. A woman national of the Central African Republic who marries an alien shall retain the nationality of the Central African Republic, unless before the celebration of the marriage she makes an express declaration in accordance with the conditions and procedure laid down in article 55 *et seq* that she renounces her nationality.

The declaration may be made without authorization even if she is a minor.

The declaration shall be valid only if she acquires or may acquire her husband's nationality under the law of his country.

In that case she shall be released from her allegiance to the Central African Republic on the date of solemnization of the marriage.

Art. 50. A national of the Central African Republic who in fact behaves as a national of a foreign State may, if he possesses the nationality of that State, be declared by decree to have lost the nationality of the Central African Republic.

In that case he shall be released from his allegiance to the Central African Republic on the date of the decree.

The said measure may be extended to his spouse and minor children if they possess a foreign nationality, but not to his minor children without his spouse.

Art. 51. A national of the Central African Republic who holds a post in a public service of a foreign State or in a foreign army, and retains the same though directed to resign it by the Government of the Central African Republic, shall lose the nationality of the Central African Republic.

On the expiry of a period of not less than two months and not exceeding six months after notification of such direction, the national shall be declared by decree to have lost the nationality of the Central African Republic, if during that period he has failed to resign the said post, unless it is proved that he was totally unable to do so, in which case the period shall run only from the date on which the impediment was removed.

He shall be released from his allegiance to the Central African Republic on the date of the decree.

Chapter II

Deprivation of the Nationality of the Central African Republic

Art. 52. A person who has acquired the nationality of the Central African Republic may be deprived thereof by decree if—

1. He is convicted of an act constituting a crime or offence [délit] against the internal or external security of the State;

2. He is convicted of an act constituting a crime or offence against the established institutions;

3. He has done, to the advantage of a foreign State, acts incompatible with the nationality and detrimental to the interests of the Central African Republic;

4. He is convicted in the Central African Republic or abroad of an act constituting a crime under the law of the Central African Republic and sentenced therefor to a term of not less than five years' imprisonment.

Art. 53. A person may not be deprived of nationality unless the acts specified in article 52 with which he is charged occurred within the ten years following the date on which he acquired the nationality of the Central African Republic, and if the deprivation of nationality is ordered within the two years following his commission of those acts.

Art. 54. Deprivation of nationality may be extended to the spouse and minor children of the national if they are of foreign origin and have retained a foreign nationality.

Provided that it may not be extended to his minor children without his spouse.

. . .

Title VII

TRANSITIONAL PROVISIONS

Art. 99. An alien woman who has married a national of the Central African Republic before this Act was published may within a period of one year from the date of publication of the Act decline the nationality of the Central African Republic.

Art. 100. A woman national of the Central African Republic who has married an alien before this Act was published and acquired his nationality through the operation of his national law may within a period of one year from the date of publication of this Act renounce the nationality of the Central African Republic.

Art. 101. The period of six months within which the Government may bar acquisition of the nationality of the Central African Republic on any grounds whatsoever shall not begin before 1 January 1963.

Art. 102. For the purposes of this Act, a person who died before it was proclaimed but satisfied when alive the requirements of articles 6 and 8 shall be deemed to have been a national of the Central African Republic.

. . .

ACT No. 61.235 TO ESTABLISH THE ELECTORAL CODE OF THE CENTRAL AFRICAN REPUBLIC

of 8 July 1961[1]

TITLE I

ELECTIONS, THE ELECTORATE AND ELIGIBILITY IN GENERAL

Art. 1. Election is the choice made by means of the suffrage for the purpose of appointing the citizens who shall manage the public affairs of the Nation or territorial communities.

Art. 2. Elections shall be carried out by universal, equal and secret suffrage, direct or indirect.

. . .

Art. 4. All persons of both sexes who have attained the age of eighteen years, who fall within the scope of article 2 of the Constitution and who are duly registered on the electoral roll or in possession of a decision ordering their registration on the electoral roll shall be entitled to vote.

All voters shall be eligible for election, unless debarred under regulations specially laid down by law for each type of election; the law shall prescribe in particular the functions or offices that are incompatible with the act of candidature or with holding an elected office.

. . .

Art. 7. All persons of both sexes who have attained the age of eighteen years who fall within the scope of article 2 of the Constitution, who on 31 March of the current year have resided for not less than six months in the electoral district, are in possession of their civil and political rights and are not affected by any prohibition or injunction laid down by statute or pronounced by the courts shall be registered on the electoral rolls of the administrative district.

. . .

Art. 18. Central African citizens temporarily residing outside the national Territory shall remain registered on the electoral rolls of their last residence.

Art. 19. The following persons shall not be registered on an electoral roll:

1. Persons convicted of a serious offence [crime];

2. Persons sentenced to imprisonment for a term of more than one month, whether or not a suspension is granted, for: theft, false pretences or fraudulent conversion, misappropriation of public funds, forging and altering of forged instruments, corruption and influence peddling, sex offences;

3. Persons sentenced to imprisonment for more than three months, without grant of suspension, or to imprisonment for a term of more than six months, with suspension of the sentence, for a less serious offence [délit] other than those enumerated in the preceding sub-paragraph;

4. Persons in contempt of court;

5. Undischarged bankrupts who have been declared bankrupt either by a Central African court or by a judgement issued abroad but enforceable in the Central African Republic;

6. Persons under disability and persons placed under a guardian appointed by the courts;

7. Persons sentenced to a term of imprisonment whatever its length thereof, with or without suspension, for reconstituting or attempting to reconstitute political parties, associations or trade unions which have been dissolved.

Art. 20. A person who has been convicted of a less serious offence [délit] referred to in article 19, sub-paragraph 3(*e*) and has been sentenced to imprisonment for a term of not less than one month nor more than three months without suspension or to imprisonment for a term of not less than three nor more than six months with suspension, or who has been convicted of any less serious offence [délit] whatever and been sentenced to a fine, without suspension, of more than 200,000 francs, shall not be registered on an electoral roll for a period of five years from the date on which the conviction became final.

Nevertheless, in passing the sentences referred to in the preceding paragraph, the courts may exempt the convicted person from this temporary loss of the right to vote.

Art. 21. A conviction for a less serious offence [délit] committed through negligence shall not constitute an obstacle to registration in an electoral roll, unless the offender at the same time commits the offence of running away.

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TITLE VI

ELECTORAL PROPAGANDA

Art. 42. The electoral campaign shall open on the fourteenth day before election day. It shall close at midnight preceding election day.

All electoral propaganda shall be prohibited outside the period thus designated.

Electoral propaganda shall be conducted by means of posters, the distribution of leaflets and circulars, and meetings.

Art. 43. Throughout the electoral period, special sites shall be reserved by the local authorities for the affixing of electoral posters.

[1] Text published in the *Journal Officiel*, 3rd year, No. 14, of 15 July 1961.

At each such site equal space shall be allocated to each candidate or list of candidates.

The maximum number of such sites, apart from those established at the side of the polling offices, shall be fixed by decree for each election.

The affixing of posters elsewhere than at these sites shall be prohibited.

Art. 44. The sites shall be allocated in the order of arrival of the applications, which shall be submitted no later than eight days before the day of the ballot.

Art. 45. Posters and circulars shall be restricted in size as follows:

A propaganda poster, 60 by 80 centimetres, mentioning the list of candidates, printed in the colour of the party, organization or political grouping to which the list relates and bearing its distinctive symbol;

A poster, 20 by 40 centimetres, to announce an electoral meeting, which shall contain only information concerning the date and place of the meeting and the names of the speakers and candidates;

A circular, size 21 by 27 centimetres.

The number of posters shall be limited to two for each polling office and that of circulars to twice the number of registered voters.

Art. 46. The posters, circulars and leaflets shall be of the colours chosen by the candidate or the party, organization or political grouping and where applicable shall bear the distinctive symbol of the party, organization or political grouping.

Leaflets, posters and circulars bearing a combination of blue, white, green, yellow and red shall be prohibited.

. . .

Art. 48. Electoral propaganda may be conducted freely, subject to due respect for public peace and order and subject to the regulations in force concerning public meetings and the freedom of the press.

Art. 49. It shall not be lawful for any public official or employee to take part in any manner whatsoever in electoral propaganda unless he is himself a candidate or specially released for the purpose.

TITLE IX

THE VOTE

Art. 67. The voter shall exercise free choice. It shall not be lawful to coerce a person in order to influence his vote.

Art. 69. The right to vote shall be suspended in the case of: persons awaiting trial and accused persons who have failed to appear for trial; persons who, though not under a legal disability, are confined in a public mental institution.

. . .

Art. 71. . . .

The ballot shall be secret. The voter shall be concealed in the voting booth from the sight of the public in order to place the ballot paper of his choice in the envelope.

. . .

ORGANIC LAW No. 61.236 CONCERNING THE ELECTION OF THE PRESIDENT OF THE REPUBLIC AND OF THE MEMBERS OF THE NATIONAL ASSEMBLY of 8 July 1961[1]

TITLE I

ELECTION OF THE PRESIDENT OF THE REPUBLIC

Chapter I

GENERAL PROVISIONS

Art. 1. The President of the Republic shall be elected by direct and universal suffrage by a single ballot and on the same national roll as the candidates in legislative elections. He shall be eligible for re-election.

. . .

Chapter III

CONDITIONS OF ELIGIBILITY AND INCOMPATIBILITY OF OFFICES

Art. 7. Any citizen of the Central African Republic who has the right to vote may be elected President of the Republic upon the conditions and subject only to the reservations set forth in the following articles.

Art. 8. A person shall not be elected President of the Republic unless he has reached the age of thirty years.

Art. 9. A convicted person shall not stand for election if his conviction permanently or temporarily bars his registration on the electoral roll.

A person deprived by a court of his right to stand for election shall also be ineligible.

[1] Text published in the *Journal Officiel*, 3rd year, No. 14, of 15 July 1961.

Art. 10. Employees of the State or of public bodies, whether or not they are civil servants, shall not stand as candidates unless they terminate their functions six months before the date of the election.

If, however, the election takes place as provided in article 4 of this law, such persons may be candidates, provided that they terminate their functions not later than the last day for the submission of candidatures.

These provisions shall not apply to officials who are former members of the Government or the National Assembly of the Central African Republic.

. . .

Art. 12. The office of President of the Republic shall be incompatible with the exercise of any parliamentary mandate, with any public employment and with any occupational activity.

TITLE II

ELECTION OF DEPUTIES

Chapter I

GENERAL PROVISIONS

Art. 13. The deputies, of whom there shall be sixty, shall be elected by direct and universal suffrage on a single ballot and on a complete national roll, with no splitting of votes or preferential voting.

. . .

Chapter II

CONDITIONS OF ELIGIBILITY AND INCOMPATIBILITY OF OFFICES

Art. 16. Every citizen of the Central African Republic who has the right to vote may be elected to the National Assembly upon the conditions and subject only to the reservations set forth in the following articles.

Art. 17. No person shall be elected to the National Assembly unless he has reached the age of twenty-three years.

Art. 18. The persons referred to in article 9 above shall not be eligible.

Art. 19. Employees of the State or of public bodies, whether or not they are civil servants, shall not stand as candidates unless they terminate their functions six months before the date of the election.

If, however, the election takes place as provided in article 28 of the Constitution, such persons may be candidates provided that they terminate their functions not later than the last day for the submission of candidatures.

These provisions shall not apply to officials who are former members of the Government or the National Assembly of the Central African Republic.

. . .

Art. 22. The office of deputy shall be incompatible with the following offices:

1. The Presidency of the Republic.

2. Any non-elective public office, whether civilian or military, or any office for which remuneration is paid by a foreign State or an international organization. Deputies entrusted by the Government or the Assembly with a mission of not more than six months' duration may combine that mission with their parliamentary duties.

3. The office of chairman, manager, deputy manager, member of the board of directors or adviser of a national public institution, unless the deputy in question is appointed as a member of the board of directors of a national public institution under the instruments establishing the said institution.

4. The office of head of an undertaking, chairman of the board of directors, managing director, manager, deputy manager or adviser of a private company subsidized by the State or by a public body.

. . .

CEYLON

NOTE[1]

I. LEGISLATION

1. Constitutional

Ceylon (Constitution) Amendment Act No. 71 of 1961

Section 55 of the Ceylon (Constitution) Order in Council, 1946, vested the appointment, transfer, dismissal and disciplinary control of judicial officers in the Judicial Services Commission. Sub-section 5 of that section which defined the term "judicial officer" as the holder of any judicial office excluded Judges of the Supreme Court and Commissioners of Assize from this category. The amendment to sub-section 5 added election judges appointed by the Governor-General under sub-section 1 of section 78 of the Ceylon (Parliamentary Elections) Order-in-Council, 1946, to the categories so excluded.

2. Judicial Procedure

(A) *The Language of the Courts Act No. 3 of 1961* is an Act to provide for the use of the Sinhala language for recording the proceedings and for pleadings filed of record, in courts of justice, and to amend certain provisions of the Civil and Criminal Procedure Codes relating to the language of the Courts.

(B) *The Criminal Procedure (Amendment) Act No. 42 of 1961* enables an accused person or his proctor to obtain certified copies of any information given under section 121 (1) of the Criminal Procedure Code and any statement made under section 122 (1) by the person against whom the accused is alleged to have committed an offence. Certified copies so obtained are also made admissible in evidence.

(C) *The Civil Courts (Special Provisions) Act No. 43 of 1961* is an Act to make provision for the production in Civil Courts of certified copies of complaints to a police officer or an inquirer and of plans and sketches prepared by a police officer or an inquirer.

3. Economic Rights

(A) *The Crop Insurance Act No. 13 of 1961* is an Act to provide for the compulsory insurance against loss of crops due to any specified cause and to make provision for the establishment of a Crop Insurance Advisory Board.

(B) *The Fertilizers Act No. 21 of 1961* is an Act to regulate the sale of fertilizers of the soil and to provide against the adulteration of fertilizers.

(C) *The Agricultural Products (Guaranteed Prices and Control of Hulling and Milling) Act No. 33 of 1961* is an Act to provide for the grading of, and the fixing of guaranteed prices for, certain agricultural products of Ceylon, to require the Commissioner of Agrarian Services and Purchases authorized by him to pay the guaranteed prices for the purchase of agricultural products to which such prices apply and to control the hulling and milling of paddy.

(D) *The Licensing of Traders Act No. 62 of 1961* is an Act to make provision for the licensing of traders, for ensuring the maintenance of business standards and morality and for enabling the maintenance of fair and stable prices in essential consumer commodities.

(E) *The People's Bank Act No. 29 of 1961* is an Act to provide for the establishment of the People's Bank.

(F) *The Paddy Lands (Amendment) Act No. 61 of 1961* introduces certain amendments to the principal Act in regard to inquiries by the Commissioner of Agrarian Services into cases of alleged eviction of tenant cultivators and in regard to the constitution of cultivation committees.

(G) *The Ceylon Petroleum Corporation Act No. 28 of 1961* is an Act to provide for the establishment of a corporation to carry on business as an importer, exporter, seller, supplier or distributor of petroleum and to enable the compulsory acquisition or requisition for such corporation of any property and to provide for the establishment of a compensation tribunal.

4. Education and Cultural

(A) *The Assisted Schools and Training Colleges (Supplementary Provisions) Act No. 8 of 1961* is an Act to provide for vesting in the Crown, without compensation, the property of assisted schools of which the Director of Education is, or becomes, the Manager under Act No. 5 of 1960 and to regulate the establishment of schools on and after the date of the commencement of this Act.

(B) *The Ceylon University (Amendment) Act No. 12 of 1961* is an Act to amend the principal statute to enable the University of Ceylon to conduct external examinations for enabling those who are not students

[1] Note furnished by the Government of Ceylon.

of the University to obtain degrees, diplomas and other academic distinctions of the University.

(C) *The Public Performances (Amendment) Act No. 40 of 1961* prohibits the holding of any carnival without a licence and prohibits gambling at such carnivals and the holding of lotteries in connexion with such carnival.

5. Labour

(A) *The Factories (Amendment) Act No. 54 of 1961* amends the principal Act in regard to the use and occupation of factories.

(B) *The Compulsory Public Service Act No. 70 of 1961* is an Act to make provision for enabling the calling up for compulsory public service of persons who are graduates of the University of Ceylon or any other university established in Ceylon or of any university outside Ceylon and who undergo a course of technical training in the University of Ceylon or a university established in Ceylon.

6. Health

Ayurveda Act No. 31 of 1961 is an Act to provide for the establishment of a Department of Ayurveda, the registration of Ayurvedic hospitals, Ayurvedic pharmacies and dispensaries.

II. JUDICIAL DECISIONS

(A) *Right to a fair trial*

1. *The Queen* v. *M. Wittie*, 63 N.L.R. 121[1]

When a confession made to a magistrate and recorded by him in terms of section 134 of the Criminal Procedure Code is entered in evidence by the prosecution without objection by the defence, it is wrong to direct the jury that there is any presumption that the confession was voluntarily made by the accused. It would also be a misdirection to tell the jury that they should not give the accused the benefit of any part of the confession which contains mitigatory or exculpatory matter.

2. *Claude Silva* v. *T. C. Joseph*, 63 N.L.R. 189

When an accused is brought before the court otherwise than on a summons or warrant, section 187 (1) of the Criminal Procedure Code precludes the magistrate from framing a charge on counts other than those disclosed by the evidence recorded by him in terms of section 151 (2). The irregularity of convictions on such counts is not curable under section 425.

3. *G. K. T. Perera* v. *M. I. Buhary*, 63 N.L.R. 262

The accused-petitioner pleaded guilty to a charge of possessing an unlicensed revolver and was sentenced to pay the maximum fine of Rs. 2500/—.

Held, that before imposing so large a fine some inquiry should have been made as to the means of the accused and as to the excuse, if any, which he could have put forward to avert so serious a punishment.

4. *The Queen* v. *K. Vellasamy*, 63 N.L.R. 265

Where the evidence of a witness is disbelieved in respect of one offence it cannot be accepted to convict the accused of any other offence. Accordingly if a witness's evidence is disbelieved in respect of a charge of murder it cannot sustain the conviction of the accused in respect of charge under section 198 of the Penal Code.

A person who is indicted on a charge of murder cannot be acquitted of murder and, at the same time, without due amendment of the indictment and being afforded an opportunity of answering the charge, be convicted under Section 198 of the Penal Code of causing disappearance of evidence of the commission of murder or culpable homicide not amounting to murder. Such a conviction is not covered by the provisions of section 182 of the Criminal Procedure Code.

5. *The Queen* v. *Sunderam*, 63 N.L.R. 363

Where in a trial for murder the accused expressly pleads the general exception of accident (section 73 of the Penal Code) but there are circumstances which make it necessary for the jury to consider the general exception of the right of private defence (section 89 of the Penal Code), the trial judge must not withdraw from the jury the consideration of the exception of private defence.

(B) *Constitutional Provisions*

M. S. T. P. Senadhira v. *The Bribery Commissioner 63 N.L.R. 313*

The power given to a Bribery Tribunal by section 66 (1) of the Bribery Act, No. 11 of 1954 (as amended by Act No. 40 of 1958) to convict, fine and imprison persons charged before it is unconstitutional in as much as such power, being exclusively a judicial power, can be exercised only by a judicial officer appointed by the Judicial Service Commission in terms of section 55 of the Ceylon (Constitution) Order-in-Council, 1946. The members of a Bribery Tribunal were not so appointed, having been appointed by the Governor-General on the advice of the Minister of Justice in terms of section 41 of the Bribery Act.

The right of appeal given by section 69 A of the Bribery Act may be availed of by a convicted person to show that a Bribery Tribunal, although it is a valid body possessing certain powers, has assumed other powers which it could not exercise, as it was not properly constituted for that purpose.

[1] "N.L.R." signifies "New Law Report".

(C) *Citizenship*

1. *P. M. K. Mohideen* v. *The Prime Minister and Minister of Defence and External Affairs*, 63 N.L.R. 263

In an application by a person to be registered as a citizen of Ceylon under the provisions of section 11 (1) (*f*) (i) 2, of the Citizenship Act No. 18 of 1948 the qualifying period of residence in Ceylon immediately preceeding the date of the application must be shown to have been uninterrupted. Casual absence during the qualifying period would interrupt the acquisition of the qualification.

2. *K. Ponnusamy* v. *The Minister of Defence and External Affairs*, 63 N.L.R. 380

Sub-section 4 of section 11 A of the Citizenship Act No. 18 of 1948 as amended by Act No. 13 of 1955 reads as follows:

"The Minister may refuse an application sent to him under sub-section 3 if he is satisfied that it is not in the public interest to grant the application."

Held, in an application for registration as a citizen of Ceylon in terms of section 11 A, that, inasmuch as the statute permits the Minister to disallow an application where he is satisfied that it is not in the public interest to grant it, the Court should not review a disallowance of an application by examining whether it is actually not in the public interest to grant it. The Minister is the sole judge of the requirements of the public interest.

(D) *Personal Rights*

P. Kannusamy v. *The Minister of Defence and External Affairs*, 63 N.L.R. 214

The Supreme Court has no common law power to admit persons to bail. When a person against whom a removal order has been made in terms of Section 28 of the Immigrants and Emigrants Act is arrested and detained under section 28 (1A), the Supreme Court has no power, in the absence of any statutory provision, to admit him to bail pending the hearing of an application made by him for registration as a citizen of Ceylon under the Citizenship Act.

(E) *Economic Rights*

1. *The Times of Ceylon Ltd.* v. *The Nidahas Karmika Saha Velanda Sevaka Vruthiya Samithya*, 63 N.L.R. 126

The definition of "workman" in section 47 of the Industrial Disputes Act does not cover an independent contractor.

2. *The Electric Equipment and Construction Co.* v. *M. J. F. Cooray*, N.L.R. 164

Where the termination of an employee's service is both legal and justifiable, a Labour Tribunal has power to award, not any benefit or compensation which it may consider equitable, but only a gratuity or other benefit legally due to the employee.

CHAD

ACT No. 31-60, OF 27 FEBRUARY 1961, PROMULGATING THE NATIONALITY CODE OF CHAD[1]

Chapter I

General Provisions

Art. 1. Nationality is the legal tie which binds the individual to the State. It is distinct from civic rights and civil status, which are defined in separate statutes enacted for that purpose.

Art. 2. This code determines which persons shall possess or acquire Chad nationality. The provisions concerning nationality contained in duly ratified and published international treaties or agreements shall override those contained in this code.

Art. 3. For the purposes of this code, majority is attained on the expiry of twenty years of age.

Chapter II

Rules for the Attribution of Chad Nationality applicable to Persons born on or before 11 August 1960

Art. 4. Persons of either sex born in the territory of the Republic of Chad on or before 11 August 1960, as well as their spouses and their legitimate, natural or adopted children who were themselves born in Chad on or before 11 August 1960, shall be nationals of Chad, provided that they fulfil the following conditions:

1. They are of Chad descent through at least one of their parents and have renounced any other nationality or citizenship within two months after the date of promulgation of this Act;

2. They are known by reputation to be fully assimilated into a community habitually resident in the territory of the Republic of Chad. Their fulfilment of this latter condition shall be judged, in light of all the circumstances evidencing the assimilation of a person into a community, by the authorities responsible for issuing certificates of nationality, and, in the event of a dispute, by the court having jurisdiction in matters of nationality.

These conditions shall in any event be deemed to have been fulfilled in the case of persons of African origin appointed to an elective office in the Republic of Chad before the promulgation of this Code.

They shall also be deemed to have been fulfilled in the case of persons able to provide evidence that they are nationals of Chad.

Art. 5. Any person who previously possessed another nationality may renounce that nationality by applying for naturalization within the year following the promulgation of this code. Such application may be accepted or rejected by the authorities of the Republic of Chad.

Art. 6. The provisions of articles 19 *et seq.* hereinafter, relating to naturalization, shall apply to all persons born on or before 11 August 1960.

Chapter III

Rules for the Attribution or Acquisition of Chad Nationality applicable to Persons born after 11 August 1960

Section I

Attribution of Chad Nationality at Birth

Art. 7. The persons referred to in this section shall be deemed to have possessed Chad nationality at birth, even if the requirements prescribed by this Code for the attribution of Chad nationality are not proved to be satisfied until after their birth.

Provided that in the latter case the attribution of Chad nationality at birth shall not affect the validity of instruments executed by the person concerned or rights acquired by third parties in virtue of his apparent nationality.

1. *By Filiation*

Art. 8. The following persons shall be nationals of Chad: (1) a legitimate child of a Chad father; (2) a legitimate child of a Chad mother and of a father who has no nationality or whose nationality is unknown.

Art. 9. The following persons shall be nationals of Chad: (1) a natural child whose filiation is proved with respect to a Chad father; (2) a natural child whose filiation is proved with respect to a Chad mother and to a father who has no nationality or whose nationality is unknown; (3) A natural child whose filiation is proved with respect to a Chad mother and is not proved with respect to the father.

2. *By Birth in Chad*

Art. 10. Any legitimate or natural child born in

[1] Text published in the *Journal Officiel de la République du Tchad*, third year, No. 6, of 1 March 1961.

Chad who has no other nationality or origin shall be a national of Chad.

Art. 11. A child born in Chad of unknown parents shall be a national of Chad. Nevertheless, he shall be deemed never to have been a Chad national if during his minority his filiation is proved with respect to an alien and under the national law of such alien he possesses the nationality of the latter.

A new-born child found in Chad shall be presumed, until the contrary is proved, to have been born in Chad.

Section II
Acquisition of Chad Nationality after Birth

Art. 12. The provisions of this section define the conditions in which a person may acquire Chad nationality after birth by operation of law or pursuant to a decision of a public authority, as well as the date from which he shall be deemed to possess such nationality.

1. *By Marriage*

Art. 13. An alien woman who marries a Chad national shall acquire Chad nationality on the date of the marriage. Nevertheless, she may decline such nationality by an express declaration to that effect signed at the time of the celebration of the marriage.

2. *By Recovery of Nationality*

Art. 14. Recovery of Chad nationality may be granted by decree, after inquiry, on the application of any person who proves that he formerly possessed Chad nationality and who is resident in Chad at the time of application. It is never granted as a matter of right.

Art. 15. Chad nationality may be recovered at any age and without any residence requirement. Recovery shall take effect from the date of the decree granting it.

3. *By Adoption, Legitimation, or the Recovery of Nationality by the Parents*

Art. 16. A child adopted by a person of Chad nationality shall acquire that nationality on his adoption. Nevertheless, he may repudiate that nationality during the year preceding the attainment of his majority.

Art. 17. A legitimated natural child shall acquire Chad nationality on his legitimation provided that he fulfils one of the conditions laid down in article 8 for the granting of Chad nationality to legitimate children.

Art. 18. The provisions of articles 8 and 9 shall apply to the children of persons who recover Chad nationality pursuant to articles 14 and 15, with effect from the date of the decree granting recovery.

Nevertheless, any such children who are married or of full age on the date of the decree granting recovery may decline Chad nationality within a period of one year from that date.

4. *By Naturalization*

Art. 19. Naturalization shall be granted by decree after inquiry. It shall never be granted as a matter of right.

Art. 20. A person may not be naturalized as a national of Chad: (1) unless at the time of applying for naturalization he has been resident in Chad for not less than fifteen years; (2) unless he is of good conduct and moral character; (3) if he has been sentenced to a severe penalty in respect of a crime or an offence against the ordinary law, and the sentence has not been expunged through the restoration of his civic rights.

Art. 21. The residence qualification referred to in article 20 (1) shall not be required in the case of: (1) an alien born in Chad; (2) an alien who has rendered eminent and effective services to Chad.

Art. 22. A Chad national by naturalization shall from the date of the naturalization decree acquire all the rights attaching to that nationality. Nevertheless, under special legislation, the enjoyment of some of these rights, more particularly the right to elect and to be elected and the right of access to public office, may be postponed to a later date.

The persons referred to in article 21 may in all cases be relieved of these disabilities by decree.

Chapter IV
LOSS AND DEPRIVATION OF CHAD NATIONALITY

Art. 23. The provisions of this chapter shall apply to all the persons referred to in chapters II and III of this Act.

Art. 24. The following persons shall automatically lose Chad nationality: (1) a person who exercises his right to repudiate Chad nationality in the cases and manner provided for in this code; (2) a Chad woman who marries an alien if, at the time of the celebration of the marriage, she makes an express declaration renouncing Chad nationality in order to acquire the nationality of her husband.

Art. 25. The following persons may be deprived of Chad nationality by decree: (1) a person who has obtained his naturalization by fraudulent means, by submitting forged documents or by deceiving the authorities conducting the official inquiry; (2) a citizen who engages in activities incompatible with the citizenship and detrimental to the interests of Chad; (3) a citizen who has been convicted of an act constituting a crime or offence against the internal or external security of the State.

Art. 26. Deprivation of nationality shall take effect from the date of the decree ordering it. The decree shall include a statement of grounds.

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CHILE

NOTE[1]

I. LEGISLATION

1. *Act No. 14511*, of 27 December 1960 (*Diario Oficial* No. 24835 of 4 January 1961) establishes departmental courts of first instance [Juzgados de Letras] for Indians, indicates and specifies their organization and jurisdiction and establishes the legal system governing indigenous property and the rules applying to indigenous communities, land tenure and credit.

2. *Act No. 14617* of 2 September 1961 (*Diario Oficial* No. 25043 of 11 September 1961)

The following new provision is added to article 8, paragraph 1, of Act No. 10475 of 8 September 1952 on Salaried Employees' Pension Insurance:

"The professional incapacity pension for aviation pilots who are contributors to the fund shall be awarded in accordance with the provisions of article 10, except where they are contrary to the provisions of this article. A contributing aviation pilot shall be deemed to be professionally incapacitated if: (*a*) he has completed twenty years' service as a pilot. (*b*) he has lost the capacity or aptitude for flying."

3. *Act No. 14628*, of 15 September 1961 (*Diario Oficial* No. 25048 of 16 September 1961)

"Sole article. The following new paragraphs are added to article 377 of the Labour Code:

" 'However, the officials of trade unions of officers and crew in the national merchant marine may, during their term of office, receive remuneration payable by the trade union concerned. This remuneration may not amount to more than the wages, bonuses, salary and other payments to which the official would have been entitled if he had actually worked for the company and it shall be subject to all the taxes and deductions to which workers' wages, salary and other remuneration are subject under the law. The tax normally paid by the ship-owner shall be payable by the trade union concerned. The remuneration mentioned in the preceding paragraphs shall be paid only when the official is unable to work in the company because of the demands made upon him by trade union activities.

" 'The Provincial Inspectorate of Labour shall, at the request of the majority of the trade union members, decide the amount of the remuneration and the maximum number of officials in each trade union who shall be entitled to it, in accordance with the procedure established in the provisions of this Act.' "

4. *Act No. 14687*, of 20 October 1961 (*Diario Oficial* No. 25079 of 26 October 1961)

"*Art. 1.* Act No. 10475, of 8 September 1952, is amended as follows:

"(*a*) The following paragraph is added as article 11, paragraph 2: 'Female contributors shall be entitled to a retirement pension when they have completed 30 years of actual service, or 20 years of actual service if they are aged 55 or over.'

"(*b*) The following paragraph is added as article 12, paragraph 2: 'The retirement and old-age pensions of female contributors who have completed at least 20 years of actual service shall be increased by 1/35 of the basic salary for each child and by an additional 2/35 in the case of widows. These increases shall be made provided that the amount of the pension does not exceed that of the basic salary.'

"*Art. 2.* Article 37, sub-paragraph (*a*), of Act No. 10383 is replaced by the following text: '(*a*) have reached the age of 65 in the case of men and 55 in the case of women.'

"*Art. 3.* The following article 39 *bis* is added to Act No. 10383: '*Art. 39 bis.* For the purposes of article 37, paragraph 2, female recipients of old-age pensions shall receive 52 weeks of contributions for each child and an additional 104 weeks if they are widows. These additional benefits shall be paid provided that the amount of the pension does not exceed the maximum old-age pension.'

"*Art. 4.* Contributions to the Social Insurance Service shall be made on the basis of a presumed daily salary of at least half an escudo (0.50 escudos)."

5. *Act. No. 14688* of 21 October 1961 (*Diario Oficial* No. 25076 of 23 October 1961)

"*Art. 21.* As from 1 March 1962, the children of workers and employees, whose income does not exceed twice the minimum salary rate (*a*) of the Department of Santiago and who contribute to a social provident fund, shall be entitled to an educational allowance to be paid in conjunction with the family allowance for all those who are entitled to

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

the latter and are between six and fifteen years of age, provided that they comply with the provisions of the Act on Compulsory Primary Education. The educational allowance shall be paid in full and shall not be subject to deductions, levies or taxes of any kind.

"*Art. 22.* As from 1 January 1962, a single compensatory fund for the payment of the educational allowance, to be called 'Educational Allowance Fund', shall be established in the Social Insurance Service and shall consist of:

"(*a*) 2.5 per cent of all the taxable salaries and wages which the Provident Funds and Compensation Funds shall transfer to the Social Insurance Service for the relevant family allowance funds;

"(*b*) 2.5 per cent of the salaries and wages of all employees and workers who are covered by the regular systems or by other special systems of family allowances, payable by the owners or employers concerned;

"(*c*) 2.5 per cent of the salaries and wages paid by the State agencies or institutions not covered by the preceding sub-paragraphs, payable by the Exchequer or the institutions concerned, respectively.

"The application of these provisions shall in no case result in a decrease in existing family allowances."

II. SUPREME DECREES

Decree No. 23 of 10 January 1961, of the Ministry of Foreign Affairs (*Diario Oficial* No. 24852 of 23 January 1961)

This decree orders the entry into force, as a law of the republic, of the Convention on the Recovery Abroad of Maintenance, concluded in New York on 30 June 1956.

III. JUDICIAL DECISIONS

Review *Fallos del Mes* (*Sintesis*), No. 35, October 1961.

"Jurisprudence of the Supreme Court"

"Inviolability of Deputies and Senators. The provision of article 32 of the Political Constitution which establishes that deputies and senators are inviolable for the opinions they may express and the votes they may cast in the discharge of their office is clearly a restrictive provision, since its effects are limited to specified cases. Publications in the press by Deputies merely in their capacity as members of a political party are acts to which this inviolability does not extend."

ACT No. 14,550 ESTABLISHING JUVENILE COURTS WITH PROFESSIONAL JUDGES AND AMENDING CERTAIN ACTS AS INDICATED of 10 February 1961[1]

Art. 1. The existing special juvenile courts and those which may be established in future shall be called juvenile courts with professional judges. These courts shall form part of the Judiciary and shall be governed by the provisions relating to the higher courts with professional judges laid down in the code relative to the organization of courts and laws supplementing the said code in so far as those provisions are not at variance with the provisions of the present Act and of Acts No. 4,447 and No. 5,750, the definitive texts of which were laid down in decrees No, 2,201 and No. 2,200, of 29 April 1949 respectively.

Art. 2. A third, a fourth and a fifth juvenile court with a professional judge are established for the Department of Santiago, and will have jurisdiction over the entire territory included in this administrative division, with the exception of the communes of San Miguel, Cisterna and La Granja.

These courts, without distinction, shall examine all cases resulting from the application of Acts No. 5,750, concerning desertion of the family and payment of maintenance, and No. 4,447, concerning the protection of minors, except the cases mentioned in article 8 of this Act, which shall be considered by the court indicated in that article.

. . .

Art. 8. The existing first juvenile court with a professional judge of Santiago shall have jurisdiction over the entire department, with the exception of the communes of San Miguel, Cisterna and La Granja, and shall examine all cases involving minors charged with crimes, offences and misdemeanours, with due regard to the provisions of article 19 of Act No. 4,447 concerning the protection of minors.

On the staff of the said court there shall be a female inspector for girls, at grade 6 of the salary scale set forth in Act No. 11,986.

[Further provisions of the Act amend Acts No. 4,447 and No. 5,750.]

[1] Text published in *Diario Oficial* No. 24886, of 3 March 1961, and furnished by Mr. Julio Arriagada Augier, former Under-Secretary of Public Education, Government-appointed correspondent of the *Yearbook on Human Rights*.

CHINA[1]

ADMINISTRATIVE INSTRUCTIONS OF THE MINISTRY OF JUSTICE No. TAI (50) LING/HSING (II) 6337, OF 8 DECEMBER 1961

To: Procurator-General of the Procurator's Department of the Supreme Court
Chief Justice of Taiwan High Court
Chief Procurator of Taiwan High Court
Chief of the Bureau of Investigation, Ministry of Justice
Chief Justice of the Amoy Branch of Fukien High Court
Chief Justice of Kinmen District Court, Fukien Province

Subject: Careful Handling of Criminal Cases with a View to Safeguarding Fundamental Human Rights

1. The Conference for the Review of the Administration of Justice held in 1961 adopted several resolutions under item VI of its agenda, entitled "Careful handling of criminal cases with a view to safeguarding fundamental human right's'. Among these resolutions, the following three are of direct concern to the courts and procurator's departments: "Proper execution of detention", "Measures to strengthen the effectiveness of the judicial police" and "Proper handling of criminal cases".

2. The texts of the three resolutions mentioned above are enclosed herewith. You are requested to comply with their terms in the performance of your duties and to ensure that they are scrupulously observed by your subordinates.

RESOLUTIONS ON THE CAREFUL HANDLING OF CRIMINAL CASES WITH A VIEW TO SAFEGUARDING FUNDAMENTAL HUMAN RIGHTS

I. *Proper Execution of Detention*

1. Careful consideration shall be given to the necessity of detention following the examination of an accused person. The accused must not be detained unless the detention is found to be necessary and justifiable on the grounds laid down in article 76 of the Code of Criminal Procedure. Where it is decided to place an accused under detention, the legal ground thereof shall be noted on the writ of detention.

2. On the application by the judicial police for a warrant of arrest, the procurator shall make a close examination of the available information on the case. The warrant shall be issued only after he is satisfied that it is indeed necessary to have the suspect arrested. Once the suspect has been arrested, the procurator shall personally conduct an examination of the arrested and shall not place the latter under detention unless he is satisfied that the charge is well-founded and that the detention is necessary and justifiable on the grounds laid down in article 76 of the Code of Criminal Procedure.

3. As a rule, accused persons charged with a minor offence shall not be held in detention, especially in cases where any of the conditions specified in article 114 of the Code of Criminal Procedure exist.

4. A juvenile accused of an offence shall, so far as possible, be committed to the custody of an appropriate person.

5. Even though detention is justifiable under article 76 of the Code of Criminal Procedure, the accused may nevertheless be released on bond, or to the custody of another person, or on the condition that his residence be restricted, if the preliminary examination shows that his detention is not necessary.

6. Where a bond is admitted to secure the release of an accused, the bond shall normally take the form of a written guarantee rather than cash security. An accused unable to provide such a bond shall, so far as possible, be released to the custody of another person or on the condition that his residence be restricted.

7. If an accused person under detention is subsequently released on bond, the grounds on which he is released from detention shall be noted on the certificate of discharge.

8. Upon receipt of an application for suspension of detention, the Court or the procurator shall immediately decide, by a ruling or an order, whether the application should be granted or denied, so that if the application is rejected the accused may have recourse to remedial measures.

9. An accused person who has been released from detention may not be detained again except on the grounds specified in article 117 of the Code of Criminal Procedure.

10. As soon as the reason for detention ceases to exist, the writ of detention shall be cancelled and the accused released.

11. If, after the expiration of the period of detention, no prosecution has been instituted or no judge-

[1] Texts furnished by the Government of China.

ment rendered, the accused shall be released forthwith, provided that the Court may order him released on bond, or to the custody of another person, or on the condition that his residence be restricted.

12. An accused person under detention shall be released on the ruling that no prosecution is to be instituted or on the pronouncement of a decision that he is not guilty or not liable to prosecution, that his sentence should be suspended, that he is sentenced to a fine, that his sentence should be commuted to a reprimand, or that the case should not be entertained on the grounds specified in article 295 (iii) and (iv) of the Code of Criminal Procedure. However, the accused may still be kept under detention in such cases, if circumstances so require.

13. Special marks in red ink shall be made on the Court Calendar to indicate cases in which the accused is being held in detention. The proceedings of such cases shall be expedited. Investigation and trial shall be completed as soon as possible so that the detention may not be unduly prolonged. After the completion of investigation or trial, every effort shall be made to carry out without delay such measures as the execution of the indictment or judgement, the service of the copies thereof, the transmission of the record and exhibits, and the transfer of the accused.

14. The court clerk shall keep a register of accused persons under detention and submit it to the procurator and the judge for review once every three days. The Chief Procurator and the Chief Justice shall have special responsibilities for the protection of accused persons under detention and shall, from time to time, make spot checks for that purpose.

. . .

III. *Proper Handling of Criminal Cases*

A. *Investigation*

1. Notwithstanding the fact that an accused has confessed before the judicial police during preliminary investigation, the procurator shall, as soon as the case is referred to him, undertake an examination of the other necessary evidence in order to ascertain whether the confession agrees with the facts of the case.

2. An accused shall be questioned at once and in great detail at the time when he is first brought before the procurator, because he is then more likely to tell the truth owing to the fact that he has no idea of what is to be asked of him and that it is not yet possible for him to be coached in his answers. The questioning shall not be conducted in a summary manner or confined to asking the name, age and place of origin of the accused before ordering him to be detained.

3. The procurator shall begin the investigation of a criminal case with a careful study of the statements made by the complainant or informant and other relevant documents and materials. He shall then proceed to gather evidence on the basis of all the known facts. The accused shall not be summoned or arrested unless the procurator considers, on the basis of preliminary investigation, that there is a strong likelihood that an offence has been committed.

4. The procurator shall conduct the investigation in a compassionate manner, taking into account all circumstances of the case, whether favourable or unfavourable to the accused.

5. If, prior to the conclusion of arguments at the trial of first instance, the procurator has reason to believe that the prosecution should not have been instituted or that it would be desirable to discontinue the prosecution, he shall withdraw the prosecution in accordance with article 248 of the Code of Criminal Procedure.

6. Upon receipt of a copy of the court decision, the procurator shall make a thorough examination of the decision from the point of view of legality and equity, regardless of whether the case was originally brought before the court on public prosecution or private complaint and whether the decision involves a judgement of "guilty", "acquittal", "exempt from prosecution", "case not entertained", or "mistake in jurisdiction". If he finds any illegality, error or injustice in the decision, he shall lodge an interlocutory appeal or an appeal within the legally prescribed period. Where the decision has already become final, he shall lodge an extraordinary appeal or appeal for a re-trial, as the case may be, in accordance with law.

B. *Trial*

1. While taking into due account any initial confession that the accused may have made, the court shall also investigate the other necessary evidence.

2. The investigation of evidence must be thorough and complete.

3. The determination of facts must be accurate.

4. The application of laws must be appropriate.

5. The penalty must fit the offence, being neither too lenient nor too severe.

JUDICIAL DECISIONS

1. Decision of Pintung District Court, Taiwan

Nos. 1961/HSING/TSAI/256 and 1961/SHENG/81, of 8 November 1961

Applicant: *Lo Chi-wen*, male, age 34, originally from Honan, a civil servant, of 19 Park Road, Pingtung City.

The following decision is rendered in connexion with a claim for indemnification submitted by the above-named applicant, who has been acquitted by this court of a charge of petty larceny:

Syllabus

Lo Chi-wen is hereby awarded an indemnification at the rate of five yuan a day for the seventeen days during which he was held in detention before his final acquittal.

Explanation

Article 1, paragraph 1 (i), of the Criminal Indemnification Act specifically provides that indemnification may be claimed by any person who has suffered injury by reason of the fact that he was held in detention before his final acquittal. It is asserted by the applicant in this case that, as a result of a false charge of petty larceny brought against him out of personal animosity, he was held in detention at the detention house of Taitung District Court from 14 to 30 August 1960. Now that he has been acquitted, he claims that he is entitled to compensation under the Criminal Indemnification Act. . . .

. . . Since there was a strong suspicion that the accused might be guilty and there was reason to believe that he might conspire with witnesses in the case, he was placed under detention on 14 August 1960. Prosecution was instituted on 18 August. It was not until 30 August 1960 that the accused was released on bond. . .

. . . This court found the accused innocent of the charge in a decision pronounced on 2 February 1961. An appeal made by the procurator against the judgement was later rejected by the Tainan branch of Taiwan High Court in a final decision rendered on 10 July 1961 (No. 1961/PAN/1865). . . .

For the reasons stated above, the applicant is entitled to indemnification for the injury he has suffered by reason of the fact that he was held in detention before his final acquittal.

Since the application is fully justified, the Court hereby pronounces the decision set forth in the Syllabus in accordance with the first part of article 13, paragraph 2, article 1, paragraph 1 (i), and article 3, paragraph 1, of the Criminal Indemnification Act.

2. Decision of Hsinchu District Court, Taiwan

No. 1962/SHENG/179, of 29 June 1962

Applicant (also the injured party): *Wu Hsiu-lan*, female, age 36, unemployed, of 21 Tailing Road, Shanchiao Village, Taishan District, Taipei hsien.

The following decision is rendered in connexion with a claim for indemnification submitted by the above-named applicant who is also the injured party in the case.

Syllabus

Wu Hsiu-lan is hereby awarded indemnification in an amount computed at the rate of four yuan a day for the period during which she was held in detention.

Explanation

According to the applicant, she was detained for seven days by order of this court following her arrest by Miaoli Police Precinct on 15 March 1962. The case has turned out to be one of mistaken identity. She therefore claims indemnification from the State for the injury she has suffered as a result of the unwarranted detention.

The applicant was indeed arrested by Miaoli Police Precinct and brought before the court on 15 March 1962. She had been mistaken for another woman named Wu Hsiu-lan, a larceny suspect wanted by this court under a circular of arrest (Case No. 1959/I/176). The two woman not only have the same name, but are also of the same age and place of origin. The mistaken identity was finally established after a close examination of the files of the two cases (Nos. 1959/I/176 and 1962/CHI/I/973).

The court finds the applicant's claim for indemnification fully justified and pronounces the decision set forth in the Syllabus in accordance with article 13, paragraph 2, and article 3, paragraph 1, of the Criminal Indemnification Act.

3. Decision of Taiwan High Court

No. 1961/PEI/2, of 20 November 1961

Applicant: *Chen Wei-fen*, of 9 Chiteh Lane, Hsichih Township, Taipei hsien.

The following decision is rendered in connexion with a claim for indemnification submitted by the above-named applicant who has been acquitted by this court of a charge of fraud on 15 August 1961:

Syllabus

Chen Wei-fen is hereby awarded an indemnification in the amount of 296 yuan for the seventy-four days during which he was held in detention before his final acquittal. . . .

Explanation

The Criminal Indemnification Act specifically provides that, in criminal cases dealt with in accordance with the laws governing criminal procedure, indemnification may be claimed from the State by any person who has suffered injury by reason of the fact that he was held in detention before his final acquittal (article 1, paragraph 1 (i)), and that such indemnification shall be awarded at the rate of four to six yuan a day for the period of detention (article 3, paragraph 1).

The applicant had been implicated in a case of fraud. The Court of the original jurisdiction placed him under detention on 31 December 1960 for fear that he might abscond, and later sentenced him to imprisonment for a term of five months. Upon appeal, the Criminal Branch of this court set aside the judgement of the lower court on the ground that his guilt had not been proved, and ordered him released on bond on 14 May 1961. The decision has become final. . . .

The applicant was actually held in detention for a total of seventy-four days from 31 December 1960, the date on which he was placed under detention, to 14 March 1961, the date of his release. Since the applicant is entitled to indemnification for the reasons stated above, he is awarded an amount of 296 yuan (one yuan being equivalent to three new Taiwan yuan), computed at the rate of four yuan a day for the period of his detention.. . .

. . . The court hereby pronounces the decision set forth in the Syllabus in accordance with article 13, paragraph 2, article 1, paragraph 1 (i), and article 3, paragraph 1, of the Criminal Indemnification Act.

COLOMBIA

ACT No. 135 ON SOCIAL LAND REFORM of 13 December 1961[1]

SUMMARY

The Act on Social Land Reform, as is stated in its article 1, "is based on the principle of the common good and stems from the need to extend the natural right to property to ever broader sectors of the rural population of Colombia", in accordance with the interests of society at large.

The purposes of this Act, as enunciated in Article 1, include the following: to "reform the social land structure of the country, eliminating the inequitable concentration of rural landholdings and preventing uneconomic partition" and distributing the land to persons who are directly engaged in working it; "to promote proper economic exploitation of uncultivated or inefficiently worked land by its ordered distribution and rational utilization; to provide more adequate guarantees to small tenant farmers and sharecroppers and to ensure that they and the agricultural workers have greater opportunities to become landowners"; and "to raise the living levels of the rural population."

The Act creates the Colombian Land Reform Institute — a public agency with legal personality, administrative autonomy and property of its own — to administer the provisions of the programme and to ensure its practical application. The Institute, in pursuance of the aims of this Act, is authorized to acquire privately owned land and, if necessary, to expropriate such land for public utility and in the social interest.

The expropriation of the land is to be carried out in such a way as to maintain the unity of the area remaining to the owner and so as equally to divide the available water supply. The evaluation for the expropriation proceedings is to be carried out by three experts. The Agrarian Reform Institute, which is empowered to issue bonds to finance the implementation of the Act, is also authorized to issue bonds to the owner of uncultivated land as compensation for such land when expropriated.

[1] Published in *Diario Oficial* No. 30691, of 20 December 1961. Text in *Food and Agricultural Legislation*, vol. X, No. 4, of 1 June 1962, published by the Food and Agriculture Organization of the United Nations.

CONGO (BRAZZAVILLE)

ACT No. 22-61 OF 2 MARCH 1961 ADOPTING THE CONSTITUTION OF THE REPUBLIC OF THE CONGO[1]

PREAMBLE

The Congolese people solemnly proclaim their devotion to fundamental rights as laid down in the Declaration of the Rights of Man and of the Citizen of 1789 and the Universal Declaration of 10 December 1948 and as guaranteed by this Constitution.

The Congolese people condemn all racial discrimination and affirm their determination to co-operate in peace with all peoples who share their ideals of justice, liberty, equality, fraternity and the solidarity of mankind.

TITLE I
THE STATE AND SOVEREIGNTY

Art. 1. The Congo is an independent and sovereign republic, indivisible, democratic and social.

It shall ensure equality before the law for all citizens, without distinction as to origin, race, or religion. It shall respect all faiths.

Any propaganda advocating racial or ethnic separatism and any manifestation of racial discrimination shall be a punishable offence.

. . .

Art. 2. National sovereignty is vested in the people.

It shall not be lawful for any group of the people or individual person to assume the exercise thereof.

Art. 3. The people shall exercise their sovereignty through their elected representatives and by way of referendum. . . .

. . .

Art. 4. Suffrage shall be universal, direct, equal and secret.

Congolese nationals of both sexes who are of full legal age and in full possession of their civil and political rights shall have the right to vote subject to the conditions laid down by the law.

Art. 5. Political parties and groups shall assist in the exercise of the franchise. They shall be free to organize and to engage in their activities. They shall respect the principles of national sovereignty and democracy.

TITLE II
THE PRESIDENT AND VICE-PRESIDENT OF THE REPUBLIC AND THE GOVERNMENT

. . .

Art. 7. The President of the Republic shall be elected by direct universal suffrage for a term of five years. He may be re-elected.

. . .

Art. 22. The offices of President of the Republic, Vice-President, and member of the Government shall be incompatible with the exercise of any parliamentary mandate, any public employment or any paid private occupation.

. . .

TITLE III
THE NATIONAL ASSEMBLY

Art. 24. The Parliament shall consist of a single assembly. This assembly shall be known as the National Assembly and its members shall be called deputies.

. . .

Art. 26. The deputies of the National Assembly shall be elected by direct universal suffrage on a complete national list.

. . .

Art. 32. Each deputy shall represent the nation as a whole.

Each deputy shall vote according to his conscience. Any peremptory mandate shall be null and void.

. . .

TITLE VII
THE JUDICIARY

. . .

Art. 60. In the exercise of their duties, judges shall be governed only by the law.

The President of the Republic shall be the guarantor of the independence of the judiciary.

He shall be assisted by the Superior Council of Judicature.

. . .

Art. 62. Judges of the bench shall be appointed by the President of the Republic on the recommendation of the Keeper of the Seals, Minister of Justice,

[1] Text published in the *Journal Officiel de la République du Congo* of 4 March 1961 and furnished by the Government of the Republic.

after consultation with the Superior Council of Judicature.

Art. 63. No person shall be subjected to arbitrary detention.

The judiciary, as the guardian of personal freedom and private property, shall ensure that this principle is observed in the manner prescribed by law.

. . .

TITLE XII

REVISION

. . .

Art. 72. The republican form of the government shall not be subject to revision.

. . .

ACT No. 35-61, OF 20 JUNE 1961, TO CODIFY THE LAW CONCERNING CONGOLESE NATIONALITY[1]

PRELIMINARY TITLE

GENERAL PROVISIONS

Art. 1. Nationality is the legal tie which binds the individual to the State. It is independent of civic rights and civil status, which are defined by special acts.

Art. 2. The present act determines which persons possess Congolese nationality at birth.

Congolese nationality may be acquired or lost after birth by operation of law or by a decision of a public authority.

Art. 3. For the purposes of this code, majority is attained on the expiry of 21 years of age.

Art. 4. For the purposes of this code, the term "in the Congo" means in the national territory of the Republic of the Congo.

Art. 5. All provisions relating to nationality contained in duly ratified and published international treaties or agreements shall apply even if they conflict with the provisions of Congolese Municipal Law.

Art. 6. Regulations for giving effect to this Act shall be made by decrees of the Council of Ministers when necessary.

TITLE I

ATTRIBUTION OF CONGOLESE NATIONALITY AS NATIONALITY OF ORIGIN

Art. 7. A child born of a Congolese father and a Congolese mother shall be a Congolese national.

Art. 8. A child born in the Congo shall be a Congolese national if:

1. His father was Congolese and his mother was born in the Congo;

2. His father was born in the Congo and his mother was Congolese;

3. His father and mother were both born in the Congo.

Art. 9. The following persons are Congolese nationals but may renounce Congolese nationality in virtue of articles 14 and 15 if proved to have an alien parent:

1. A child born of a Congolese father or a Congolese mother;

2. A child born in the Congo, one of whose parents was born in the Congo;

3. A child born in the Congo of unknown parents:

Provided that in the last-mentioned case the child shall be deemed never to have been a Congolese national if during his minority it is proved that both his parents were aliens and if by virtue of the national law of either parent he possesses a foreign nationality.

Art. 10. A new-born child found in the Congo shall be presumed until the contrary is proved to have been born in the Congo.

Art. 11. A person who is a Congolese national by virtue of the provisions of this Title shall be deemed to have been a Congolese national at birth even if the statutory requirements for the attribution of Congolese nationality are not proved to be satisfied until after his birth.

Provided that in the last-mentioned case the attribution of Congolese nationality from birth shall not affect the validity of instruments executed by the person or rights acquired by third parties in virtue of his apparent nationality.

Art. 12. Parentage shall affect the attribution of Congolese nationality only if proved according to custom and to Congolese Civil Law, this Act, or the regulations made to give effect to this Act.

Art. 13. The nationality of a child shall be affected by his parentage only if the same is proved during his minority.

Art. 14. A minor having the right to renounce Congolese nationality may exercise the same without authorization during the year preceding his attainment of majority.

[1] Text published in the *Journal Officiel de la République du Congo*, 1 July 1961, and communicated by the Government of the Republic. Decree No. 61-178, of 29 July 1961, makes regulations for giving effect to the nationality code.

He may waive this right, but if under 18 years of age may do so only if authorized thereto or represented by the person exercising over him parental authority or similar rights.

Art. 15. No person may renounce Congolese nationality unless he can prove that he possesses through parentage the nationality of a foreign country and has discharged any military duty imposed on him by the law of that country, subject to the provisions of international agreements.

Art. 16. The following persons shall lose the right granted to them by the provisions of this title to renounce Congolese nationality:

1. A minor who acquires Congolese nationality in virtue of Article 44;

2. A Congolese minor who has signed a declaration, or on whose behalf a declaration has been signed that he waives the right to renounce Congolese nationality;

3. A Congolese minor who takes service in the army, or who without claiming to be an alien takes part in the recruiting operations of the army.

Art. 17. The provisions contained in this title shall not apply to children born in the Congo of diplomatic agents or of career consular officers of foreign nationality.

TITLE II
ACQUISITION OF CONGOLESE NATIONALITY

CHAPTER I

Art. 18. An alien woman who marries a Congolese national shall acquire Congolese nationality on completion of five years of joint residence in the Congo after entry of the marriage in the civil register.

Art. 19. During the period aforesaid the alien woman shall have the right to declare in the manner prescribed in articles 57 *et seq.* that she declines Congolese nationality.

Section II
ACQUISITION OF CONGOLESE NATIONALITY BY BIRTH AND RESIDENCE IN THE CONGO

Art. 20. A person born in the Congo of alien parents shall acquire Congolese nationality on attaining his majority if on that date he is resident in the Congo and has been habitually resident in the Congo since the age of sixteen years.

Art. 21. During the year preceding his majority a minor shall have the right which he may exercise without authorization, to declare in the manner prescribed in articles 57 *et seq.* that he declines Congolese nationality.

Section III
COMMON PROVISIONS

Art. 22. During the periods allowed by articles 19 and 21 for exercise of the right to decline Congolese nationality the Government may by decree bar acquisition of Congolese nationality on the ground that the person has lost civic rights, or has failed to assimilate, or is suffering from a serious physical or mental disability.

Art. 23. An alien who satisfies the requirements of articles 18 and 20 for acquisition of Congolese nationality may decline the same only in accordance with the provisions of article 15.

Art. 24. Any person in respect of whom an expulsion or restricted residence order has not been expressly revoked in the terms in which it was made may not benefit by the provisions of this section.

Art. 25. The provisions of this chapter shall not apply to diplomatic agents or to career consular officers of foreign nationality or to their children.

Chapter II
ACQUISITION OF CONGOLESE NATIONALITY BY DECISION OF A PUBLIC AUTHORITY

Art. 26. Congolese nationality is acquired by decision of a public authority where naturalization or recovery of nationality is granted to an alien on his application.

Art. 27. Congolese naturalization shall be granted by decree after inquiry.

Art. 28. A person may not be naturalized unless resident in the Congo when the decree of naturalization is signed.

Art. 29. Save as otherwise provided in articles 30 and 31, naturalization may not be granted to an alien unless he can prove habitual residence in the Congo during the ten years preceding the submission of his application.

Art. 30. The following persons may be naturalized without probation:

1. A minor one of whose parents acquires Congolese nationality but who does not acquire nationality through that parent;

2. The wife and adult child of an alien who acquires Congolese nationality;

3. A child one of whose parents has lost Congolese nationality otherwise than by his voluntary act or by forfeiture.

Art. 31. An alien in respect of whom an expulsion or restricted residence order has been made may not be naturalized unless the order has been revoked in the terms in which it was made.

Residence in the Congo while an administrative

order as aforesaid is in effect shall not be reckoned in the period prescribed in article 29.

Art. 32. A person may not be naturalized unless (1) he has completed eighteen years of age; (2) he is found to be of sound mind; (3) his physical health is found to be such that he is not likely to be a charge on or a danger to the public, unless he is suffering from a condition contracted in the service or in the interests of the Congo;

4. He is of good conduct and moral character, or if, having been sentenced to imprisonment for more than one year for an offence against the ordinary law punishable at Congolese law by a criminal penalty or by a term of correctional imprisonment,[1] or convicted of theft, fraud, breach of trust, receiving goods obtained by any of the said offences, usury, indecent exposure, procuring, vagrancy or begging, he has regained his civic rights.

Convictions abroad need not be considered, but in such cases the naturalization decree shall be required to be approved beforehand by the Supreme Court;

5. He proves assimilation into the Congolese community;

6. He has taken the civic oath before the magistrate empowered by article 95 to issue nationality certificates;

7. He has expressly renounced his nationality of origin.

Art. 33. A Congolese national by naturalization shall be subject to the following disabilities:

1. During a period of ten years following the naturalization decree he may not be appointed to an elective function or office which may be discharged or held only by a Congolese national;

2. During a period of five years following the said decree —

(*a*) He may not vote in an election for which only Congolese nationals may be registered as electors;

(*b*) He may not be appointed to a public office remunerated by the State or a local authority or to an autonomous public service or a public establishment or be called to a bar or hold ministerial office, except in virtue of a decree approved beforehand by the Supreme Court.

Art. 34. These disabilities shall not apply to a naturalized person who (1) has completed the period of active military service in the Congolese army required of persons in his age group; (2) has served for five years in the Congolese army.

A naturalized person who has rendered outstanding services or whose naturalization would be of exceptional value may be relieved of some or all of the disabilities prescribed in article 33 hereof by a decree approved beforehand by the Supreme Court and made in consequence of a report submitted with a statement of reasons by the Keeper of the Seals and Minister of Justice.

Art. 35. A naturalized person shall be subject to all obligations and duties incumbent upon Congolese nationals by birth.

Section II
Recovery of Congolese Nationality

Art. 36. Recovery of Congolese nationality shall be granted by decree after inquiry.

Art. 37. Congolese nationality may be recovered at any age without probation; but a person may recover Congolese nationality only if resident in the Congo at the time.

Art. 38. A person applying for recovery of nationality shall prove that he was formerly a Congolese national.

Art. 39. An alien against whom an expulsion or restricted residence order has been made may recover Congolese nationality only if the order has been revoked in the terms in which it was made.

Art. 40. In all cases to which the three preceding articles apply, the Government shall have discretion to grant or refuse recovery of nationality.

Chapter III
PROVISIONS COMMON TO CERTAIN MODES OF ACQUIRING CONGOLESE NATIONALITY

Art. 41. Residence in the Congo as a requirement for the acquisition of Congolese nationality shall include (1) residence abroad in the discharge either of an office conferred by the Congolese Government or of duties at a Congolese embassy or legation, or for studies or vocational training courses; (2) peacetime or war-time service in a regular unit of the Congolese army.

Art. 42. A person may acquire Congolese nationality where residence in the Congo is a requirement therefor only if he performs the duties and satisfies the requirements of statute and regulation applying to the residence of aliens in the Congo.

Chapter IV
EFFECTS OF ACQUISITION OF CONGOLESE NATIONALITY

Art. 43. A person shall enjoy from the date on which he acquires Congolese nationality all the rights of a national subject to the disabilities prescribed by article 33.

[1] Criminal penalty [peine criminelle] means imprisonment for more than five years or deportation or death; correctional imprisonment [emprisonnement correctionel] means imprisonment for more than five days but less than five years.

Art. 44. A minor whose father or mother acquires Congolese nationality shall acquire Congolese nationality together with his parents by operation of law, provided that his parentage has been proved in accordance with article 12.

Art. 45. The provisions of the foregoing article shall not apply to (1) a married minor; (2) a person who is serving or has served in the armed forces of his country of origin.

Art. 46. The following persons shall be debarred from the benefit of article 44: (1) a person in respect of whom an expulsion or restricted residence order has been made and not expressly revoked in the terms in which it was made; (2) a person debarred under article 42 from acquiring Congolese nationality; (3) a person in respect of whom a decree barring acquisition of Congolese nationality has been made under article 22.

TITLE III

LOSS AND DEPRIVATION OF CONGOLESE NATIONALITY

Chapter I

LOSS OF CONGOLESE NATIONALITY

Art. 47. A Congolese national who voluntarily acquires a foreign nationality shall lose Congolese nationality.

Art. 48. Until the expiry of a period of fifteen years from the date of registration either on the active list, or where exemption from effective service has been granted on the national service register, Congolese nationality may be lost only by authorization of the Congolese Government.

Such authorization shall be granted by decree.

The following persons need not apply for authorization to lose Congolese nationality: (1) Persons exempted from military service; (2) Persons finally discharged; (3) Any male person, even if he has evaded his military service obligations, who has reached the age at which he is completely relieved thereof by the Army Recruitment Act.

Art. 49. In time of war the time-limit prescribed by the foregoing article may be altered by decree.

Art. 50. A Congolese national who exercises his right to renounce his nationality in a case to which article 9 applies shall lose Congolese nationality.

Art. 51. A Congolese national, even if a minor, who has also a foreign nationality and who on application is authorized by the Congolese Government to lose Congolese nationality shall lose the same. Such authorization shall be granted by decree. Where necessary, the minor must be authorized or represented as prescribed in article 14, second paragraph.

Art. 52. A Congolese national who loses Congolese nationality shall be released from his allegiance to the Congolese State —

1. In a case to which articles 47 and 48 apply, on the date on which the foreign nationality is acquired;

2. Where he renounces Congolese nationality, on the date on which he signs the declaration to that effect;

3. In a case to which article 51 applies, on the date of the decree authorizing him to lose Congolese nationality.

Art. 53. A Congolese national who in fact behaves as a national of a foreign country, may if he possesses the nationality of that country, be declared by decree to have lost Congolese nationality. In that case he shall be released from his allegiance to the Republic of the Congo on the date of the decree.

Art. 54. A Congolese national who holds a post in a foreign army or public service or in an international organization of which the Congo is not a member or generally collaborates therewith, and who has not resigned his post or ceased to collaborate though directed to do so by the Congolese Government, shall lose Congolese nationality.

He shall be declared by decree to have lost Congolese nationality if within the period specified in the direction, which may not be less than three months, he has not ceased his activities, unless it is proved that he was totally unable to do so, in which case the period shall run only from the date on which the impediment was removed.

He shall be released from his allegiance to the Republic of the Congo on the date of the decree.

Chapter II

DEPRIVATION OF CONGOLESE NATIONALITY

Art. 55. A person who has acquired Congolese nationality may be deprived thereof by decree if —

1. He is convicted of an act constituting a crime or offence [délit] against the internal or external security of the State;

2. He is convicted of an act constituting a crime or offence punishable under articles 109 to 131 of the Penal Code;

3. He is convicted of evading his obligations under the Army Recruitment Act;

4. He does, to the advantage of a foreign State, acts incompatible with Congolese nationality and detrimental to the interests of the Republic of the Congo;

5. He is convicted in the Congo or abroad of an act constituting a crime under Congolese law and

sentenced therefor to a term of not less than five years' imprisonment.

Art. 56. A person may not be deprived of nationality unless the acts specified in the preceding article with which he is charged occurred within the ten years following the date on which he acquired Congolese nationality, and if the deprivation is ordered within the ten years following his commission of those acts.

. . .

ACT No. 40-61, of 20 JUNE 1961, CONCERNING THE ESTABLISHMENT AND ORGANIZATION OF THE CONGOLESE NEWS AGENCY [AGENCE CONGOLAISE D'INFORMATION][1]

Art. 1. There shall be established a self-governing body corporate by the name of Congolese News Agency [Agence Congolaise d'Information (A.C.I.)], which shall operate on business lines.

Art. 2. The purposes of this body shall be:

(*a*) To collect complete and objective news and information;

(*b*) To distribute in addition to its own news and information also world news and information obtained by agreement or association;

(*c*) To provide users, against payment, with all the news and information at its disposal.

Art. 3. (*a*) The Congolese News Agency shall in no circumstances be susceptible to influences or considerations likely to impair the accuracy or objectivity of its news and information;

(*b*) The Congolese News Agency shall develop and improve its organization in as far as its resources allow it, with a view to providing users with a regular and uninterrupted supply of accurate and impartial news and information.

. . .

[1] Text published in *Journal Officiel de la République du Congo* of 1 July 1961, and furnished by the Government of the Republic.

ACT No. 44-61, OF 28 SEPTEMBER 1961, ESTABLISHING THE GENERAL PRINCIPLES OF EDUCATIONAL ORGANIZATION[1]

FIRST TITLE
GENERAL PROVISIONS

Art. 1. Every child living in the territory of the Republic of the Congo shall be entitled, without distinction of sex, race, belief, opinion or property, to an education which shall ensure the full development of his intellectual, artistic, moral and physical aptitudes, and his civic and vocational training.

Art. 2. The organization of education shall be a national duty. This education shall provide every child with training adapted to life and to contemporary social tasks, and shall assist in raising the general level of culture.

Art. 3. This education shall be provided by public and private establishments.

Art. 4. School attendance shall be compulsory from six to sixteen years of age.

In exceptional cases education may be given in the home in conditions to be established by decree.

Art. 5. Education shall be free. During the period of compulsory school attendance, school supplies shall also be free.

Art. 6. School work shall be supplemented by extra-curricular and after-school activities.

. . .

TITLE IV
IMPARTIALITY OF EDUCATION

Art. 15. Education in public establishments and in private establishments of the two first categories shall respect all philosophical and religious doctrines.

These establishments shall be open to all students applying for admission, without distinction of origin, race or belief.

In public establishments and in establishments assimilated thereto, religious instruction may be given only outside regular class hours.

. . .

[1] Text published in the *Journal Officiel de la République du Congo*, 1 October 1961, and transmitted by the Government of the Republic.

CONGO (LEOPOLDVILLE)

LEGISLATIVE DECREE OF 9 DECEMBER 1960 CONCERNING PERIODICALS AND THE FOREIGN PRESS[1]

Art. 1. Any newspaper or periodical may be published without prior authorization, after the declaration provided for in article 3 has been made.

Art. 2. Any newspaper or periodical must have an editor.

Art. 3. Prior to the publication of any newspaper or periodical, the following information shall be submitted to the Minister of Information: (1) the title of the newspaper or periodical; (2) the name and residence of the editor; (3) the identity of the printing office at which the publication is to be printed.

Any change in the above-mentioned information shall be declared within the fifteen days following such change.

. . .

Art. 6. Irrespective of judicial proceedings, the Minister of Information may suspend the publication of a newspaper or periodical likely to endanger public order and tranquillity. The suspension may not exceed twenty-one days or two months, depending on whether the publication is or is not a daily one.

. . .

Art. 10. The importation, circulation, sale or distribution of periodicals or other writings published abroad, in any language, which are of a nature likely to disrupt public order and tranquillity, may be prohibited by the Minister of Information.

. . .

[1] Text communicated by the Government of the Republic of the Congo (Leopoldville). The text of the Organic Legislature Decree on Social Security (*Moniteur Congolais*, No. 17, of 4 August 1961) has been published by the International Labour Office as *Legislative Series* 1961 — Congo (Leo.) 2.

COSTA RICA

NOTE[1]

1. Pursuant to legislative decree No. 2738, of 12 May 1961,[2] article 177 of the Political Constitution of Costa Rica has been amended as follows:

A. At the end of the first paragraph of the above-mentioned article — which lays down the principles to be applied in the preparation of the general budget of the republic for both central and local administrations — the following is added:

"The Supreme Electoral Tribunal's estimates for expenditure required to give effect to the suffrage shall not be open to objection by the department referred to in this article."

The purpose of this amendment is obvious; consequently, it needs only to be added to ensure proper understanding of the text that under article 99 of our supreme political charter the organization, direction and supervision of acts relating to the suffrage are vested exclusively in the Supreme Electoral Tribunal, which enjoys independence in the discharge of its functions and to which the other electoral organs are subordinate.

B. The following provision is inserted between paragraphs 2 and 3 of the original text:

"In order to make social security universal and fully to guarantee payment of the contribution of the State, as such and as employer, revenues shall be established for the benefit of the Costa Rican Social Security Fund, such revenues to be of adequate amount and computed in such a manner as to cover the present and future needs of that institution. Should a deficit arise through the inadequacy of these revenues, it shall be covered by the State, for which purpose the Executive Power shall include in its next budget estimates such provision as the above-mentioned institution deems necessary to cover the full amount of the State contributions."

As will be noted, the foregoing legal provision guarantees to the Costa Rican Social Security Fund, which is the autonomous agency responsible for the administration and supervision of social security, payment of the contribution of the State, as such and as employer.

C. With reference to the new constitutional provision mentioned under B above, amending decree No. 2738, also includes the following transitional provision:

"Article 177 (third paragraph). Transitional. The Costa Rican Social Security Fund shall ensure the universal application of the various forms of insurance for which it is responsible, including family welfare under the sickness and maternity schemes, within a period not exceeding ten years reckoned from the date of promulgation of this constitutional amendment."

The importance of this transitional provision lies in the fact that it establishes a time-limit for the compulsory application throughout the territory of Costa Rica of the various forms of social security which have been in operation in Costa Rica for many years, but which for various reasons have not been applied to the nation as a whole.

2. Legislative decree No. 2737, of 6 May 1961,[3] amended the second paragraph of article 73 of the Political Constitution[4] by naming the independent twenty-year-old institution charged with the administration and control of social security: "Costa Rican Social Security Fund".

LEGISLATIVE DECREE NO. 2738, OF 12 MAY 1961[5]

Sole Article. — Article 177 of the Political Constitution is hereby amended to read as follows:

"*Article 177.* — The preparation of the ordinary budget shall be the function of the Executive Power, to be carried out through a specialized department, the head of which shall be appointed by the President of the Republic for a term of six years. The said department shall have authority to reduce or delete any item in the draft budgets prepared by the Ministers of government, the Legislative Assembly, the Supreme Court of Justice, and the Supreme Electoral Tribunal. In the event of a dispute, the final decision shall rest with the President of the Republic. The Supreme Electoral Tribunal's estimates for expenditure required to give effect to the suffrage shall not be open to objection by the department referred to in this article.

"The budget shall assign to the Judicial Power a sum amounting to no less than 6 per cent of the ordinary income estimated for the fiscal year. When,

[1] Information furnished by the Government of Costa Rica.

[2] The text of legislative decree No. 2738 appears below.

[3] Published in *La Gaceta-Diario Oficial*, year LXXXIII, No. 111, of 17 May 1961.

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

[5] Published in *La Gaceta-Diario Oficial*, year LXXXIII, No. 111, of 17 May 1961.

however, this amount is greater than that required to cover the Judicial Power's estimated basic needs, the department referred to shall enter the difference as a surplus, submitting a plan for additional investment, in order that the Legislative Assembly may take whatever decision may be appropriate.

"In order to make social security universal and fully to guarantee payments of the contribution of the State, as such and as employer, revenues shall be established for the benefit of the Costa Rican Social Security Fund, such revenues to be of adequate amount and computed in such a manner as to cover the present and future needs of that institution. Should a deficit arise through the inadequacy of these revenues, it shall be covered by the State, for which purpose the Executive Power shall include in its next budget estimates such provision as the above-mentioned institution deems necessary to cover the full amount of the state contributions.

"The Executive Power shall prepare extraordinary estimates for each fiscal year with a view to the investment of revenues derived from the use of public credit or from any other extraordinary source.

"*Article* 177. — Transitional. The percentage for the budget of the Judicial Power referred to in article 177 shall be fixed at a figure of no less than 3½ per cent for the year 1958, at no less than 4 per cent for 1959, and at no less than 1 per cent for each succeeding year, until the indicated minimum of 6 per cent has been reached.

"*Article* 177 (*third paragraph*). — Transitional. The Costa Rican Social Security Fund shall ensure the universal application of the various forms of insurance for which it is responsible, including family welfare under the sickness and maternity schemes, within a period not exceeding ten years, reckoned from the date of promulgation of this constitutional amendment."

CUBA

CONSTITUTIONAL REFORM ACT

of 4 January 1961[1]

Art. 1. Article 15 of the Fundamental Law is amended to read as follows:

"*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 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;

"(*d*) Being a naturalized citizen, he accepts a double 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."

Art. 2. Article 24 of the Fundamental Law is amended to read as follows:

"*Art. 24.* 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; confiscation is also authorized whenever the Government shall deem it necessary in order to repress acts of sabotage, terrorism or any other counter-revolutionary activities. No other individual or body corporate may be deprived of his property except by a competent authority for reasons of public utility or social or national interest. The procedure for expropriations shall be governed by statute, as shall the manner of payment and the authority competent to declare a reason of public utility or social or national interest and the necessity for expropriation."

Art. 3. This Act shall enter into force on the date of its publication in the *Official Gazette* of the republic.

[1] Published in *Gaceta Oficial de la Republica de Cuba*, extraordinary edition, Year LIX, No. 1, of 4 January 1961. For article 15 of the Fundamental Law before amendment, see *Yearbook on Human Rights for 1959*, p. 61. For article 24 before amendment, see *Yearbook on Human Rights for 1960*, p. 73.

CONSTITUTIONAL AMENDMENT ACT

of 1 August 1961[1]

Art. 1. Article 69 of the Fundamental Law is amended to read as follows:

"*Art. 69.* The right of workers, manual and intellectual, public and private, to form trade unions 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 a trade union organization. Registration shall endow a trade union with legal personality.

"Every member of the governing body of such an association shall be a Cuban."

Art. 2. Article 70 of the Fundamental Law is amended to read as follows:

"*Art. 70.* Persons exercising professions recognized by the law may form associations for purposes of research, the exchange of experience, and other activities conducive to scientific, cultural or technical progress. The State shall furnish to the professional associations such means as are available to it for the attainment of their objectives, which are declared to be of national interest.

"The professional associations shall be governed by their statutes, which must be approved by the ministry responsible for the branch of technical or scientific activity in which they engage."

[1] Published in *Gaceta Oficial de la República de Cuba*, Extraordinary edition, Year LIX, No. 12, of 3 August 1961.

NATIONALIZATION OF EDUCATION ACT

of 6 June 1961[1]

Art. 1. Education is hereby declared to be public and free. The system of education shall be administered by the State through the agencies established for the purpose under existing provisions of law.

Art. 2. The system of education shall be nationalized and all educational institutions which at the time of the promulgation of this Act are operated by private persons, whether natural or juridical, together with all the property, rights and investments which constitute the holdings of the aforesaid institutions, shall consequently be transferred to the Cuban State.

Art. 3. The nationalization and consequent transfer to the Cuban State of educational institutions, as prescribed in the foregoing article, shall be carried out through the Ministry of Education, the minister concerned being authorized to take the action required for the incorporation of the aforesaid institutions into the national education system and generally to carry out the provisions of this Act.

Art. 4. The Minister of Education shall determine which of the owners of the educational institutions covered by this Act shall be paid compensation by the State, and the form, amount and term of such compensation, provided that the owners, administrators and teaching staff of these institutions have not acted contrary to the interests of the Revolution and the Fatherland.

Art. 5. Exempt from the provisions of this Act shall be those educational institutions which because of the number of pupils or teachers or because of their special nature are deemed by the Minister of Education to be unsuitable for inclusion under the terms of the Act.

Final Provision

By virtue of the constituent power vested in the Council of Ministers, this Act is declared to form an integral part of the Fundamental Law of the republic, which is accordingly supplemented thereby.

In consequence, constitutional force and authority are given to this Act, which shall enter into force on the date of its publication in the *Gaceta Oficial* of the republic.

[1] Published in *Gaceta Oficial de la República de Cuba*, Year LIX, No. 109, of 7 June 1961.

CYPRUS

HUMAN RIGHTS IN 1961[1]

A. LEGISLATION

1. By law No. 12/61, provision was made enabling the courts to postpone, in proper cases and if it is deemed just so to do, the sale in execution for judgement-debt of agricultural implements of farmers or of livestock of shepherds.

2. By law No. 17/61, provision was made preventing the eviction, save by order of a court, of tenants of certain business premises, and regulating the rents payable in respect of such premises.

3. By law No. 41/61, provision was made for the purpose of exercising effective control over children and young persons in domestic employment.

4. By law No. 42/61, certain matters relating to the practice of the profession of advocacy were provided for.

5. By law No. 48/61, provision was made for the reinstatement of public officers who were dismissed or forced to resign or otherwise prejudiced by the then colonial government in Cyprus for political considerations during the course of the liberation struggle in 1955–1959.

6. By law No. 53/61, provision was made in relation to certain matters concerning the registration of medical practitioners.

7. By law No. 58/61, the legislation concerning income-tax payable by foreign persons and concerns was revised and re-enacted.

8. By law No. 59/61, restrictions were placed upon the sale of immovable property in execution for judgement-debt or a mortgage.

B. JUDICIAL DECISIONS ON FUNDAMENTAL RIGHTS AND LIBERTIES

Under this heading are grouped both judgements of the Supreme Constitutional Court, which is the judicial organ mainly concerned with the implementation of the relevant Articles of the Constitution,[2] and judgements of the High Court of Justice touching upon human rights subjects.

I. DECISIONS OF THE SUPREME CONSTITUTIONAL COURT

1. *The Right of Life and Corporal Integrity*

[Article 7 of the Constitution]

In the case of *The Republic and Loftis (1 R.S.C.C. p. 30)*, it was held that, as under article 7, the death penalty may be provided for by law only in cases of premeditated murder, high treason, piracy *jure gentium* and capital offences under military law, a provision to the effect that any person convicted of murder shall be sentenced to death was unconstitutional to the extent to which it provided the death penalty in cases of murder other than premeditated.

2. *The Right to a Decent Existence*

[Article 9 of the Constitution]

In the case of *The Police and Milliotis (1 R.S.C.C. p. 113)* it was held that article 9, which safeguards, *inter alia*, the right to a decent existence, did not, in any sense whatsoever, provide a free licence for anyone to act as he deems fit, irrespective of the general interests of society, for the purpose of allegedly ensuring a decent existence. Therefore, limitations imposed by law, as being necessary in the public interest, on the right to carry on in any place, other than a shop, any retail trade or other business during shops' closing time were not unconstitutional.

3. *The Right to Liberty and Security of Person*

[Article 11 of the Constitution]

In the case of *The Attorney-General and Afamis (1 R.S.C.C. p. 121)*, it was held that provisions concerning the arrest or detention of citizens of the republic in the course of extradition proceedings were unconstitutional, as paragraph 2 (*f*) of article 11 made it permissible to legislate only for the arrest or detention of an alien against whom action was being taken with a view to deportation or extradition. In this respect a difference was found to exist with article 5 (1) (*f*) of the European Convention on Human Rights, 1950, in which the term "person" was used, instead of the term "alien" which was used in the corresponding Cyprus provision, article 11 (2) (*f*).

In the case of *The Gendarmerie and Michael (2 R.S.C.C. p. 103)*, it was held that a regulation enabling a police officer in uniform to cause a motor vehicle to stop and remain stationary for a time for the

[1] Note furnished by the Government of Cyprus.

[2] Extracts from the Constitution appear in *Yearbook on Human Rights for 1960*, pp. 74-83

purposes of controlling the flow of traffic was not unconstitutional because even if such stopping were to be of such duration as to amount technically to a detention it would still be permissible to provide for such power as being, under paragraph 2 (*c*) of article 11, reasonably considered necessary to prevent offences — viz., motoring offences.

4. *Protection against Laws providing Punishment Disproportionate to the Gravity of the Offence*

[Article 12 of the Constitution]

In the case of *The District Officer, Nicosia and Hadji-Yiannis* (*1 R.S.C.C. p. 79*), it was held that, as paragraph 3 of article 12 laid down, that no law shall provide for a punishment which is disproportionate to the gravity of the offence, a penal provision of a mandatory nature, providing for the same serious punishment to be invariable imposed in all cases of offences of a certain class or category, irrespective of the circumstances or merits of each particular case, when in such class or category were bound to arise cases where the said punishment would be disproportionate to the gravity of the offence, depriving, thus, a trial court of a discretion to assess the proper punishment in each case, was unconstitutional.

5. *The Right to move Freely*

[Article 13 of the Constitution]

In the case of *The Gendarmerie and Michael* (*2 R.S.C.C. p. 103*), it was held that article 13, safeguarding the right to move freely throughout the territory of the republic, could not in any sense be interpreted as rendering unconstitutional laws or regulations reasonably necessary, in every modern society, for the purpose of ensuring that such right shall be exercised reasonably and safely and, moreover, with due regard for the enjoyment by others of such right and of the right to life and corporal integrity. Traffic regulations, therefore, requiring drivers to stop their vehicles at the request of a police officer in uniform were not unconstitutional.

6. *Protection against Banishment or Exclusion from the Republic*

[Article 14 of the Constitution]

In the case of *The Attorney-General and Afamis* (*1 R.S.C.C. p. 121*), it was held that extradition did not amount to banishment or exclusion from the Republic, contrary to article 14, because it did not amount to a compulsory expulsion from the republic with a prohibition of return to the Republic for a defined period of time.

7. *The Inviolability of Dwelling House*

[Article 16 of the Constitution]

In the case of *Djirkalli and The Republic* (*1 R.S.C.C. p. 36*) it was held that provisions for forcible entry of a dwelling house, without a judicial warrant, for the purpose of tax collection were unconstitutional as being contrary to article 16 which provided that there shall be no entry in any dwelling house except when and as provided by law and on a judicial warrant duly reasoned or when the entry is made with the express consent of its occupant or for the purpose of rescuing the victims of any offence of violence or of any disaster.

8. *The Right to Property*

[Article 23 of the Constitution]

In the case of *The Holy See of Kitium and The Limassol Municipal Council* (*1 R.S.C.C. p. 15*), it was held that whether the decisions of the appropriate authority in relation to applications for building permits amounted to deprivation of or only the imposition of restrictions or limitations on the right to acquire, own, possess, enjoy or dispose of property, as safeguarded under article 23, depended on the particular circumstances of each case.

In the case of *Djirkalli and The Republic* (*1 R.S.C.C. p. 36*), it was held that provisions for the levying of execution against property for the purposes of collecting compensation assessed by the administration as payable by the inhabitants of a village in respect of damage caused to property by persons unknown were unconstitutional because such compensation was neither a tax nor a penalty, and article 23, which safeguarded the right to property, permitted execution only in respect of a tax or a penalty.

In the case of *Ramadan and The Electricity Authority of Cyprus* (*1 R.S.C.C. p. 49*) it was held that if during the currency of restrictions or limitations on property, which were imposed before the coming into operation of the Constitution, there supervened a basic change in the nature of the user of such property and administrative action were taken under a law, after the coming into operation of the Constitution, affirming the continued existence of such restrictions or limitations, notwithstanding the aforesaid basic change, then there would arise a case of constructive imposition of such restrictions or limitations after the coming into operation of the Constitution.

In the case of *Kyriakides and The Republic* (*1 R.S.C.C. p. 66*), it was held that provisions for the seizure of movable property and the temporary detention thereof for purposes of production before a court in criminal proceedings were constitutional within the meaning of paragraph 3 of Article 23, which allowed the imposition on property of restrictions or limitations which were absolutely necessary, *inter alia*, in the interest of public safety or for the protection of the rights of others.

In the case of *The Famagusta Municipality and Stylianou* (*2 R.S.C.C. p. 30*), it was held that a municipal by-law prohibiting the keeping of swine within the limits of a town, without a licence from the municipality, was not unconstitutional as it was a provision

enabling the imposition on the use of property of restrictions or limitations which were absolutely necessary in the interest of public health and town and country planning, as envisaged by paragraph 3 of article 23. But the provision in such by-law enabling the mayor to order the confiscation of the swine, in relation to which an offence against such by-law had been committed, was unconstitutional, as it amounted to deprivation of property, and such confiscation was not a penalty imposed by a court of law.

In the case of *Kaniklides and The Republic (2 R.S.C.C. p. 49)*, it was held that the creation, during the construction of a modern road, of road-protecting strips on either side of such road and the consequent limitations imposed with regard to permits for building on plots abutting on the said road were not unconstitutional because they were absolutely necessary in the interests of public safety and town and country planning, within the ambit of paragraph 3 of article 23.

In the case of *Evlogimenos and The Republic (2 R.S.C.C. p. 139)*, it was held that the right of property safeguarded under article 23 is not a right *in abstracto*, but a right as defined and regulated by the law relating to civil law rights in property and such right is protected against deprivation, restrictions or limitations effected or imposed in the interests of the state or public bodies and not under legislation regulating civil law rights in property, as in the case of the exercise of a right of pre-emption.

9. *Freedom of Profession, Occupation, Trade or Business*

[Article 25 of the Constitution]

In the case of *Kyriakides and The Republic (1 R.S.C.C. p. 66)*, it was held that a mere hobby is not within the ambit of article 25.

In the case of *The Nicosia Municipality and The Cyprus Oil Industries Ltd. (2 R.S.C.C. p. 107)*, it was held that if a particular food-product might or might not be injurious to health, depending on the circumstances relating to its production, an absolute prohibition of the sale of such food-product was beyond the ambit of the restrictions permissible under paragraph 2 of article 25.

In the case of *The Police and Constantinou (2 R.S.C.C. p. 123)*, it was held that provisions for the licensing of omnibuses within the municipal limits of a town were necessary in the interests of public safety and in the public interest generally and thus, in view of paragraph 2 of article 25, they were not unconstitutional.

10. *Equality before the Law*

[Article 28 of the Constitution]

In the case of *Mikrommatis and The Republic (2 R.S.C.C. p. 125)*, it was held that, as equality before the law did not convey the notion of exact arithmetical equality but safeguarded only against arbitrary differentiations, it followed that reasonable distinctions made by taxation legislation between married and unmarried persons, which were based on the intrinsic nature of the status of marriage and the relationship it creates between spouses, were not unconstitutional as being contrary to article 28. Thus, a provision laying down that the income of a married woman, living with her husband, shall, for purposes of income tax, be deemed to be the income of her husband, was not unconstitutional because, against the background of the present status of the institution of marriage in Cyprus, it resulted in a reasonable, and not an arbitrary, distinction between married and unmarried persons. But the same provision was unconstitutional as resulting in unreasonable distinction between married men and married women, so far as the income of the labour of married women was concerned, because it placed the latter in a disadvantageous position vis-à-vis the former, when competing in the same profession, occupation, trade or business.

11. *Right to petition Public Authorities and receive Replies to such Petitions*

[Article 29 of the Constitution]

In the case of *Kyriakides and The Republic (1 R.S.C.C. p. 66)*, it was held that the right safeguarded under article 29 embraced all cases where a person applied in writing to competent authority, whether under the provisions of any specific law or otherwise.

12. *The Right to Fair Trial*

[Article 30 of the Constitution]

In the case of *Djirkalli and The Republic (1 R.S.C.C. p. 36)*, it was held that provisions for the assessment, by the administration, of compensation payable by the inhabitants of a village in respect of damage caused to property by persons unknown, without an inhabitant so assessed being given an opportunity of proving that he was not in any way connected with the causing of the damage, were unconstitutional as being contrary to article 30, because they deprived such inhabitants of a fair and public hearing in the determination of their civil obligations.

In the case of *The Nicosia Municipality and The Cyprus Oil Industries Ltd. (2 R.S.C.C. p. 107)*, it was held that to deprive a person charged with an offence in relation to the sale of a food-product injurious to health of the chance of proving that such food-product was not in fact injurious to health, was tantamount to depriving such a person of a fair and public hearing, contrary to article 30.

II. Decisions of the High Court of Justice

1. *Protection against Double Jeopardy in relation to Criminal Trials*

[Article 12 of the Constitution]

In the case of *Xenophontos and Charalambous* (Criminal

Appeal No. 2335), a case of private criminal prosecution, it was held that clear, express and ambiguity-free language was necessary in order to grant by statute to a prosecution a right of appeal against an acquittal, because generally the presumption was that an acquittal ought not to be questioned.

2. *Protection against being punished twice for the Same Act*

[Article 12 of the Constitution]

In the case of *Pefkos and others and The Republic* (Criminal Appeals No. 2396–2398), sentences in respect of carrying firearms and possessing ammunition in circumstances forming part and parcel of the offence of armed robbery, for which a sentence had already been passed, were set aside.

3. *The Right to Fair Trial*

[Article 30 of the Constitution]

In the case of *Nestoros and The Republic* (Criminal Appeal No. 2381), it was stressed that the priceless asset of fair trial, afforded to all accused persons, however guilty, necessitated the setting aside of a conviction, which was not justified under the law of Cyprus, irrespective of what the consequences of the setting aside of such connection might be.

CZECHOSLOVAKIA

NOTE[1]

1. Act No. 62/1961 of the *Collection of Laws*, of 26 June 1961, concerning organization of courts, and governmental ordinance of 6 July 1961, promulgating the rules for election of judges of district courts, No. 63/1961 of the *Collection of Laws*.

The Act, which implemented the principles of chapter VIII of the new Socialist Constitution, laid down a firm organizational basis for the operation of tribunals.

According to the Act, there were to be elections of judges for courts at all levels, while judges of district courts were to be elected directly by the citizens by universal suffrage, and by equal and direct vote by secret ballot. Citizens of integrity, enjoying the confidence of their fellow citizens, were selected as candidates in these elections. As regards lay judges, who perform their judicial duties apart from their ordinary job, candidates were selected from factories, agricultural co-operatives and from amongst the intelligentsia: 5,660,000 citizens took part in the pre-election meetings during the campaign: 99.22% of all citizens with the right to vote cast their ballots and 99.98% of the voters voted for the candidates. Elections of judges are of particular importance for the further activity of courts, because they strengthen the links between our judiciary and the people. They enhance active interest among the popular masses in the solution of all the questions of our life, both political and social, and evoke their comments on all aspects of socialist legality and morality as well as on the work of our courts. One of the important forms of increasing active participation of the people in the activities of our judiciary and strengthening the links between the judges and the working people is the regular reporting of the judges on their activities, in the courts of which they are members, to the voters or to the representative body which elected them. The duty of all judges to submit such reports is laid down in the Constitution. These reports reflect the democratic character of our courts and the principles of responsibility of the judges to their electorate and of the citizens' control over the activity of the judiciary with full respect for the independence of the judges. Submission of reports on the activities of our courts enables the judges to discuss with the working people questions of socialist legality, causes of infringement upon this principle and measures devised to prevent breaches of legality, to develop a broadly based educational and preventive activity and to popularize our laws among the citizens. The principle of control of the activities of the judiciary by the people is not a mere proclamation, but is consistently put into practice according to the rule that if a judge fails to perform properly his duties he may be recalled from his post.

2. Act No. 65/1961 of the *Collection of Laws*, of 27 June 1961 concerning safety of work and protection of health at work

More than 3 million citizens actively participated in the discussions of the Bill. The law emanates from the principle that the basic purpose and aim of the construction of socialism is man, his full and rich life and that an inseparable and most important part of the over-all care for man is the betterment of the environment in which he works, greater safety and hygiene in his work and the creation of civilized and healthy working environment. The purpose of the law is to improve this care so as to meet the needs for the development of society, and to bring it into harmony with the material and cultural prerequisites which have been established as a result of the victory of socialism in the Czechoslovak Socialist Republic as well as with the future progress of our advanced socialist society. In the past, a number of measures were devised and large funds were spent on the improvement of working conditions. However, we shall still have to intensify these efforts. Under this law, safety and protection of health at work applies to the working people in all branches of the national economy, to members of agricultural co-operatives, members of production co-operatives, apprentices, to pupils and students during classroom and workshop instruction, and during polytechnical training and practical exercises included in the school curricula, to members of voluntary brigades and to all others working in various institutions and organizations. Special training and instruction dealing with safety of work is given in schools and educational establishments. For apprentices, pupils and students of technical colleges and professional schools, safety at work and protection of health is taught at work under special facilities provided in the curricula and syllabuses of such institutions. For women, juveniles, persons with reduced working capacity and persons working under particularly hard conditions (subterranean works, overheated places, workplaces filled with harmful substances or where workers are exposed to the harmful effects of radiation, and where

[1] Note furnished by the Government of Czechoslovakia.

there are increased potential risks of infectious diseases), safety at work and protection of health is secured also by special reliefs, e.g. by reduced and better distributed hours of work, special hygienic and protective amenities or by determining the kind of work where such persons must not be employed.

3. Governmental decree of 28 June 1961, concerning the establishment of nurseries and kindergartens in joint buildings, No. 72/1961 of the *Collection of Laws and Decrees*

The purpose of this governmental decree, which permits the establishment of nurseries and kindergartens in joint buildings according to local conditions, is to secure an all-round, harmonious development of children of pre-school age as well as continuity of their education. Implementation of this ordinance makes it possible to apply educational care for the inmates through one team of expert pedagogues and according to unified health and educational standards with due regard to the individual development of every child and with a view to facilitating smooth transition of the children from nursery to kindergarten.

4. Ordinance of the Minister of Health of 10 August 1961, concerning health care and physical education, No. 89/1961 of the *Collection of Laws and Ordinances*

The ordinance provides that the task of health care in physical education is to assist mass development of physical education and to heighten the standard of sportsmanship of our working youth so as to improve the health and over-all development of every individual. Health care in this particular field consists of regular check-ups of the condition of health of every participant in organized physical education, of medical supervision of gymnastics, training and mass sport events, of hygienic control of all establishments serving the purposes of physical education, of medical assistance in physical culture performances and of instruction courses and lectures for physical education teachers and for the general public.

5. Government decree of 15 September 1961, No. 107/1961 of the *Collection of Laws*, concerning reliefs at work and economic security of employed students of secondary schools and universities and evening colleges of Marxism-Leninism

The right of all citizens to enjoy the benefits of education is one of the basic constitutional rights. The decree constitutes evidence of how the Government creates all prerequisites for enabling every citizen to enjoy his or her right provided by the Constitution. The decree states that the development of production forces requiring the introduction of modern technology, the continuous widening of Socialist democracy and the all-round advancement of every individual necessitate systematic improvement of the qualifications and education of the working people. Therefore, studies of employed people form an integral part of the cultural and educational system of our Socialist society.

6. Government decree of 15 September 1961 concerning the establishment of the university of 17 November in Prague

The purpose of the new university is to provide university education in certain fields for foreign students, particularly those from developing countries, to prepare them for study at other Czechoslovak universities, and to make all the necessary arrangements so that they may graduate from those universities.

7. Ordinance of the Central Council of Trade Unions of 8 August 1961, setting out the rules for granting leave to employees discharging duties as officials of the revolutionary trade union movement

This ordinance is another measure which proves that in the Czechoslovak Socialist Republic care is taken to enable the workers fully to exercise their political rights. It is the mission of the revolutionary trade union movement actively to participate in the building of an advanced socialist society. The responsible and important tasks of the revolutionary trade union movement are implemented and organized by hundreds of thousands of voluntary officials of elected organs, their commissions and establishments in factories, districts, regions and in headquarters, apart from regular employment and mostly after working hours. However, the broad organizational and educational activities of the trade unions require sometimes that, in urgent cases, officials get leave from work in order to be able to discharge their duties. Therefore, to serve the interests of the society and to facilitate the activities of the trade union organs, the Central Council of Trade Unions promulgated unified and universally binding rules to be observed by the managing bodies of factories, offices and other establishments in regard to granting leave from work to their employees discharging duties in the revolutionary trade union movement.

DAHOMEY

NOTE

By Act No. 61-48, of 11 December 1961 (*Journal Officiel*, No. 4, of 15 January 1962), Dahomey approved the general convention relating to personal status and conditions of establishment, signed at Tananarive on 12 September 1961 by the governments of the Republic of Cameroun, the Central African Republic, the Republic of Chad, the Republic of the Congo, the Republic of Dahomey, the Gabon Republic, the Republic of the Ivory Coast, the Malagasy Republic, the Islamic Republic of Mauritania, the Republic of the Niger, the Republic of Senegal and the Republic of Upper Volta.[1]

By Act No. 61-49, of 11 December 1961 (*Journal Officiel*, No. 4, of 15 January 1962), Dahomey approved the convention relating to the African and Malagasy Postal and Telecommunications Union, signed by the same countries.

[1] See pp. 451-2

By Act No. 61-51, of 11 December 1961 (*Journal Officiel*, No. 4, of 15 January 1962) Dahomey approved the general convention on co-operation in judicial matters, dated 12 September 1961, signed by the same countries. Articles 4 and 6 of that convention provide as follows:

"*Art. 4.* Nationals of each high contracting party shall enjoy in the territory of the other parties easy and free access to both administrative and judicial tribunals for the enforcement and defence of their rights. They may not, in particular, be required to deposit security or bond under whatsoever title it may be, on the ground either of their being aliens or of their not being domiciled or resident in the country.

. . .

"*Art. 6.* Nationals of each high contracting party shall be entitled in the territory of the other parties to legal aid on the same terms as nationals of the country concerned, provided that they obey the law of the country in which such legal aid is requested."

DENMARK

NOTE

1. Act No. 207 of 16 June 1961 (*Lovtidende* A, 1961, No. XVI) lowered to 21 the minimum age for voting in elections to Parliament.

2. An Act on Public Assistance, No. 169 of 31 May 1961, was published in *Lovtidende* A, 1961, No. XII.

3. An Act on Vocational Guidance, No. 117 of 3 May 1961, was published in *Lovtidende* A, 1961, No. VIII. Translations of this Act into English and French have been published by the International Labour Office as *Legislative Series* 1961 — Den. 1.

ACT ON RIGHTS IN PHOTOGRAPHIC PICTURES, 1961

Act No. 157 of 31 May 1961[1]

1. Within the limitations stated hereinafter, a person who produces a photographic picture shall have the exclusive right to make copies thereof by photography, printing, drawing, or other process, and to exhibit it publicly.

A picture produced by a process analogous to photography shall be considered to be a photographic picture.

The producer shall be designated as the photographer in this Act.

2. The photographer shall be entitled to be mentioned by name in accordance with the requirements of proper usage, both on copies of the picture and when it is exhibited publicly.

The picture may not be altered nor exhibited publicly in a manner or in a connection which is prejudicial to his reputation as a photographer.

3. When not otherwise stated, the person whose name, firm, or generally known signature is stated in the usual manner on copies of the picture, or when the picture is publicly exhibited, shall be deemed to be the photographer.

4. A photographic picture is considered disseminated when it is lawfully published, exhibited in public, or otherwise made available to the public.

5. Single copies of a photographic picture may be produced for private use, but they may not be used for other purposes.

6. By royal decree, and in accordance with the conditions prescribed therein, copies of photographic pictures may be made by archives, libraries and museums for use in their activities.

7. Disseminated photographic pictures may be reproduced in connection with the text of a critical or scientific treatise or a work of popular science, when this is done in accordance with proper usage and only single pictures by the same photographer are inserted. The photographer is entitled to remuneration for the reproduction if it is in a work of popular science.

Disseminated photographic pictures may be reproduced against remuneration in connection with the text of works intended for educational use.

Disseminated photographic pictures may also be reproduced against remuneration in connection with the reporting of events of general interest in newspapers.

8. A television broadcast or film of a news event may include photographic pictures exhibited in connection with the event or if they happen to appear as the background thereof.

9. Radio Danmark may show disseminated photographic pictures in its television broadcasts, unless the photographer has prohibited their showing. The photographer is entitled to remuneration.

This provision shall not apply to films.

10. When a photographer has transferred one or more copies of a photographic picture to another person, or when the picture has been published, the copies transferred or published may be exhibited publicly.

A disseminated photographic picture may also be exhibited publicly when this is done in connection with education. It may likewise be exhibited publicly in connection with a lecture if admission is free and the lecture serves no commercial purpose, or if the lecture is held solely in aid of charity, for popular education, or other purposes for the common good.

The provisions in the foregoing paragraph shall not apply to films.

[1] Published in *Lovtidende* A, 1961, No. XI. English translation furnished by the Government of Denmark.

11. If a television organization has the right to broadcast a photographic picture, the organization may also, for use in its own broadcast, record the picture on film or similar instrument. The right to show such a recorded picture in a television broadcast shall be subject to the rules otherwise in force.

By royal decree, further rules may be laid down for the conditions under which such recordings are to be made and for their use and storage.

12. Unless otherwise agreed, the right in a photographic picture which is executed to order shall be held by the person ordering it. However, the photographer may exhibit the picture in the usual manner for advertising purposes, unless the person who has commissioned it prohibits such display.

Even if it is agreed that the right in a photographic picture executed to order shall belong to the photographer, the person who has commissioned it may have the portrait reproduced in newspapers, periodicals or biographical writings, unless the photographer has expressly made reservations thereon.

The provisions in the two foregoing paragraphs shall not entail any limitation on the photographer's rights under section 2.

13. Photographic pictures may be freely used in the interests of the administration of justice and public safety.

14. When a photographic picture is reproduced publicly without the photographer's consent, as provided for under sections 6-10, the source shall be stated in accordance with the requirements of proper usage.

15. The right in a photographic picture shall continue until twenty-five years have elapsed after the end of the year in which the picture was produced.

. . .

20. This act shall apply to photographic pictures produced by Danish nationals and by persons domiciled in Denmark, or by stateless persons or refugees who have their habitual residence in this country. The Act shall also apply to photographic pictures first published in Denmark.

Conditional upon reciprocity, the applicability of the provisions in this Act may be extended to other countries by royal decree.

By royal decree, the Act may also be made to apply to photographic pictures first published by international organizations and to unpublished pictures which such organizations are entitled to publish.

21. The Act shall also apply to photographic pictures which would have been able to secure protection under the legislation hitherto in force.

Unless otherwise agreed, newspapers and periodicals may again use photographic pictures for which they had acquired the reproduction rights before the coming into force of this Act.

22. This Act shall come into force on 1 October 1961. Act No. 131 of 13 May 1911 on Exclusive Rights in Photographic Works is hereby repealed.

COPYRIGHT ACT, 1961

ACT NO. 158 OF 31 MAY 1961[1]

Chapter I

SUBJECT MATTER AND SCOPE OF COPYRIGHT

1. The person producing a literary or artistic work shall have copyright therein, be it expressed in writing or in speech as a fictional or a descriptive representation, or whether it be a musical, dramatic or cinematographic work, or a work of fine art, architecture, applied art, or expressed in some other manner.

Maps and drawings and other works of a descriptive nature executed in graphic or plastic forms, shall be considered as literary works.

2. Within the limitations specified in this Act, the copyright shall carry with it the exclusive right of disposal of a work by producing copies thereof and by making it available to the public, whether in the original or in an amended form, in translation, adaptation into another literary or artistic form or into another technique.

The recording of the work on devices which can reproduce it, shall be considered as a production of copies.

The work is made available to the public when it is performed in public, or when copies of it are offered for sale, lease or loan, or otherwise distributed to the public or publicly exhibited. The performance of a work at a place of business before a large group, otherwise regarded as being not open to the public, shall also be considered as a public performance.

3. Both in copies of the work and when it is made available to the public, the author is entitled to be mentioned by name in accordance with the requirements of proper usage.

The work must not be altered nor made available to the public in a manner or in a context which is prejudicial to the author's literary or artistic reputation, or to his individuality.

[1] Published in *Lovtidende* A, 1961, No. XI. English translation furnished by the Government of Denmark.

The right of the author under this section cannot be waived except in respect of a use of the work which is limited in nature and extent.

4. The person translating, revising or adapting a work, or converting it into some other literary or artistic form, shall have copyright in the work in the new form, but his right to control it shall be subject to the copyright in the original work.

Copyright in a new and independent work created through the free use of another work, shall not be subject to the copyright in the work of which use has been made.

5. A person combining works or parts of works, to create a literary or artistic composite work, shall have copyright therein, but his right shall not limit the copyright in the individual works.

6. When a work has two or more authors, without the individual contributions being separable as independent works, the copyright in the work shall be held jointly. Each of the authors, however, may bring an action for infringement.

7. Unless stated otherwise, the author shall be considered as the person whose name or generally known pseudonym or signature is indicated in the usual manner on copies of the work, or when the work is made available to the public.

If a work is published without the author being indicated in accordance with the foregoing paragraph, the editor, if named, and otherwise the publisher, shall act on behalf of the author until the latter is named in a new edition of the work or notified to the Ministry of Education.

8. A work is considered disseminated when it is lawfully made available to the public.

It is considered published when copies of the work have been lawfully placed on sale or otherwise distributed to the public.

9. Acts, administrative orders, legal decisions and other official documents are not subject to copyright.

10. Protection under the Act on Designs does not preclude copyright.

Photographs do not enjoy protection under this Act but are protected according to the rules in the Act on Rights in Photographic Pictures.

Chapter II
Limitations on Copyright

11. Single copies of a disseminated work may be produced for private use, but must not be used in other ways.

This provision does not entitle anyone to engage other persons to copy applied art or sculptures or to produce artistic reproductions of other works of art; nor does it entitle the construction of architectural works.

12. Archives, libraries and museums may be permitted by royal decree, under conditions stipulated therein, to make photographic copies of works for use in their activities.

13. Buildings may be altered by the owner without the consent of the originator, for technical reasons or with a view to their practical utilization. Articles of everyday use may be altered by the owner without the consent of the author.

14. It is permitted to quote from a disseminated work in accord with proper usage and to the extent required for the purpose.

With the same limitation, it is allowed to reproduce in connection with the text in critical and scientific treatises or works of popular science, any previously disseminated works of art or works such as are mentioned in the second paragraph of section 1. If two or more works by the same author are reproduced in a work of popular science, the author is entitled to remuneration.

15. Disseminated works of art may be reproduced in newspapers and periodicals in connection with the reporting of current events. This does not apply, however, to works created with a view to reproduction in newspapers and periodicals.

16. Minor parts of literary or musical works, or short works of this nature, may be reproduced in a composite work consisting of works of a large number of authors compiled for use in divine services or education, when five years have elapsed from the year of their publication. Artistic works, and the works mentioned in the second paragraph of section 1, may also be reproduced in connection with the texts when five years have passed from the year of their dissemination. Works created for use in education may not be reproduced without the consent of the author in a composite work compiled for teaching purposes.

The author shall be entitled to remuneration.

17. For temporary use in education, it is permitted to make sound recordings of disseminated works if the reproduction takes place in an educational establishment or a recording station established by the educational authorities. The copies produced must not be utilized for other purposes.

This provision does not justify the direct copying of gramophone records or tape produced for sale.

The Minister of Education can lay down further rules for the storage and use of the sound recordings made.

18. Copies in braille may be produced of published literary or musical works. Copies of these works may likewise be photographed for educational use in schools for the deaf and sufferers from speech impediments.

For loan to the blind, sufferers from defective vision, and others unable to read ordinary books

due to their disability, it is permitted to make sound recordings of published literary works, when this is not done for commercial purposes. The author shall be entitled to remuneration for such recordings.

19. When a short published poem or a part of a published poem is used as text for a new musical composition, such text may be reproduced on the sheet music and may be performed in public, unless reservation thereto is made at the time of publication. The author shall be entitled to remuneration.

When a musical work is performed with a published text, it is permitted to reproduce the text in concert programmes and the like, for the use of the audience. The author shall be entitled to remuneration if more than 300 copies are produced.

A few published song texts may be freely reproduced in small song sheets produced solely for the use of participants in a particular meeting or series of meetings.

20. A published work, other than dramatic or cinematographic works, may be publicly performed in the following instances:

(*a*) At divine services;

(*b*) For educational purposes;

(*c*) When the audience or spectators pay no admission charge and when the performance of works like those specified herein are not the main feature of an event conducted for other than commercial purposes;

(*d*) On occaisons at which the performer of the work or, if there are several, all the performers, receive no payment for their services and the performance is conducted in aid of charity, for popular education or for other purposes for the common good.

21. A radio or television broadcast or the film of a news event may include brief excerpts of works which are performed or exhibited in connection with the event.

22. If the Radio Danmark or the official radio services in the Faroe Islands or Greenland be entitled, under an agreement with an organization comprising a considerable proportion of the Danish authors of works of a certain nature, to broadcast the works of authors represented by the organization, then published works of a similar nature by authors not represented by the organization may also be broadcast against payment. This rule shall not apply to dramatic works, nor to other works the broadcasting of which the author has prohibited.

Radio or television organizations may record works for use in their broadcasts, on tape, film or other devices able to reproduce them, provided they have the right to broadcast such works. The right to make works so recorded available to the public shall be subject to the rules generally in force.

By royal decree, further rules can be laid down for the conditions under which such recordings are to be made and for their use and storage.

23. When a literary or musical work has been published, copies included in the publication may be further distributed or exhibited publicly. Sheet music, however, may not be distributed to the public through lease without the author's consent.

The rule in the foregoing paragraph does not restrict in any way the author's right to remuneration for books loaned to the public through the libraries, cf. statutory order No. 128, of 16 April 1959, section 7, subsection 2 (*b*).

24. Proceedings in Parliament, municipal councils and other elected public authorities, in legal suits and in public meetings held to discuss public matters, may be reproduced without the author's consent. However, the author shall have the exclusive right to publish a compilation of his own statements.

The rule in the foregoing paragraph also applies to discussions broadcast over the radio and television during which public matters are discussed.

25. When an author has transferred one or more copies of an artistic work to other parties, or when the work has been published, the copies may be further distributed and exhibited publicly. The work may also be included in the production of a film or television programme when the reproduction of it is of minor importance in relation to the contents of the film or television programme.

Works of art included in a collection, or exhibited, or offered for sale, may be depicted in catalogues of the collection and in notices concerning the exhibition or sale. Works of art may also be depicted when they are permanently situated in a public place or road, but if the artistic work is the chief motif and its reproduction is used for commercial purposes, the author shall be entitled to payment unless the reproduction is for insertion in newspapers.

Pictures of buildings may be made freely.

26. The provisions of this chapter do not limit the author's rights under section 3, except as provided in section 13.

When a work is publicly reproduced according to the provisions of this chapter, the source shall be stated in accordance with the requirements of proper usage.

Without the consent of the author, the work may not be altered more extensively than is required for the purpose of the reproduction.

Chapter III

Transfer of Copyright

General Provisions

27. Subject to the limitation of section 3, the author may transfer wholly or partially his right of disposal in the work. The transfer of copies shall

not include a transfer of the copyright. If the author has transferred to another person the right to make the work available to the public in a specified manner or through certain media, the transfer does not give the assignee the right to do so in another manner or through other media.

Rules governing the transfer of copyright in certain special cases are provided in sections 32-42; these rules may be deviated from by agreement between the parties; as far as section 37 is concerned though not to the detriment of the author.

28. When not otherwise agreed, the transfer of copyright does not entitle the assignee to alter the work.

Neither may copyright be further transferred without consent, unless it is included in a business or a part thereof, and is transferred together with the business. The transferor remains liable for the fulfilment of the contract with the author.

29. An agreement on the transfer of copyright may be wholly or partially repudiated, if it appears to lead to obviously unreasonable consequences. The same applies if the conditions agreed upon for the transfer are contrary to proper copyright usage.

30. The usual rules of the inheritance laws shall apply to the copyright upon the author's death.

The author may give directions in his will, with binding effect for the spouse and issue, concerning the exercise of the copyright, or may authorize somebody else to give such directions.

31. Copyright shall not be subject to legal seizure, neither when remaining with the author nor when with any person who has acquired the copyright by virtue of marriage or inheritance.

The same rule shall apply to works of art which have not been exhibited, placed on sale, or otherwise authorized for dissemination, and with respect to manuscripts.

Right to Public Performance

32. If the right to perform a work publicly has been transferred, the transfer shall be valid for a period of three years and shall not include exclusive rights. If exclusive rights have been agreed upon, the author himself may nevertheless perform the work or transfer the right of performance to others, if the right has not been exercised for three consecutive years.

These rules shall not apply to cinematographic works.

Publishing Contracts

33. Through a publishing contract the author transfers to the publisher the right to produce copies of a literary or artistic work by printing or a similar process and the right to publish it.

The manuscript or other copy from which the work is being reproduced shall remain the property of the author.

34. The publisher shall have the right to publish one edition, which may not exceed 2,000 copies of a literary work, 1,000 of a musical work, and 200 of an artistic work.

By an edition is to be understood the copies which the publisher produces at one time.

35. The publisher shall publish the work within a reasonable time and shall see to its distribution to the extent made possible by marketing conditions and other circumstances.

36. If the work has not been published within two years, or in the case of a musical work within four years, from the time at which the author had submitted a complete manuscript or other copy for reproduction, the author may rescind the contract irrespective of whether he is entitled to do so according to the ordinary rules of Danish law. The same rule shall apply when the copies of the work are exhausted and the publisher has the right to publish a new edition, if he fails within one year to comply with the author's request to do so.

If the author is entitled to rescind the contract due to default or deficiency in the publishing of his work, he may retain the fee already received, irrespective of any claim by him for damages.

37. The publisher shall forward to the author a statement in writing from the printer, or whoever is reproducing the work, concerning the number of copies produced.

If the author is entitled to royalty on the sales or rentals during a fiscal year, the publisher shall submit to him, within nine months from the end of the year, a statement showing sales and other uses during the year and the number of copies remaining in stock at the end of the year.

After the expiry of this time limit, the author shall always be entitled to receive, at his request, a statement of the number of copies left in stock at the end of the fiscal year.

38. If the production of a new edition is commenced more than one year after publication of the previous edition, the publisher shall allow the author to make such changes in the work as do not entail unreasonable cost or alter the character of the work.

39. The author shall not have the right to publish the work again in the form or manner stated in the contract, until the edition or editions contracted for are out of stock.

When fifteen years have elapsed from the year of the first publication of a literary work, the author shall be entitled to include it in an edition of his collected or selected works.

40. The provisions concerning publishing contracts

shall not apply to contributions to newspapers and periodicals.

The provisions in sections 35-36 shall not apply to contributions to composite works.

Film Contracts

41. When a contract is concluded for the use of a literary or musical work for the production of a film for public exhibition, the person acquiring the right to utilize the work in this manner shall produce the film and make it available to the public within a reasonable time.

If the film has not been produced within five years from the time at which the author has carried out his obligations under the contract, he may rescind the contract irrespective of whether he is entitled to do so according to the ordinary rules of Danish law.

The provision in the second paragraph of section 36 shall likewise apply.

42. A transfer of the right to produce a film of a literary or artistic work shall include the right to make the work available to the public by means of the film.

This provision shall not apply to musical works.

Chapter IV

Duration of Copyright

43. Copyright shall extend until fifty years have elapsed after the year of the author's death or, in the case of the works mentioned in section 6, after the year of the death of the last surviving author.

44. When a work has been disseminated without indication of the author's name or generally known pseudonym or signature, the copyright shall extend until fifty years have elapsed since the end of the year in which is was disseminated. If the work consists of several concomitant parts, the copyright shall continue for fifty years after the end of the year in which the last part was disseminated.

If the author is indicated in accordance with section 7 during the course of the said period, or if it is established that he had died before the work was disseminated, the duration of copyright shall be as provided for in section 43.

Chapter V

Other Rights

45. The performance of a literary or artistic work by a performing artist may not without his consent

(*a*) Be recorded on gramophone records, sound tape, films or other devices by which it can be reproduced;

(*b*) Be broadcast directly over radio or television;

(*c*) Be communicated to the public by some other technical means to another group than that before which the artist is giving a direct performance.

When a performance has been recorded as stated in point (*a*) of the foregoing paragraph, such recording may not without the artist's consent be re-recorded until twenty-five years have elapsed from the year in which the performance took place.

The provisions of section 3, first paragraph of section 11, first paragraph of section 14, sections 17, 20 and 21, second and third paragraphs of section 22, and sections 27-31, shall likewise apply to recordings, broadcasts, communication and re-recordings as mentioned in the first and second paragraphs of this section.

Notwithstanding the rule in (*b*) of the first paragraph, the Royal Theatre may arrange for the Radio Danmark to broadcast gala performances, or performances in honour of official visits, over sound radio and television.

46. A gramophone record or other sound recording may not be copied without the consent of the producer, until twenty-five years have elapsed from the year in which the recording was made. Re-recording shall be regarded as copying.

The provisions in the first paragraph of section 11, first paragraph of section 14, sections 17 and 21, and the second and third paragraphs of section 22, shall likewise apply.

47. When gramophone records or other sound recordings within the period stated in section 46, are used in radio or television broadcasts or when they are played publicly for commercial purposes, both the producer of the recording and the performing artists whose performances are reproduced shall be entitled to remuneration. If two or more performers have taken part in a performance, their claim of remuneration may only be made jointly. The rights of the performers may only be claimed through the producer or through a joint organization for producers and performers, approved by the Minister of Education.

The provisions in the first paragraph of section 14, and in sections 20 and 21 shall likewise apply. The rights of performers are similarly governed by sections 27-31.

The provisions in this section do not apply to sound films.

48. A radio or television broadcast may not be re-broadcast by other parties without the consent of the radio or television organization. Without such consent it may neither be photographed nor recorded on gramophone records, sound tape, film or other devices by means of which it can be reproduced, nor made available to the public for commercial purposes.

If a broadcast has been photographed or recorded as stated in the foregoing paragraph, it may not be re-recorded without the consent of the organization until twenty-five years have elapsed from the year in which the broadcast took place.

The provisions in the first paragraph of section 11, first paragraph of section 14, sections 17, 20 and 21, and the second and third paragraphs in section 22, shall likewise apply.

49. Catalogues, tables and similar productions in which a great number of items of information have been compiled, as well as programmes, may not be reproduced without the consent of the producer until ten years have elapsed from the year in which the production was published.

If productions of the said nature or parts thereof are subject to copyright or other protection, such may also be applied for.

The provisions in the first paragraph of section 11 and in section 14 shall likewise apply. The same applies to the rule in section 9 though not as regards the programmes of the Royal Theatre.

50. Press communiqués supplied under contract with foreign news agencies or from correspondents abroad, may not without the consent of the recipient be made available to the public through the press, the radio or other similar manner, within 12 hours after they have been disseminated in this country.

Chapter VI

Various Provisions

51. A literary or artistic work may not be made available to the public under a title, pseudonym or signature capable of causing confusion with a previously disseminated work or with its author.

If the dissemination of the latter work had taken place less than three months prior to the publication of the other work, the provision in the foregoing paragraph shall not apply unless it may be presumed that the confusion was intentional.

52. The name or signature of the artist may not be placed on a work of art by others than himself, unless he has given his consent thereto.

The name or signature of the artist may not in any case be added to a reproduction so that the reproduction could be confused with the original.

53. Even if copyright has expired, a literary or artistic work may not be altered nor made available to the public contrary to the first and second paragraphs of section 3, if cultural interests are thereby violated.

The Ministry of Education shall make a statement upon request as to whether a use of a work might be regarded as contrary to the rules given in the foregoing paragraph or constituting such infringement of section 3 as is liable to public prosecution — c.f. the seventh paragraph in section 55.

. . .

Chapter VIII

Applicability of the Act

58. The provisions of this Act on copyright shall apply to works of Danish nationals or of persons domiciled in this country, and to works of stateless persons and refugees who have their habitual residence in this country. The Act shall also apply to other works if first published in Denmark, to buildings constructed in this country, and to works of art affixed to buildings situated here.

The provisions of sections 51-53 shall apply to all works mentioned in section 1.

59. The provisions of sections 45, 47 and 48 shall apply to performances, sound recordings, and radio or television broadcasts which take place in Denmark. The rule in section 46 shall apply to all sound recordings.

The provisions in sections 49 and 50 shall apply in favour of Danish nationals, persons domiciled in Denmark, stateless persons or refugees who have their habitual residence in this country, and of companies or corporations under Danish management and domiciled in Denmark. Section 49 shall also apply to productions first published in Denmark.

60. By royal decree, the application of this Act may be extended to other countries conditional upon reciprocity.

By royal decree, the Act may also be made applicable to works first published by international organizations and to unpublished works which such organizations are entitled to publish.

61. The Act shall also apply to works and other productions which are already subject to copyright under older laws.

Copies lawfully produced before the coming into force of the Act may continue to be exhibited publicly and distributed, though the rule in section 23, on the leasing of sheet music shall be observed.

The protection against the copying of a sound recording, produced before the coming into force of the Act and which could be protected under older laws, shall not be terminable earlier than 1 October 1966, notwithstanding the time limit specified in section 46.

62. The special privileges and prohibitions prescribed under older legislation shall remain in force.

63. This Act shall come into force on 1 October 1961.

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DOMINICAN REPUBLIC

NOTE

A revised constitution was adopted by the National Assembly on 29 December 1961, and appears in *Gaceta Oficial*, Year LXXXII, No. 8631, of the same date. The constitutional provisions appearing in *Yearbook on Human Rights for 1955*, pp. 47-52, and *Yearbook on Human Rights for 1960*, p. 94, were affected by this revision to the following extent:

(i) The provision of article 106 concerning the Dominican Party was deleted;

(ii) Article 111 was deleted;

(iii) Article 117 was renumbered article 114.

EL SALVADOR

ELECTORAL ACT

PROMULGATED BY DECREE NO. 292 OF 12 SEPTEMBER 1961,[1] AS AMENDED BY DECREE NO. 313 OF 26 SEPTEMBER 1961[2]

Part I

PURPOSE

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. In such event, the incompetence shall continue for the term of the office refused;
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.

. . .

Part V

POLITICAL PARTIES

Chapter I. — *Formation and 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.

It shall also be unlawful to establish political parties which receive assistance, financial or otherwise, from foreign persons or bodies, whether political or not, other than parties or groups pursuing by democratic means Central American union or pan-American or world co-operation based on fraternity.

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 for an amendment or alteration within the meaning of article 32.

Art. 22. No political party may be registered unless it has 2,000 members, who must be domiciled in the territory of the republic.

[1] Published in *Diario Oficial*, vol. 192, No. 166, of 12 September 1961.

[2] Published in *Diario Oficial*, vol. 192, No. 178, of 29 September 1961.

The membership of a party must be recorded in special membership books or registers to be kept for the purpose.

Art. 23. At least twenty-five citizens must band together to constitute a political party. The deed of association shall be executed before a notary and in the presence of twenty-five citizens who have established the party. The notary shall be required to submit a copy of the said deed on unstamped paper to the Central Electoral Board within the following fifteen days. The deed of association must contain the following:

1. The full name, age, profession or trade, civil status, nationality, domicile and number and date of the personal identity card of each of the founders;

2. The name of the party, a clear statement of its principles and purposes and the names of the provisional officers or the organizers; and

3. A solemn undertaking by the said persons to carry on their activities in accordance with the law.

The provisional officers or the organizers shall personally submit a written application to the Central Electoral Board for permission to campaign with a view to recruiting sufficient members for the registration of the party. The application shall be accompanied by a copy on unstamped paper of the public deed referred to in this article and by the books in which the members are to be registered.

No application for registration shall be accepted if the citizens signing the deed include any person to whom any of the prohibitions contained in article 26, paragraph 4, hereof applies.

Art. 24. If the provisions of the preceding article are complied with, the Central Electoral Board shall authorize the party to campaign and return the books with its seal affixed to each page and an intimation on the first page of the book's purpose and number of pages. The authorization shall be published in the *Diario Oficial.*

Pending the organization of a political party the organizers shall use the name given in the deed of association, followed by the words "in process of organization", and shall use print of the same size and form for both expressions.

Art. 25. During the campaign the organizers of a party may make propaganda by all legal means and shall remain subject to the provisions of this Act in so far as they are applicable. If the organizers fail to comply with the legal provisions pertaining to propaganda and disregard the written injunction to that effect served on them by the Central Electoral Board, the authorization for their activities shall be cancelled forthwith and an order to that effect shall be published in the *Diario Oficial.*

Art. 26. The Register of Political Parties is hereby established and shall be kept by the Central Electoral Board.

In order to have legal personality and the right to participate in the elections a party must be entered in the appropriate register.

Subject to the provisions of article 203 (transitional) of this Act, the final application for the registration of a political party must be made to the Central Electoral Board at least four months before the date of the election.

No political party shall be registered if its declaration of principles and purposes, statutes or programme of action incorporates any of the doctrines referred to in article 20, or if its founders, organizers, officers, or leading members include persons of known Communist affiliation or who advocate similar doctrines, or who, in the campaign to obtain 2,000 signatures, disseminate or make propaganda in favour of the ideas referred to in the said article.

Art. 27. Applications for registration shall be in writing, shall be signed by the members of the party executive and shall be accompanied by the following documents:

1. A certified copy of the minutes of the general meeting at which the declaration of principles and purposes and the statutes of the party, the programme of action, name, colours and emblem are finally adopted;

2. Three copies of the statutes;

3. The complete roll of the officers and members, including the personal identity card number of each;

4. The registers showing each member's full name and (in an adjacent box) his original signature, civil status, profession or trade, and domicile, and the number, place and date of issue of his personal identity card. Where a member is unable for any reason to sign his name, his fingerprint shall be impressed in lieu of a signature. The registers shall be returned to the applicants when they are notified of the decision taken.

Art. 28. When an application for registration has been duly submitted, a notice shall be published within three days in the *Diario Oficial* and two of the country's most widely circulated newspapers giving a summary of the contents of the application and specifying the mandatory period of eight days, reckoned from the date of publication in the *Diario Oficial*, within which any citizen or registered political party may challenge the legality or completeness of the application.

On the expiry of the said period, an order shall be issued within three days from which an appeal shall lie to the Central Electoral Board.

Art. 29. In ordering the registration of a political party the Central Electoral Board shall recognize the party's legal personality and approve its statutes. Once the said order has been issued, it shall be published in the *Diario Oficial* together with the relevant statutes.

No political party shall be deemed to exist legally until such time as the order made in accordance with the preceding paragraph has been issued and duly published in the *Diario Oficial.*

The statutes of a party shall govern the procedure for choosing the party's candidates and officers, the manner of obtaining the funds needed to carry on the party's activities, the allocation of the functions, the obligations and powers of the various bodies, the participation of members in a democratic manner and free from outside pressure in the organization and functioning of the party, and the penalties applicable to members who fail to observe the party's ethical and political principles. The statutes shall also lay down the procedure for voluntary dissolution.

Art. 30. The entry shall be made in the Register within three days of the date on which the order is issued, and shall contain the following:

(*a*) The serial number of the registration, and the name, colours and emblem or other distinguishing sign of the party;

(*b*) The full name, age, profession or trade, domicile and personal identity card number of each member of the executive group applying for registration;

(*c*) Confirmation of the fact that the application was accompanied by all the documents mentioned in article 27 and that the statutes were approved; and

(*d*) The place, the date and the signatures of the officials competent to authorize registration.

Art. 31. Once a party has been registered it shall be required to report within three days any change in the membership of its highest executive organ.

Art. 32. If the principles and purposes, action programmes, statutes, names, colours and emblems adopted by a party are amended or changed, a special entry shall be made in the register, a marginal note being made against the original entry giving the number of the new entry. In such cases the procedure laid down in article 28 thereof shall be followed.

Art. 33. Without prejudice to the provisions of article 165, a political party or a coalition shall be struck off the register:

1. In the event of voluntary dissolution of the party in accordance with its statutes;

2. In the event of a merger of parties, whereupon the new group shall be registered provided it meets the requirements laid down in article 27 hereof;

3. If the party participates in the election of the President and Vice-President of the republic or of deputies to a Constituent Assembly or Legislative Assembly but fails to obtain at least 1 per cent of the total votes cast, provided, in such latter event, that it participates throughout the territory of the Republic;

4. If the party fails to meet all the requirements laid down in article 48, paragraph 2.

The striking-off of a party and fresh registration in cases covered by paragraph 2 of this article 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. 34. Striking-off shall take place automatically or at the request of the Fiscal General de la República [State Counsel General] or of any citizen or registered party.

Art. 35. When the petition for the striking-off of a party has been submitted to the Central Electoral Board or the latter has issued an order, containing a statement of the reasons for the automatic striking-off, the State Counsel General and the legal representative of the party concerned shall be invited to a joint hearing on the third day to state their cases if they so desire. Whether they appear or not, the proceedings for the taking of evidence shall be opened for a period of fifteen days, which may not be extended and within which each side may submit the relevant evidence or the court may order evidence to be gathered on its own initiative. On the expiry of the said period, each side, starting with the State Counsel General, shall be notified that it has five days within which to argue the evidence and the Central Electoral Board shall give its final ruling within the following ten days.

. . .

Art. 38. Only political parties registered in conformity with this Act may use the 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, without prejudice to the provisions of article 172.

Chapter IV. — *Electoral Propaganda*

Art. 51. 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, for two months before the date of the elections for deputies and for one month before the elections for members of municipal bodies.

During the periods specified only registered parties may undertake political propaganda of any kind. On the expiry of the time allowed for registering candidates, only the contending parties shall be entitled to undertake such propaganda.

Art. 52. Electoral propaganda must remain within the bounds prescribed by law, by public decency and by good manners.

The supreme executive body of each political party shall supervise and be responsible for the general

conduct of its own party's propaganda and its members shall render themselves liable to the penalties prescribed in this Act if the said propaganda is not undertaken in the manner specified in the preceding paragraph.

. . .

Art. 54. 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. 55. Any partisan propaganda through the medium of the Press, radio and television or any other medium of communication owned or operated by the Government of the republic, municipal councils, autonomous official bodies, or by religious bodies or bodies consisting of members of the clergy, if such latter bodies violate the provisions of article 56, is prohibited.

Members of the armed forces on active service and agents of the security forces may not engage in electoral propaganda.

No civil servant or public authority may take advantage of his or its position to engage in party politics.

Art. 56. 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.

It shall also be forbidden to criticize the laws of the State, the Government or individual public officials in the churches in connexion with any religious function or religious propaganda.

Art. 57. 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 towns. In the capital of the republic and the capitals of departments the permit issued by the governor must also be presented to the appropriate police headquarters in order that the latter may note or record it with a view to taking whatever security measures and making whatever arrangements are necessary for regulating traffic while the meeting or demonstration is being held.

Art. 58. An application for permission to hold such a meeting or demonstration shall be made in writing to the appropriate authority by the authorized legal representative of the political party concerned at least three days before the date for which the meeting or demonstration is scheduled, with an indication of the hour, date, place and duration of the meeting or demonstration and, where appropriate, the route or area to be covered.

The legal representative of the party shall deliver a duly signed true copy of such application to the Central Electoral Board, if the meeting or demonstration is to take place in the capital, or send such copy by registered post, in other cases. The copy shall be delivered or sent on the date on which the application is submitted to the authority competent to grant the permission.

The authority to whom the application is made shall grant permission without further reference or formality, not later than at its following meeting. Permission shall not be withheld except for a very serious reason that may lead to a breach of the peace.

Art. 59. An application for permission may be rejected by the appropriate authority only if some other political party or parties has or have already applied for similar permission for the same day. In such cases the permission 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 public meetings or demonstrations in the same town on the same day.

Any deliberate or unwarranted curtailment of the freedom to hold the meetings or engage in the electoral propaganda referred to in this chapter shall be reported immediately to the Central Electoral Board which, on establishing fully and summarily the truth of the charge, shall request the Executive to have the civil servant or public employee responsible dismissed without delay.

Part VI

CANDIDATES

. . .

Art. 63. Applications for registration as candidates for the offices of president and vice-president of the republic, deputies to the Constituent Assembly and Legislative Assembly, and for municipal councils, may be made by the candidates themselves, either individually or collectively, or by the representative designated in advance by the sponsoring political party.

In every case an application shall be signed by the candidates and accompanied by a certified copy of the document of nomination; this copy shall include a complete list of all the candidates nominated in accordance with the relevant statutes and shall be endorsed by the political party concerned.

. . .

Art. 66. An application for registration shall expressly indicate the party or coalition of parties on behalf of which it is made.

. . .

Part X

VIOLATIONS AND PENALTIES

. . .

Chapter II. — *Contraventions*

Section 1. — Political Parties

Art. 165. A political party shall be struck off the register in the following cases:

1. If, in the course of its political activities, it

propagates any of the anarchic or anti-democratic doctrines referred to in article 20;

2. If it fails to comply with its declaration of principles and objects or its programme of action as set forth in its application for registration or as subsequently amended and duly registered, or fails to comply with the provisions of its own statutes in respect of its organization;

3. If it uses for its own propaganda printing presses, organs of the Press, radio or television or any other medium of communication that is operated by the Government of the republic, a municipal council or an autonomous official body;

4. If it encourages fraud in any election or accepts fraud to its own advantage, provided that the fact has been established by a competent authority.

. . .

Section 2. — Individuals

Art. 172. The officers and organizers of any association, group or body which, though not established as a political party in accordance herewith, engages in activities germane to political parties, shall be warned to refrain therefrom and each officer or organizer shall be liable to a fine of 200 to 500 colons which shall be imposed and enforced by the Central Electoral Board through official channels.

If the offending association, group or body is endowed with legal personality, the Central Electoral Board shall also report the offence, for all relevant legal purposes, to the Ministry of the Interior or the Ministry of Labour and Social Welfare, as the case may be.

In the event of the repetition of such an offence, the fine shall be doubled.

The provisions of this article shall be without prejudice to any criminal proceedings that the offence may entail.

. . .

Art. 180. Within the ten days following each election, the authorities shall require citizens to produce evidence of having voted and shall report any person who has failed to vote to the mayor concerned who, if he finds that there is not sufficient cause for such failure, shall impose a fine of 2 to 100 colons, depending on the offender's financial capacity. The foregoing shall be made known to the public prior to the elections by means of a proclamation or other medium of communication.

The fine referred to in the preceeding article shall in no case exceed 2 colons if the offender is a day labourer, a domestic servant or an indigent person.

Art. 181. A person shall be deemed to have sufficient cause for not voting if:

1. He is ill or confined to bed on the day of the elections;

2. He is outside the national territory;

3. He is in employment where, owing to the nature of his work, he cannot arrange to be relieved during the hours of voting;

4. He is outside the municipal constituency in which he registered as a voter, provided that he produces evidence to that effect supplied by the municipal electoral board of the locality in which he is staying;

5. He was forcibly prevented from voting or prevented by *force majeure* or other duly substantiated circumstances beyond his control.

Such grounds shall be summarily established in the presence of the mayor who imposed the fine, who shall order repayment if and when they are substantiated.

. . .

Part XII

GENERAL PROVISIONS

. . .

Art. 193. No elector shall be obliged to disclose how he voted, even if called upon to do so by a judicial or administrative authority.

Art. 202. The Pre-electoral Regime Act, promulgated by decree No. 38, of 7 December 1960, of the Government Junta of El Salvador published in *Diario Oficial* No. 228, of 8 December 1960, and decree No. 30, of 27 February 1961, of the Civil and Military Directorate of El Salvador published in *Diario Oficial* No. 43, vol. 190, of 2 March 1961, and all other provisions contrary to this Act are hereby repealed.

ETHIOPIA

THE CIVIL CODE OF THE EMPIRE OF ETHIOPIA of 5 May 1960[1]

Book I. — Persons

TITLE I. — PHYSICAL PERSONS

Chapter 1

PERSONALITY AND THE RIGHTS INHERENT TO PERSONALITY

Section 1. — Attribution of Personality

Art. 1. — *Principle*

The human person is the subject of rights from its birth to its death.

. . .

Section 2. — Rights of Personality

Art. 8. — *Effect of Personality*

(1) Every physical person shall enjoy the rights of personality and the liberties guaranteed by the Ethiopian Constitution.

(2) In this respect, no regard shall be had to the race, colour, religion or sex of persons.

Art. 9. — *Limitations to these Effects*

(1) The rights of personality and the liberties guaranteed by the Constitution are *extra commercium.*

(2) Any voluntary limitation imposed on the exercise of such rights and liberties shall be of no effect unless it is justified by a legitimate interest.

Art. 10. — *Cessation of Unlawful Molestations*

Any unlawful molestation to the personality shall give to the person who suffers it the right to demand that it be stopped, without prejudice to the liability of the author of such molestation.

Art. 11. — *Restriction on Freedom and Searches*

No person may have his freedom restricted, or be subjected to a search, except in the cases provided by law.

Art. 12. — *Freedom of Residence*

(1) Every person is free to establish his residence wherever it is suitable for him and to change the place of such residence.

(2) The undertaking of a person to reside in a particular place shall be of no effect under civil law.

(3) The undertaking of a person not to reside in or not to go to a particular place shall be of no effect unless it is justified by a legitimate interest.

Art. 13. — *Inviolabilty of Domicile*

(1) The domicile of a physical person is inviolable.

(2) No one may enter the domicile of another against the will of such person, neither may a search be effected therein, except in the cases provided by law.

Art. 14. — *Freedom of Thought*

(1) Every person is free to think and to express his ideas.

(2) The only restrictions which this liberty admits of are those which are imposed by the respect for the rights of others, morality and the law.

Art. 15. — *Religion*

There shall be no interference with the exercise, in accordance with the law, of the rites of any religion or creed by residents of the Empire, provided that such rites be not utilised for political purposes or be not prejudicial to public order or morality.

Art. 16. — *Freedom of Action*

(1) Every person is free to exercise any activity which he deems proper in that which concerns his calling and his leisure.

(2) The only restrictions which such freedom admits of are those which are imposed by the respect for the rights of others, morality and the law.

(3) The act by which a person binds himself to exercise a given activity or binds himself not to exercise such activity shall be of no effect unless it is justified by a legitimate interest.

Art. 17. — *Marriage and Divorce*

(1) The undertaking of a person not to marry or not to remarry shall be of no effect under civil law.

(2) This shall apply to the undertaking of a person to divorce or not to divorce.

[1] The Civil Code was promulgated by proclamation No. 165, of 5 May 1960, and appeared in *Negarit Gazeta,* extraordinary issue, No. 2, of 5 May 1960. The Civil Code came into force on 11 September 1960. Text furnished by the Government of Ethiopia.

Art. 18. — *Integrity of Human Body*

(1) The act by which a person disposes of the whole or of a part of his body shall be of no effect under civil law where such act is to be carried out before the death of the person thus disposing, if such act has the effect of causing a serious injury to the integrity of the human body.

(2) The provisions of sub-art. (1) shall not apply where the act is justified by the rules of medical practice.

Art. 19. — *Revocability of Acts relative thereto*

(1) A person may at any time revoke the act by which he has disposed of the whole or a part of his body whether such act is to be carried out during the lifetime of the person by whom it was performed or after his death.

(2) The person to whose advantage such act has been made has the right to be indemnified for the expenses which he has incurred on the faith of such promise.

Art. 20. — *Medical Examinations and Treatment*

1. *Principle.* (1) A person may at any time refuse to submit himself to a medical or surgical examination or treatment.

(2) Nothing in this article shall affect the provisions of laws or regulations providing for a physical examination of persons or their compulsory vaccination or other similar measures in the public interest.

(3) Nothing in this article shall affect the power of a guardian of a minor or interdicted person to submit the incapacitated person of whom he is in charge to an examination or treatment beneficial to that person's health.

Art. 21. — 2. *Restriction*

Where the examination or treatment to which a person is required to submit himself does not involve any abnormal risk, such person, in case of refusal, forfeits the right to avail himself of the illness or infirmity which the treatment could have prevented, eliminated or lessened.

Art. 22. — *Medical examination*

Where a person refuses to submit himself to a medical examination not involving any serious danger for the human body, the court may consider as established the facts which the examination had the object of ascertaining.

Art. 23. — *Right to keep Silent*

Any admission or manifestation of the will obtained by methods causing molestation to the personality shall be of no effect.

Art. 24. — *Professional Secrecy*

(1) A person may not be compelled to reveal facts which have come to his knowledge by reason of his profession, if by revealing such facts he will betray or risk to betraying the confidence which a third person has placed in him for the very reason of his profession.

(2) The person who has confided or disclosed such facts may ensure that they be not revealed by him in whom he has placed his confidence.

(3) Nothing in this article shall affect the provisions of arts. 267 and 344 of the Penal Code.

. . .

Art. 27. — *Image of the person*

1. *Principle.* — The photograph or the image of a person may not be exhibited in a public place, nor reproduced, nor offered for sale without the consent of such person.

Art. 28. — 2. *Exception*

The consent of the person concerned shall not be required where the reproduction of his image is justified by the notoriety of such person or by the public office which he occupied or by the requirements of justice or of the police or by a scientific, cultural or didactic interest, or where the reproduction of the image is made in connection with facts, events or ceremonies of public interest or which have taken place in public.

. . .

Art. 31. — *Inviolability of Correspondence*

(1) The addressee of a confidential letter may not divulge its contents without the consent of its author.

(2) He may, however, produce it in judicial proceedings if he shows that he has a legitimate interest.

. . .

TITLE II. — CAPACITY OF PERSONS

. . .

Chapter 2
MINORS

. . .

Section 3. — Powers of the Guardian and of the Tutor

. . .

Art. 272. — 3. *Work of Minor*

(1) From the age of fifteen years onwards, the minor himself shall receive the income deriving from his work.

(2) He may freely dispose of such income but shall contribute to his own maintenance.

. . .

Chapter 5

FOREIGNERS

Art. 389. — *Assimilation to Ethiopians*

(1) Foreigners shall be fully assimilated to Ethiopian subjects as regards the enjoyment and exercise of civil rights.

(2) All rights the exercise of which does not imply any participation in the government or administration of the country shall be considered to be civil rights.

(3) Nothing in this article shall affect such special conditions as may be prescribed regarding the granting to a foreigner of a permit to work in Ethiopia.

. . .

BOOK III. — GOODS

. . .

TITLE IX. — COLLECTIVE EXPLOITATION OF PROPERTY

Chapter 1

PUBLIC DOMAIN AND EXPROPRIATION

. . .

Section 2. — Expropriation

Art. 1460. — *Definition*

Expropriation proceedings are proceedings whereby the competent authorities compel an owner to surrender the ownership of an immovable required by such authorities for public purposes.

. . .

[Articles 1470-9 concern the fixing of the amount of compensation in the event of expropriation.]

. . .

TITLE XI. — LITERARY AND ARTISTIC OWNERSHIP

Art. 1647. — *Attribution of the Right*

(1) The author of a work of the mind shall have on the work he created, by the mere fact of his creation, an incorporeal right of ownership.

(2) He shall have such right regardless of the nature, form of expression, merit or purpose of the work.

(3) He shall have such right notwithstanding that he executed the work in pursuance of a contract of employment or a contract for the performance of a project entered into with a third party.

Art. 1648. — *Works of the Mind*

The following works shall be deemed to be works of the mind:

(*a*) Literary works such as books, booklets, articles in reviews and newspapers, lectures, speeches, sermons, theatrical and other dramatic works; and

(*b*) Musical compositions with or without text, dramatic-musical works, radiophonic or radiovisual works, choreographic works or pantomimes the production of which is reduced to writing or otherwise; and

(*c*) The works of the figurative arts such as drawings, paintings, engravings and sculptures as well as photographic and cinematographic works; and

(*d*) Illustrations, maps, plans, sketches, plastic works pertaining to geography, topography, architecture or other sciences; and

(*e*) Any other work created by the intelligence of their author and presenting an original character.

Art. 1649. — *Translations and Adaptations*

Without prejudice to the rights of the author of the original work, translations, adaptations, musical arrangements and other renderings of a literary or artistic work shall be protected as original works.

Art. 1650. — *Encyclopaediae and Anthologies*

Collections of literary or artistic works such as encyclopaediae or anthologies which by the choice or arrangement of the material constitute intellectual creations shall be protected as such without prejudice to the rights of the authors over each of the works included in such collections.

Art. 1651. — *Official Texts*

(1) Official texts of a legislative, administrative or judicial nature shall not be subject to the provisions of this title.

(2) They may be freely reproduced.

Art. 1652. — *Right of Publication*

(1) Only the author shall have the right to publish his work.

(2) After his death, this right shall pass to the person named by him or, in default of such person, to the heirs of the author.

(3) Where the heirs do not agree on the expediency or conditions of publication, the court shall settle the matter on the application of any of them.

Art. 1653. — *Production and Reproduction of the Work*

(1) Only the author shall have during his life the right to produce his work.

(2) He shall alone have during his life the right to reproduce it.

Art. 1654. — *Adaptations*

(1) Only the author shall have during his life the right to authorize the adaptation of his work to the theatre, cinematography or television, or any other kind of adaptation.

(2) A work shall be regarded as an adaptation of a third party's work where it explicitly refers to

the said work or it is obvious, from the circumstances of the case, that it closely derives its inspiration therefrom.

(3) A parody, pastiche or caricature shall not be regarded as an adaptation of the work.

Art. 1655. — *Translations*

(1) An author cannot object to the translation of his work.

(2) A translation made without the authorization of the author shall expressly state this fact at the beginning of the work.

(3) Failing such a statement, it shall be deemed to be prejudicial to the author's rights.

Art. 1656. — *Private Performances Free of Charge*

The author may not forbid private performances of his work given free of charge at a family gathering or in a school.

Art. 1657. — *Articles and Information of Topical Interest*

(1) Articles of topical interest published in newspapers and reviews may be reproduced in the press, whether printed or broadcasted, unless such reproduction was expressly reserved.

(2) The source shall always be clearly stated.

(3) Daily news articles on current events which are mere press information may be freely reproduced.

Art. 1658. — *Public Speeches*

Speeches delivered in political assemblies, at public meetings or on the occasion of official ceremonies may be freely reproduced by the press, whether printed or broadcasted, during fifteen days from the day on which they were made.

Art. 1659. — *Collection of Speeches or Articles*

Only the author shall have the right to publish his speeches and articles in book form or to issue a collection thereof.

Art. 1660. — *Limitation of the Exclusive Right of Reproduction*

(1) The author cannot forbid analyses and press reviews of his work.

(2) Copies or reproductions of the work made in a single copy shall be permitted where they are intended for private use only.

Art. 1661. — *Quotations*

The author cannot forbid short quotations from his work provided they do not exceed, in the work in which they are included, forty lines in the case of a poetical work or ten thousand letters in the case of any other work.

Art. 1662. — *Photographic Works*

(1) Photographic works shall be protected where they form part of a collection or are published in a book.

(2) In other cases, they shall not be protected unless they bear the name and address of the author or his agent.

Art. 1663. — *Assignment of the Work*

(1) The incorporeal ownership of the author shall be independent of the ownership of the material object which constitutes the protected work.

(2) The rights specified in this title shall not vest in the acquirer of the object by the mere fact of his acquisition.

(3) The author may not require the owner of the material object to place this object at his disposal so as to enable him to exercise his rights.

Art. 1664. — *Reference to Rules governing Contracts of Publication*

The conditions on which literary or artistic rights of ownership may be assigned by the author to third parties shall be as provided by the chapter of this code relating to "contracts of publication" (art. 2672-2697).

Art. 1665. — *Alteration of a Work*

Notwithstanding any stipulation to the contrary, the author may prevent his work, if altered by a third party, from being presented as his own.

. . .

Art. 1670. — *Heirs of the Author*

1. *Pecuniary rights.* — (1) The author's right to authorize the production, reproduction or adaptation of his work may, after his death, be exercised by his heirs for a period of fifty years from the time of the publication of the work.

. . .

Art. 1673 — *Rights of Public Authorities*

(1) Public authorities may in the general interest, notwithstanding the author's opposition, authorize the presentation or reproduction of a work or its adaptation, after such work has been published by its author or his heirs.

(2) The conditions and forms of such authorization shall be determined by a special law providing in particular for fair compensation to the author.

(3) In no circumstances may public authorities authorize the alteration of a work.

. . .

Book V. — Special contracts

. . .

TITLE XVI. — CONTRACTS FOR THE PERFORMANCE OF SERVICES

Chapter 1

CONTRACT OF EMPLOYMENT IN GENERAL

. . .

Section 5. — Holidays due to the Employee

. . .

Art. 2561. — *Annual Leave*

Where the employer uses the whole or main time of the employee, he shall grant the employee a period of annual leave during which time he shall pay him his wages.

Art. 2562. — *Duration of Leave*

(1) The duration of the leave shall be ten consecutive days where the employee has been in the service of the employer for one to five years.

(2) It shall be fifteen consecutive days where the employee has been in the service of the employer for five to fifteen years.

(3) It shall be twenty consecutive days where the employee has been in the service of the employer for more than fifteen years.

Art. 2566. — *Maternity Leave*

(1) An employee who expects a child shall be entitled to one month's leave during the period of her confinement.

(2) The employer shall pay half her salary, during this leave.

. . .

THE CRIMINAL PROCEDURE CODE of 2 November 1961[1]

PRELIMINARY TITLE

. . .

Art. 3. — *Interpretation*

In this code the following expressions shall have the following meanings:

. . .

"Young person" shall mean a person between the ages of nine and fifteen.

Book I. — Jurisdiction of courts, Public prosecution department and police

Chapter 1

JURISDICTION OF COURTS

. . .

Art. 5. — *Persons to be tried*

(1) No young person (art. 53, Penal Code) may be tried together with an adult.

. . .

Book II. — Prosecution and inquiry

TITLE I. — SETTING IN MOTION PROSECUTION AND INQUIRY

Chapter 1

SETTING JUSTICE IN MOTION

. . .

Section 1. — Setting Justice in Motion in Flagrant Cases

Art. 19. — *Flagrant Offences*

(1) An offence shall be deemed to be flagrant where the offender is found committing the offence, attempting to commit the offence or has just committed the offence.

(2) An offence shall be deemed to be quasi-flagrant when, after it has been committed, the offender who has escaped is chased by witnesses or by members of the public or when a hue and cry has been raised.

Art. 20. — *Assimilated Cases*

An offence shall be deemed to be flagrant and to fall under the provisions of Art. 19 when:

(*a*) The police are immediately called to the place where the offence has been committed; or

(*b*) A cry for help has been raised from the place where the offence is being or has been committed.

. . .

Chapter 2

POLICE INVESTIGATION

. . .

Art. 25. — *Summoning of Accused or Suspected Person*

Where the investigating police officer has reason to believe that a person has commited an offence, he may by written summons require such person to appear before him.

Art. 26. — *Arrest*

(1) Where the accused or the suspect has not been arrested and the offence is such as to justify arrest or where the person summoned under art. 25 fails to appear, the investigating police officer shall take such steps as are necessary to effect his arrest.

(2) Where the arrest cannot be made without warrant, the investigating police officer shall apply to the court for a warrant of arrest in accordance with the provisions of art. 53.

[1] The Criminal Procedure Code was promulgated by proclamation of 2 November 1961, and appeared in *Negarit Gazeta*, extraordinary issue, No. 1 of 1961. Text furnished by the Government of Ethiopia.

Art. 27. — *Interrogation*

(1) Any person summoned under art. 25 or arrested under art. 26, 50 or 51 shall, after his identity and address have been established, be asked to answer the accusation or complaint made against him.

(2) He shall not be compelled to answer and shall be informed that he has the right not to answer and that any statement he may make may be used in evidence.

(3) Any statement which may be made shall be recorded.

(4) Where the arrested person is unable properly to understand the language in which his answers are to be recorded, he shall be supplied with a competent interpreter, who shall certify the correctness of all questions and answers.

Art. 28. — *Release on Bond*

(1) Where the offence committed or complained of is not punishable with rigorous imprisonment as a sole or alternative punishment, or where it is doubtful that an offence has been committed or that the summoned or arrested person has committed the offence complained of, the investigating police officer may in his discretion release such person on his executing a bond with or without sureties that he will appear at such place, on such day and at such time as may be fixed by the police.

(2) Where the accused is not released on bond under this Article, he may apply to the court to be released on bail in accordance with the provisions of art. 64.

Art. 29. — *Procedure after Arrest*

(1) Where the accused has been arrested by the police or a private person and handed over to the police (art. 58), the police shall bring him before the nearest court within forty-eight hours of his arrest or so soon thereafter as local circumstances and communications permit. The time taken in the journey to the court shall not be included.

(2) The court before which the accused is brought may make any order it thinks fit in accordance with the provisions of art. 59.

Art. 30. — *Examination of Witnesses by the Police*

(1) The investigating police officer may, where necessary, summon and examine any person likely to give information on any matter relating to the offence or the offender.

(2) Any person so examined shall be bound to answer truthfully all questions put to him. He may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge.

(3) Any statement which may be made shall be recorded.

Art. 31. — *No Inducement to be offered*

(1) No police officer or person in authority shall offer or use or make or cause to be offered, made or used any inducement, threat, promise or any other improper method to any person examined by the police.

(2) No police officer or other person shall prevent or discourage by whatever means any person from making or from requiring to be recorded in the course of the police investigation any statement relating to such investigation which he may be disposed to make of his own free will.

Art. 32. — *Searches and Seizures*

Any investigating police officer or member of the police may make searches or seizures in accordance with the provisions which follow:

(1) No arrested person shall be searched except where it is reasonably suspected that he has about his person any articles which may be material as evidence in respect of the offence with which he is accused or is suspected to have committed. A search shall be made by a person of the same sex as the arrested person.

(2) No premises may be searched unless the police officer or member of the police is in possession of a search warrant in the form prescribed in the third schedule to this code except where:

(*a*) An offender is followed in hot pursuit and enters premises or disposes of articles the subject matter of an offence in premises;

(*b*) Information is given to an investigating police officer or member of the police that there is reasonable cause for suspecting that articles which may be material as evidence in respect of an offence in respect of which an accusation or complaint has been made under art. 14 of this code and the offence is punishable with more than three year's imprisonment, are concealed or lodged in any place and he has good grounds for believing that by reason of the delay in obtaining a search warrant such articles are likely to be removed.

Art. 33. — *Issue of Search Warrant*

(1) A search warrant may be issued by any court. No search warrant shall be issued unless the court is satisfied that the purposes of justice or of any inquiry, trial or other proceedings under this Code will be served by the issue of such warrant.

(2) Every search warrant issued shall specify the property to be searched for and seized and no investigating police officer or member of the police may seize any property other than that specified in such warrant.

(3) On seizing any property such investigating police officer or member of the police shall make a

list of the property seized and where possible shall have the list checked and signed by an independent person. Any property seized which is required for the trial shall be preserved in a safe place until handed over to the court as an exhibit. Any property not so required may be returned to the person from whom it was taken and a receipt shall be taken.

(4) In effecting a search the investigating police officer or member of the police may use such force as is necessary and may where access to premises is denied use reasonable force to effect entry.

(5) Unless otherwise expressly ordered by the court, searches shall be carried out only between the hours of 6 a.m. and 6 p.m.

Art. 34. — *Physical Examination*

(1) Notwithstanding the provisions of art. 20, Civil Code, where an investigating police officer considers it necessary, having regard to the offence with which the accused is charged, that a physical examination of the accused should be made, he may require a registered medical practitioner to make such examination and require him to record in writing the results of such examination. Examination under this Article shall include the taking of a blood test.

(2) An investigating police officer may, with the agreement of the victim of an offence or, where he is incapable with the consent of the parent or guardian, require a registered medical practitioner to make such physical examination as the offence being inquired into would appear to require. He shall require the registered medical practitioner to record in writing the results of such examination.

Art. 35. — *Power of Court to record Statements and Confessions*

(1) Any court may record any statement or confession made to it at any time before the opening of a preliminary inquiry or trial.

(2) No court shall record any such statement or confession unless, upon questioning the person making it, it ascertains that such person voluntarily makes such statement or confession. A note to this effect shall be made on the record.

(3) Such statement or confession shall be recorded in writing and in full by the court and shall thereafter be read over to the person making the statement or confession, who shall sign and date it. The statement shall then be signed by the president of the court.

(4) A copy of the record shall then be sent to the court before which the case is to be inquired into or tried, and to the public prosecutor.

. . .

TITLE II. — STEPS TO BE TAKEN PENDING INVESTIGATION

Chapter 1

Arrest

Section 1. — Arrest without Warrant

Art. 49. — *Principle*

Save as is otherwise expressly provided, no person may be arrested unless a warrant is issued and no person may be detained in custody except on an order by the court. An arrest without warrant may only be made on the conditions laid down in this Section.

Art. 50. — *Arrest without Warrant in Flagrant Cases*

Any private person or member of the police may arrest without warrant a person who has committed a flagrant offence as defined in Art. 19 and 20 of this Code, where the offence is punishable with simple imprisonment for not less than three months.

Art. 51. — *Arrest without Warrant by the Police*

(1) Any member of the police may arrest without warrant any person:

(*a*) Whom he reasonably suspects of having committed or being about to commit an offence punishable with imprisonment for not less than one year;

(*b*) Who is in the act of committing a breach of the peace;

(*c*) Who obstructs a member of the police while in the execution of his duties or who has escaped or attempted to escape from lawful custody;

(*d*) Who has evaded or is reasonably suspected of having evaded police supervision;

(*e*) Who is reasonably suspected of being a deserter from the armed forces or the police forces;

(*f*) Who has in his possession without lawful excuse housebreaking implements or weapons;

(*g*) Who has in his possession without lawful excuse anything which may reasonably be suspected of being stolen or otherwise obtained by the commission of an offence;

(*h*) Who may reasonably be suspected of being a dangerous vagrant within the meaning of art. 471, Penal Code.

(2) Nothing in this Article shall affect the powers of other government officers to make an arrest without warrant under special provisions of other laws.

. . .

Section 3. — General Provisions

. . .

Art. 59. — *Detention*

(1) The court before which the arrested person is brought (art. 29) shall decide whether such person shall be kept in custody or be released on bail.

(2) Where the police investigation is not completed the investigating police officer may apply for a remand for a sufficient time to enable the investigation to be completed.

(3) A remand may be granted in writing. No remand shall be granted for more than fourteen days on each occasion.

Chapter 2

REMAND

. . .

Art. 61. — *Detained Persons' Right to consult Advocate*

Any person detained on arrest or on remand shall be permitted forthwith to call and interview his advocate and shall, if he so requests, be provided with the means to write.

. . .

Chapter 3

BAIL

Section 1. — Bail Bond

Art. 63. — *Principle*

(1) Whosoever has been arrested may be released on bail where the offence with which he is charged does not carry the death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offence was committed dying.

(2) No person shall be released on bail unless he has entered into a bail bond, with or without sureties, which, in the opinion of the court, is sufficient to secure his attendance at the court when so required to appear.

(3) Nothing in this article shall affect the provisions of art. 67.

. . .

Art. 67. — *Bail not Allowed*

An application for bail shall not be allowed where:

(*a*) The applicant is of such nature that it is unlikely that he will comply with the conditions laid down in the bail bond;

(*b*) The applicant, if set at liberty, is likely to commit other offences;

(*c*) The applicant is likely to interfere with witnesses or tamper with the evidence.

. . .

Book III. — Preliminary inquiry and committal for trial

Art. 80. — *Principle*

(1) Where any person is accused of an offence under art. 522 (homicide in the first degree) or art. 637 (aggravated robbery) a preliminary inquiry shall be held under the provisions of this book:

Provided that nothing in this article shall prevent the High Court from dispensing with the holding of a preliminary inquiry where it is satisfied by the public prosecutor that the trial can be held immediately.

(2) Where any person is accused of any other offence triable only by the High Court no preliminary inquiry shall be held unless the public prosecutor under art. 38 (*b*) so directs.

(3) The provisions of this book shall not apply to offences coming within the jurisdiction of the High Court which have been committed by young persons.

. . .

Book IV. — Trial

TITLE I

Chapter 2

PLACE OF TRIAL

Art. 99. — *Ordinary Place of Trial*

Every offence shall be tried by the court within the local limits of whose jurisdiction it was committed.

. . .

Chapter 4

THE TRIAL

Section 1. — The hearing

. . .

Art. 125. — *Bench Warrant*

Where an accused person or a witness, who has been duly summoned and there is proof of service of such summons, has failed to appear as required, the court may issue a bench warrant and such accused person or witness shall be brought before the court by the police.

. . .

Art. 127. — *Attendance of Accused*

(1) The accused shall appear personally to be informed of the charge and to defend himself. When he is assisted by an advocate the advocate shall appear with him.

(2) The accused shall be adequately guarded and shall not be chained unless there are good reasons to believe that he is dangerous or may become violent or may try to escape.

. . .

Art. 132. — *Plea of Accused*

(1) After the charge has been read out and explained to the accused, the presiding Judge shall ask the accused whether he pleads guilty or not guilty.

(2) Where there is more than one charge the presiding Judge shall read out and explain each charge one by one and shall record the plea of the accused in respect of each charge separately.

(3) The plea of the accused shall be recorded as nearly as possible in the words of the accused.

Art. 133. — *Plea of not guilty*

(1) Where the accused says nothing in answer to the charge or denies the charge, a plea of not guilty shall be entered.

(2) Where the accused admits the charge with reservations, the court shall enter a plea of not guilty.

. . .

Section 2. — Evidence and Judgement

Art. 136. — *Opening of Case and Calling of Witnesses for Prosecution*

. . .

(2) The public prosecutor shall then call his witnesses and experts, if any.

. . .

(3) They shall be examined in chief by the public prosecutor, cross-examined by the accused or his advocate and may be re-examined by the public prosecutor.

. . .

Art. 140. — *Absence of Cross-examination*

Failure to cross-examine on a particular point does not constitute an admission of the truth of the point by the opposite party.

. . .

Art. 142. — *Opening of Case for Defence*

(1) Where the court finds that a case against the accused has been made out and the witnesses for the injured party, if any, have been heard it shall call on the accused to enter upon his defence and shall inform him that he may make a statement in answer to the charge and may call witnesses in his defence.

(2) The accused or his advocate may then open his case and shortly explain his defence stating the evidence he proposes to put forward. He shall then call his witnesses and experts, if any, who shall be sworn or affirmed before they give their testimony.

(3) The witnesses for the defence may be called in any order:

Provided that, where the accused wishes to make a statement, he shall speak first.

The accused may not be cross-examined on his statement but the court may put questions to him for the purpose of clarifying any part of his statement.

. . .

Art. 149. — *Judgement and Sentence*

(1) When the final addresses including the addresses under art. 156, if any, have been concluded, the court shall give judgement. The judgement shall be dated and signed by the judge delivering it. The judgement shall contain a summary of the evidence, shall give reasons for accepting or rejecting evidence and shall contain the provisions of the law on which it is based and, in the case of a conviction, the article of the law under which the conviction is made.

(2) Where the accused is found not guilty, the judgement shall contain an order of acquittal and, where appropriate, an order that the accused be released from custody.

(3) Where the accused is found guilty, the court shall ask the prosecutor whether he has anything to say as regards sentence by way of aggravation or mitigation. The prosecutor may call witnesses as to the character of the accused.

(4) Where the prosecutor has made his submissions on sentence the accused or his advocate shall be entitled to reply and may call witnesses as to character. Where the accused does not admit any fact regarding his antecedents, the prosecutor shall be required to prove the same.

(5) The court shall then pass sentence and shall record the articles of the law under which the sentence has been passed.

. . .

(7) After delivery of judgement, the prosecutor and the accused shall be informed of their right of appeal.

. . .

TITLE II. — SPECIAL PROCEDURES

. . .

Chapter 2

Procedure in Cases of Petty Offences

Art. 167. — *Summoning of Accused*

(1) Where a petty offence has been committed, the public or private prosecutor shall apply to the court having jurisdiction to summon the accused to appear.

(2) The application and the summons shall contain the name of the accused, the circumstances of the petty offence committed and the law and articles of the law to be applied.

. . .

Art. 170. — *Procedure where Accused appears before the Court charged with Petty Offence*

(1) Where the accused does not endorse on the summons that he pleads guilty, he shall appear on the day and at the time fixed for the hearing.

(2) The prosecutor and the accused shall take such steps as are necessary to secure the attendance of their witnesses, if any.

(3) The procedure shall be oral. The court shall only record the salient part of the evidence of each

witness. It shall give judgement orally recording briefly the reasons for its judgement and mentioning the provisions of the law under which judgement is given.

(4) Where the accused fails without good cause to appear in private proceedings, the court shall give judgement forthwith.

. . .

[Book IV, title II, chapter 3, deals with procedure in cases concerning young persons. Book V, title I, concerns appeals, and book VI, execution of sentences.]

. . .

FEDERAL REPUBLIC OF GERMANY

THE PROTECTION OF HUMAN RIGHTS IN 1961[1]

A SURVEY OF LEGISLATION, JUDICIAL DECISIONS AND INTERNATIONAL AGREEMENTS

CONTENTS

1. Protection of human dignity
2. The principle of equal treatment
3. Protection against arbitrary deprivation of liberty
4. The right to physical integrity
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6. Due process in criminal proceedings
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8. Deportation; extradition; asylum
9. Capacity to marry; protection of the family
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12. The right to the free expression of opinion and freedom of information
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1. PROTECTION OF HUMAN DIGNITY

(Universal Declaration of Human Rights, preamble and article 1)

The precept of respect for the dignity of man fundamental to the German legal order (article 1 of the Basic Law) makes itself felt, because of its manifold implications, in many different ways. While it applies primarily to the State, it is also to be observed, as is shown by the decision mentioned below, in interpreting civil rights as between private individuals.

A bank manager felt that his reputation had been injured by misleading Press reports. The periodical having ignored his request for publication of a correction, he brought an action. The Higher Administrative Court at Cologne, which heard the case, ruled (10 April 1961, *NJW* 1962, p. 48) that the chief editor had unlawfully infringed the complainant's general rights as an individual. The rights of the individual had as their basis the inviolability of human dignity. Within the bounds of the moral and social order, no one might be impeded in the free development of his personality. The values at stake were basic to the legal order, and must be respected by everyone in the legal relations of private individuals as in other spheres. It followed from these general rights of the individual that — in keeping with the principle of *audiatur et altera pars* — there was a right to a hearing through the publication of a rebuttal in the periodical.

The right to a hearing as a corollary of human dignity was also considered by the Court of Appeal [Kammergericht] at Berlin (24 August 1961, *NJW* 1961, p. 2166) and, in a decision of fundamental importance, by the Federal Court of Justice (22 March 1961 *BGHZ* 35, p. 1). On the basis of an official medical certificate, a guardianship court had appointed a curator for a women whose mental infirmity rendered her incapable of managing her own affairs. Departing from its previous decisions, the Federal Court of Justice allowed the complaint lodged by the woman herself. It followed directly from the constitutionally guaranteed inviolability of human dignity, the court held, that a person of full age lacking legal capacity and, consequently, capacity to be a party in a suit, was entitled to lodge a legally effective complaint on his own behalf against an order placing him under curatorship.

The dignity of the person meant that man was made to decide his own destinies and influence the

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[1] Report prepared by Dr. Paulus Andreas Hausmann, lawyer, *Referent* at the Max-Planck Institute for Foreign Public Law and International Law, Heidelberg.

ABBREVIATIONS

BGBl	*Bundesgesetzblatt* (official gazette of the Federal Republic); parts I and II
BGHSt	*Entscheidungen des Bundesgerichtshofs in Strafsachen* (decisions of the Federal Court of Justice in criminal cases)
BGHZ	*Entscheidungen des Bundesgerichtshofs in Zivilsachen* (decisions of the Federal Court of Justice in civil actions)
BVerfGE	*Entscheidungen des Bundesverfassungsgerichts* (decisions of the Federal Constitutional Court)
BVerwGE	*Entscheidungen des Bundesverwaltungsgerichts* (decisions of the Federal Administrative Court)
DÖV	*Die Öffentliche Verwaltung* (Public Administration)
NJW	*Neue Juristische Wochenschrift*
SaBL	*Sammelblatt für Rechtsvorschriften des Bundes und der Länder* (Collected Statutes of the Federation and the Länder)

world around him in freedom. That remained true without any limitation, of a person handicapped by mental infirmity. His human dignity was not forfeit, and therefore he could not be reduced to the level of a mere object of judicial proceedings. On the contrary, he was entitled to a modicum of personal initiative in any proceedings which affected his sphere of life. The fundamental right of human dignity implied the right to a judicial hearing. The individual must therefore—whether or not this was prescribed in the rules of procedure—be given the opportunity to state his views before a curatorship order was made on the ground of his infirmity. Once the order had been made, the human dignity of the ward was not adequately safeguarded by the mere fact that the curator was required to protect his interests. The right to a lawful hearing was not met unless a ward of full age was conceded a right of defence exercisable by him personally.

In criminal law, the fundamental right to respect for human dignity means that the punishment must bear a reasonable relation to the gravity of the offence. In every case, the judge must adapt the penalty to the degree of individual guilt.

Some doubts have been expressed, in the professional literature and in court decisions, as to whether the provisions of article 401 of the Reich Taxation Ordinance are in keeping with the principles of the rule of law. The article provides for the confiscation of taxable goods in respect of which payment of taxes has been evaded. If the goods cannot be confiscated, an equivalent fine is imposed. Such confiscations and fines are based solely on the value of the confiscable goods, so that no allowance can be made for the gravity of the offence and the degree of culpability in individual cases. Although this clause, with its lack of regard for special circumstances, indiscriminately results in harsh and indeed often crushing punishment, article 401 was held to be constitutional by the Federal Court of Justice (17 October 1961, *NJW* 1962, p. 212) and by the Bavarian Constitutional Court (3 July 1961, *NJW* 1961, p. 1619). In accordance with the principles of the rule of law, however, it was amended by the Taxation Amendment Act of 13 July 1961 (*BGBl* 1961 I, p. 981). Confiscation is now no longer mandatory, but must be decided by the judge at his discretion.

2. THE PRINCIPLE OF EQUAL TREATMENT

(Universal Declaration, articles 2 and 7)

The principle of equality again engaged the close attention of the courts.

The Federal Government has statutory powers to make regulations adjusting pensions awarded under the Federal Restitution Act to current civil service salaries. The Federal Constitutional Court agreed (13 December 1961, *NJW* 1962, p. 147) that the powers of the legislator were in principle wide. The freedom of action of the regulation-making executive, on the other hand, was strictly limited by the enabling legislation, even where the latter did not expressly require regulations to be made. The precept of equality debarred the Government from using the powers conferred on it in respect of one group of pensions only, and not generally.

In a number of decisions the courts endeavoured, taking as their basis the legalities inherent in the cases themselves, to define the scope of the legislator's powers in treating matters as equal or unequal (Federal Constitutional Court, 29 November 1961, *NJW* 1962, p. 99: application of the Shop Hours Act to bookshops; Federal Constitutional Court, 29 November 1961, *NJW* 1962, p. 100: application of the Shop Hours Act to railway station pharmacies; Federal Constitutional Court, 16 May 1961, *NJW* 1961, p. 1395: supplementary turnover tax on the textile industry; *Land* High Court of Bavaria, 24 August 1951, *NJW* 1961, p. 2123: granting of discounts by department stores; Federal Finance Court, 11 July 1961, *NJW* 1961, p. 2135: admissibility of the branch establishments tax). Some outstanding decisions which deserve notice are mentioned below.

On the denationalization of the Volkswagen motor works, the legislator granted a preferential right to acquire shares to lower-income sections of the population, and in particular to employees of the works. The Federal Constitutional Court ruled (17 May 1961, *BVerfGE* 12, p. 354) that, where State assistance and welfare activities were concerned, the preferential treatment of individual groups of the population was legitimate, provided that the category of privileged persons was defined on the basis of suitable factors. So far as the denationalization of the Volkswagen works was concerned, the favoured category had not been predetermined by the objective circumstances of the case. The privileged treatment accorded to lower-income groups was justified by the fact that it offered encouragement to acquire shares to sections of the people who hitherto had had no experience of those instruments of the contemporary economy. The preference given to employees, on the other hand strengthened their sense of identification with the Volkswagen works and promoted the idea of "partnership". Thus, the approach embodied in the Denationalization Act was based on considerations of justice.

The Federal Constitutional Court was called upon to decide (9 May 1961, *BVerfGE* 12, p. 326) whether the fact that judges of the Higher Administrative Court in North Rhine-Westphalia received larger salaries, under a special law, than the corresponding judges of the Land High Court contravened the principle of equality. The court conceded that this differentiation in the remuneration of judges was not in harmony with the tendency of the Basic Law, which was to place the various branches of the judicial system, as a matter of principle, on an equal footing. In view of the traditionally special character

of the Higher Administrative Court, however, to provide for differential remuneration was not manifestly arbitrary. The legislator was allowed considerable latitude in applying the principle of equality, and the Constitutional Court was entitled only to satisfy itself that he had not overstepped the extreme bounds of this legislative discretion. Since, in any event, other objective reasons could be found why judges of the Higher Administrative Court should receive better treatment under the salaries regulations than Land High Court judges, the regulations were not positively incompatible with the principle of equality. This decision, which has not gone unchallenged, indicates how narrow are the limits within which the Federal Constitutional Court must operate in testing a statute by the yardstick of the principle of equality. The statute is void only if it is manifestly arbitrary.

The Division for Legal Profession Affairs of the Federal Court of Justice (20 March 1961, *BGHZ* 34, p. 382) saw no arbitrary discrimination in the fact that the Federal Ordinance on Attorneys categorically prohibited admission to the legal profession on certain statutorily defined grounds, whereas in the case of admitted lawyers the revocation of the licence to practise on the same grounds was only optional. To revoke a licence already granted was a much more serious matter for the person affected than to refuse to admit him from the start. The differential treatment was justified by different circumstances.

The Federal Administrative Court (8 March 1961, *NJW* 1962, p. 265) upheld article 158 of the Federal Employees Act, under which pension and maintenance benefits, etc., are withheld to the extent that the beneficiary is in receipt of other emoluments derived from employment in the public service, though income from other sources is disregarded. The Court held that this differential treatment was justified in view of the fact that in the provision of maintenance public funds deriving in any way from a single source should not be doubly burdened.

The same court took the view (25 January 1961, *DÖV* 1961, p. 391) that it was an offence against the principle of equality to deny winter and Christmas relief to an unemployed person because he belonged to a communist-led party. The principle of equality proclaimed in article 3 of the Basic Law required that no one should be prejudiced because of his political opinions — a term which meant not only a person's inward convictions, but also his active manifestation of those convictions and his membership of and activity in political parties, provided that this manifestation of political convictions did not recognizably overstep the exercise of civic rights.

The Land Court at Berlin held (10 July 1961, *NJW* 1962, p. 207), that the principle of equality was a supreme value which could not be divorced from any sphere of community life. In public as well as civil law, it constituted the guide-line and the bench-mark by reference to which broad concepts were to be interpreted and developed and the general clauses were to be given their specific content. Consequently, the courts must apply the principle of equality in ruling on cases involving possible abuses of monopoly — such abuses constituting, according to established precedent, a breach of public policy rendering the monopolist liable to payment of compensation where the public interest required that everyone should have a share in the goods distributed by the enterprise. This applied not only to business enterprises but also to cultural associations.

As will be seen from section 14 below, the principle of equality is also operative in the realm of labour legislation.

3. PROTECTION AGAINST ARBITRARY DEPRIVATION OF LIBERTY

(Universal Declaration, articles 3, 4 and 9)

Under article 104 of the Basic Law, deprivation of liberty is subject to strict legal safeguards; only a judge may decide on the admissibility of a deprivation of liberty, and any person provisionally detained on suspicion of having committed a punishable offence must be brought before a judge, at the latest on the day following the arrest. Practical difficulties arise in fulfilling this requirement within the prescribed brief time-limit on board ships on the high seas. For this reason, the Armed Services Disciplinary Regulations have been supplemented by an Act of 9 June 1961 (*BGBl* 1961, I, p. 689), which provides that a person provisionally detained for a breach of discipline on a ship outside the territorial waters of the Federal Republic may be held in custody without a judge's warrant of arrest, provided that, and for such time as, he constitutes a direct danger which cannot be averted in any other way. This clause corresponds in substance to the provisions of article 106 of the Seamen's Act (*BGBl* 1957 II, p. 713), which governs the merchant marine.

A sentence of detention may also be imposed without judicial confirmation where military discipline cannot be maintained in any other way. The Bundestag rejected as unjustified objections raised against this clause on the basis of article 104 of the Basic Law (Bundestag, third session, 2621). Since there were statutory rules narrowly circumscribing the conditions in which such deprivation of liberty might be imposed without a court order on board a ship at sea, where this action appeared urgently necessary in the circumstances, there was no possibility of abuse.

As mentioned in last year's report, a guardian may not commit a legally incapacitated person of full age to an institution without court authorization (Federal Constitutional Court, 10 February 1960, *BVerfGE* 10, p. 302). In line with this decision of

the Federal Constitutional Court, the Family Code Amendment Act of 11 August 1961 (*BGBl* 1961 I, p. 1221), which came into force on 1 January 1962, provides that the committal to an institution of either an adult or a minor ward by the guardian must be authorized by the guardianship court.

The principles developed by the Constitutional Court with regard to the committal of wards to institutions by their guardians have been applied by the Land High Court of Bavaria (14 November 1961, *NJW* 1962, p. 677; see also Court of Appeal at Berlin, 1 June 1961, *NJW* 1961, p. 2115) to cases in which a curator [Gebrechlichkeitspfleger] appointed for a physically or mentally defective person and having the authority to prescribe the latter's place of residence places him in an institution. Although a person of full age for whom a curator has been appointed — unlike a legally incapacitated person — retains disposing capacity, the court ruled, not without encountering criticism, that the objection of such a person to placement in an institution, where this has been judicially authorized, could not be entertained.

Under article 1872 of the Civil Code, the family council has the same rights and obligations as the guardianship court. This, however, did not, the Land High Court at Hamm ruled (12 June 1961, *NJW* 1961, p. 1727), means that the committal to an institution of a person of full age must be approved by the family council, acting in lieu of the guardianship court. Any encroachment upon the fundamental right of freedom of the individual was reserved, under article 104 of the Basic Law, to an independent and disinterested court of law; and the authorization of a person's committal to an institution by the family council did not adequately safeguard that constitutional guarantee of freedom.

The Land High Court of Bavaria (7 February 1961, *NJW* 1961, p. 971) held that it followed from the fundamental right to the free development of the personality laid down in article 2 of the Basic Law that the individual could not in general be directly compelled to maintain himself in good health. Only where the sickness of the individual represented a threat to the community was the State entitled to intervene for the protection of the public. Consequently, a person of unsound mind or an alcoholic could not justifiably be detained in a closed institution on the mere ground that he was a danger to his own health or property; the threat to his health and property resulting from his sickness must at the same time affect public safety and order.

Difficulties frequently arise in determining when, in the interest of the proper administration of justice, ground exists for ordering detention pending investigation — an infringement of the right of freedom of the individual. Under aricle 112 of the Code of Criminal Procedure, a person strongly suspected of an offence may be detained pending investigation only if there is reason to suspect that he may abscond or if definite facts exist to indicate a danger of his obstructing the investigation — for instance, by destroying evidence of the offence.

The Land High Court at Cologne (21 June 1961, *NJW* 1961, p. 1880) held that a danger of obstruction of justice could be presumed to exist where a Communist was arrested for agitation endangering the State; the mere fact of his membership of a prohibited group engaged in conspiracy and trained to operate in secret justified that conclusion. Even in the absence of any actual preparations for or attempts at the deliberate obstruction of justice, that membership constituted a "definite fact" which sufficed to raise a presumption of such a danger.

The Land High Court at Hamburg (28 July 1961, *NJW* 1961, p. 1881) considering the grounds justifying the presumption of a danger of escape, decided that these were necessarily less stringent where a serious crime had been committed than in cases of lesser moment. It based its ruling on the argument, not that the danger of escape was greater in serious cases because of the severity of the penalty, but — and this point has not gone uncriticized — that it would outrage the sense of justice of all right-minded persons if the accused should evade punishment.

4. THE RIGHT TO PHYSICAL INTEGRITY

(Universal Declaration, articles 3 and 5)

The Federal Infectious Diseases Act of 18 January 1961 (*BGBl* 1961 I, p. 1012) which came into force on 1 January 1962, establishes, for the first time, uniform regulations for the whole territory of the Federal Republic of Germany with respect to inoculations and measures of compensation for injuries resulting from inoculation. The Act authorizes compulsory inoculation, in a strictly limited range of cases, against a number of epidemic diseases. The measures of compensation are intended to provide redress appropriate to the sacrifice made in the public interest.

The Act of 10 March 1961 concerning the use of direct force in the exercise of public authority by executive officers of the Federal Republic (*BGBl* 1961, I, p. 165), which came into force on 1 April 1961, gives the competent federal officers power to use effective means of coercion in protecting the legal order and general security of the Federal Republic. At the same time it defines — on the basis of the principle of reasonableness — the conditions for the use of handcuffs or firearms in terms so precise that the use of direct force in any individual case can be tested under administrative law.

5. JUDICIAL AND ADMINISTRATIVE GUARANTEES OF DUE PROCESS

(Universal Declaration, articles 8 and 10)

The Basic Law lays the onus of regulating the legal status of the federal judiciary upon the legis-

lator. The legislator discharged this responsibility by the Judiciary Act of 8 September 1961 (*BGBl* 1961 I, p. 1665), which came into force on 1 July 1962. The main purpose of the Act is to safeguard and develop the independence of the judiciary. The judge, who is subject only to the law, is protected against undue interference by the judicial administration through the medium of a newly established professional tribunal.

The principle of the independence of the judiciary was to be safeguarded in legislation relating to judges' stipends as in other spheres, the Federal Constitutional Court held (24 January 1961, *BVerfGE* 12, p. 81), in reviewing a complaint against a stipends law. Increments in judges' stipends must not be left to the discretion of the executive, but must be regulated by statute.

The Federal Court of Justice (8 February 1961, *BGHZ* 34, p. 260) confirmed earlier decisions to the effect that auxiliary judges must be appointed only where there was a *temporary* need for additional judges which could not be met from regular sources. In the interest of judicial independence, in any event, the criterion of temporary need must be strictly interpreted.

The Federal Ordinance on Attorneys provides for the establishment of divisions for legal profession affairs in the Land high courts and in the Federal Court of Justice. In the Land high courts this division, known as the Court of Honour [Ehrengerichtshof], consists of an attorney, who acts as president, two professional judges, and two attorneys acting as associate judges, the latter being appointed for terms of four years by the Land Department of Justice.

The Federal Administrative Court held (13 October 1961, *NJW* 1961, p. 2368) that the Court of Honour was a genuine court which satisfied the requirements of the rule of law. The State had an adequate share in its constitution, and a sufficient number of professional judges took part in its judgements.

Whereas decisions in the regular divisions of the Federal Court of Justice are taken by five judges, the Court's Division for Legal Profession Affairs consists of the President of the Federal Court of Justice as President, together with three members of the Federal Court of Justice and three attorneys. This difference, the Division for Legal Profession Affairs ruled (20 March 1961, *BGHZ* 34, p. 382), did not make the division an unconstitutional extraordinary court. The question whether or not a court was an extraordinary court did not depend on any peculiarities in its constitution, organization, functions or procedure. The decisive factor in determining the status and character of a court was, rather, the manner in which the legislator had fitted it into the judicial system. Despite its singularities — which, however, were based on objective considerations — the Division for Legal Profession Affairs remained a specialized division forming part of the Federal Court of Justice.

The Bavarian Constitutional Court (16 January 1961, *DÖV* 1961, p. 263) had occasion to consider the principle of free access to the courts. Under article 120 of the Bavarian Constitution, only residents of Bavaria are entitled to submit constitutional complaints. Although this means that aliens living abroad have no right of complaint, the Court held that this provision did not deprive them of the due process to which they were entitled under the rule of law, since they could bring complaints and apply for legal remedies before the ordinary courts. A constitutional complaint was not a legal remedy comparable to appeal. The Constitutional Court was not required to test decisions of the courts generally; its function was merely to determine whether any subjective constitutional right had been violated. Consequently, the category of persons entitled to submit constitutional complaints could be limited, on the basis of objective considerations, without any infringement of the principle of free access to the courts. The European Convention for the Protection of Human Rights and Fundamental Freedoms, it had to be noted, imposed no obligation to provide, apart from the remedies normally available before the ordinary courts, an additional recourse by way of constitutional complaint.

The Higher Administrative Court at Münster had to deal with a case concerning postal charges amounting to DM 0.20. Despite the triviality of the value in controversy, the court held (28 February 1961, *NJW* 1961, p. 1643) that the plaintiff was entitled to due process of law. Under article 19 of the Basic Law, any person whose rights are infringed by public authority has the right of recourse to the courts. The court took the view that this guarantee of recourse to the courts implied a broadly interpretable subjective right at public law to the comprehensive protection of the law against the public authority. However, that right was not unlimited. In particular, article 19 of the Basic Law did not abrogate the traditional principle of adjective law that procedural rights must not be abused. The right to due process must be denied where it was used vexatiously.

It follows from the right of the citizen to bring before the courts any action by the public authorities which infringes his legal rights that reasons must be given for such action; only then can the citizen defend himself appropriately. The Federal Administrative Court commented on this rule in its decision of 23 January 1961 (*NJW* 1961, p. 1321).

The general provisions of a statute aimed at building up the forces of the Bundeswehr called for the transfer to the latter of personnel of the Federal Frontier Guard. Contrary to these provisions, the transfer of a frontier guard officer was vetoed by the Minister for Defence. The statute authorizes such

action in individual cases, and the Minister gave no reason for his refusal. The court held that the Minister's discretionary powers to refuse the statutory transfer were absolute. Since no one had any claim to be accepted into the regular Bundeswehr forces — any more than into the public service in general — there was no obligation to give reasons for a negative decision. It was a general principle that a public employer was not bound to disclose to an applicant the reasons for his non-appointment to the public service.

The personal assessment of the Federal Minister for Defence was subject to judicial review only with a view to ensuring that the statutory procedure had been observed and that the assessment had not been based on erroneous facts or on considerations repugnant to the law.

A finance court based one of its decisions on tax investigation records which the revenue office had not allowed the taxpayer to inspect. The decision was quashed by the Federal Finance Court (10 November 1961, *NJW* 1962, p. 759). It was incompatible with the taxpayer's right of due process that the court might be influenced by documents — even if they were not mentioned in its judgement — which had been withheld from the taxpayer's scrutiny and against the influence of which he was powerless. Consequently, no documents might be made available to the court unless they could also be shown to the taxpayer. This equal treatment of the parties followed from the position of the taxation courts as part of a system based on the rule of law.

Everyone is entitled to a hearing before the courts in accordance with the law. This principle, laid down in article 103 of the Basic Law, is no mere technical matter of procedure arising as a by-product of the process of judicial determination of the facts. In the final analysis, the right has its roots not in the principle of the rule of law but — as was emphasized by the Federal Court of Justice in the decision mentioned in section 1 above (22 March 1961, *BGHZ* 35, p. 1) — in the precept embodied in article 1 of the Basic Law that the dignity of every human being must be respected. No one may be reduced to the level of a mere object of a court decision. Since human dignity must be respected not only by the judiciary but by all state authorities, the right to a hearing applies to all acts of State authority.

The right to a lawful hearing means primarily that each party must be given the opportunity to express himself with specific reference to the facts before a judicial decision is pronounced. There is lively controversy as to whether the right extends to legal arguments, or indeed implies that the court must enter into a "legal dialogue" with the parties. The following decision is of interest in this connexion: the Federal Administrative Court (First Division, 4 February 1961, *NJW* 1961, p. 891; *DÖV* 1961, p. 798) reversed the decision of an appeal court which had departed from its own consistent precedents without previously informing the plaintiff of the possibility of this change, which worked to his disadvantage. The effect of this unexpected departure, the Federal Administrative Court pointed out, was to restrict the plaintiff's exercise of his right of lawful hearing.

In contrast to this stands another decision of the Federal Administrative Court (Second Division, 27 April 1961, *NJW* 1961, p. 1548). Here the court based its ruling on the argument that the right to a lawful hearing extended in principle solely to facts and evidence. Consequently, it was infringed only in cases where the decision was based on facts or evidence on which the parties had had no opportunity to express their views. On the other hand, the fundamental right to a lawful hearing imposed no obligation on the courts to bring to the attention of the parties all the legal considerations which might influence the decision. If the court failed to do so, it was not the fundamental right to a lawful hearing that was infringed, but the general duty of the judge to discuss and interrogate — a legal obligation lacking constitutional rank.

In its decision of 13 January 1961 (*BVerwGE* 11, p. 328), the Federal Administrative Court dealt with the question whether a plaintiff's right to a lawful hearing was abridged by the fact that he was serving a long term of imprisonment for a serious offence.

The court held that, in principle, the form in which a lawful hearing was to be granted was determined by the type of procedure applicable to the case. Accordingly, the plaintiff, although his conviction had deprived him of freedom of movement, was fully entitled to be heard before the administrative court. While it was true that he could present his views in writing from prison without hindrance, that would not satisfy the right to an oral hearing which existed in proceedings under administrative law. The plaintiff must be given the opportunity at least to make an oral statement in the presence of a member of the court who was competent to judge his complaint. Of course, the right to a lawful hearing must not be abused; no one had any right to submit, without limitation of time, facts manifestly irrelevent to the determination of the case before the court or to advance legal opinions that were clearly extraneous.

The Bavarian Constitutional Court (30 June 1961, *NJW* 1961, p. 1523) examined the position of a party in a case argued by counsel. Generally speaking, the right to a hearing was satisfied when counsel was heard by the court. If, however, a party had made application to address the court in person, as well as through counsel, he must be allowed to do so. Even in cases argued by counsel, factual statements by the parties must be considered by the court. If the court took into consideration facts to which

counsel was unable, unaided by his client, to address himself, without first allowing the client to speak or at least giving him the opportunity to instruct his counsel, the principle of a lawful hearing was thereby infringed. Where there was any evidence to suggest that but for that error the court would have reached a different decision, the judgement must be quashed.

While all rules of judicial procedure issued since the entry into force of the Basic Law give the parties the right to oral proceedings, no such right exists in proceedings before the finance courts. The Federal Finance Court decided (17 October 1961, *NJW* 1962, p. 839) that this rule did not infringe the constitutional right to a lawful hearing. Whether or not to grant an application for oral proceedings lay within the discretion of the finance courts. Nevertheless, it followed from the development of the rule of law since 1945 that the freedom of the finance courts to reject applications for oral proceedings was very strictly circumscribed. An application could be rejected only if the court found for the taxpayer on all points or if — the facts not being in dispute — the taxpayer was simply challenging established precedents.

6. DUE PROCESS IN CRIMINAL PROCEEDINGS

(Universal Declaration, articles 10 and 11)

The right to a lawful hearing is of particular importance in criminal proceedings.

A defendant who had been interrogated three weeks after the occurrence of the minor traffic offence with which he was charged could not remember any details of the incident in question. Although the defendant had been offered the opportunity to be heard on the issues of fact and of law, the court of first instance held that the right to a lawful hearing had been infringed, since the accused must have a reasonable possibility of defending himself and the delay in granting him a lawful hearing made it impossible for him to take an appropriate stand. The principle of a lawful hearing embraced the right to a prompt hearing.

This decision of the court of first instance was reversed by the Land High Court at Düsseldorf (3 May 1961, *NJW* 1961, p. 1734). The Land High Court took the view that the right to a lawful hearing was a "formal fundamental right". It was not inherent in that right that it must be granted within a specific lapse of time. It was part of the task of evaluating the evidence to decide what weight was to be given to statements by the accused which were imprecise owing to the passage of time.

After an accused person had been sentenced, his son, who was present in the courtroom, shouted: "This is monstrous". The court thereupon sentenced the son to a disciplinary fine, without first giving him the opportunity to explain his allegation of injustice. The Land High Court at Neustadt (29 September 1961, *NJW* 1961, p. 2320) annulled the fine as an infringement of the principle of lawful hearing which, generally speaking, was to be respected even in proceedings relating to disciplinary penalties. While normally the absence of a lawful hearing was rectified if the person concerned had access, through some legal remedy, to a higher court which was competent to rule on the facts, that did not apply — as the Land High Court particularly emphasized — to proceedings relating to disciplinary penalties. It was true that the offender could explain to the higher court that he had not intended by his exclamation to criticize the court; but the fact remained that he was no longer then in a position to make amends to the court by giving that assurance and, if necessary, by apologizing. Where disciplinary proceedings were concerned, the particular significance of a lawful hearing was that the person concerned must be given the opportunity to explain such an outburst and, if need be, to apologize. Since the disciplinary powers of the court which had imposed the fine had lapsed with the closing of the session, the case could not be returned to it in order to make good the offender's right to a lawful hearing.

The Federal Court of Justice established an important precedent with its ruling (13 June 1961, *NJW* 1961, p. 1781) on a question which has recently been the subject of hot debate, namely, whether television transmissions from the courtroom should be permitted. The principle of publicity laid down in article 169 of the Judicature Act did not — as the court pointed out in citing a 1957 decision concerning the permissibility of radio broadcasts (*BGHSt* 10, p. 202) — mean that it was permissible in principle to televise courtroom proceedings. The principle of publicity referred only to "direct" publicity; all it meant was that interested persons should be at liberty to be present in the courtroom, as available space permitted, and to register what took place there with their natural organs of sense. To permit television during a trial would expose the parties to an anonymous public. They would only too easily adjust their demeanour to suit the theatrical situation; as a rule, they would react differently under these circumstances than if they were free from such an influence. The reality of the courtroom would be flooded with effects quite alien to the court proceedings and their objective. That would be repugnant to the purpose of the proceedings, which was to elicit the truth and, on that basis, to reach a just decision.

In particular, the accused's final statement — one form of expression of the constitutional right to a lawful hearing — must be protected against any encroachment or abridgment likely to result from television. The Court reversed the decision of the assize court [Schwurgericht], on the ground that the possibility could not with certainty be excluded that but for the procedurally irregular influences

exerted on him the accused would have made further statements which might have influenced the decision in his favour. This ruling leaves open the further and likewise controversial question whether television transmission is permissible while judgement is being pronounced.

The principle of judicial independence relates primarily to the courts; however, under article 1 of the Federal Ordinance on Attorneys, dated 1 August 1959, it also applies to the position of the lawyer. The lawyer is an independent agent of the administration of justice. The Federal Court of Justice drew the logical conclusion from this principle in an important ruling (2 March 1961 *BGHSt* 15, p. 326) in which it refused a convinced Communist resident in East Berlin the right to appear before the Federal Court of Justice as defence counsel. The court emphasized that the issue was not one of political opinion pure and simple; defence counsel, as an agent of the administration of justice, must maintain his independence not only of the State but of any one whose interests might conflict with those of the accused in the criminal proceedings. It was incompatible with the rule of the independence of the legal profession that any influence should be brought to bear on defence counsel by outside political interests; if such influences were not ruled out the accused — in defiance of the basic rules of criminal proceedings — would be entirely at the mercy of extraneous interests. The paramount public interest in ensuring that in criminal proceedings the truth should be determined without any intervention of unlawful outside influences required the exclusion of defence counsel with communist affiliations. This imposed no significant restriction on the right of the accused to the free choice of defence counsel.

The importance of defence counsel in criminal proceedings was also emphasized by the Federal Court of Justice in a ruling dated 24 January 1961 (*BGHSt* 15, p. 306). In a complicated case involving difficult issues of fact and law, the absence during an essential part of the proceedings of defence counsel — whether retained by the accused or assigned to him by court — was absolute ground for appeal [Revision]. In a trial lasting several weeks, it was the duty of defence counsel to arrange for a substitute if he was temporarily unable to attend. If he failed to do so, however, he was still not debarred from appealing on the ground of his absence during the proceedings. Procedural law gave the accused an absolute right of appeal, without making it conditional on the forethought or good will of any other person, including even defence counsel himself. By appointing assigned counsel in addition to the attorney retained by the accused, the court could ensure the smooth progress of the proceedings.

Notice of appeal was given by a defendant against a judgement acquitting him on the ground of diminished responsibility. Leave to appeal was refused by the Federal Court of Justice (24 November 1961, *NJW* 1962, p. 404). The purpose of criminal proceedings, the Court pointed out, was to determine whether the State was entitled to punish the defendant. If, for any reason whatever, no punishable offence was established, the accused must be acquitted, and the purpose of the proceedings was thereby achieved. The accused might, of course, be anxious to win acquittal on a particular ground — on the ground of proven innocence, for instance, rather than of diminished responsibility. This desire, however, was in conflict with the interests of the administration of criminal justice. Given the need for economy in the conduct of proceedings, it sufficed to establish that the accused was not liable to punishment.

No legal remedy was available to the accused unless he was aggrieved by the operative part of the decision — i.e., the judgement. The accused could achieve no more favourable result than an acquittal. If he was acquitted, therefore, he could not appeal against the grounds on which the decision had been reached. To take any other view would be to divorce criminal proceedings from their purpose and to render the expeditious conduct of such proceedings more difficult.

The Bavarian Constitutional Court confirmed (3 July 1961, *NJW* 1961, p. 1619) that the Universal Declaration of Human Rights did not set forth positive rights that were directly enforceable in Member States, but only general guide-lines. A constitutional complaint against a sentence could not be grounded on the Universal Declaration.

The principle *ne bis in idem* — i.e., the prohibition of double jeopardy, is entrenched in article 103 of the Basic Law. The courts have endeavoured in their decisions to define more closely the range and compass of this fundamental right.

Article 8 of the Juvenile Courts Act provides that where a juvenile is sentenced to imprisonment he may not in addition be ordered to undergo supervised education [Fürsorgeeziehung]. Nevertheless, the Court of Appeal (6 February 1961) held that an order for supervised education could be made if the sentence of juvenile imprisonment was suspended for a probationary period.

The Land High Court at Neustadt ruled (19 September 1961, *NJW* 1961, p. 2126) that the administrative authorities could impose a fine for an administrative offence even though the offender had already been acquitted of a violation of the economic laws with respect to the same offence.

7. PROTECTION AGAINST INTERFERENCE WITH PRIVACY

(Universal Declaration, articles 6 and 12)

Both the Youth Welfare Act, as amended on 11 August 1961 (*BGBl* I, p. 1193) and the Federal Infectious Diseases Act of 18 July 1961 (*BGBl* 1961 I,

p. 1012) introduce restrictions, in clearly specified cases, on the principle of the inviolability of the home; the latter permits the authorities to enter private premises in order to ensure effective epidemic control, while the former empowers the Youth Welfare Officer to enter homes for minors for inspection purposes. In today's Federal Republic of Germany, founded as it is on the rule of law, personal privacy is threatened not so much by public authority as by the sensational press and unscrupulous advertising.

In its decision of 24 October 1961 (*NJW* 1962, p. 32) the Federal Court of Justice weighed the right of the individual to privacy against the interest of the public in being kept informed by the press. A newspaper published a truthful report describing a banking house's interests in the armaments business. The banker felt that his reputation had been damaged by the report. The court held that the publication of the report had not unlawfully violated the banker's rights as an individual; anyone taking an active part in business life laid himself open, in a democratic community, to criticism of his activities. The right to personal protection in business affairs was less extensive than the right of protection of privacy in the narrower sense. A truthful press report was not an unlawful violation of individual rights where it touched on a matter of legitimate interest to the public.

The scientific authority of a professor was invoked without any foundation in advertisements for a sexual potency tonic. The Federal Court of Justice held (19 September 1961, *NJW* 1961, p. 2059) that this was a violation of individual rights. Although the Civil Code, promulgated some sixty years ago, makes no provision for reparation in such cases of moral injury, the court awarded damages, basing its decision on the right of the individual to the free development of his personality (article 2 of the Basic Law) and on the precept of respect for the dignity of man (article 1 of the Basic Law).

8. DEPORTATION; EXTRADITION; ASYLUM

(Universal Declaration, articles 13 and 14)

The European Convention on Establishment of 1955 provides that nationals of any contracting party who have been lawfully residing for more than ten years in the territory of any other party may only be expelled for reasons of national security or for other particularly serious reasons relating to the maintenance of "ordre public". The Higher Administrative Court at Münster held (16 May 1961, *NJW* 1961, p. 1787) that the basic idea of the convention, which has not yet come into force for the Federal Republic of Germany, reflected a general principle of international law. While it was true that a State was free under international law to decide whether or not to accept an alien into its national territory, it needed quite exceptional grounds to justify a person's deportation after more than sixty years of residence.

Under article 25 of the Basic Law, the authorities in Germany as elsewhere are bound by this principle as by a general rule of international law.

By virtue of article 16 of the Basic Law persons persecuted for political reasons enjoy the right of asylum in the Federal Republic. In its decision of 11 January 1961 (*BGHSt* 15, p. 297), the Federal Court of Justice was confronted with the task of defining more closely what is meant by the expression "persons persecuted for political reasons", which is not defined in specific terms in either German or international law. The court agreed with the Federal Constitutional Court (*BVerfGE* 9, p. 180) that the expression was to be interpreted broadly. Extradition should be granted only where there was assurance that the victim of persecution would not after extradition be exposed for political reasons, either as part of the criminal proceedings or — an important point — otherwise, to measures endangering his person and life or limiting his personal freedom. That assurance could normally be regarded as present where the Government gave a formal guarantee that the person concerned would be punished only for the offence for which extradition was granted — and that in lawful measure and by due process of law.

9. CAPACITY TO MARRY; PROTECTION OF THE FAMILY

(Universal Declaration, article 16)

Under article 6 of the Basic Law, marriage and the family enjoy the special protection of the State. In 1957, the Federal Constitutional Court ruled on the basis of this constitutional guarantee of marriage and the family that the joint assessment of a married couple for income tax, which placed them at a disadvantage in relation to single persons, was unconstitutional (*BVerfGE* 6, p. 55). The Federal Constitutional Court has now twice ruled (21 January 1961, *BVerfGE* 12, pp. 151 and 180) that the joint assessment of a married couple for equalization tax also contravenes the guarantee of marriage and the family as an institution, in so far as it operates to the disadvantage of married persons. By interpreting the terms of the Equalization of Burdens Act in a manner compatible with constitutional requirements, the court brought them into harmony with the Basic Law.

The Federal Court of Justice has consistently ruled in such a manner as to make divorce more difficult than is prescribed by the letter of the law. By the Family Code Amendment Act of 11 August 1961 (*BGBl* 1961 I, p. 1221) which came into force on 1 January 1962, the legislator adapted the law relating to marriage to this extensive body of precedent. In future, under article 48 of the Marriage Act, the spouse wholly or mainly responsible for the

breakdown of the marriage will be unable to obtain a divorce if the petition is opposed by the other spouse, unless the latter displays no attachment to the marriage and no apparent readiness to continue it.

An Act of 12 April 1938 (*RGBl* 1938 I, p. 380) revoked the right of a husband under the law in force up to that time to acknowledge the legitimacy of a child by waiving his right to contest paternity.

The Land High Court at Cologne (26 May 1961, *NJW* 1961, p. 2312) declared the 1938 act void in that it disregarded the husband's natural right, which took precedence over any legal code, to recognize as legitimate any child born in wedlock. The court regarded this as a fundamental right following from the nature of the marriage community, in which it was the husband's task to defend the essential cohesion of the family unit against assault from without. Unlike the Federal Court of Justice (*BGHZ* 2, p. 130), the Land High Court took the view that this right of the husband, as an inalienable fundamental right, needed no statutory expression. The legislator, however, in recasting the law relating to contestation of paternity through the Family Code Amendment Act, mentioned above, had expressly declined to enact any provision of this nature.

In fulfilment of the constitutional duty to protect and promote marriage and the family, an act of 18 July 1961 (*BGBl* 1961 I, p. 1001) makes children's allowances payable in respect of the second and each subsequent child, instead of only the third and each subsequent child as hitherto. In view of the large number of foreign workers employed in the Federal Republic of Germany, this provision was extended, by ordinances of 7 December 1961, to cover employed persons who are domiciled, or whose children are domiciled, in Belgium, France, Greece, Italy, Luxembourg, the Netherlands or Spain (*BGBl* 1961, pp. 1997-1999).

10. PROTECTION OF PROPERTY

(Universal Declaration, article 17)

The protection of property guaranteed in article 14 of the Basic Law covers property in the widest sense, i.e. all valuable rights. Any State interference with such rights is expropriation, permissible only subject to compensation. The Federal Court of Justice had occasion to rule (23 January 1961, *BGHZ* 34, p. 188) on the question whether an order prohibiting the opening in a rural area of a prescription collection centre for a city pharmacy amounted to interference with an established and functioning enterprise, and consequently expropriation. The court held that from the business point of view the proposed collection centre was a separate arrangement, independent of the operation of the pharmacy. Accordingly, the order did not interfere with the running of the pharmacy, but merely prohibited a venture which was still in the preparatory stage. This did not constitute expropriation.

The 1948 Land Reform Act of Land Rhineland-Palatinate authorized the partial expropriation of large estates. Compensation was to be based on the productive value of the property expropriated, but the amount was to be so calculated as not to prejudice the benefit to the community at large which was the purpose of the expropriation.

The Rhineland-Palatinate Constitutional Court (19 June 1961, *NJW* 1961, p. 1963) was called upon to consider whether the amount of compensation as thus defined was reasonable. Under the constitution of Land Rhineland-Palatinate, compensation is reasonable if it makes due allowance both for the interests of the individual parties and for the public welfare. The court concluded from this phraseology that neither full compensation nor even, necessarily, the market value was payable; on the contrary, the legislator was allowed wide discretion in determining the amount of compensation. The sole question to be asked in testing the constitutionality of the Act was whether it ensured that the broadest limits were respected in striking an objective balance between the interests involved. The Court held that the compensation provisions of the Land Reform Act were constitutional, since they allowed of a solution reasonable and just to all concerned.

While article 14 of the Basic Law prohibits expropriation without compensation, it provides that the nature and the bounds of property rights may be determined by statute. In its decision of 28 February 1961 (*NJW* 1961, p. 2078), the Federal Administrative Court sought to define the distinction between the lawful limitation of property rights and expropriation. The court held that a special obligation rested upon the owner of a stock of vegetables, because of the potential threat of epidemic infection from such merchandise. Under the Infectious Diseases Act, the owner was required to allow the destruction of vegetables suspected of harbouring infection. Such destruction was not expropriation, but the corollary of an obligation imposed in the public interest on the ownership of vegetables.

The Federal Court of Justice ruled (6 March 1961, *BGHSt* 15, p. 399) that an order, under article 86 of the Criminal Code, for the confiscation of anti-constitutional writings in the possession of a person objectively involved in treason, did not infringe the guarantee of property contained in article 14 of the basic law. Even in a social order governed by the rule of law, property enjoyed constitutional protection only if, and to the extent that, it adapted itself to that order. The threat to the legal order which arose from anti-constitutional writings in the hands of a person disposed to commit an objective offence against the law justified confiscation without compensation.

The Federal Administrative Court, on the other hand, held (21 December 1961, *Bayerische Verwaltungsblätter* 1962, p. 144) that the confiscation under

article 23 of the Firearms Act of weapons in the possession of persons who had been prohibited from possessing firearms was unconstitutional. While the penal confiscation of articles used for criminal acts was lawful, a clause providing for confiscation without compensation in disregard of the principle of reasonableness infringed the very substance of article 14 of the basic law. If the permanent confiscation of the article appeared necessary as a precautionary measure, for the protection of the community, the constitutional guarantee of property required that the owner should at least be paid the amount realized from the sale of the weapon.

The income and property of the individual is affected by taxation. Although the redistribution of wealth by means of taxation has not traditionally been regarded under German law as expropriatory, mention should be made in this connexion of two important decisions of the Federal Constitutional Court which deal with the lawfulness of retroactive tax legislation. In 1952 an act was passed increasing the rate of corporation tax for 1951. The Federal Constitutional Court (19 December 1961, *NJW* 1962, p. 291) regarded this retroactive worsening of the citizen's legal position as an infringement of the principle of the certainty of the law to be maintained in a State based on the rule of the law. The citizen should know in advance what claims the State might make upon him and be in a position to make his arrangements accordingly. He must be able to act in conformity with the existing laws in full confidence that his actions would continue to be sanctioned by the legal order, with all the legal consequences originally entailed. Since this confidence of the citizen was abused if the legislator attached to accomplished facts consequences less favourable than the citizen was entitled to have expected when ordering his affairs, the Court ruled that the retroactive tax legislation was unconstitutional.

On the other hand, the Federal Constitutional Court (14 November 1961, *NJW* 1962, p. 729) upheld the legality of another tax law which superseded, with retroactive effect, an unsound law. The lawfulness of retroactive tax legislation, the Court held, depended on whether the citizen's confidence in the reliability of the existing law merited protection. Confidence in the continued existence of a given state of law could not be protected if that state of law was so palpably defective that new legislation having retroactive effect had to be enacted.

11. FREEDOM OF CONSCIENCE

(Universal Declaration, article 18)

Under the constitutional right of freedom of conscience laid down in article 4 of the Basic Law, no one may be compelled against his conscience to perform military service as an armed combatant. This clause confronts the courts with the delicate task of determining in each individual case whether a person liable to military service is refusing to serve on conscientious grounds.

In its decision of 23 June 1961 (*BVerwGE* 12, p. 271), the Federal Administrative Court emphasized that a youth refusing military service need not possess any pronounced intellectual capacity in order to make a conscientious decision. All that was required was a degree of moral discernment sufficient to enable him to form a moral judgement. Even a person who, by reason of his mental capacity and development, was unable to apprehend the refusal to perform military service as an intellectual problem could take a conscientious decision in accordance with his feelings. If the person liable to military service had taken his decision on the basis of feelings so strong that to act in defiance of it would involve him in irresolvable inner conflict, the Basic Law required that he should be recognized as a conscientious objector. This decision was confirmed by the Federal Administrative Court (21 July 1961, *NJW* 1961, p. 1941).

12. THE RIGHT TO THE FREE EXPRESSION OF OPINION AND FREEDOM OF INFORMATION

(Universal Declaration, article 19)

The right to the free expression of opinion which is fundamental to the libertarian and democratic legal order and is proclaimed in article 5 of the Basic Law is restricted by the criminal laws for the protection of reputation. In a fundamental decision pronounced in connexion with a feud carried on in the press, the Federal Constitutional Court (25 January 1961, *BVerfGE* 12, p. 113) endeavoured to re-define the limits of the right to the protection of reputation as against the fundamental right to the free expression of opinion.

A periodical accused a judge occupying a high position in the Federal Republic of Germany of communist leanings, though it had reliable information to the contrary. The judge thereupon made a violent attack on the periodical in a daily newspaper. The Land High Court at Celle found the judge guilty of libel, but its decision was reversed by the Federal Constitutional Court. The Land High Court, it noted, had rejected the judge's defence, the protection of legitimate interests, on the ground that his only legitimate interest was in the protection of his personal reputation. However, the criminal law relating to the protection of reputation had to be interpreted in the light of the fundamental right to the free expression of opinion, and from this standpoint, the judge's legitimate interest in influencing the formation of public opinion merited equal recognition as a defence against a technical charge of libel. The Constitutional Court regarded the judge's statement as a legitimate reaction to the misinformation of the public on an important question of policy relating to public appointments. The misleading

statements made by the periodical justified the unobjective and polemic tone of the reply.

In a decision of the greatest constitutional and political importance, the Federal Constitutional Court (28 February 1961, *BVerfGE* 12, p. 205, especially pp. 259 *et seq.*) dealt with the question of the Television Corporation of Germany [Deutschland-Fernsehen-Gesellschaft], an entity incorporated under private law with the Federal Republic of Germany as its sole shareholder. The judgement, after first discussing the federative structure of the Federal Republic of Germany and the competence of the Federation and Länder to establish television services, goes on to deal with article 5 of the Basic Law.

Article 5 of the Basic Law, the Court held, covered something more than merely the fundamental right of the citizen as an individual, vis-à-vis the State, to respect for an area of freedom within which he could express his opinion without hindrance. Specifically, the protection of the article extended also to the independence of the press as an institution, from the gathering of information down to the dissemination of news or opinions. It was a contravention of this constitutional guarantee for the press to be directly or indirectly under state guidance. Radio, like the press, was an indispensable mass communication medium for the formation of public opinion. Accordingly, it followed from article 5 of the Basic Law that radio, and consequently television also, as a modern instrument for the formation of opinion, should not be the monopoly either of the State or of any *single* business group. A radio service must be so organized as to ensure that all qualified parties were given a hearing within the general programme and to preserve the necessary balance, objectivity and mutual respect. This could be guaranteed only if the institutional and substantive principles on which they organized were made universally binding by legislation. Since the Television Corporation was entirely controlled by the Federal Government, its formation was a violation of article 5 of the Basic Law.

13. PROHIBITION OF POLITICAL PARTIES

(Universal Declaration, articles 20, 21, and 30)

The Basic Law recognizes the parties as constitutional institutions which participate in the forming of the political will of the people. Because of their constitutional status, article 21 of the Basic Law offers the political parties a guarantee of protection and continuity of existence; only the Federal Constitutional Court has the right to decide that a political party is unconstitutional. Such a decision, the Federal Constitutional Court ruled (21 March 1961, *BVerfGE* 12, p. 296), had the effect of creating the relevant law. Even where a party was later declared to be unconstitutional, its supporters and officials, in working to realize the aims of the party up to that time, did so under the shield of a constitutionally guaranteed toleration. Until the party was prohibited they could participate on its behalf in forming the political will of the people by any means normally permitted. Since the criminal law could not prohibit what was sanctioned by the Basic Law, the Federal Constitutional Court declared the provisions of article 90 a of the Criminal Code to be void in so far as they penalized, in substantive law, the foundation and promotion of an unconstitutional political party even before it had been prohibited by the Federal Constitutional Court.

The prohibition of the German Communist Party by the Federal Constitutional Court (*BVerfGE* 5, p. 85) applies also to substitute organizations for that party. The Federal Court of Justice ruled (18 September 1961, *NJW* 1961, p. 2217) that a substitute organization was any association of persons which sought to take the place of the dissolved party in further pursuing its anti-constitutional aims, immediate, partial or final, whether in whole or in part, in the short or long term, locally or supralocally, openly or in secret.

14. THE SUFFRAGE AND THE RIGHT OF SELF-DETERMINATION

(Universal Declaration, article 21)

Population movements since the electoral districts for elections to the Bundestag were fixed have led to considerable variations, in some cases, between the numbers of persons represented by deputies elected from different districts. The Federal Constitutional Court conceded (26 August 1961, *NJW* 1961, p. 2011) that any large differences in size between electoral districts which returned a single deputy by simple majority vote would be incompatible with the principle of equality. However, elections to the Bundestag were conducted on the basis of a system combining the personal vote with proportional representation and the supraregional transfer of left-over votes. In an electoral system of that kind, the demarcation of the electoral districts did not play a decisive role. The requirement that the vote of every elector should carry the same weight was not infringed in a manner repugnant to the system.

Under the North Rhine-Westphalia Local Elections Act, officials of a municipality belonging to a Landkreis may not be members of the latter's elected representative body, the Kreistag. The Federal Constitutional Court ruled (17 January 1961, *BVerfGE* 12, p. 73) that this incompatibility rule, while it was a limitation of the right to be elected, was not inconsistent with the principle of equal suffrage. Since the Kreistag exercised authority over the municipalities within its jurisdiction, such a rule was legitimate as obviating the danger of a conflict of interests.

As a result of the Federal Constitutional Court's rulings that regard must be had, in local elections,

to electoral equality between political parties and local associations of voters (*BVerfGE* 11, p. 266; 12, p. 10), some of the Länder have been obliged to amend their electoral laws. This was done in Lower Saxony by Act of 18 January 1961 (*SaBl* 1961, p. 155) and in Schleswig-Holstein by Acts of 27 September 1961 and 5 December 1961 (cf. *SaBl* 1961, p. 2387). In Hamburg, a new Local Elections Act was promulgated on 24 April 1961 (*SaBl* 1961, p. 762).

15. THE RIGHT TO THE FREE CHOICE AND EXERCISE OF A PROFESSION OR OCCUPATION

(*Universal Declaration, article 23*)

One particular aspect of the broad fundamental right to the free development of the personality (article 2 of the Basic Law) is the right to the free choice of a trade or profession, guaranteed in article 12 of the Basic Law. Under the Federal Constitutional Court's ruling in the pharmacies case (*BVerfGE* 7, p. 377), limitations on freedom of access to professions or occupations are lawful only to the extent that they are essential in the public interest. Proceeding from this ruling, the Federal Administrative Court (17 July 1961, *NJW* 1961, p. 2011) considered the constitutionality of the law requiring independent craftsmen to qualify for a certificate of proficiency before setting up in business. The Court, after weighing the conflicting interests of the individual and the public, found that such certificates of proficiency were a legitimate means of maintaining and promoting sound and efficient craft industries.

The Federal Constitutional Court held (30 October 1961, *NJW* 1961, p. 2299) that tax legislation might also have repercussions on the free choice of a profession or occupation. If such legislation intimately affected the practice of a profession or occupation, so that its inherent tendency, objectively, was to regulate the profession or occupation in question, it should be tested against article 12 of the Basic Law. However, any such repercussion on the free choice of a profession or occupation was constitutionally relevant only where a tax made it economically impossible for the class of persons it affected to make their chosen profession or occupation the basis of their livelihood.

Under the Foreign Exchange Control Law which, as an enactment of the occupation regime, came under the jurisdiction of the German legislator after 5 May 1955, when that regime ended, all foreign trade transactions were in principle prohibited. Although this prohibition contravened article 12 of the Basic Law, the Federal Constitutional Court held (21 March 1961, *BVerfGE* 12, p. 281) that its continuance for a specified transitional period had been necessary. If the Act had become inoperative on 5 May 1955, chaotic disorder would have ensued. In keeping with the constitutional requirement of freedom in foreign trade, as a matter of general principle, the Foreign Trade Act of 28 April 1961 (*BGBl* 1961 I, p. 481), which came into force on 1 August 1961, maintains only such business restrictions as are essential. Under article 7 of the Federal Ordinance on Attorneys, admission to the legal profession is refused where the applicant is engaged in activities incompatible with the practice of law. In interpreting this provision, the Federal Court of Justice (20 March 1961, *BGHZ* 34, p. 382) invoked the principle, enunciated by the Federal Constitutional Court, that any limitation of professional freedom must bear a reasonable relation to the end in view. This principle, the Federal Court of Justice held, offered a guarantee that the broad grounds for refusal laid down in article 7 of the ordinance would be interpreted in conformity with the constitutional requirements.

The practice of a number of professions has been regulated by statute — the profession of chartered accountant by Act of 24 July 1961 (*BGBl* 1961 I, p. 1049), the legal position of tax consultants by Act of 16 August 1961 (*BGBl* 1961 I, p. 1301), and admission to the medical profession by the Federal Physicians Ordinance of 2 October 1961 (*BGBl* 1961 I, p. 1857).

16. THE PROTECTION OF RIGHTS IN LABOUR LEGISLATION

(*Universal Declaration, articles 23, 24 and 25*)

Economic provision for sick workers has been improved by the Federal Act of 12 July 1961 (*BGBl* 1961 I, p. 913), which narrows the gap between the benefits payable to workers and salaried employees in case of sickness.

An ordinance of 7 July 1961 (*BGBl* 1961 I, p. 900), adopted "with a view", as stated in its preamble, "to giving greater protection than hitherto to Sundays and holidays as days of worship, spiritual edification, rest from work and physical recreation", imposes restrictions on Sunday and holiday work in the metallurgical industry. The North Rhine-Westphalia Sundays and Holidays Act was amended by Act of 26 April 1961 (cf. *SaBl* 1961, p. 843).

The Federal Labour Court had occasion to rule (22 September 1961, *NJW* 1962, p. 74) on a case involving the protection of a working expectant mother. If such a person, in reply to a direct question put to her on her application for employment, concealed the fact that she was pregnant, the employer was justified in contesting the employment contract on the ground of fraudulent misrepresentation. This was not an evasion of the Protection of Working Mothers Act, which applied only after the contract had been negotiated.

The Federal Labour Court has consistently ruled that the constitutional principle of equality applies in labour law as elsewhere. Accordingly, the court held (14 July 1961, *NJW* 1961, p. 1942, and two

decisions of 18 October 1961, *NJW* 1962, pp. 221, 222) that persons performing equal work with equal efficiency had the right to equal pay. However, the parties were entitled to due latitude in evaluating efficiency. A collective agreement regulating working conditions, the Federal Labour Court ruled (18 October 1961, *NJW* 1962, p. 221), did not violate the principle of equality unless it was impossible to discern any objectively defensible grounds whatever for differentiation.

17. STATE CARE FOR PERSONS IN NEED OF ASSISTANCE

(Universal Declaration, articles 22 and 23)

The Federal Social Assistance Act of 30 June 1961 (*BGBl* 1961 I, p. 815), which came into force on 1 June 1962, establishes comprehensive regulations for public social assistance. Article 1 of the Act states that the primary purpose of social assistance is "to enable the recipient to lead a life in keeping with the dignity of man". The Act endeavours to increase the self-reliance of persons in need of assistance. Social assistance is available only to those who cannot help themselves. So far as possible, it must fit them to live without such assistance, and they must collaborate to the best of their ability towards that goal.

The Convention on Social Security between the Federal Republic of Germany and the United Kingdom, signed on 20 April 1960, was approved by the Bundestag by Act of 21 March 1961 (*BGBl* 1961 II, p. 241). The convention came into force on 1 August 1961 (*BGBl* 1961 II, p. 805).

The Agreement concerning social security between the Federal Republic and Spain, signed on 29 October 1959, was approved by the Bundestag by Act of 16 June 1961 (*BGBl* 1961 II, p. 598) and came into force on 1 October 1961 (*BGBl* 1961 II, p. 1630).

18. THE RIGHT TO EDUCATION

(Universal Declaration, article 26)

The *Reich* Youth Welfare Amendment Act of 11 August 1961 (*BGBl* 1961 I, p. 1193), which came into force on 1 July 1962, establishes new regulations governing the relationship between public and private youth services. The basic feature of the Act is that priority is given to voluntary youth services supported by public funds. Public youth services are intended to support and supplement the training begun in the family. Those providing voluntary youth services — voluntary youth welfare societies, youth associations and churches — act on behalf of the parents.

New education laws have been enacted in some of the Länder — in Hesse, the Compulsory Education Act of 17 May 1961 (*SaBl* 1961, p. 823) and an Act of 28 June 1961 providing for the partial State financing of private schools (*SaBl* 1961, p. 2151); in Berlin, the Schools Act of 15 June 1961 (*SaBl* 1961, p. 1627); in Bavaria, the Schools Ordinance for Higher Schools of 22 August 1961 (*SaBl* 1961, p. 2074).

19. PROTECTION OF INDUSTRIAL RIGHTS

(Universal Declaration, article 27)

An Act of 23 March 1961 (*BGBl* 1961 I, p. 274), which came into force on 1 July 1961, introduced important changes as regards the legal protection of industrial rights. From the standpoint of procedure, attention may be drawn to the new rules affecting the German Patent Office, as administrative authority, and to the establishment of an independent Federal Patents Court. From the standpoint of substantive law, an innovation is the provision made in the Act for the granting of secret patents and the registration of secret designs in respect of any invention whose disclosure to an unauthorized person would constitute treason if the interests of the Federal Republic or one of its Länder were jeopardized thereby. Since a secret patent is not published, it is to a great extent excluded from the legal protection of industrial rights and is of only limited commercial use.

20. INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF HUMAN RIGHTS

(Universal Declaration, article 28)

Notice was given on 20 September 1961 (*BGBl* 1961 II, p. 1626) that the Federal Republic had recognized the jurisdiction of the European Commission of Human Rights for a further five years with effect from 1 July 1961.

By Act of 8 March 1961 (*BGBl* 1961 II, p. 97), the Federal Republic acceded to the Convention concerning Discrimination in respect of Employment and Occupation, adopted by the International Labour Organisation on 25 June 1958.

FEDERATION OF MALAYA

NOTE[1]

1. The Age of Majority Act, 1961, Act No. 9 of 1961, assented to on 9 March 1961, declared the age of majority for various purposes.

2. The Legitimacy Act, 1961, Act No. 11 of 1961, assented to on 9 March 1961, consolidated the law providing for the legitimation of children born out of wedlock.

3. The Guardianship of Infants Act, 1961, Act No. 13 of 1961, received the Royal Assent on 9 March 1961.

4. The Education Act, 1961, Act No. 43 of 1961, assented to on 11 November 1961, amended and consolidated the law relating to education; section 22 permitted the making of regulations introducing compulsory free primary education in the Federation or in parts thereof.

[1] The legislation mentioned in this note was published in *Acts Passed During the Year 1961*, printed by the Government Printer, Kuala Lumpur.

FINLAND

NOTE[1]

Act No. 395 on the Pension Rights of Employees of 8 July 1961 (*AsK* No. 395/61)[2] is designed to fill a gap in the social legislation in Finland. Together with another Act, passed on 9 February 1962, concerning those employed in short-term jobs such as forestry, lumber and harbour work, which are of a seasonal nature, it represents a big step forward in the social field and together they concern more than one million people, that is to say, about one fourth of the whole population of the country. Both of these Acts came into force on 1 July 1962.

In principle, every employee covered by the terms of these acts is entitled to a pension, the amount of which is determined by the duration of employment and scale of wages. The minimum pension provides both for old-age pensions upon reaching the age of sixty-five and for disability pensions. A disability pension can be claimed by an employee of eighteen years of age or older, provided that, according to the provisions concerning the National Pension Institute, he is entitled to a disability pension to be paid by this Institute. In some cases, however, the disability pension may be paid even though the claimant is not entitled to a pension to be paid by that institute.

These pensions are designed to supplement any other pensions to which the employee is entitled from other sources, such as special insurance or foundation funds, or from the National Pension Institute. If, however, the sum of such pensions is more than 60 per cent of the salary of the employee, the excess is to be deducted from the total.

The cost of this scheme is paid by the employers. The employees may change their employments without risking the loss of their pension rights. All practical matters, such as the keeping of pension records, are to be handled by the employers and various pension institutes. The right to pension is also secured by law in the event of the termination of business activities or bankruptcy of the employer or the pension institute concerned.

According to Act No. 395, the employer is required to arrange, and to pay the cost of, a pension scheme for all his employees reaching the age of eighteen after six continuous months of employment.

The Act does not apply in the following cases:

1. If the employment started only after the employee reached sixty-five years of age or, if this Act was not applied to him previously, after he reached the age of fifty-five;

2. If the employment cannot be considered to constitute the main source of livelihood of the employee;

3. If the employee is entitled to a pension provided for by another law.

The employer, however, is required to apply the terms of this Act if the employee has reached the age of fifty-five provided that the employee has been continuously in his service for at least fifteen years at the time this Act came into force.

The employers are to be covered by liability insurance in a Finnish insurance company or in a special insurance fund or foundation provided for separately.

When an employee is entitled to pension on the grounds of two or more successive employments, his pension is to be determined according to the terms established by the most recent employment.

A Pension Centre, consisting of representatives and a board, serves as a co-ordination and supervision organ of the various pension institutes. The representatives are assigned by the Ministry of Social Affairs from the employers' and employees' organizations. The Board consists of a chairman and a vice-chairman appointed by the above-mentioned ministry and of nine members elected by the representatives.

The decisions of the Pension Centre can be appealed against to the Pension Board, and the Board's decisions can be further appealed against to the Insurance Court.

[1] Note prepared by Mr. Voitto Saario, Judge of the Court of Appeal, Helsinki, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] See International Labour Office: *Legislative Series* 1961 — Fin. 4.

FRANCE

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS IN 1961[1]

The one instrument of outstanding importance to be recorded in 1961 is the Act granting to the peoples of Algeria the right to choose their political destiny. The text of this Act is given below.

The political circumstances prevailing in France during the final months of the Algerian war necessitated, as early as 1961, a number of exceptional measures to safeguard law and order. The present note makes mention of these measures.

Other instruments worthy of record relate to the regulation of motion picture production and to the reception of French nationals repatriated from a number of African regions as a result of the political changes involving those regions.

Lastly, a number of agreements with French-speaking African States in the Community are mentioned.

I. Civil and Individual Rights

1. *Nationality*

An Act of 22 December 1961[2] amended a number of articles of the Nationality Code without changing its sense as a whole; some additional opportunities for naturalization were provided.

Conversely, by the ordinance of 2 February 1961[3] the Government's authority to require a French national occupying a public post in the employ of a foreign State or army to quit that post, under penalty of revocation of French nationality by decree (Nationality Code, article 97) was extended to cover two additional circumstances: the holding of a post in an international organization of which France is not a member, and the mere act of supporting a State, army or international organization (without actually holding a post).

The penalty imposed remains subject to the usual methods of appeal to the administrative authority concerned.

2. *Civil Registry. Personal Status*

An Act of 28 July 1961[4] established a system of civil registry for French nationals in the departments of Algeria and the Sahara who retained Israelite personal status. Such persons had retained the particular customs of their religion for the recording of births, marriages and deaths among them and for the assigning of personal names. The recent Act requires a census of such persons, the adoption of a patronymic and individual given names, the recording of those names in a master register and the obligation, in future, of reporting all births, marriages, deaths and divorces — that is, the establishment of civil registry records in accordance with the methods prescribed under ordinary law.

However, persons declaring that they refuse to take advantage of the new Act will retain their status.

3. *Individual Rights*

After a private association of disabled or wounded servicemen had expelled one of its members "by reason of his behaviour, statements and writings which were harmful to the federation", he sought legal remedy, thus giving rise to a decision which is noteworthy for the reasons stated in it.

The judgement[5] declares that the plaintiff was expelled without first being notified of the proposed expulsion, called before the body competent to impose it and allowed to present his defence. Although the regulations of that purely private organization did not provide for any special formalities for the expulsion of members, the judgement maintains that "such a violation of the elementary rights of the individual effectively nullifies the decision concerned".

The right to defend oneself against any accusation, even before a body which is of a private and contractual nature, is thus affirmed as a fundamental guarantee attaching to the person.

4. *Law and Order. Extraordinary Safeguarding Measures*

The attempted *putsch* at Algiers in April 1961, and the attitude of persons and groups intending to oppose by violence the policies pursued — particularly in Algeria — by the Government, necessitated the declaration of a state of emergency[6] and later the application of article 16 of the Constitution, which confers extraordinary powers on the President of the Republic.

[1] Note prepared by Mr. E. Dufour, Maître des requêtes of the Conseil d'Etat, Paris, appointed by the French Government as correspondent to the *Yearbook on Human Rights*.

[2] Act 61-1408, *Journal officiel*, December 1961, p. 11819.

[3] Ordinance 61-120, *Journal officiel*, February 1961, p. 1345.

[4] Act 61-805, *Journal officiel*, July 1961, p. 6988.

[5] "Tribunal de Grande instance de la Seine", 15 May 1961, in *Droit Social*, No. 12, December 1961, p. 591, *Librairie économique et sociale*.

[6] Decrees 61-395 and 396 of 2 April 1961, *Journal officiel*, April 1961, p. 3843.

Immediate steps were taken by the President of the Republic under article 16.

Thus the provisions of Ordinance 58-916 of 7 October 1959, originally intended to put an end to the activities of persons aiding or supporting the Algerian rebels, were declared[1] to be "applicable to any person who, by any means whatever, participates in a subversive undertaking directed against the authorities of the Republic and encourages subversion". That ordinance authorized forced residence orders and administrative internment. By a second decision of the same date,[2] notwithstanding the recent provisions of the Code of Penal Procedure, the term of surveillance, which had already been extended from forty-eight hours to five days by ordinance 60-123, of 13 February 1960, was extended to fifteen days for the duration of the state of emergency.

Another decision, of 27 April 1961,[3] concerns the prohibition of periodical writings distributed in the form of letters or booklets if they give support to organizations or movements contending with the authorities of the republic. The text of the decision is given below. The prohibition was, in fact, directed only against a limited number of confidential publications, usually addressed through the post to "subscribers" but having an influence generally greater than might be deduced from the frequently mediocre quality or objectivity of their contents.

A decision of 4 May 1961[4] established until 31 December 1961 some other exceptions to the provisions concerned with penal procedure, but only "in matters relating to crimes and offences of every kind committed in connexion with the events which have taken place in Algeria".

The state of emergency and the application of most of the abovementioned measures were extended until 15 July 1962 by the decision of 29 September 1961.[5] The application of article 16 of the Constitution, however, was terminated on 29 September 1961.

A military high court was established[6] to judge persons who had committed "crimes and offences against the security of the State or against military discipline if such crimes were committed in connexion with the events in Algeria and before the expiry of the extraordinary powers". Its structure was amended by the decisions, already quoted, of 29 September 1961.

[1] Decisions of 24 April 1961, *Journal officiel*, April 1961, p. 3876.

[2] Decisions of 24 April 1961, *Journal officiel*, April 1961, p. 3876.

[3] Decision of 27 April 1961, *Journal officiel*, April 1961, p. 3947.

[4] Decision of 4 May 1961, *Journal officiel*, May 1961, p. 4147.

[5] Decision of 29 September 1961, *Journal officiel*, September 1961, p. 8963.

[6] Decision of 27 April 1961, *Journal officiel*, April 1961, p. 3947.

5. *Penal Procedure*

A long circular of 17 February 1961[7] includes a detailed commentary on the texts published in 1960 (see *Yearbook on Human Rights for 1960*, pp. 133–4) and amending or supplementing the Code of Penal Procedure.

Among these, we shall mention:

Specifications concerning the powers and obligations of examining judges and officials of the criminal police;

The requirement that no search of a domicile may be made except in the presence of the person concerned or a representative chosen by him;

The limitation of detention pending trial to a term of four months, with precise provisions intended to restrict to very exceptional cases the extension of such detention for additional terms of four months each when the circumstances of the judicial investigation so require.

6. *Press, Film, Radio*

With regard to the press, mention has already been made of the decision authorizing the Ministers of the Interior and Information to prohibit confidential publications when these are considered to support so-called subversive activities.

A decree of 18 January 1961[8] relating to public administration reorganizes the regulation of the production and exhibition of cinematographic films. This decree is designed particularly to meet the motion picture industry's objections to earlier regulatory measures. It establishes, in particular, a type of pre-censorship, in the form of a preliminary opinion by the chairman of the regulatory commission, delivered before the film is made. This preliminary opinion is intended as a warning and is designed to spare producers the incurring of frequently substantial expenditure on films whose exhibition is liable to be partly or completely prohibited. The principal provisions concern:

(*a*) The procedure governing delivery of the commission's opinion:

"Any opinion representing a decision which in any way restricts the exhibition of the film in the form in which it was presented to the commission must be delivered in plenary session; in such a case, the grounds for the opinion must be stated . . . The members of the commission are bound to professional secrecy and shall not report, in any manner whatsoever, the deliberations of the commission. Voting shall be by secret ballot. . . ." [article 2]

(*b*) The preliminary opinion:

"Before the granting of the official approval or of the authorization to make the film, . . . an opinion on any full-length film must be delivered by

[7] Circular of 17 February 1961, *Journal officiel*, February 1961, p. 2000.

[8] Decree 61-62, *Journal officiel*, January 1961, p. 820.

the chairman of the regulatory commission. The chairman shall notify the producer of this opinion, stating the grounds, and shall declare whether, in his view, prohibitive measures are liable to be incurred, specifying the nature of those measures where necessary. . . ." [article 3].

'(*c*) The procedure for regulation:

The commission may, in its opinion, propose to the Minister of Information the complete prohibition of the film, a permit to show the film to all types of audience, or a permit specifiying that the film must not be shown to persons under thirteen or eighteen years of age. The opinion shall also mention whether any proposal to prohibit or authorize the export of the film has been made.

"In addition, the commission has the option of making its opinions conditional upon modifications or deletions. Where the producer refuses to make the required modifications or deletions, the commission shall be entitled to amend the opinion which it had proposed to deliver" [article 4].

The Minister adopting one of the measures proposed by the commission shall state the grounds for his decision; however, he shall not be bound by the proposals.

"Before rendering a decision, the minister shall always have the option of calling upon the commission to re-examine the case." He is, in fact, bound to seek a new opinion "if he proposes to take a decision imposing a restrictive measure not proposed by the regulatory commission" [article 5].

Notwithstanding the unfavourable opinion expressed by the Chairman before filming, the producer shall have the right to request authorization to submit the finished film to the commission. Foreign films must also be submitted to the regulatory commission in their original and final dubbed versions. Exhibition permits for both versions shall be required. Lastly, other provisions are concerned with co-production films and with foreign films made in France.

7. *Protection of Children*

Supplementing a number of earlier provisions (see *Yearbook on Human Rights for 1959*, p. 111), a second decree of 18 January 1961 deals with the admission of minors to motion picture theatres.[1]

It specifies the manner in which the prohibition of the showing of a film to persons aged under thirteen or eighteen shall be announced to the public, and the penalties which may be imposed on persons who violate the regulations or allow children to attend the showing of films forbidden to them.

For the same purpose of protecting the morals of minors, article 6 of decree 61-62, of the same date, specifies that publicity posters and pictures advertising films prohibited to persons aged under thirteen or eighteen must be approved in advance by the regulatory commission.

[1] Decree 61-63, *Journal officiel*, January 1961, p. 822.

8. *Youth and Popular Education*

In order to facilitate the training of leaders for youth and popular education organizations, an Act of 29 December 1961[2] established special unpaid vacations of six working days per year for paid workers and apprentices (of both sexes), to enable them to take part in the activities of youth and popular education organizations and of federations or associations for sports and open-air recreation.

9. *Equality of Access to Public Employment*

By an ordinance of 1 February 1961[3], the regulations previously promulgated to facilitate the access of Moslem French nationals in Algeria to public employment were extended to nationalized enterprises and to public establishments of an industrial or commercial nature. (See *Yearbooks on Human Rights for 1958 and 1959*: Provisions particularly affecting Algeria.)

II. Social Rights

1. *Handicapped Workers and Disabled Servicemen*

Mention has been made (see *Yearbooks on Human Rights for 1957 and 1959*) of the provisions concerning the compulsory employment, and the resettlement in industrial and commercial enterprises, of workers who have been deprived by a physical or mental disability, accidental or otherwise, of genuine equality of opportunity in the competition for employment.

An Act and a decree of 27 December 1960 are designed to bring the new legislation into line with legislation, dating from 1924, which provides similar protection for disabled servicemen.[4]

In particular, so as to safeguard effectively the interests of persons under such protection, it is provided that "associations whose principal purpose is to protect the interests of the beneficiaries of the Act of 26 April 1924 concerning the compulsory employment of disabled servicemen, or of the Act of 23 November 1957 on the resettlement of handicapped workers, may institute civil proceedings on the grounds of non-compliance with the provisions of the said Acts or those of the decree of 3 August 1959, if such non-compliance prejudices the collective interests which they represent" [article 2].

2. *Trade Union Rights*

A decision of the Conseil d'Etat specified the extent to which a trade union has the right to be consulted before any amendment of a statutory regulation of a vocational group in a case where such consultation is provided for by law.

The regulations for the personnel of nationalized mining and gas enterprises, provided for by the

[2] Act 61-1448, *Journal officiel*, December 1961, p. 12172.

[3] Ordinance 61-107, *Journal officiel*, February 1961, p. 1268.

[4] Act 60-1434 and decree 60-1453, *Journal officiel*, December 1960, pp. 11907 and 11990.

Act of 14 February 1946, are established by decree after consultation with a "permanent commission on regulations" consisting of delegates of trade union organizations.

A decree of 2 February 1955, amending certain of these regulations with regard to the system of remuneration, was annulled by the Conseil d'Etat,[1] which declared that the commission had not been properly consulted. The feature of particular interest in this matter is that the commission had in fact been consulted; however, the finding of the Conseil d'Etat was that, although the commission had been consulted almost five years previously about certain projects relating to the fixing of salaries, that consultation had not borne on all of the measures envisaged and adopted in the Decree under criticism, "whereas the questions raised by these measures should normally be submitted simultaneously to the commission, because of the close relationship between them".

On the other hand, another ruling of the same date, on a complaint by the same trade union organization with regard to another decree, states that the competent commission was consulted on all of the questions raised and that therefore no irregularity could be alleged.

3. *The Government's Power of Requisition in Case of Strike*

The Conseil d'Etat had occasion to reaffirm that the Government's powers of requisition in matters involving labour disputes were subject to the criteria of legality appropriate to such matters and thus different from the criteria of legality observed for the exercise of the right of requisition in time of war.

In particular, it was able to specify[2] that the control powers of the juge administratif [administrative judge] were to be exercised in respect of the grounds invoked by the administration with regard to the need for ensuring the continued maintenance of a public service or the requirement of satisfying the needs of the population. The problem in every case remains that of determining when a strike or threat of strike appears liable to cause such serious harm to society as a whole as to necessitate the exercise of the right of requisition. The judge, however, affirms that he is qualified to evaluate this.

4. *Repatriated French Nationals*

The events, peaceful or otherwise, marking the process of decolonization in Africa since 1958 have brought about the return to France, sometimes in difficult circumstances, of many French nationals originally established in tropical Africa, in Morocco, in Tunisia and, lastly, in Algeria. Special protective measures were necessary.

The Act of 26 December 1961[3] relating to the reception and resettlement of overseas French nationals provides for a number of measures motivated by the requirements of national solidarity.

[Article 1] "French nationals who have been compelled or have felt compelled by political events to leave a territory in which they were established and which was previously under French sovereignty, protectorate or trusteeship shall have the benefit of State assistance under the conditions provided for in the present Act, in virtue of the national solidarity affirmed by the preamble to the Constitution of 1946.

"Such assistance shall be manifested by a set of measures designed to integrate repatriated French nationals into the economic and social structure of the nation."

The measures in question provide for temporary subsistence allowances, loans, grants for re-establishment and resettlement, educational opportunities, social allowances and special arrangements for housing.

The Government has been authorized to adopt by ordinance the amendments to legislative texts which may be necessary to achieve the intended purposes, particularly with regard to labour and social security legislation and to public employment.

5. *Social Assistance*

Several decrees of 15 May 1961[4] amended the provisions of the Social Assistance Code and the texts governing its application. Noteworthy is the establishment of a so-called rent allowance granted to aged persons whose resources are below a certain level, for the purpose of reducing their financial burden in respect of housing.

III. Provisions affecting Overseas Territories and Algeria

1. *Amnesty*

The provisions of the Act of 31 July 1959 granting amnesty (see *Yearbook on Human Rights for 1959*) were made applicable in the Overseas Territories by an Act of 26 December 1961,[5] which modified them in certain respects. The amnesty applies to petty offences committed before 28 April 1961 and to a certain number of offences in respect of elections, meetings, demonstrations on the public highway, labour conflicts, breaches of the press laws, the provisions concerning the elimination of fraud in the sale of merchandise, adulteration of foodstuffs and, lastly, the offences referred to in the Act of 10 September 1947 on co-operation.

2. *Adoption*

An Act of 29 July 1961[6] extended and adapted to overseas territories the provisions: (1) of Act 60-

[1] "Conseil d'Etat", 8 December 1961, in *Recueil des décisions du Conseil d'Etat*, 1961, p. 694, Sirey.

[2] "Conseil d'Etat", 24 February 1961, in *Recueil des décisions du Conseil d'Etat*, 1961, p. 150, Sirey.

[3] Act 61-1439, *Journal officiel*, December 1961, p. 11996.

[4] Decrees 61-495, 61-496, 61-498, *Journal officiel*, May 1961, p. 4555.

[5] Act 61-1438, *Journal officiel*, December 1961, p. 11995.

[6] Act 61-824, *Journal officiel*, July 1961, p. 7025.

1370, of 23 December 1960, concerning adoption (see *Yearbook on Human Rights for 1960*, p. 133); (2) of ordinance 58-1306, of 23 December 1958, amending the rules for adoption and adoptive legitimation.

3. *Algeria. Self-determination*

The text of the Act of 14 January 1961, adopted by referendum on 8 January 1961, concerning the self-determination of the Algerian peoples and the organization of public powers in Algeria before self-determination (*Journal officiel*, January 1961, p. 578) is published below.

IV. AGREEMENTS AFFECTING THE COMMUNITY

Act 60-1435 of 27 December 1960 authorized the ratification of a number of treaties concluded between the French Republic and the Republic of Cameroun:

The Treaty on Co-operation and its annexes on economic and financial matters, cultural matters, defence matters and matters of technical co-operation;

The Treaty providing for a consular convention;

The Treaty providing for a judicial convention.

These treaties were published under a decree of 31 July 1961.[1]

A number of Acts of 26 July 1961 authorized the ratification of similar agreements concluded between the French Republic and the following republics, respectively: the Republic of the Upper Volta;[2] the Republic of the Ivory Coast;[3] the Republic of the Niger;[4] the Republic of Dahomey.[5]

[1] Decree 61-877, *Journal officiel*, August 1961, p. 7429.

V. INTERNATIONAL TREATIES

The Agreement establishing the International Development Association, signed by France on 30 December 1960 and approved by Act 60-1374 of 21 December 1960, was published in France under a decree of 13 October 1961[6].

In addition, the following were published in 1961:

The Conventions of 31 December 1958 concerning the Exchange of Official Publications and Government Documents between States and concerning the International Exchange of Publications (decree of 7 February 1961);[7]

The Conventions of 15 December 1960 against Discrimination in Education (decree of 31 October 1961).[8]

[2] Act 61-767, *Journal officiel*, July 1961, p. 6907.

[3] Act 61-768, *Journal officiel*, July 1961, p. 6908.

[4] Act 61-770, *Journal officiel*, July 1961, p. 6908.

[5] Act 61-771, *Journal officiel*, July 1961, p. 6909.

[6] Decree 61-1330, *Journal officiel*, October 1961, p. 9523.

[7] Decree 61-144, *Journal officiel*, February 1961, pp. 1652 and 1783.

[8] Decree 61-1202, *Journal officiel*, November 1961, p. 10166.

ACT No. 61-44, OF 14 JANUARY 1961, CONCERNING SELF-DETERMINATION OF THE ALGERIAN PEOPLE AND THE ORGANIZATION OF PUBLIC AUTHORITY IN ALGERIA PENDING SELF-DETERMINATION[1]

Art. 1. As soon as security conditions in Algeria enable the full exercise of public freedoms to be restored, the Algerian people, in a vote taken by universal and direct suffrage, will make known the political destiny which they choose with respect to the French Republic.

The conditions for this vote shall be determined in a decree issued by the Cabinet.

Any instruments drawn up in consequence of self-determination shall be submitted to the French people in accordance with the constitutional procedures.

Art. 2. Until such time as self-determination has been exercised as provided in art. 1, the organization of public authority in Algeria shall be regulated by decrees of the Cabinet in accordance with the provisions of article 72 of the Constitution and in conformity with the following conditions:

(*a*) To confer on the people of Algeria and their representatives the responsibility for Algerian affairs through the establishment of an executive body and deliberative assemblies having jurisdiction over all the departments of Algeria, and the establishment of appropriate regional and departmental executive and deliberative bodies.

(*b*) To ensure the co-operation of the communities and the provision of appropriate guarantees in respect of each of them.

(*c*) To set up organs having jurisdiction in matters of joint concern to the metropolitan country and Algeria and to ensure the co-operation of representatives of the metropolitan country and representatives of Algeria within these organs.

[1] *Journal officiel*, January 1961, p. 578.

DECISION OF 27 APRIL 1961 RELATING TO CERTAIN WRITTEN MATERIALS[1]

Art. 1. All written materials, whether periodical or not, in the form of booklets, leaflets or information sheets shall, irrespective of the manner of their distribution, be prohibited if they in any way give support to subversive activities directed against the authorities or laws of the republic; or they disseminate secret information of a military or administrative character.

Art. 2. The prohibition shall be ordered by decree issued jointly by the Minister of the Interior and the Minister of Information.

Measures taken in virtue of this decision shall be enforceable by the administrative authorities on their own initiative.

Art. 3. The Prime Minister, the Minister of the Interior and the Minister of Information shall be severally responsible for the application of this decision, which shall be published in the *Journal officiel* of the French Republic.

[1] *Journal officiel*, April 1961, p. 3947.

GABON

CONSTITUTION OF THE REPUBLIC OF GABON

Promulgated under Constitutional Law No. 1/61 of 21 February 1961[1]

Preamble

The people of Gabon, aware of their responsibility before God, inspired by the wish to safeguard their national independence and unity and to organize the life of the community in accordance with the principles of social justice, solemnly reaffirm the human rights and freedoms defined in 1789 and enshrined in the Universal Declaration of Human Rights in 1948.

In compliance with these principles and that of the self-determination of peoples, the people of Gabon have adopted the present constitution.

Introductory Title

Art. 1. The people of Gabon also proclaim their adherence to the following principles:

1. Everyone has the right to the free development of his personality, subject to due respect for the rights of others and for public order.

2. Freedom of conscience and the free practice of religion shall be guaranteed to all, subject only to the requirements of public order.

3. The secrecy of correspondence and the secrecy of postal, telegraphic and telephonic communications shall be inviolable. No restrictions may be imposed on this inviolability except in application of the law.

4. Everyone has the duty to work and the right to obtain employment. No one shall suffer in his employment by reason of sex, origin, beliefs or opinions.

5. To the extent of its ability, the State shall guarantee protection to all, in particular to children, mothers and aged workers, in respect of their health, physical security, rest and recreation.

6. Everyone has the right to own property, both singly and in association with others.

No one may be arbitrarily deprived of his property except in case of public necessity, lawfully determined, and subject to the payment of fair and prior compensation.

7. The home shall be inviolable. Searches may not be ordered except by a judge or by other authorities as specified by law. Searches may be carried out only in the manner prescribed by law. 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. Such measures may also be taken in application of a law, in order to protect the public interest from an impending danger, in particular in order to forestall an epidemic or to protect youth in jeopardy.

8. Subject to the conditions prescribed by law, all are guaranteed the right to form associations and societies, organizations of a social nature and religious communities.

Religious communities shall manage and administer their affairs independently, provided that they respect the principles of national sovereignty and public order.

Associations and societies whose purposes or activities are contrary to the penal laws and to friendly relations among ethnic groups shall be prohibited.

Any act of racial, ethnic or religious discrimination, as well as any propaganda on behalf of a particular region, which may endanger the internal security of the State or the integrity of the territory of the republic shall be punishable by law.

9. Marriage and the family form the natural basis of society. They shall be placed under the special protection of the State.

10. The care and education to be given to children are a natural right and duty of their parents, which the latter shall exercise under the supervision and with the assistance of the State and the community.

Parents have the right, within the framework of compulsory education, to decide on the education of their children.

Children born out of wedlock shall have the same rights as legitimate children, both with respect to the assistance to be given them and their physical, mental and moral development.

11. It is the duty of the State and the community to protect youth against exploitation and moral, mental and physical neglect.

12. The State shall guarantee to both children and adults equal access to education, vocational training and cultural activities.

It is the duty of the State to provide education which shall be free of charge and non-religious.

[1] Text published in the *Journal Officiel de la République Gabonaise*, special number, of 25 February 1961, and transmitted by the Government of the Republic of Gabon.

The right to establish private schools shall be guaranteed to all persons, all religious communities and all legally constituted associations which agree to accept the educational supervision of the State and to comply with the existing laws.

The conditions for the participation of the State and the community in the financial costs of private educational establishments which the State recognizes as being in the public interest 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.

13. The Nation proclaims the solidarity and equality of all with respect to costs arising from national disasters.

Everyone shall contribute, in proportion to his resources, to the expenses of the State.

Title I

THE REPUBLIC AND ITS SOVEREIGNTY

Art. 2. Gabon is an indivisible, democratic and social republic. It affirms the separation of religion and the State.

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. 3. National sovereignty is vested in the people, who shall exercise it directly by means of elections and the referendum, and indirectly through the organs invested with the legislative, executive and judicial powers.

No section of the people nor any individual may assume the exercise of sovereignty.

The exercise of the franchise shall be universal, equal and secret. It may be direct or indirect under the conditions determined by the Constitution or by law.

All nationals of Gabon 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 under the conditions determined by law.

The age may be reduced to eighteen years in cases determined by law.

Foreign nationals residing in Gabon may be granted the right to vote, as well as the other rights reserved to nationals of Gabon, under the conditions and in the cases provided for 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 activity freely within the framework determined by laws and regulations. They shall respect democratic principles, national sovereignty and public order.

Title II

THE PRESIDENT OF THE REPUBLIC AND THE GOVERNMENT

. . .

Art. 7. The President of the Republic shall be elected for seven years by universal direct suffrage. He shall be eligible for re-election.

Title III

THE NATIONAL ASSEMBLY

Art. 26. The Parliament of the Republic of Gabon is a single chamber, called the National Assembly.

The members of the National Assembly shall have the title of deputies. They shall be elected for five years by direct universal suffrage.

. . .

Art. 30. A compulsory mandate shall be null and void.

Title VI

THE JUDICIARY

. . .

Art. 56. The judiciary shall be independent. In the performance of their duties, judges shall be subject only to the authority of the law.

Magistrates of the bench shall remain in office for life, subject to the conditions prescribed by law.

Art. 57. The President of the Republic shall guarantee the independence of the judiciary.

He shall be assisted for that purpose by the Higher Council of the Bench, of which he shall be the President.

. . .

Art. 58. No one shall be subjected to arbitrary detention. A person charged with an offence shall be presumed innocent until proved guilty following a trial in which he has had all the guarantees necessary for his defence.

The judiciary, as the guardian of the freedom of the individual, shall ensure respect for these principles in the conditions provided for by law.

Title VII

THE SUPREME COURT

. . .

Art. 60. There shall be no appeal against judicial decisions of the Supreme Court. They shall be binding upon the public authorities, as well as upon all administrative and judicial authorities.

A provision which is declared unconstitutional may not be promulgated or put into effect.

. . .

Title XII

AMENDMENT

. . .

Art. 70. . . .

The republican and democratic form of the State shall not be subject to revision.

. . .

GHANA

NOTE

I. LEGISLATION

1. The State Proceedings Act, 1961 (Act No. 51 of 1961, assented to on 11 May 1961) made provisions for legal proceedings by and against the Republic of Ghana.

2. The Book and Newspaper Registration Act, 1961 (Act No. 73 of 1961, assented to on 10 August 1961) made provisions for the preservation of copies of books printed in Ghana, for the registration of books and newspapers and for the registration of newspaper proprietors.

3. The Cinematograph Act, 1961 (Act No. 76 of 1961, assented to on 17 August 1961) regulated cinematograph exhibitions and included safety provisions and provisions for the censorship of films.

4. The Apprentices Act, 1961 (Act No. 45 of 1961, assented to on 22 March 1961) established an Apprentices Board and made a number of other provisions concerning apprentices.

5. The Education Act, 1961 (Act No. 87 of 1961, assented to on 15 November 1961) provided for the development of education and regulated the conditions of service of teachers.

6. The Copyright Act, 1961 (Act No. 85 of 1961, assented to on 8 November 1961) made provision for copyright in literary, musical and artistic works, cinematograph films, gramophone records and broadcasts.

II. JUDICIAL DECISION[1]

In its decision delivered on 28 August 1961 on Civil Appeal No. 42/61, the Supreme Court of Ghana passed judgement in an appeal from the refusal of the High Court to grant an application made jointly by the appellants for writs of *habeas corpus ad subjiciendum*. The appellants had been arrested and placed in detention on 10 and 11 November 1959 under an order made by the Governor-General and signed on his behalf by the Minister of Interior under section 2 of the Preventive Detention Act, 1958.[2] The decision includes the following passages on the constitutionality of that Act.

The main issues raised by counsel for the appellants are that:

. . .

6. The Preventive Detention Act, 1958, by virtue of which the appellants were detained, is in excess of the powers conferred on Parliament by the Constitution of the Republic of Ghana with respect to article 13 (1) of the Constitution, or is contrary to the solemn declaration of fundamental principles made by the President on assumption of office.

7. The Preventive Detention Act not having been passed upon a declaration of emergency is in violation of the Constitution of the Republic of Ghana.

. . .

By notice filed during the pendency of this appeal, counsel for appellants invoked the powers of the Supreme Court under section 2 of article 42 of the Constitution to declare the Preventive Detention Act invalid on the ground that it was made in excess of the power conferred on Parliament because:

1. That the Preventive Detention Act, 1958, was made in excess of the power conferred on Parliament by or under the Constitution with respect to article 13 (1) of the Constitution, that until that article is repealed by the people, (*a*) freedom and justice shall be honoured and maintained, (*b*) no person should suffer discrimination on grounds of political belief, and (*c*) no person should be deprived of freedom of speech, or of the right to move and assemble, or of the right of access to the courts of law.

2. That the Preventive Detention Act, 1958, is contrary to the Declaration of Fundamental Principles solemnly subscribed to by Kwame Nkrumah on accepting the call of the people to the high office of President of Ghana and to which he adhered upon that declaration — namely, that "The powers of government spring from the will of the people and should be exercised in accordance therewith", in particular, with reference to the honouring and maintaining of freedom and justice, prohibition of discrimination on grounds of political belief, non-deprivation of the freedom of speech, or of the right to move and assemble without hindrance or of the right of access to the courts of law.

3. That the Preventive Detention Act, 1958, which was not passed upon a declaration of emergency or as a restriction necessary for preserving public order, morality or health, but which nevertheless placed a penal enactment in the hands of the President to discriminate against Ghanaians — namely, to arrest and detain any Ghanaian and to imprison him for at least five years and thus deprive him of his freedom of speech, or of the right to move and assemble

[1] Information based upon the text of the judgement furnished by the Government of Ghana.

[2] See *Yearbook on Human Rights for 1958*, p. 82. For relevant extracts from the Constitution of the Republic of Ghana, see *Yearbook on Human Rights for 1960*, pp. 145–6.

without hindrance, or of the right of access to the courts of law, constitutes a direct violation of the Constitution of the Republic of Ghana and is wholly invalid and void.

Article 42, section 2, reads:

"The Supreme Court shall have original jurisdiction in all matters where a question arises whether an enactment was made in excess of the powers conferred on Parliament by or under the Constitution, and if any such question arises in the High Court or an inferior court, the hearing shall be adjourned and the question referred to the Supreme Court for decision."

As the legal issues arising from those questions could not properly be raised and/or determined at the High Court, we deemed it appropriate to grant the leave sought, and the issues have been accordingly argued in the course of this appeal.

All the grounds relied upon appear to be based upon article 13 of the Constitution. It is contended that the Preventive Detention Act is invalid because it is repugnant to the Constitution of the Republic of Ghana, 1960, as article 13 (1) requires the President upon assumption of office to declare his adherence to certain fundamental principles which are:

That the powers of government spring from the will of the people and should be exercised in accordance therewith.

That freedom and justice should be honoured and maintained.

That the union of Africa should be striven for by every lawful means and, when attained, should be faithfully preserved.

That the independence of Ghana should not be surrendered or diminished on any grounds other than the furtherance of African unity.

That no person should suffer discrimination on grounds of sex, race, tribe, religion or political belief.

That chieftaincy in Ghana should be guaranteed and preserved.

That every citizen of Ghana should receive his fair share of the produce yielded by the development of the country.

That subject to such restrictions as may be necessary for preserving public order, morality or health, no person should be deprived of freedom of religion or speech, of the right to move and assemble without hindrance or of the right of access to courts of law. That no person should be deprived of his property save where the public interest so requires and the law so provides.

This contention, however, is based on a misconception of the intent, purpose and effect of article 13 (1), the provisions of which are, in our view, similar to the Coronation Oath taken by the Queen of England during the Coronation Service. In the one case the President is required to make a solemn declaration, in the other the Queen is required to take a solemn oath. Neither the oath nor the declaration can be said to have a statutory effect of an enactment of Parliament. The suggestion that the declarations made by the President on assumption of office constitute a "Bill of Rights" in the sense in which the expression is understood under the Constitution of the United States of America is therefore untenable.

We may now consider the effect of the Constitution of the Republic of Ghana 1960 with regard to the Preventive Detention Act 1958 enacted by Parliament of Ghana under the Ghana Constitution Order in Council 1957. We observe that by the Constitution (Consequential Provisions) Act, 1960, enacted by the same Constituent Assembly which enacted the Republican Constitution, the Preventive Detention Act 1958 was amended thus:

In section 2, in subsections 3, 4 and 5 of section 3, and in subsection 2 of section 4, for "Governor-General" in each place where it occurs, substitute "President". Also that by article 40 of the Republican Constitution, 1960, the laws of Ghana comprise inter alia enactments in force immediately before the coming into operation of the Constitution, *a fortiori*, the Preventive Detention Act 1958 being law in force in Ghana at the time the Constitution was enacted and having been amended by the same body which enacted the said Constitution, it cannot be denied that it must have been the intention of the people of Ghana by their representatives gathered in a Constituent Assembly to retain the Preventive Detention Act, 1958, in full force and effect. The contention that the legislative power of Parliament is limited by article 13 (1) of the Constitution is therefore in direct conflict with express provisions of article 20. We hold that the Preventive Detention Act does not constitute a violation of the Constitution of the Republic of Ghana, consequently it is neither invalid nor void.

We are of opinion that the effect of article 20 of the Constitution, which provides for "The Sovereign Parliament", is that subject to the following qualifications, Parliament can make any law it considers necessary: The limitations are that

(*a*) Parliament cannot alter any of the entrenched articles in the Constitution unless there has been a referendum in which the will of the people is expressed.

(*b*) Parliament can, however, of its own volition, increase, but not diminish, the entrenched articles;

(*c*) The articles which are not entrenched can only be altered by an Act which specifically amends the Constitution.

It will be observed that article 13 (1) is in the form of a personal declaration by the President and is in no way part of the general law of Ghana. In

the other parts of the Constitution where a duty is imposed the word "shall" is used, but throughout the declaration the word used is "should". In our view the declaration merely represents the goal to which every president must pledge himself to attempt to achieve. It does not represent a legal requirement which can be enforced by the courts.

On examination of the said declarations with a view to finding out how any could be enforced we are satisfied that the provisions of article 13 (1) do not create legal obligations enforceable by a court of law. The declarations however impose on every President a moral obligation, and provide a political yardstick by which the conduct of the Head of State can be measured by the electorate. The people's remedy for any departure from the principles of the declaration is through the use of the ballot box, and not through the courts.

We do not accept the view that Parliament is competent to pass Preventive Detention Act in war time only and not in time of peace. The authority of Parliament to pass laws is derived from the same source, the Constitution, and if by it, Parliament can pass laws to detain persons in war time there is no reason why the same parliament cannot exercise the same powers to enact laws to prevent any person from acting in a manner prejudicial to the security of the State in peace time. It is not only in Ghana that Detention Acts have been passed in peace time.

Finally, the contention that the Preventive Detention Act 1958 is contrary to the Constitution of the Republic of Ghana is untenable and for the reasons indicated the appeal is dismissed.

THE CRIMINAL CODE, 1960

PROMULGATED BY ACT NO. 29 OF 1960, ASSENTED TO ON 12 JANUARY 1961[1]

As Amended by the Criminal Code (Amendment) Act, 1961

PART IV

OFFENCES AGAINST PUBLIC ORDER, HEALTH, AND MORALITY

Chapter I

OFFENCES AGAINST THE SAFETY OF THE STATE

. . .

183. . . .

(2) Whenever the President is of opinion —

(*a*) That there is in any newspaper, book or document which is published periodically a systematic publication of matter calculated to prejudice public order or safety, or the maintenance of the public services or economy of Ghana, or

(*b*) That any person is likely to publish individual documents containing such matter, he may make an executive instrument requiring that no future issue of the newspaper, book or document shall be published, or, as the case may be, that no document shall be published by, or by arrangement with, the said person, unless the matter contained therein has been passed for publication in accordance with the instrument.

(3) Any person who conspires with any person to carry into execution any seditious enterprise, or prints or publishes any seditious words or writing; or utters any seditious words, or sells, offers for sale, distributes, reproduces or imports any newspaper, book or document or any part thereof or extract therefrom containing any seditious words or writing, shall be guilty of second degree felony.

. . .

(11) For the purposes of this section an intention shall be taken to be seditious if it is an intention —

(*a*) To advocate the desirability of overthrowing the Government by unlawful means; or

(*b*) To bring the Government into hatred or contempt or to excite disaffection against it; or

(*c*) To excite the people of Ghana to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Ghana as by law established; or

(*d*) To bring into hatred or contempt or to excite disaffection against the administration of justice in Ghana; or

(*e*) To raise discontent or disaffection among the people of Ghana; or

(*f*) To promote feelings of ill-will or hostility between different classes of the population of Ghana; or

(*g*) Falsely to accuse any public officer of misconduct in the exercise of his official duties, knowing the accusation to be false or reckless whether it be true or false.

(12) An intention, not being an intention manifested in such a manner as to effect or be likely to effect any of the purposes mentioned in paragraph (*a*) of subsection 11 shall not be seditious if it is an intention —

(*a*) To show that the Government have been misled or mistaken in any of their measures; or

[1] Printed and published by the Government Printer, Accra, Ghana. The Act entered into force on 1 February 1961.

(*b*) To point out errors or defects in the Government or constitution of Ghana as by law established or in legislation or in the administration of justice, with a view to the reformation of those errors or defects; or

(*c*) To persuade the people of Ghana to attempt to procure by lawful means the alteration of any matter in Ghana as by law established; or

(*d*) To point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will or hostility between different classes of the population of Ghana.

. . .

183A [As added to the Criminal Code by the Criminal Code (Amendment) Act, 1961, Act. No. 82 of 1961, assented to on 1 November 1961 and deemed to have entered into force at the same time as the Criminal Code, 1960]. Any person who with intent to bring the President into hatred, ridicule or contempt publishes any defamatory or insulting matter whether by writing, print, word of mouth or in any other manner whatsoever concerning the President, commits an offence and shall be liable on summary conviction to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

184. Whoever does any act or utters any words or publishes any writing with intent to insult or bring into contempt or ridicule the official national flag or emblem of Ghana or any representation or pictorial reproduction thereof is guilty of a misdemeanour.

185. (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 and which he knows or has reason to believe is false, shall be guilty of second degree felony.

(2) This section does not apply to any statement which is absolutely privileged under section 117.

(3) It is 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 whether committed in or outside Ghana.

. . .

Chapter 3

OFFENCES AGAINST THE PEACE

. . .

201. (1) When three or more persons assemble with intent to commit an offence, or being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.

(2) It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner.

202. (1) Whoever takes part in an unlawful assembly shall be guilty of a misdemeanour.

. . .

208. (1) Any person who publishes or reproduces any statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace, knowing or having reason to believe that the statement, rumour or report is false is guilty of a misdemeanour.

(2) It is no defence to a charge under subsection 1 that the person charged did not know or did not have reason to believe that the statement, rumour or report was false unless he proves that, prior to publication, he took reasonable measures to verify the accuracy of the statement, rumour or report.

. . .

Chapter 7

OFFENCES AGAINTS PUBLIC MORALS

. . .

Obscenity

280. Whoever publishes or offers for sale any obscene book, writing, or representation, shall be guilty of a misdemeanour.

Illustrations

(*a*) A. publishes a book for the use of physicians or surgeons, or of persons seeking medical or surgical information. Whatever may be the subjects with which the book deals, if they are treated with as much decency as the subject admits, A. is not guilty of an offence against this section.

(*b*) B. publishes extracts from the book mentioned in the last illustration, arranged or printed in such a manner as to give unnecessary prominence to indecent matters. If the Court or jury think that such publication is calculated unnecessarily and improperly to excite passion, or to corrupt morals, B. ought to be convicted.

281. (1) Any person who —

(*a*) For the purposes of or by way of trade, or for the purposes of distribution or public exhibition, makes, produces, or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films, or any other obscene objects; or

(*b*) For any of the purposes above mentioned imports, conveys, or exports, or causes to be im-

ported, conveyed, or exported, any of the said obscene matters or things, or in any manner whatsoever puts any of them into circulation; or

(*c*) Carries on or takes part in any business, whether public or private, concerned with any of the said obscene matters or things, or deals in any of the said matters or things in any manner whatsoever, or distributes any of them or exhibits any of them publicly, or makes a business of lending any of them; or

(*d*) Advertises or makes known by any means whatsoever, with a view to assist in the said punishable circulation or traffic, that a person is engaged in any of the above punishable acts, or advertises or makes known how or from whom any of the said obscene matters or things can be procured either directly or indirectly,

shall be guilty of a misdemeanour.

(2) A district magistrate may, on application being made to him for the purpose by or on behalf of the Commissioner of Police, order to be destroyed any of the obscene matters or things mentioned in subsection 1 which he, the magistrate, is satisfied has or have been or is or are being made, deposited, or used for any of the purposes referred to in the said subsection.

282. Whoever affixes to or inscribes on any house, building, wall, hoarding, gate, fence, pillar, post, board, tree, or any other thing whatsoever, so as to be visible to a person being in or passing along any public place, or public road, or footpath, and whoever affixes to or inscribes on any public urinal, or delivers or attempts to deliver, or exhibits, to any inhabitant or to any person being in or passing along any public place or public road, or footpath, or exhibits to public view in the window of any house or shop, any picture or printed or written matter which is of an indecent or obscene nature, shall be liable to a fine not exceeding fifty pounds.

283. Whoever gives or delivers to any other person any picture or printed or written matter mentioned in section 282 with the intent that it be affixed, inscribed, delivered, or exhibited as therein mentioned, shall be liable to a fine not exceeding twenty pounds.

284. (1) Any advertisement relating to venereal disease, nervous debility, or other complaint or infirmity arising from or relating to sexual intercourse, and any advertisement claiming for any preparation aphrodisiac properties, shall be deemed to be of an indecent or obscene nature.

(2) This section does not apply to any advertisement relating to venereal disease published by or with the authority of the minister responsible for public health.

. . .

Chapter 10

MISCELLANEOUS OFFENCES

. . .

Slave-dealing

314. (1) Whoever —

(*a*) Deals or trades in, buys, sells, barters, transfers, or takes any slave; or

(*b*) Deals or trades in, buys, sells, barters, transfers, or takes any person in order that that person may be held or treated as a slave; or

(*c*) Places or receives any person in servitude as a pledge or security for debt, whether then due and owing or to be incurred or contingent, whether under the name of a pawn or by whatever other name that person may be called; or

(*d*) Conveys any person, or induces any person to come to Ghana in order that such person may be dealt or traded in, bought, sold, bartered, transferred, or become a slave, or be placed in servitude as a pledge or security for debt; or

(*e*) Conveys or sends any person, or induces any person to go out of Ghana in order that that person may be dealt or traded in, bought, sold, bartered, transferred, or become a slave, or be placed in servitude as a pledge or security for debt; or

(*f*) Enters into any contract or agreement with or without consideration for doing any of the acts or accomplishing any of the aforementioned purposes; or

(*g*) By any species of coercion or restraint otherwise than in accordance with the Labour Ordinance, compels or attempts to compel the service of any person,

shall be guilty of second degree felony.

(2) This section does not apply to any such coercion as may lawfully be exercised by virtue of contracts of service between free persons, or by virtue of the rights of parents and other rights, not being contrary to law, arising out of the family relations customarily used and observed in Ghana.

. . .

THE CRIMINAL PROCEDURE CODE, 1960

ACT No. 30 OF 1960, ASSENTED TO ON 12 JANUARY 1961[1]

Part I

GENERAL PROVISIONS

Procedure

1. All offences under the Criminal Code and, subject to the provisions of any enactment, all other offences shall be enquired into, tried and otherwise dealt with according to this code.

. . .

Arrest generally

3. In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

4. (1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of the place shall, on demand of the person so acting or the police officer, allow him free entry thereto and afford all reasonable facilities to search therein for the person sought to be arrested,

(2) If entry to the place cannot be effected under subsection 1 —

(*a*) Any person acting under a warrant, or

(*b*) A police officer, in a case in which a warrant may issue, but cannot be obtained without affording an opportunity for the escape of the person to be arrested,

may enter the place and search therein for the person to be arrested and, in order to effect entrance into that place, break open any outer or inner door or window of any house or place, whether that of the person to be arrested, or of any other person or otherwise effect entry, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

. . .

6. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

7. Except when the person arrested is in the actual course of the commission of a crime or is pursued immediately after escape from lawful custody, the police officer or other person making the arrest shall inform the person arrested of the cause of the arrest, and, if the police officer or other person is acting under the authority of a warrant, shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

[1] Printed and published by the Government Printer, Accra, Ghana. According to its section 416, the Code was to enter into force on 1 February 1961.

8. (1) Whenever a person is arrested by a police officer or a private person, the police officer making the arrest or to whom the private person makes over the person arrested may search such person, and place in safe custody all articles other than necessary wearing apparel found upon him.

(2) Whenever the person arrested can be legally admitted to bail and bail is furnished, he shall not be searched unless there are reasonable grounds for believing that he has about his person, any —

(*a*) Stolen articles; or

(*b*) Instrument of violence; or

(*c*) Tools connected with the kind of offence which he is alleged to have committed; or

(*d*) Other articles which may furnish evidence against him in regard to the offence which he is alleged to have committed.

(3) All searches shall be made with strict decency and whenever it is necessary to cause a woman to be searched, the search shall be made by another woman.

(4) The right to search an arrested person does not include the right to examine his private person.

(5) Notwithstanding any other provision of this section, a police officer or other person making an arrest may in any case take from the person arrested any offensive weapons which he has about his person.

9. Any person who is arrested, whether with or without a warrant, shall be taken with all reasonable despatch to a police station, or other place for the reception of arrested persons, and shall without delay be informed of the charge against him. Any such person while in custody shall be given reasonable facilities for obtaining legal advice, taking steps to furnish bail, and otherwise making arrangements for his defence or release.

Arrest without Warrant

10. Any police officer may, without an order from a Court and without a warrant, arrest —

(*a*) Any person whom he suspects upon reasonable grounds of having committed a felony or misdemeanour;

(*b*) Any person who commits any offence in his presence;

(*c*) Any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;

(*d*) Any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing;

(*e*) Any person whom he suspects upon reasonable grounds of being a deserter from the armed forces;

(*f*) Any person whom he suspects upon reasonable grounds of having been concerned in any act committed at any place outside Ghana which, if committed in Ghana, would have been punishable as an offence, and for which he is, under any enactment, liable to be apprehended and detained in Ghana;

(*g*) Any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement adapted or intended for use in unlawfully entering any building;

(*h*) Any person for whom he has reasonable cause to believe a warrant of arrest has been issued by a court;

(*i*) Any person whom he finds in any highway, yard, verandah, building or other place during the night and whom he suspects upon reasonable grounds of being about to commit a felony or misdemeanour;

(*j*) Any person whom he has reasonable cause to believe is about to commit a felony or misdemeanour where there is no other practicable way of preventing the commission of the offence.

. . .

12. Any private person may arrest any person who in his view commits a felony or misdemeanour or any offence involving the use of force or violence, or whom he reasonably suspects of having committed a felony provided that the felony has been committed.

13. Persons found committing any offence involving injury to property may be arrested without a warrant by the owner of the property or his servants or persons authorized by him.

14. (1) Any private person arresting any other person without a warrant shall without unnecessary delay make over the person so arrested to a police officer or, in the absence of a police officer, shall take him to the nearest police station.

(2) If there is reason to believe that that person comes under section 10, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a felony or misdemeanour, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which the officer has reason to believe to be false, he shall be dealt with under section 11. If there is no sufficient reason to believe that he has committed any offence he shall be at once released.

15. (1) When any person has been taken into custody without a warrant for an offence other than an offence punishable with death, the officer in charge of the police station or other place for the reception of arrested persons to which such person is brought shall at once enquire into the case, and if, when the enquiry is completed, there is no sufficient reason to believe that the person has committed any offence he shall be released forthwith.

(2) If upon the completion of the enquiry there is reason to believe that the person arrested has committed an offence and, if the offence does not appear to be of a serious nature, the officer may, and shall, if it does not appear practicable to bring such person before an appropriate court within twenty-four hours after he was taken into custody, release the person on his executing a bond, with or without sureties for a reasonable amount, to appear before a court at a time and place named in the bond.

(3) If, on a person being so taken into custody as aforesaid, it appears to the officer that the enquiry into the case cannot be completed forthwith, he may release the said person on his entering into a bond, with or without sureties for a reasonable amount, to appear at that police station and at such times as are named in the bond, unless he previously receives notice in writing from the officer of police in charge of that police station that his attendance is not required, and any such bond may be enforced as if it were a bond conditional for the appearance of the said person before a court for the place in which the police station named in the bond is situate.

(4) Where any person so taken into custody as aforesaid is retained in custody, he shall be brought before a court at the earliest time practicable, whether or not the police enquiries are completed.

. . .

Part II

PROVISIONS RELATING TO CRIMINAL PROCEEDINGS

. . .

Information as to Offences against the State

50. (1) For the purpose of detecting the commission of offences under chapter 1 of part IV of the Criminal Code (which relates to offences against the safety of the State) or any activity prejudicial to —

(*a*) The defence of Ghana,

(*b*) The relations of Ghana with other countries, or

(*c*) The security of the State,

the Attorney-General may give to any person in Ghana, or any individual outside Ghana who is a citizen of Ghana or ordinarily resident in Ghana, directions requiring him, within such time and in such manner as may be specified in the directions, to furnish to the Attorney-General or to any person designated in the directions as a person authorized to require it, any information in his possession or control which the Attorney-General or the person so authorized, as the case may be, may require.

(2) A person required by any such directions to furnish information shall also produce such books, accounts or other documents in his possession or

control as may be required for the said purpose by the Attorney-General, or by the person authorized to require information, as the case may be.

(3) The Attorney-General or other person to whom any such documents are produced may cause copies to be taken of those documents or any part thereof.

(4) For the purposes of this section, a body corporate shall be deemed to be in Ghana if it is incorporated in Ghana or if it carries on business or has any branch or office in Ghana.

51. Nothing in section 50 shall be taken to require any person who has acted as counsel or solicitor for any person to disclose any privileged communications made to him in that capacity.

. . .

Search Warrants

88. (1) A District Magistrate who is satisfied, by evidence upon oath, that there is reasonable ground for believing that there is in any building, vessel, carriage, box, receptacle, or place —

(*a*) Anything upon or in respect of which any offence has been or is suspected to have been committed, for which, according to any law for the time being in force, the offender may be arrested without warrant; or

(*b*) Anything which there is reasonable ground for believing will afford evidence as to the commission of any such offence; or

(*c*) Anything which there is reasonable ground for believing is intended to be used for the purpose of committing an offence against the person for which, according to any law for the time being in force, the offender may be arrested without warrant,

may at any time issue a warrant under his hand authorizing any constable to search any such building vessel, carriage, box, receptacle, or place for any such thing, and to seize and carry it before the magistrate issuing the warrant or some other magistrate to be by him dealt with according to law.

. . .

89. Every search warrant may be issued and executed on a Sunday and shall be executed between the hours of 6.30 a.m. and 6.30 p.m., but the court may, by the warrant, in its discretion, authorize the police officer or other person to whom it is addressed to execute it at any hour.

90. (1) Whenever any building or other place liable to search is closed, any person residing in or being in charge of the building or place shall, on demand of the police officer or other person executing the search warrant, allow him free entry thereto and afford all reasonable facilities for a search therein.

(2) If entry into the building or other place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by sections 4 and 5.

(3) When any person in or about such building or place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman the provisions of section 8 (3) shall be observed.

91. (1) When any thing is seized under a search warrant and brought before any magistrate, he may detain or cause it to be detained, taking reasonable care that it is preserved till the conclusion of the case; and if any appeal is made, he may order it further to be detained for the purpose of or pending an appeal. If no appeal is made, the Magistrate shall direct the thing to be restored to the person from whom it was taken, except in the cases hereinafter mentioned, unless he is authorized or required by law to dispose of it otherwise.

. . .

93. Whenever a police officer has reasonable cause to believe that any article which has been stolen or otherwise unlawfully obtained, or in respect of which a criminal offence has been, is being, or is about to be, committed, is being conveyed, or is concealed or carried on any person in a public place, or is concealed or contained in any package in a public place, for the purpose of being conveyed, then and in any such case, if the police officer considers that the special exigencies of the case so require, he may without a warrant or other written authority apprehend, seize, and search any such person, package, or article, and may thereupon take possession of and detain such article together with the package, if any, containing it, and may also arrest any person conveying, concealing, or carrying the same as aforesaid.

94. (1) Any police officer not below the rank of Assistant Superintendent of Police, or who being below such rank is authorized in writing so to do by some police officer not below such rank, may enter any house, shop, warehouse, yard, ship, boat, vessel, beach, or other premises which he has reasonable cause to believe contains any property which has been stolen or dishonestly received and may search for, seize, and secure, any property which he has reasonable cause to believe has been stolen, or dishonestly received in the same manner as if he had a search warrant and the property seized, if any, corresponded to the property described in such search warrant.

(2) Authorizations, searches, and seizures, given or made under this section shall not be confined to any particular property, but may be general.

95. Sections 88 and 93 shall not apply to the case of postal matter in transit by post, except where the postal matter has been, or is suspected of having been dishonestly appropriated during such transit.

. . .

Previous Acquittal or Conviction

113. A person who has been once tried by a court of competent jurisdiction for an offence, and convicted or acquitted of the offence, shall not be liable to be tried again on the same facts for the same offence or any other offence of which he could have lawfully been convicted at the first trial unless a retrial is ordered by a court having power to do so.

. . .

Evidence for Defence

129. (1) Every person charged with an offence shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person.

(2) A person so charged shall not be called as a witness in pursuance of this Code except upon his own application.

(3) The failure of any person charged with an offence to give evidence or make a statement under section 187 may be the subject of comment by the judge, the prosecution or the defence.

(4) A person charged and called as a witness in pursuance of this Code may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged.

(5) A person charged and called as a witness in pursuance of this Code shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless —

(*a*) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or

(*b*) he has personally or by his counsel asked questions of the witnesses for the prosecution with a view to establish his own good character or has given or called evidence of his own good character; or

(*c*) the nature or conduct of the defence is such as to involve imputations against the character of the prosecutor or the witnesses for the prosecution which are not reasonably necessary for the conduct of the defence; or

(*d*) he has given evidence against any other person charged with the same offence.

. . .

Part III

SUMMARY TRIAL

. . .

Procedure upon Summary Trial

165. The room or place in which the court sits to hear and determine the charge is an open and public court, to which the public generally may have access as far as it can conveniently contain them.

. . .

171. (1) If the accused appears personally or, under section 70 (1), by his advocate, the substance of the charge contained in the charge sheet or complaint shall be stated and explained to him, or, if he is not personally present, to his advocate (if any), and he or his advocate, as the case may be, shall be asked whether he pleads guilty or not guilty. In stating the substance of the charge the court shall state particulars of the date, time, and place of the commission of the alleged offence, the person against whom or the thing in respect of which it is alleged to have been committed, and the section of the enactment creating the offence.

(2) If the plea is one of guilty the plea shall be recorded as nearly as possible in the words used, or if there is an admission of guilt by letter under section 70 (1) such letter shall be placed on the record and the court shall convict the accused person and pass sentence or make an order against him, unless there shall appear to it sufficient cause to the contrary.

(3) If the plea is one of not guilty the court shall proceed to hear the case as hereinafter provided.

(4) If the accused or his advocate, as the case may be, refuses to plead, or if he does not appear and the court decides to hear the case in his absence under the provisions of section 170, a plea of not guilty shall be entered and the plea so entered shall have the same force and effect as if the same had been actually pleaded.

172. (1) If the accused does not plead guilty to the charge, the court shall proceed to hear such evidence as the prosecutor may adduce in support of the charge.

(2) The accused or his advocate may put questions to each witness produced against him.

(3) If the accused does not employ an advocate, the court shall, at the close of the examination of each witness for the prosecution, ask the accused whether he wishes to put any questions to that witness and shall record his answer.

(4) If the accused instead of questioning the witness makes any statement regarding the evidence of that witness, the magistrate shall, if he thinks it desirable in the interest of the accused, put the substance of such statement to the witness in the form of questions.

173. If at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused sufficiently to require him to make a defence, the court shall, as to that particular charge, acquit him.

174. (1) At the close of the evidence in support of the charge, if it appears to the court that a case is made out against the accused sufficiently to require

him to make a defence, the court shall call upon him to enter into his defence and shall remind him of the charge and inform him that, if he so desires, he may give evidence himself on oath or may make a statement. The court shall then hear the accused if he desires to be heard and any evidence he may adduce in his defence.

(2) If the accused states that he has witnesses to call but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused, the court may adjourn the trial and issue process, or take other steps, to compel the attendance of such witnesses.

(3) If the accused person has examined any witnesses or given any evidence other than as to his, the accused's, general character, the court may grant leave to the prosecutor to give or adduce evidence in reply.

175. (1) The prosecutor or his advocate shall be entitled to address the court at the commencement of his case and, where the accused has called witnesses, other than witnesses as to his general character, also at the conclusion of the case for the defence. The accused or his advocate shall be entitled to address the court at the commencement or in conclusion of his case as he thinks fit.

(2) Except with the leave of the court, the accused or his advocate shall not be entitled to address the court on evidence adduced by the prosecutor in reply.

. . .

177. . . .

(2) . . . in the event of the court convicting or making an order against an accused person in respect of which an appeal lies, the court shall inform that person of his right to appeal at the time of entering the conviction or making the order.

. . .

Part IV

COMMITTAL FOR TRIAL FOR INDICTABLE OFFENCE

Preliminary Hearing by District Court

181. Where a person is before a district court charged with an offence which is not being tried summarily there shall be a preliminary hearing of the case by the court, at which the procedure laid down in this Part shall be followed.

. . .

184. (1) The prosecution may address the court in explanation of the case against the accused.

(2) An address may be made in reply by or on behalf of the accused.

. . .

(4) If the court is of opinion that there is a case for the accused to answer, it shall commit him for trial to a court (in this part called "the trial court") of competent jurisdiction.

(5) If the court is of opinion that there is not a case for the accused to answer, it shall discharge him but this shall not be a bar to a subsequent charge in respect of the same facts.

185. The room or place in which the proceedings are held is not an open or public court for that purpose, and the court may, if it thinks that the ends of justice will be best served by so doing, order that no person have access to, or be, or remain in that room or place without the express permission of the court.

. . .

188. (1) The court, on committing the accused for trial, shall ask him whether he desires to call witnesses at the trial.

. . .

(4) The court shall inform the accused of his right to require the attendance at the trial of any witness and of the steps which he must take for the purpose of enforcing such attendance.

. . .

Procedure before Trial Court

198. (1) When the accused comes before the trial court in pursuance of the committal order the procedure laid down in this section shall be followed.

(2) The court shall cause the bill of indictment to be read to the accused and, if necessary, explained to him.

(3) Any objection by or on behalf of the accused to the indictment or the summary of evidence shall then be taken.

. . .

199. (1) Where the accused pleads guilty to a charge, the court before accepting the plea shall, if the accused is not represented by an advocate, explain to him the nature of the charge and the procedure which follows the acceptance of a plea of guilty.

(2) The accused may then withdraw his plea and plead not guilty.

(3) Any statement made by the accused in answer to the court shall be recorded by the court in writing and shall form part of the record of the proceedings.

(4) Where the accused pleads guilty but adds words indicating that he may have a defence or so indicates in answer to the court, the court shall enter a plea of not guilty and record it as having been entered by order of the court.

(5) The court shall not accept a plea of guilty in the case of an offence punishable by death.

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Part V

Trial on Indictment

Procedure on Indictment

. . .

204. All trials on indictment shall be by a jury or with the aid of assessors in accordance with the provisions hereinafter contained.

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Case for the Prosecution

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267. The witnesses called for the prosecution shall be subject to cross-examination by or on behalf of the accused and to re-examination on behalf of the prosecution.

. . .

Case for the Defence

272. (1) At the close of the evidence for the prosecution and after the statement of the accused person before the committing court has been given in evidence the court shall in cases where the accused is not defended by counsel inform him of his right to address the court, to give evidence on his own behalf or to make an unsworn statement and to call witnesses in his defence and in all cases shall require him or his counsel to state whether it is intended to call any witnesses as to fact other than the accused person himself.

(2) Upon the accused being so informed the judge shall record the fact and shall then observe the appropriate procedure set out in section 273.

273. (1) Where the accused person is not defended by counsel and states that he does not intend to call any witness as to the facts except himself, the court shall forthwith call upon the accused to make his statement or say nothing or give evidence on oath as to the facts, and after his cross-examination (if any) he shall be permitted to address the court if he so desires and to call any witnesses as to character.

(2) Where the accused is not defended by counsel but states that he intends to call witnesses (other than himself) as to the facts, the court shall call upon him to open his case if he so desires. The accused shall then make his own unsworn statement or give his evidence on oath, and thereafter he shall call his witnesses (including witnesses as to character). At the conclusion of the evidence for the defence the accused shall be permitted to sum up his case to the court and counsel for the prosecution shall be entitled to reply.

274. (1) Where the accused is defended by counsel who states that no witness as to the facts will be called except the accused, the court shall require the accused to make his unsworn statement or give his evidence, as the case may be. Thereafter counsel for the prosecution may address the court and counsel for the defence may reply and shall then call his witnesses (if any) as to the character of the accused.

(2) Where the accused is defended by counsel who states that he intends to call witnesses as to the facts other than the accused, the court shall call upon the accused's counsel to open his case and shall then require the accused, if he so desires, to make his own unsworn statement or give his evidence on oath, as the case may be, and thereafter to call his witnesses (including witnesses as to character). At the conclusion of the evidence for the defence, counsel for the accused may address the court and counsel for the prosecution may reply.

. . .

Part VI

Punishments

Different Kinds of Punishment

. . .

295 (1) Sentence of death shall not be pronounced on or recorded against a juvenile offender, that is to say, an offender who, in the opinion of the court, is under the age of seventeen years.

(2) In lieu thereof the sentence of the court shall be that the juvenile offender be detained during the pleasure of the President, and he shall thereupon be detained in such place and manner as the minister may direct and whilst so detained shall be deemed to be in legal custody.

. . .

Part VII

Proceedings after Trial

Capital Sentences

. . .

312. (1) Where a woman is convicted of an offence punishable with death, the question whether the woman is pregnant or not shall be determined by the Court or jury (if the trial has been by jury) upon such evidence as may be laid before either on the part of the woman or on the part of the State, and the court or the jury shall find that the woman is not pregnant unless it is proved affirmatively to the satisfaction of the Court or jury that she is pregnant, in which case the court shall pass on her a sentence of imprisonment for life.

(2) Where on proceedings under this section a verdict is found that the woman is not pregnant, and in consequence she is sentenced to death, the woman may appeal to the Supreme Court and that Court, if satisfied that the finding should be set aside, shall quash the sentence passed on her and instead thereof pass on her a sentence of imprisonment for life.

. . .

[Part VIII deals with appeals, and part IX with procedure in juvenile courts.]

. . .

THE CRIMINAL PROCEDURE CODE (ADDITIONAL PROVISIONS) ACT, 1961

Act No. 93 of 1961, assented to on 22 November 1961[1]

1. (1) Any citizen of Ghana

(*a*) Employed in the service of the Republic of Ghana or in the service of a statutory corporation established under the Statutory Corporations Act, 1961 (Act 41), who commits outside Ghana when acting or purporting to act in the course of his employment an offence which if committed in Ghana would be punishable, or

(*b*) Who commits outside Ghana an offence under section 183A of the Criminal Code, 1960 (Act 29), shall be guilty of an offence of the same nature and subject to the same punishment as if the offence had been committed in Ghana.

(2) A citizen of Ghana referred to in subsection 1 may be proceeded against, tried and punished for an offence referred to in this section in Ghana in accordance with the law for the time being in force; and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in Ghana.

2. The provisions of this Act, in relation to a person specified in paragraph (*a*) of subsection 1 of section 1, shall be deemed to have come into force on the sixth day of March, 1957.

[1] Printed and published by the Government Printer, Accra, Ghana.

THE EMERGENCY POWERS ACT, 1961

Act No. 56 of 1961, assented to on 24 May 1961[1]

1. If the President is satisfied that a state of emergency exists in Ghana or in any part of Ghana he may, with the approval of the Cabinet, by legislative instrument, proclaim a state of emergency in the whole of Ghana or in that part of Ghana where the emergency exists, as the case may be.

2. (1) When a state of emergency is proclaimed in the whole of Ghana under section 1 of this Act it shall be forthwith communicated to the National Assembly. If the National Assembly is not sitting and is not likely to sit within ten days after the proclamation the President shall summon the National Assembly to meet not later than ten days after the proclamation is made.

(2) If the state of emergency is proclaimed in part only of Ghana it shall be communicated to the National Assembly at once if it is sitting or, if not, as soon as it meets.

3. (1) On the making of a proclamation under section 1 of this Act the President with the approval of the Cabinet may, by legislative instrument, make such regulations as he may consider necessary or expedient for securing the public safety, the defence of Ghana, the maintenance of public order, the efficient prosecution of any war in which the republic may be engaged, and for maintaining supplies and services essential to the community in the whole or any part of Ghana.

(2) Without prejudice to the generality of subsection (1) regulations may be made under this section for the following purposes —

(*a*) In the case of an emergency affecting the whole of Ghana —

(i) The detention of persons or the restriction of their movements;

(ii) The deportation and exclusion from Ghana of persons not being citizens of Ghana;

. . .

(*b*) In the case of an emergency affecting only part of Ghana, the detention of any person for the commission of any act in relation to the state of emergency and the exclusion of any person from the emergency area;

(*c*) In the case of an emergency affecting the whole or any part of Ghana —

(i) Taking possession or control, on behalf of the republic, of any property or undertaking;

(ii) The acquisition of any property other than land;

(iii) Entering and searching any premises;

(iv) Amending any law, or suspending the operation of any law;

. . .

(viii) The apprehension, trial and punishment of persons offending against the regulations.

(3) Where a state of emergency is proclaimed in respect of a part only of Ghana regulations made under this section shall only apply in that part.

. . .

8. (1) Any court sittting in any part of Ghana where a proclamation made under section 1 of this Act is in force may, if it is satisfied that it is in the interests of the public safety or the defence of the republic so to do —

[1] Printed and published by the Government Printer, Accra, Ghana.

(*a*) Direct that throughout, or during any part of, the proceedings such persons or classes of persons as the court may determine shall be excluded; and

(*b*) Prohibit or restrict the disclosure of information relating to the proceedings.

(2) Any person who contravenes the directions of a court under this section shall be guilty of a misdemeanour.

. . .

10. Nothing in this Act shall authorize the making of provision for the trial of persons by military courts.

11. In this Act, unless the context otherwise requires —

"Emergency" includes any emergency arising out of any action taken or immediately threatened whether in or outside Ghana by any person or persons and from its nature or scale likely to be prejudicial in Ghana to the public safety or public order or public health, or to deprive any substantial portion of the community of the essentials of life, or to interfere in any way with Government services, and also includes any emergency arising out of an event due to natural causes with or without human intervention;

"Law" means any rule of law, whether statutory or otherwise, but does not include the Constitution or this Act.

12. . . . The Emergency Powers Act, 1957 (No. 28) [is] hereby repealed.

GHANA NATIONALITY ACT, 1961

ACT NO. 62 OF 1961, ASSENTED TO ON 7 JUNE 1961[1]

Citizenship by Birth or Descent

1. A person born in Ghana is a citizen of Ghana by birth:

Provided that —

(*a*) A person born before the commencement of this Act is not a citizen by virtue of this section unless he was a citizen at such commencement;

(*b*) A person is not a citizen by virtue of this section if at the time of his birth neither of his parents was a citizen of Ghana and either parent possessed diplomatic immunity in Ghana.

2. (1) A person born outside Ghana is a citizen of Ghana by descent if at the time of his birth —

(*a*) His father was a citizen otherwise than by descent; or

(*b*) His mother was a citizen by birth.

(2) A person born before the commencement of this Act is not a citizen by virtue of this section unless he was a citizen at such commencement.

Citizenship by Registration or Naturalisation

3. (1) A citizen of any approved country, being a person of full age and capacity, may with the approval of the President acting on the advice of the Cabinet be registered as a citizen of Ghana if he satisfies the minister that he is of good character and has sufficient knowledge of a language indigenous to and in current use in Ghana and that he is ordinarily resident in Ghana and has been so resident throughout the period of five years, or such shorter period as the minister may in the special circumstances of any particular case accept, immediately preceding his application.

(2) Any person of full age and capacity born outside Ghana one of whose parents was at the time of his birth a citizen of Ghana by descent may with the approval of the President acting on the advice of the Cabinet be registered as a citizen of Ghana.

(3) A woman who is married to a citizen of Ghana or who was married to a citizen and has not since re-married may with the approval of the President acting on the advice of the Cabinet be registered as a citizen of Ghana whether or not she is of full age and capacity.

(4) A person shall not be registered as a citizen under this section until he has taken the oath of allegiance.

4. (1) The minister may cause the minor child of any citizen of Ghana to be registered as a citizen of Ghana upon the application of a parent or guardian of the child.

(2) The minister, in such special circumstances as he thinks fit, may cause any minor who is not a citizen to be registered as a citizen of Ghana.

5. A person registered under section 3 or 4 of this Act shall be a citizen of Ghana by registration from the date on which he is registered.

6. The minister may with the approval of the President acting on the advice of the Cabinet grant a certificate of naturalisation to a person of full age and capacity who satisfies him that he is qualified under section 7 of this Act for naturalisation, and the person to whom the certificate is granted shall, on taking the oath of allegiance, be a citizen of Ghana by naturalisation from the date on which that certificate is granted.

7. (1) Subject to subsection 2, the qualifications for naturalisation of any person are —

[1] Printed and published by the Government Printer, Accra, Ghana.

(*a*) That he has resided in Ghana throughout the period of twelve months immediately preceding the date of the application; and

(*b*) That during the seven years immediately preceding the said period of twelve months he has resided in Ghana for periods amounting in the aggregate to not less than five years; and

(*c*) That he is of good character; and

(*d*) That he has sufficient knowledge of a language indigenous to and in current use in Ghana; and

(*e*) That he intends in the event of a certificate being granted to him to reside in Ghana.

(2) The minister in such special circumstances as he thinks fit may with the approval of the President acting on the advice of the Cabinet —

(*a*) Allow a continuous period of twelve months ending not more than six months before the date of application to be reckoned for the purposes of subsection 1 (*a*) as though it had immediately preceded that date;

(*b*) Allow residence in an approved country to be reckoned for the purposes of subsection 1 (*b*) as if it had been residence in Ghana;

(*c*) Allow periods of residence earlier than eight years before the date of application to be reckoned in computing the aggregate mentioned in that subsection.

. . .

Renunciation and Deprivation of Citizenship

10. (1) If any citizen of Ghana of full age and capacity who is also a citizen of another country makes a declaration of renunciation of citizenship of Ghana, the minister, if he is satisfied that that person is not ordinarily resident in Ghana, shall, and in all other cases may, cause the declaration to be registered; and, upon the registration, that person shall cease to be a citizen:

Provided that the minister may withhold registration of any such declaration if in his opinion it is contrary to public policy.

(2) For the purposes of this section any woman who has been married shall be deemed to be of full age.

11. The minister may with the approval of the President acting on the advice of the Cabinet by order deprive a person of his citizenship of Ghana if —

(*a*) He is satisfied that that person by a voluntary and formal act other than marriage has acquired citizenship of another country; or

(*b*) That person, being a citizen by registration or naturalisation, has, on being so required by the minister, failed to renounce his citizenship of any other country or to take the oath of allegiance within a specified time; or

(*c*) He is satisfied that that person has obtained registration or naturalisation by means of fraud, false representation or concealment of any material fact; or

(*d*) He is satisfied that that person, being a citizen by naturalisation, has shown himself by act or speech to be disloyal or disaffected towards the republic or its Government; or

(*e*) He is satisfied that that person, being a citizen by naturalisation, has, during any war in which the republic was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(*f*) He is satisfied that that person has within five years after becoming naturalised been sentenced in any country to imprisonment for a term of not less than twelve months; or

(*g*) He is satisfied that that person, being a citizen by naturalisation, has been resident in other countries for a continuous period of seven years and during that period has not registered annually at a consulate of Ghana or by notice in writing to the minister intimated his intention to retain his citizenship,

and that on any of those grounds it is not conducive to the public good that that person should continue to be a citizen of Ghana.

Commonwealth Citizenship

12. Every person who is a citizen of Ghana or of any Commonwealth country shall, by virtue of that citizenship, have also the status of a Commonwealth citizen.

Miscellaneous

13. Any reference in this Act to the status or description of a parent of a person at the time of that person's birth shall, if he was born after the death of that parent, be construed as a reference to the status or description of that parent at the time of the parent's death.

14. The minister shall not be required to assign any reason for any decision taken under any of the provisions of this Act, and no such decision shall be subject to appeal to or review in any court.

15. The minister may, on application made by or on behalf of any person with respect to whose citizenship of Ghana a doubt exists, whether on a question of fact or law, certify that the person is a citizen of Ghana; . . .

19. (1) Each of the following enactments is repealed:

The Ghana Nationality and Citizenship Act, 1957 (No. 1);

. . .

20. Every person who was a citizen of Ghana at the commencement of this Act shall remain a citizen notwithstanding the repeals effected by this Act.

21. (1) In this Act, unless the context otherwise requires —

. . .

"child" includes a child born out of wedlock and the expressions "father", "mother" and "parent" shall be construed accordingly;

. . .

"minor" means a person who has not attained the age of twenty-one years;

. . .

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

(4) A person shall for the purposes of this Act 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.

. . .

THE NATIONAL ASSEMBLY ACT, 1961

ACT NO. 86 OF 1961, ASSENTED TO ON 14 NOVEMBER 1961[1]

Part I

MEMBERSHIP

1. (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 president or speaker, or being a public officer.

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.

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 (No. 17) 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 256 of the Criminal Code, 1960 (Act 29) or section 16 of the Electoral Provisions Ordinance, 1953 (No. 33).

. . .

2. (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 —

(*a*) An event occurs whereby he becomes a person such as is mentioned in the table contained in the preceding section; or

(*b*) The speaker receives a notice signed by him whereby he resigns his seat; or

(*c*) He is expelled from the Assembly under section 39 of this Act; or

(*d*) 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

[1] Printed by the Government Printing Department, Accra, Ghana.

(*e*) 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 IV

PRIVILEGES AND IMMUNITIES

. . .

(3) An answer by a person to a question put by the Assembly shall not be admissible in evidence against him in any civil or criminal proceedings out of the Assembly, not being proceedings for perjury brought under section 210 of the Criminal Code, 1960 (Act 29).

Part V

CONTEMPT OF PARLIAMENT

28. Any act 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 of particular contempts shall not be taken to affect the generality of this section.

. . .

35. 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.

. . .

Part VII

SUPPLEMENTAL

46. In this act, unless the context otherwise requires — "the Assembly" means the National Assembly, and in parts IV and V 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;

. . .

47. (1) The following enactments are hereby repealed —

The National Assembly Act, 1959 (No. 78);

. . .

GREECE

NOTE[1]

1. Act No. 4159/61 (*Official Gazette*, No. 69/1961) ratifies the European Interim Convention, signed in Paris on 11 December 1953, relating to social security systems covering old age, invalidity and survivors.[2]

2. Act. No. 4161/61 (*Official Gazette*, No. 68/1961) ratifies the European Interim Convention, signed in Paris on 11 December 1953, relating to social security systems other than those for old age, invalidity and survivors.[3]

3. Act No. 4169/61 (*Official Gazette*, No. 81/1961)[4] is of special importance, as it covers fully the problem of social security of the country's rural population, by according old age pensions to farmers as well as medical care to farmers and their families, and by insuring the agricultural production and so the farmers' income.

4. Legislative decree No. 4194/61 (*Official Gazette*, No. 166/1961) ratifies the European Cultural Convention, signed in Paris on 19 December 1954, by the States members of the Council of Europe, aiming at protecting and promoting among the Parties the ideals and principles of the European spiritual civilization and at encouraging its development.

5. Legislative decree No. 4204/61 (*Official Gazette*, No. 174/1961) ratifies International Labour Convention No. 87, on Freedom of Association and Protection of the Right to Organize, adopted in San Francisco in 1948 by the International Labour Conference.[5]

6. Legislative decree No. 4205/61 (*Official Gazette*, No. 174/1961) ratifies International Labour Convention No. 98, on the Application of the Principles of the Right to Organize and to Bargain Collectively, adopted by the International Labour Conference in Geneva, in 1949.[6]

7. Legislative decree No. 4215/61 (*Official Gazette*, No. 170/1961) ratifies International Convention No. 90, adopted by the International Labour Conference at its 31st Session in San Francisco, on the night work of young persons in industry. This convention, revising the previous one of 1919, considers the question of the night work of young persons from a new angle, taking into account both the modern technical needs of industry and the climatic conditions of the different countries, and makes provisions less stringent as to the time limits of night work and more protective of the class of persons concerned.

8. Legislative decree No. 4216/61 (*Official Gazette*, No. 172/1961) ratifies the European Convention on exchange of programmes by means of television films, signed in Paris on 15 December 1958. The convention in question refers to the Berne Convention for the protection of literary and artistic works, and strengthens the cultural and economic unification of the European States.

9. Legislative Decree No. 4221/61 (*Official Gazette*, No. 173/1961) ratifies International Labour Convention No. 105, on the abolition of forced labour, adopted by the International Labour Conference at its 40th Session, in Geneva, in 1957. Being a completion of the International Convention No. 29 of 1930, on forced labour, Convention No. 105, aiming at the abolition of forced labour under any form, is in line with the post-war views on the nature and protection of the individual's rights, as specified in the United Nations Charter and in the Universal Declaration of Human Rights.

[1] Note furnished by the Government of Greece.

[2] See *Yearbook on Human Rights for 1953*. pp. 355-7.

[3] See *ibid.*, pp. 357-8.

[4] See International Labour Office: *Legislative Series* 1961 — Gr.1.

[5] See *Yearbook on Human Rights for 1948*, pp. 427-30.

[6] See *Yearbook on Human Rights for 1949*, pp. 291-2.

GUATEMALA

DECREE No. 1441, OF 29 APRIL 1961, PROMULGATING THE LABOUR CODE

Entered into force on 16 August 1961[1]

SUMMARY

The Labour Code, 1961, amended and consolidated the laws of Guatemala relating to labour. The Code deals with: the right to work; employment contracts and agreements; wages; length of working day and rest periods; work subject to special regulations; health and safety at work; trade unions; collective economic conflicts; prescription, penalties and responsibilities; administrative organization of labour; organization of labour courts and social insurance courts; ordinary procedure; procedure for the settlement of collective social and economic conflicts; social insurance procedure; procedure for trying offences against the labour or social insurance laws; execution of awards; appeal; and powers of the Supreme Court in labour matters.

Article 6 of the Code reads as follows:

"A person's right to work may be restricted only by the decision of a competent authority based on law and dictated by considerations of public order or national interest. Consequently, no person may prevent another person from exercising the lawful occupation or activity of his choice.

"Freedom to work shall not be deemed to be restricted by actions of authorities or private persons in exercise of the rights or in fulfilment of the obligations prescribed by law.

"An employer may not surrender or transfer the rights he holds under a contract or employment relationship or make available to other employers workers whose services he has contracted for his own account, without the clear and express consent of such workers, in which case the temporary or permanent change of employer shall not affect the employment contract to the detriment of the workers. This prohibition shall not affect the transfer by the employer of the enterprise in question."

It is also forbidden to take any type of reprisals against workers with the object of preventing the exercise of their rights under the Constitution or the Labour Code or on the ground that workers have exercised or intend to exercise such rights.

Article 14 *bis* reads:

"Discrimination for reasons of race, religion, political belief or economic status shall be prohibited in social-welfare, educational, cultural, recreational or commercial establishments conducted for the use and benefit of workers, in privately owned enterprises or places of work or in those which the State may establish for workers in general.

"The access of workers to the establishments referred to in this article may not be made conditional on the amount of their wages or the importance of the work which they perform."

The Code lays down the right of every worker to a minimum wage sufficient to meet the material, moral and intellectual requirements of his home and family. Special protection is provided for employed women and young persons. Every female worker is entitled to paid maternity leave before and after confinement, with full rights of reinstatement.

In the case of conflict between the labour and social insurance laws and laws of any other kind, the labour and social insurance laws shall prevail.

[1] Published in *Diario Oficial* No. 14, volume CLXII, of 16 June 1961, and furnished by Mr. Gilberto Chacón Pazos, Ministry of Foreign Affairs, Guatemala City, government-appointed correspondent of the *Yearbook on Human Rights*. A translation of the Code into English and French has been published by the International Labour Office as *Legislative Series* 1961 — Gua.1.

GUINEA

ACT No. 15 AN-61, OF 23 AUGUST 1961, ON THE PROTECTION OF NATURAL CHILDREN[1]

Art. 1. Pending the adoption of the Code of "Persons and Liberalities", children conceived out of wedlock, other than those born of adultery or of an incestuous union, have a right, when their paternity is established, to lodging, board and upkeep by the father.

Art. 2. In default of lodging, board and upkeep of the natural child as defined in article 1, the father shall be obliged to pay maintenance, the amount of which shall be determined by the court, in proportion to the needs of the child and the material situation of the father.

Art. 3. Only the child has the right to bring an action for acknowledgement of paternity. During its minority, only the mother, even though she is under age, or the guardian may bring the action.

This action will not be admissible:

1. If it is established that, during the legal period of conception, the mother indulged in notorious misconduct or had relations with another person.

2. If it was physically impossible for the alleged father, during the same period, either because of his absence or as a result of some accident, to have been the father of the child.

Art. 4. This action for acknowledgement may be brought by the mother or the guardian throughout the child's minority. If the action has not been brought during this period, the child, on coming of age, may bring an action during the year following its majority.

Art. 5. Acknowledgement in the cases referred to can be effected only by a court decision. Proof of paternity shall be established by prolonged cohabitation, acknowledgement by the father, or the testimony of at least two persons.

Proof to the contrary may be shown by any means.

Art. 6. Any person whose paternity has been established with regard to a child born out of wedlock and who evades his obligations for the upkeep, lodging and board of the child, or who shirks payment of the maintenance ordered by decision of the Court, shall be prosecuted for desertion of family, either by the mother or guardian of the child or by the Ministère publique.

The absence of subsistence and the failure to pay maintenance must have lasted for at least two months; this applies despite a formal notice duly served on the person concerned by an enforcement officer.

Art. 7. The present Act shall enter into force from the date of its publication in the *Journal officiel* of the Republic of Guinea.

[1] Text published in the *Journal officiel de la Républic de Guinée*, 3rd year, No. 18, of 15 September 1961.

HAITI[1]

The new legislative measures directly or indirectly affecting human rights which were adopted in Haiti during 1961 are embodied in six international conventions ratified by decree of the National Assembly of the Legislative Chamber, three presidential decrees and one presidential order, and five Acts, including one endowing Haiti with a labour code which, by reason of its scope — embracing as it does all questions relating to the relations between capital and labour — and of its economic, social and legal importance, represents alone a more solid contribution to Haitian human rights legislation than all the other Acts, decrees and orders put together.[2]

1. Accordingly, the first measure to be considered is the code, known as the "François Duvalier Code" as a mark of gratitude to the present president of the republic, which was adopted by the legislature on 12 September 1961 and promulgated on 6 October 1961. The publication even of a complete and explicit summary of this code in the *Yearbook on Human Rights*, let alone of the full text, with its ten laws in 638 articles, taking up 146 octavo pages, would be physically impossible. All that can be done therefore is to indicate its main principles and to give an analytical list of the matters it covers.

The following *general principles* are formulated in articles 1 to 13 inclusive, which form the preamble to law No. 1: The object of the code is to harmonize the relations between capital and labour and ensure the workers' well-being; "work" is defined as any free human activity; all workers are equal in the eyes of the law; every worker has the right to participate in collective bargaining to determine conditions of work; the waiver by any worker of any of his statutory rights is prohibited; all workers have the right to associate in the defence of their interests; work, as a social activity, enjoys the protection of the State; maternity and children under a specified age enjoy special protection; workers incapable of work for reasons beyond their control are entitled to social insurance benefits; co-operatives and an agricultural and handicrafts credit system are established in order to improve the workers' material standards; all labour disputes are to be settled, even when no applicable statute exists, on the basis of judicial precedents, custom, authoritative legal opinion, or international conventions and recommendations.

Law No. 1 deals with individual contracts of employment, their nature and form, their suspension, their termination, notice of termination, sub-contractors, and the obligations of contracting parties.

Law No. 2 deals with collective labour agreements.

Law No. 3 deals with apprenticeship contracts, their nature and form, conditions of apprenticeship, obligations of heads of enterprises, obligations of apprentices, termination of apprenticeship contracts, and special provisions concerning work in mines, quarries, and other extractive industries.

Law No. 4 governs conditions of work: weekly rest and public holidays, night work, leave with pay, wages, tips, and supplementary annual wages or bonuses.

Law No. 5 deals with labour disputes, whether individual or collective, conciliation and amicable settlements, arbitration, the Superior Arbitration Council, strikes and lock-outs, and labour courts.

Law No. 6 deals with social organizations and trade unions.

Law No. 7 governs co-operatives.

Law No. 8 deals with workers and employees subject to special provisions, such as civil servants, domestic workers, seafarers, overland transport workers, workers in mines and quarries, foreign workers and employees, labour of female workers, minors and children employed in service (local custom), home work, wage-earners in agriculture, and tenant-farmers or share-farmers.

Law No. 9 governs the inspection of workplaces and labour, declarations of undertakings, the General Labour Inspectorate, and works rules.

Law No. 10 deals with the organization of social security, industrial health and safety, social welfare, medical service, medical cards, social, industrial accident, sickness and maternity insurance, penalties and settlements in connexion with disputes, and general provisions.

The Labour Code concludes with a Schedule giving the text of an Act of 16 October 1961 containing forty-four articles on the administrative organization of the Department of Labour and Social Welfare.

The Labour Code was published in three special issues (Nos. 99-1-A, 1-B and 1-C) of the official gazette, *Le Moniteur*, all dated 19 October 1961.

[1] Note furnished by Dr. Clovis Kernisan, Dean of the Faculty of Law at the University of Port-au-Prince, government-appointed correspondent for the *Yearbook on Human Rights*.

[2] See International Labour Office: *Legislative Series*, 1961 — Hai.1.

2. After the Labour Code, mention must be made of the presidential order of 4 December 1961 issued pursuant to the provisions of the Labour Code, which lays down the administrative organization, the mode of operation and the general regulations of the Haiti Social Welfare and Research Institution (*Le Moniteur*, No. 114, 4 December, and No. 115, 7 December 1961).

3. An Act of 7 September 1961 designed to prevent any irregularities arising in connexion with real estate ownership in the Artibonite valley, lays down rules governing conveyances of registered land, even when such conveyances have not been made in writing, but by simple transfer of the deeds (*Le Moniteur*, No. 87, 18 September 1961).

4. An Act of 12 September 1961 provides that persons wishing to marry must obtain a pre-marital certificate from the Haiti Social Welfare and Research Institution (IHBESR) or the health service thirty days before the marriage (*Le Moniteur*, No. 90, 25 September 1961).

5. An Act of 7 September 1961 amends articles 50, 51 and 52 of the Penal Code (forming part of Act No. 3 relating to persons punishable, pardonable or responsible for crimes or misdemeanours) to provide better protection for wayward minors or minors in physical and moral danger (*Le Moniteur*, No. 94, 2 October 1961).

6. The decree of 8 December 1960 imposes on the father, mother, or other person responsible for the education or upbringing of a minor the obligation to send such minor to school (*Le Moniteur*, No. 1, 2 January 1961).

7. The decree of 20 November 1961 establishes a special division of the Civil Court of Port-au-Prince, to be known as the Children's Court, responsible for trying cases involving offences committed by children under sixteen, and makes provision for co-operation between the Judge of the Children's Court, the professional staff of the Centre d'Accueil Duval-Duvalier [Duval-Duvalier Reception Centre], and the General Directorate of the Haiti Social Welfare and Research Institution (*Le Moniteur*, No. 108, 20 November 1961).

CONVENTIONS RATIFIED

8. By decree of 13 December 1960, the National Assembly adopted and gave effect to the Union Convention of Paris for the Protection of Industrial Property, dated 20 March 1883 (*Le Moniteur*, No. 19, 15 February 1961).

9. By decree of 13 December 1960, the National Assembly adopted and gave effect to the International Convention for the Safety of Life at Sea, signed at London on 17 June 1960 (*Le Moniteur*, No. 19, 15 February 1961).

10. By decree of 13 December 1960, the National Assembly adopted and gave effect to the International Convention on Patents and Trade Marks signed at Lisbon on 31 October 1958 (*Le Moniteur*, No. 19, 15 February 1961).

11. By decree of 13 December 1960, the National Assembly adopted and gave effect to the Universal Postal Convention and annexes, signed at Ottawa (Canada) on 3 October 1957 (*Le Moniteur*, No. 19, 15 February 1961).

HUNGARY

NOTE[1]

1. ACT III OF 1961 ON THE EDUCATIONAL SYSTEM IN THE HUNGARIAN PEOPLE'S REPUBLIC

In view of the broad developments that have taken place in education the National Assembly of the Hungarian People's Republic has adopted this Act after a public debate. The Hungarian national economy has an ever-increasing need for cultured, educated specialists. The aim of this Act is to speed up the training of educated people and to provide for a rise in the level of up-to-date knowledge of natural sciences in educational establishments. It is aimed at bringing about a closer relationship between education and life and at creating the conditions for an early realization of general and compulsory secondary school education. The Hungarian State guarantees not only the right to, but also the facilities for, education. The Government makes available every possible means to ensure undisturbed education, including day nurseries, students' hostels, scholarships, grants, study rooms, school meals to students worthy and in need of such facilities, and study leave to adults. *Extracts* from the Act follow:

GENERAL PROVISIONS

Art. 1. (1) The purpose of the educational system in the Hungarian People's Republic is to ensure through planned educational work the acquisition of general and professional knowledge; to meet the demand of the national economy for skilled labour; to raise the level of general and professional knowledge; to develop and strengthen the Marxist-Leninist view and socialist morality of students; to bring up conscious, educated, honest and law-abiding citizens faithful to the people and loving their country who, engaged in work of value to socialist construction, build and defend the people's state and faithfully serve the cause of the peace and fraternity of peoples.

(2) This Act ensures a closer relationship of every grade of education with life, practice and productive work, extends the period of schooling and fosters increasing participation in education.

(3) In line with the purpose of this Act an increasing measure of care shall be devoted to the training and further training of educationalists equal to the multifarious tasks in hand; to the provision of up-to-date programmes of study, textbooks, visual aids and school libraries; and to a higher efficiency of educational work with the application of up-to-date teaching methods.

Art. 2. (1) The language of instruction is Hungarian.

(2) School-age children belonging to nationalities shall continue to be given the possibility of receiving instruction in their native tongues.

Compulsory Attendance at School

Art. 3. (1) School-age begins on the first day of September following the reaching of the sixth year of age, when every child shall be enrolled in general school.

(2) Children shall attend general school until successful completion of the eighth grade but not later than the end of the school-year in which the child becomes 16 years of age.

(3) A child who has successfully completed the eighth grade of general school before becoming sixteen years of age and attends neither a secondary school nor a factory apprenticeship school, nor is in employment in excess of four hours of work per day, shall attend a further training school until the end of the school-year in which it becomes sixteen years of age.

Art. 4. Children of school-age may, on good grounds, be exempted from school attendance for a period of one school-year. Children who suffer from bodily or mental or sensory infirmity but are trainable shall be given education in institutions for defective children. Untrainable children shall be exempted from attendance at school.

Art. 5. Education is free for school-age children; the children are exempted from paying registration and tuition fees.

Lower-grade Education

Art. 6. (1) Lower-grade education is carried out in general and further training schools.

(2) The establishment and maintenance of general and further training schools is the responsibility of the State.

(3) The period of training shall be eight years in general schools and two years in further training schools.

Art. 7. (1) General schools provide studentsw¯fth a general basic knowledge, lay the foundation ior their scientific, ideological, moral, aesthetic and

[1] Note furnished by the Government of Hungary.

physical education; introduce students to productive work through theoretical and practical training, and prepare them for work which is of value to society.

(2) The practical educational work of general schools is conducted in training shops in places assigned for this purpose.

Art. 8. (1) Further training schools provide graduates of general schools with certain professional knowledge in the field of agriculture or industry in addition to enlarging their general basic knowledge, and promote the ideological and moral education of students.

(2) Students of further training schools shall receive practical training in agricultural and industrial establishments.

Vocational and Technical Training

Art. 9. (1) The aim of training industrial, agricultural, forestry, commercial and transport students (hereinafter called apprentices) is to provide them with professional knowledge in addition to enlarging their basic knowledge and ideological and moral outlook acquired at general school.

(2) The practical training of apprentices is carried out in training shops and workplaces, while theoretical training is provided in apprenticeship schools.

(3) The period of training, depending on professional requirements, is generally three years.

(4) Details concerning the training of apprentices are laid down in special provisions.

Secondary Education

Art. 10. (1) Secondary education is provided in secondary (high) schools, specialized secondary schools and technical schools.

(2) The period of training in secondary (high) schools, specialized secondary schools and technical schools is four years.

(3) The establishment and maintenance of secondary training institutions is the responsibility of the State; secondary (high) schools may be maintained also by the churches in accordance with agreements concluded between the State and the Church.

Art. 11. The secondary (high) school strengthens and widens the general education provided in general schools, develops further the knowledge, socialist, moral, aesthetic and physical education of its students and gives preliminary training for a certain occupation.

Art. 12. (1) The educational and preliminary training work of the secondary (high) school is carried out in co-operation with industrial, agricultural or other plants or institutions (hereinafter referred to as plants) in line with the purposes of training. Theoretical training shall be provided on five days and practical training on one day of the week.

(2) The practical and preliminary training of students in the secondary (high) school is carried out in training shops of the school or in a plant co-operating with it.

Art. 13. (1) After successful completion of the last grade of the secondary (high) school the students shall sit a final examination and a proficiency examination in their speciality.

(2) The certificate of final examination entitles the students to employment in any work made subject to general secondary education, and to candidacy for an admission test at any higher educational establishment.

(3) Acquisition of proficiency in their speciality qualifies the students for admission to an examination attesting to their qualification as skilled workers after achieving appropriate practice and successfully completing their studies.

Art. 14. (1) The specialized secondary school strengthens and widens the general knowledge provided in general school; develops further the knowledge, socialist, moral, aesthetic and physical education of its students; and provides qualifications for a certain occupation.

(2) The specialized secondary school works in co-operation with a plant in line with the purposes of training.

Art. 15. (1) Following successful completion of the last grade of the specialized secondary school the students shall sit a final examination and a qualifying examination in their speciality.

(2) The certificate of final examination entitles the students to employment in any work made subject to general secondary education, and to candidacy for an admission test at any higher educational establishment.

(3) The successful qualifying examination entitles the students to employment corresponding to their speciality in types of work specified by the law.

Art. 16. Students of the secondary (high) school shall take part in summer production exercises, while students of the specialized secondary school shall participate in occupational exercises before the end of the school year.

Art. 17. Decree-laws No. 37 of 1955, No. 38 of 1955, No. 10 of 1956 and the legal provisions on their enforcement shall be applicable to technical schools.

Higher Education

Art. 18. (1) Higher education is based on secondary education, and is carried out at higher technical schools, higher institutes, colleges, colleges treated as universities and universities.

(2) Higher technical schools and higher institutes may be established and abolished by the Council

of Ministers, while colleges, colleges treated as universities and universities may be established and abolished by the Presidential Council of the Hungarian People's Republic.

(3) The creation or abolition of university faculties shall lie with the Council of Ministers and the conditions of creating, merging and abolishing faculties and principal faculties shall be determined by the Council of Ministers.

Art. 19. The purpose of higher education is to produce specialists with a high level of professional knowledge and general education, who, after having acquired the basic teaching of Marxism-Leninism, are capable of its practical application in their special branch of work. Higher education also gives the students a grounding on which the best may train themselves to become research workers and scientists in their particular profession.

Art. 20. (1) The task of higher technical schools is to train technical (agricultural, medical, commercial, etc.) experts and highly skilled technicians who are capable of specific types of work in the various branches of the national economy and public health.

(2) The task of higher institutes is to train specialists in the field of culture, and teachers and kindergarten teachers for lower-grade education.

(3) The task of colleges is to train practical specialists in arts, drawing, singing and music; teachers and physical instructors for lower-grade and secondary education, and subject teachers for lower-grade education.

(4) The task of universities and colleges treated as universities is to train secondary school teachers, engineers, economists, physicians, veterinaries, lawyers and other specialists.

(5) The vocational training of graduates with higher education is the task of universities, colleges and special institutes.

Art. 21. With a view to establishing a closer relationship of higher education with practice and productive work,

(*a*) Preferential admission to higher educational establishments shall be accorded to students who have spent at least one year in practical work after completion of studies at secondary school;

(*b*) Students qualified as skilled workers may be admitted to a higher technical school without having secondary school education if they meet the requirements of a special entrance examination;

(*c*) Students, while pursuing a course of study, shall gain practical experience in their particular profession;

(*d*) The plants, in co-operation with higher educational establishments, ensure for students in practical work an employment promoting their professional training, ensure remuneration for their productive work, and promote their professional and political development.

Art. 22. In addition to their educational work the higher educational establishments cultivate their special fields of science and to this end carry out basic and applied research. In co-operation with the plants they take part in the solution of the scientific, cultural, technical and economic tasks facing the national economy.

Art. 23. (1) The higher educational establishments may only grant diplomas to students who have passed an examination before a State examining body and have defended their diploma work.

(2) The diploma received in higher educational establishments qualifies for employment in types of work requiring higher qualifications.

Adult Education

Art. 24. (1) Workers above school age are accorded the opportunity to acquire, while at work, general primary and secondary school education or higher qualifications by attending evening classes or completing correspondence courses adapted to the special requirements of adult education.

(2) Evening classes, by giving regular weekly lessons based on working schedules and correspondence courses and by holding periodically compulsory seminars parallel with the programme of study ensure that the workers may meet the curricular requirements of the educational establishments.

(3) After having passed the required examinations the participants in evening classes and correspondence courses acquire a qualification equal to that obtained in the daytime courses of the educational establishments.

Art. 25. The instruction of adults takes place in separate courses or at educational establishments organized for this purpose chiefly in plants.

Facilities for Participants in Education

Art. 26. (1) Students of secondary educational establishments are exempted from paying registration and tuition fees.

(2) Worthy students of secondary and higher educational establishments may be granted scholarships or other facilities under conditions prescribed by the Council of Ministers.

(3) Under conditions prescribed by the Council of Ministers, workers participating in evening classes and correspondence courses may also be granted other benefits in addition to those mentioned in paragraphs 1 and 2.

Educationists

Art. 27. (1) To be active at educational establishments an educationist shall have an appropriate qualification which makes him fit, from the ideological,

moral, political, pedagogical and professional points of view, to educate young people in the spirit of socialism and to prepare them for practical life.

(2) Educationists are under the obligation constantly to raise the level of their professional, practical and pedagogical knowledge and to improve their ideological and political literacy.

Art. 28. The State appreciates the educationists doing a highly responsible work for their achievements in the cultural revolution, in the education of youth, and in the socialist upbringing of the coming generation.

The Co-operation of Society in Educational Work

Art. 30. The realization of the objectives of this Act is the concern of society as a whole, a task common to the workers of educational establishments, to the competent ministries, plants, mass organizations and parents' and teachers' associations.

Art. 31. (1) It is a common duty of the workers of plants and educational establishments to establish contacts which enable students to become familiar with the life of plants and workers. They are further obliged to promote the development of close friendship between students and working youth, which is instrumental in the mutual appreciation of each other's work and in the unity of youth.

(2) The conditions necessary for the in-plant practical training of students are ensured by the plants.

(3) The state, co-operative and social organizations promote the continued education of worthy students by grants of social scholarships.

Art. 32. The Young Communists' League and the Federation of Hungarian Pioneers give effective support to the realization of the educational objectives of schools.

Art. 33. In developing school education and creating harmony between school and home education, the workers of educational establishments rely on the willing co-operation of the Teachers' Union, the National Council of Hungarian Women, and the teachers' and parents' associations.

Miscellaneous and Interim Provisions

Art. 34. (1) Students may continue their studies as follows: Graduates of further training schools — at apprenticeship schools and institutes;

Graduates of apprenticeship schools — at secondary (high) schools;

Graduates of higher technical schools and higher institutes — at universities, colleges treated as universities, and colleges, by passing a supplementary examination and with certain reductions in the period of study.

(2) The continuation of studies may, at specified faculties, be made subject to completion of a certain period of employment in practical work.

2. ACT V OF 1961 ON THE PENAL CODE OF THE HUNGARIAN PEOPLE'S REPUBLIC

The National Assembly of the Hungarian People's Republic has adopted the Penal Code after a long and widespread public debate. The framers of the Code have pursued the aim of creating an effective means of serving the building of socialism and the protection of socialist society. Framed in the spirit of socialist humanism, the Code is in keeping with the interests of the widest strata of society. *Extracts* follow:

GENERAL PART

Art. 2. The Concept of Crime

(1) Any act dangerous to society which is punishable by law and has been committed with intent or, should negligent commission be similarly punishable by law, through negligence, shall be deemed to be a crime.

(2) Any act or omission which prejudices or endangers the state, social, or economic order of the Hungarian People's Republic or the person or the rights of citizens shall be deemed to be dangerous to society.

Chapter I

SCOPE OF APPLICATION OF THE LAW

Art. 3. Conditions as to Time

(1) The offender shall be tried under the provisions of the law in force at the time of the commission of the crime.

(2) If the act is not declared to be a crime or is to receive a more favourable judgement under the new law in force at the time of the trial, the new law shall apply to the acts committed prior to its coming into force; otherwise the new law shall have no retroactive effect.

Chapter III

PENALTIES AND MEASURES

Art. 34. The Purposes of Punishment

Punishment is a statutory retribution for a crime committed, and is intended to reform the convicted person as well as to prevent the commission of further crimes by other persons in the interest of the protection of society.

Chapter IV

IMPOSITION OF PENALTIES

Art. 70. Suspension of the Enforcement of Penalties

(1) The court may suspend the enforcement of the sentence of imprisonment not exceeding one year, or of the fine imposed as a principal penalty if, considering the personal circumstances, particularly the past records, of convicted persons, as well as the circumstances of the offence committed, the

purpose of the punishment is attainable without the enforcement of the penalty.

(2) The court, having regard to the circumstances of exceptional cases deserving special appreciation, may similarly suspend the enforcement of the sentence of imprisonment exceeding one year but less than two years.

(3) The enforcement of the fine imposed as a principal penalty may be suspended for one year; of the sentence of imprisonment not exceeding one year, for three years; the sentence of imprisonment exceeding one year, for five years of probation from the date of the sentence becoming legally valid.

(4) The suspension of enforcement, unless otherwise decided by the court, shall not affect the fine imposed as an accessory penalty.

(5) The enforcement of the penalty shall not be suspended, if:

(*a*) Recourse is had to deprivation of the civil rights to hold certain public offices or to perform certain public functions, or to exclusion from the present place of residence or expulsion from the country;

(*b*) The convicted person committted the offence before completion of the sentence of imprisonment or while on probation;

(*c*) The convicted person had been sentenced to imprisonment for a wilful offence committed within five years prior to the commission of his present offence, unless the enforcement of the penalty for the earlier offence has been suspended.

Chapter V

Rehabilitation

Art. 78. The Effect of Rehabilitation

(1) The effect of rehabilitation consists in relieving the convicted person of the prejudicial consequences ensuing from his conviction under the law. The effect of rehabilitation does not extend to civil law consequences.

(2) The person rehabilitated shall be considered to have a clean record and shall not be obliged to give account of his conviction in respect of which he has been rehabilitated.

(3) Should the person rehabilitated commit a further crime, the court may take into account his earlier conviction in respect of which he has been rehabilitated as an aggravating circumstance.

Art. 81. Rehabilitation by Decision of Court

(1) The court may, on petition, rehabilitate the convicted person worthy of rehabilitation, if the time elapsed since the date of expiration of the sentence of imprisonment or of its enforceability is:

(*a*) Five years in case of imprisonment exceeding one year but less than five years;

(*b*) Ten years in case of imprisonment exceeding five years but less than fifteen years;

(*c*) Fifteen years in case of imprisonment exceeding fifteen years.

(2) The waiting period shall be ten years in case of subparagraph (*a*), and fifteen years in case of subparagraph (*b*) of paragraph 1 if the penalty has been imposed for crimes defined in chapter IX or X.

(3) In granting rehabilitation the court shall have regard to the way of life conducted by the convicted person since the completion of the principal penalty, and shall take into account whether the convicted person has, so far as it was possible for him, made amends for the prejudice caused.

Chapter IX

Offences against the State

Art. 127. Incitement

Whosoever in public commits acts likely to arouse hatred against any people, nationality, denomination, or race, or against groups or persons because of their socialist conviction, shall be punished with imprisonment for a term of six months to five years.

Chapter X

Offences against Peace and Humanity

Art. 136. Offence against the Liberty of Peoples

A Hungarian citizen who, of his own free will, enlists in any armed formation organized for the oppression of peoples shall be punished with imprisonment for a term of six months to five years.

Art. 137. Genocide

(1) Whosoever, with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group:

(*a*) Kills any member of the group;

(*b*) Inflicts on the group conditions of life likely to result in the destruction of the group or of its members;

(*c*) Imposes measures intended to prevent propagation within the group;

(*d*) Forcibly transfers children of the group to another group,

shall be punished with imprisonment for a term of ten to fifteen years, or by death.

(2) Whosoever commits acts of preparation with intent to genocide shall be punished with imprisonment for a term of two to eight years.

Art. 138. Offence against a National, Ethnic, Racial or Religious Group

Whosoever causes serious bodily or mental harm to members of a national, ethnic, racial or religious group on account of their belonging to such a group shall be punished with imprisonment for a term of from two to eight years.

Chapter XI

OFFENCES AGAINST STATE ADMINISTRATION AND THE ADMINISTRATION OF JUSTICE

Title II. — *Offences against Official Duties*

Art. 145. Assault in the Performance of Official Duties

Any public servant who in the performance of his official duties commits an assault on another person shall be punished with imprisonment for a term of up to one year.

Art. 146. Extraction of Confession under Duress

Any public servant who resorts to unlawful means to obtain a confession or a statement shall be punished with imprisonment for a term of six months to five years.

Art. 147. Unlawful Detention

(1) Any public servant who apprehends, arrests or detains another person except in accordance with the law shall be punished with imprisonment for a term of up to three years.

(2) Imprisonment shall be for a term of six months to five years, if the offence:

(*a*) was committed with ignoble motives or intent;

(*b*) was accompanied by physical or mental torture to the person offended; or

(*c*) resulted in grave consequences.

Title VI. — *Offences against the Administration of Justice*

Art. 172. False Accusation

(1) A person who, before a public authority:

(*a*) Falsely accuses another person, or

(*b*) invents false incriminating evidence against him,

shall be punished with imprisonment for a term of six months to five years.

(2) Imprisonment shall be:

(*a*) For a term of two to eight years, if the false accusation relates to an offence which would incur a sentence of imprisonment for a term exceeding five years;

(*b*) For a term of ten to fifteen years, if the false accusation relates to an offence which could incur the death penalty as well.

Art. 173

A person who, before a public authority, falsely accuses another person of a disciplinary offence or with a minor infraction of a regulation, or invents against him evidence of such act, shall be punished by imprisonment for a term of up to one year.

Art. 183. Suppression of Exculpating Circumstances

(1) A person who keeps back from the accused, the counsel for the defence, or the public authority any fact or evidence on which the acquittal of the defendant or the release of the unjustly convicted person might depend, shall be punished with imprisonment for a term of six months to five years.

(2) Paragraph 1 shall not apply to a person:

(*a*) Whose disclosure of a fact or evidence mentioned in paragraph 1 would result in self-incrimination or in the incrimination of his relatives;

(*b*) Whose hearing as a witness is precluded by law.

Chapter XIV

OFFENCES AGAINST PERSONS

Title II. — *Offences against Human Freedom and Dignity*

Art. 261. Coercion

A person who, by coercion or threat, unlawfully compels another person to act, omit to act, or suffer in any way, if the commission of the act resulted in a considerable prejudice and no other offence was committed, shall be punished with imprisonment for a term of up to three years.

Art. 262. Violation of Personal Liberty

(1) A person who unlawfully deprives another person of his personal liberty shall be punished with imprisonment for a term of up to two years.

(2) Imprisonment shall be for a term of up to three years, if the offence:

(*a*) Was committed with ignoble motives or intent;

(*b*) Was committed under pretext of official capacity or lawful authority;

(*c*) Was accompanied by physical or mental torture to the person offended; or

(*d*) Resulted in grave consequences.

Art. 263. Violation of Privacy of Domicile

(1) Whosoever, without lawful authority or by deceit, enters or remains in another person's dwelling or other premises or enclosure forming part thereof, against the wishes of the occupant or of the tenant;

Also a person who hinders another from entering his dwelling or other premises or enclosure forming part thereof,

shall be punished with imprisonment for a term of up to one year.

(2) Imprisonment shall be for a term of up to three years, if the offence was committed:

(*a*) By violence or threats;

(*b*) By abuse or under pretext of official capacity or lawful authority;

(*c*) By night;

(*d*) By recourse to arms; or

(*e*) By more than one person collectively.

Art. 264. Violation of Private Secrets

(1) A person who, without good reason, reveals any private secret he has learnt of in the exercise of his occupation or in the discharge of his official duties, shall be punished by correctional-educational labour for a period of up to six months, or by a fine.

(2) Punishment shall be imprisonment for a term of up to one year, if the offence resulted in grave prejudice.

Art. 265. Violation of the Secrecy of Correspondence; Secret Interception of Messages transmitted by Means of Telecommunication

(1) Whosoever opens or seizes a letter, closed paper, or telegram of another person in order to learn its content, or to hand it over to a third person to a similar end;

Also a person who secretly intercepts communications transmitted by telephone or by any other means of telecommunication,

shall be punished by correctional-educational labour for a period of up to six months, or by a fine.

(2) Punishment shall be imprisonment for a term of up to one year, if the offender divulges the secret he has learnt.

Art. 266. Defamation

(1) Whosoever, in the presence of others, imputes to another or spreads a fact such as to injure his honour, or uses an expression explicitly referring to such a fact, shall be punished with imprisonment for a term of up to six months, or by correctional-educational labour for a period of up to one year.

(2) Punishment shall be deprivation of liberty for a term of up to one year, if the defamation:

(*a*) Was committed with ignoble motives;

(*b*) Was committed by means of the press or by a process of reproduction, or in any other manner ensuring wide publicity; or

(*c*) Resulted in grave prejudice.

Art. 267. Injury to honour

(1) Whosoever, without committing the offence defined in Article 266, uses an expression or commits an act prejudicial to the honour of another person, shall be punished by a fine.

(2) Punishment shall be imprisonment for a term of up to six months, or correctional-educational labour for a period of up to one year, if the injury to honour was committed:

(*a*) With ignoble motives;

(*b*) In a particularly rude manner;

(*c*) By means of the press or by a process of reproduction, or in any other manner ensuring wide publicity; or

(*d*) Resulting in grave prejudice.

Chapter XV

OFFENCES AGAINST THE FAMILY, YOUTH, AND SEXUAL MORALS

Title I. — *Offences against the Family and Youth*

Art. 274. Offence against Youth

(1) A person who, being obliged to supervise or take care of a minor, seriously endangers the latter's bodily, mental or moral development shall be punished with imprisonment for a term of up to three years.

(2) Provided that no offence of greater gravity was committed, the same penalty shall be imposed upon the person of full age who induces or tries to induce a minor to commit an offence or to lead an immoral life.

Art. 275. Neglect of the Obligation of Maintenance

(1) Whosoever fails to comply with his obligation of maintenance ensuing from the law or from an enforceable decision of authority, through his own fault, shall be punished with imprisonment for a term of up to one year or with correctional-educational labour.

(2) The crime of neglect of maintenance shall also be deemed to be committed by a man who is obliged by a final court decision to maintain a child and fails to discharge this obligation though paternity may not be established.

(3) Punishment shall be imprisonment for a term of up to three years, if the offender: (*a*) is a recidivist; (*b*) does not discharge the obligation of maintenance because of a truant, inebriate or debauched way of life; (*c*) Subjects the person entitled to maintenance to grave distress by the failure to provide maintenance.

(4) A person who has discharged his obligation prior to a sentence of first instance shall not be punished for the crime of neglect of obligation to provide maintenance.

Title II. — *Offences against Sexual Morals*

Art. 280. Depravity

(1) A person who performs an act of sexual intercourse or an unnatural act of sexual perversion with a person under fourteen years of age shall be punished with imprisonment for a term of from six months to five years.

(2) Imprisonment shall be for a term of from two to eight years, if, at the time the offence was committed, the person offended was entrusted to the supervision or care of, or medical treatment by, the offender.

Chapter XVII

MILITARY OFFENCES

Title III. — *Offences committed by Superiors*

Art. 321. Offence against Subordinates

(1) A superior who injures his subordinate in his human dignity shall be punished with imprisonment for a term of up to six months.

(2) Imprisonment shall be for a term of up to one year, if the offence was committed: (*a*) in a particularly rude manner or with ignoble motives; (*b*) repeatedly against the same person; (*c*) against more than one subordinate;

(3) Imprisonment shall be for a term of six months to five years, if the offence as defined in paragraph 2 caused: (*a*) grave physical or mental torture, or (*b*) bodily harm, or (*c*) considerable prejudice to the service.

Art. 322. Abuse of Powers by Superiors

(1) A superior who, exceeding his powers, or in any unlawful manner:

(*a*) Subjects his subordinate to disciplinary measures;

(*b*) Restricts him in the exercise of his right of complaint;

(*c*) Curtails his allowance or imposes on him a financial burden;

(*d*) Makes personal use of his service;

(*e*) Accords him a treatment more or less favourable than that of other subordinates,

shall be punished, provided no offence of greater gravity was committed, with imprisonment for a term of up to one year.

Art. 323. Breach of Duties by Superiors

(1) A superior who through breach of his duty to provide for the material needs of his subordinate or to protect or save him from an impending danger, fails to take the necessary measures shall be punished, with imprisonment for a term of up to one year.

(2) Imprisonment shall be for a term of six months to five years, in time of war or in a military situation, or for a term of two to eight years, if the offence caused considerable prejudice to the service or discipline.

(3) A superior who committed the offence through negligence shall be punished with imprisonment for a term of up to six months in case of paragraph 1, and in case of paragraph 2, according to the distinction made therein, for a term of up to one or three years respectively.

Title VI. — *Offences against the International Law of War*

Art. 335. Violence against Civilian Population

(1) A person who in operational or occupied territory commits acts of violence against persons belonging to the civilian population or otherwise gravely abuses his power shall, provided that no offence of greater gravity was committed, be punished with imprisonment for a term of from six months to five years.

(2) A person who in operational or occupied teritory plunders or destroys the property of the population when there is no military necessity therefor, or extorts unlawful performances, or in any other manner causes serious damages thereto, shall be punished with imprisonment for a term of two to eight years.

(3) Imprisonment shall be for a term of five to twelve years, if the offence was committed: (*a*) by three or more persons collectively; (*b*) by recourse to arms.

Art. 336. Plundering at the Front

(1) A person who at the front plunders those killed, the wounded or the sick shall be punished with imprisonment for a term of two to eight years.

(2) Imprisonment shall be for a term of five to fifteen years, if the offence was committed: (*a*) by three or more persons collectively; (*b*) by violence.

Art. 339. Ill-treatment of Prisoners of War

(1) A person who ill-treats a prisoner of war, or fails to provide for him as he is obliged to, shall, provided that no offence of greater gravity was committed, be punished with imprisonment for a term of up to one year.

(2) Imprisonment shall be for a term of from six months to five years, if the offence was committed: (*a*) systematically; (*b*) with gross cruelty; (*c*) against a wounded or sick prisoner of war.

3. LEGISLATIVE DECREE No. 20 OF 1961 ON THE COMPULSORY MUTUAL PENSIONS INSURANCE OF ARTISANS

The legislative body and its executive organ, the Government of the Hungarian People's Republic, attach primary importance to ensuring a constant and planned rise in the living standards of the population and to solving their everyday problems. Legislative decree No. 20 of 1961 and government decree No. 48/1961/XII. 30 enforcing the former contain provisions for the regulation of entitlement of artisans to old-age and invalidity pensions, as well as of their dependants to widows' pensions, orphans' maintenance allowances and parents' pensions.

The legislative decree provides for qualifying conditions easily accessible to the broad masses of artisans; furthermore, in deserving cases, it ensures the payment of pensions to the artisan or his survivor even if he has failed to satisfy the conditions for eligibility.

4. GOVERNMENT DECREE No. 9/1961 ON THE ENFORCEMENT OF ART. III OF 1960 ON MINING

Act III of 1960 on Mining ensures special appreciation for the miners whose work, done in hard and tiring circumstances, is essential to the satisfaction of the basic needs of the country. The enforcement decree of this Act contains a detailed description of the rules of conduct which among others ensure appropriate working conditions to miners, provide for the observance of the health and accident prevention regulations, and define the range of persons responsible therefor. The decree reflects society's appreciation for the miners and the endeavours of the Government to provide them with every means for securing safe and healthy working conditions. *Extracts* follow:

Art. 53. The mining plants shall promote the implementation of the health and labour safety regulations by providing for appropriate working conditions and creating a consistent labour discipline. Special care shall also be devoted to the observance of fire regulations.

Art. 54. The manager of the mining enterprise (mining plant) shall, without prejudice to the responsibility of the technical manager, designate in every plant a person in charge of labour safety who shall have the qualification of at least a mining technician and shall have three years of practice in a mining plant. The National Mining Board, in concurrence with the Miners' Trade Union and the competent minister, shall designate the enterprises where the person in charge of labour safety must not have another duty. If such person has another duty as well, the manager of the mining enterprise shall take care that he fully discharges his duty assigned to him.

Art. 55. The responsible technical manager or his deputy shall, in co-operation with the labour safety supervisor, plant doctor and the person in charge of labour safety, examine at least once a month the safety conditions of the mining enterprise and enter in the control book the fact of examination and the measures taken; the implementation of the measures shall be supervised.

Art. 56. The manager of the mining enterprise (mining plant) shall organize enlightenment work on health protection and accident prevention with the help of up-to-date media and create the necessary conditions for the plant trade union committee to this end.

Art. 57. (1) The mining enterprise shall arrange for persons, newly employed or transferred to another sphere of work, to take part in training courses on health protection and accident prevention combined with practice, and shall require them to pass an examination on the subject of instruction prior to actual employment.

(2) Regular accident prevention courses shall be organized for the workers of the mining enterprises who shall be required to pass an examination on the subject before the representative of the District Board of Technical Control of Mines and the district technical inspector.

(3) Against a written acknowledgement of receipt the mining plant shall give the workers to be employed written information on health protection and accident prevention.

(4) The rules of examination described in paragraph 2 of Article 33 of the Act shall be laid down by the chairman of the National Mining Board. The worker who fails to appear before the examining board or fails in the examination may not be employed in his work until he has passed the examination.

Art. 58. (1) As prospecting develops, the mining plant shall take measures to reduce the danger inherent in the operation of mines.

(2) Regular research on safety techniques in mines shall also be provided for within the framework of industrial scientific research. The plan of research themes on mining safety techniques shall be elaborated in co-operation with the National Mining Board.

Art. 59. (1) The classification of mining plants in accordance with Art. 36 of the Act lies with the National Mining Board which shall act in concurrence with the supervisory organ.

(2) Fire prevention shall be organized in every mining plant.

5. GOVERNMENT DECREE No. 14/1961/IV.27 ON ORGANIZED HOLIDAYS AT REDUCED RATES

The Government of the Hungarian People's Republic devotes great care to extending to the broadest masses of workers the advantages of organized holidays at reduced rates both at home and abroad. Beneficiaries are required to pay only a fraction of the costs incurred. This decree is intended by the Government to ensure appropriate accommodation to and provisions for the workers as well as a cultured standard of recreation conforming to health requirements in every respect. The decree provides for a constant rise in the number of people enjoying the benefits of this scheme.

6. GOVERNMENT DECREE No. 21/1961/V.25 ON THE EMPLOYMENT OF GRADUATES FROM THE DAY-TIME COURSE OF HIGHER EDUCATIONAL ESTABLISHMENTS

The Hungarian People's Republic knows no unemployment. The rapid development of the national economy makes it possible for every able-bodied person to find an employment suitable to his qualifications. The decree ensures that young people graduat-

ing from the day-time course of higher educational establishments may, immediately after having required their professional knowledge, find an employment appropriate to their qualifications. It is in the interest of the Hungarian People that young persons obtain a high level of practical knowledge after theoretical training. *Extracts* from the decree follow:

Art. 1. Young specialists graduating from the day-time courses of higher educational establishments (universities, colleges, academies, training schools for teachers and kindergarten teachers or higher technical schools) shall be ensured in the first two years (or, where there has been appropriate previous practice, in the first year) of employment suitable to their qualifications, the means of obtaining good practical knowledge in their particular branch in a type of work most suitable for enlarging the professional skills acquired during their studies.

Art. 2. (2) During the period of practice young specialists may be employed in any field of work appropriate to their qualifications if it is such as to meet the specific requirements and to ensure the attainment of a varied practical professional knowledge.

7. GOVERNMENT DECREE No. 49/1961/XII.30 ON THE VOLUNTARY SICKNESS INSURANCE OF ARTISANS

In keeping with the endeavours of the Hungarian Government to extend the coverage of health and other benefits to the broadest masses of the population, this decree contains provisions governing the grant of benefits to voluntarily insured artisans and to members of their families under the scheme of the State health service. *Extracts* follow:

Art. 3. (1) Artisans taking part in voluntary sickness insurance and persons entitled to pensions under the scheme of the compulsory mutual pensions insurance of artisans and voluntarily insured in case of sickness, together with members of their families, are, in case of illness, childbirth or death, entitled, with the exception of sick-pay, pregnancy and confinement allowance, to the same benefits as the workers taking part in the compulsory health insurance and pensioners, together with the eligible members of their families.

(2) The period of insurance completed under the scheme of sickness insurance, both compulsory and voluntary, including the voluntary sickness insurance on the basis of Government decree No. 33/1954/VI.2 shall be counted together and recognized as a period qualifying for entitlement to benefits.

8. GOVERNMENT DECREE No. 1027/1961/XII. 30 ON THE VOCATIONAL GUIDANCE OF YOUNG PEOPLE

This decree aims at helping young people who have completed their studies at general schools in choosing an occupation most suitable to their abilities and personal circumstances. The Government provides far-reaching measures for giving appropriate advice to young people in accordance with their interests and with the needs of the national economy in order to facilitate the solution of the important problem of giving suitable employment to them. The Council for Vocational Guidance to be established in pursuance of this decree will have all data and facilities at its disposal adequately to perform its function which is recognized as an activity important for the future of young people and for the development of the national economy.

9. DECREE No. 3/1961/VII.5 OF THE MINISTER OF HEALTH ON THE REGULAR GRANTING OF SOCIAL BENEFITS TO THE BLIND IN NEED OF ASSISTANCE

This decree regulates the granting of regular social assistance to the blind in need. The decree provides for a regular monthly allowance to the blind who are unable to earn their livelihood and have no relative obliged and able to take care of their maintenance.

10. DECREE No. 2/1961/III.31 OF THE MINISTER OF HOME TRADE REGULATING THE ADMISSION OF MINORS TO THE PREMISES OF THE CATERING INDUSTRY

In the interest of combating alcoholism and protecting minors and ensuring their undisturbed upbringing, the Decree regulates the admission of minors under 16 years of age to the premises of the catering industry. They are denied admission to drink shops, bars, and night clubs. Restrictions apply also to their entering other places of the catering industry (certain time-limits or accompaniment by parents).

ICELAND

ACT No. 60, OF 29 MARCH 1961, CONCERNING EQUAL PAY FOR WOMEN AND MEN[1]

Art. 1. Between the years 1962 and 1967 women's wages shall be increased so as to equal the wages paid to men for the same work in the following categories of employment: general domestic work, factory work, work in shops and office work.

Art. 2. The wages of women in the categories of employment referred to in article 1 shall on 1 January 1962 be increased by one-sixth of the difference in wages; and thereafter on 1 January of each year up to and including 1 January 1967 they shall be increased by an amount equal to the difference in wages existing at the beginning of each year, divided by the number of increases that remain to be made. Complete equality of pay shall be achieved by 1 January 1967.

Art. 3. The annual wage increase shall be determined by a three-member committee, to be known as the Wage Equalization Committee, of which one member, who shall be the Chairman of the Committee, shall be appointed by the Labour Court. The second member shall be appointed by the Federation of Icelandic Labour Unions, and the third by the Icelandic Employers' Association. The aforesaid agencies shall also appoint one alternate member each. The term of office of the members shall be three years. Decisions of the Committee shall be final, and may not be referred to a court. Decisions shall be taken by a majority vote. The expenses incurred in the operation of the Committee shall be borne by the Treasury.

Art. 4. Professional associations that negotiate agreements on the wages and working conditions of women in the categories of employment referred to in article 1 shall submit their applications for wage increases to the Committee each year in November, beginning in 1961, attaching copies of the relevant agreements. The Committee shall then take a decision concerning the wage increases in accordance with the provisions of articles 1 and 2, and shall publish that decision.

Instead of letting wage increases be decided by the Committee, professional associations may negotiate wage increases with employers, on condition that the Committee ratifies the agreements thus negotiated.

Art. 5. This Act shall in no way affect the right of professional associations to enter into negotiations with employers with a view to achieving equality of pay within a shorter period than that provided for in the Act.

Art. 6. This Act shall enter into force immediately.

[1] Published in *Stjórnastidindi* 1961, part A, p. 171.

INDIA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS IN 1960[1]

I. LEGISLATION

A. Political Rights

1. *The Bombay Reorganization Act, 1960*[2]
(Act No. 11 of 1960)

This Act of the Parliament of India has provided for the reorganization of the former State of Bombay by re-constituting it as two separate States — namely, Gujarat and Maharashtra — and it has also made the necessary supplemental and incidental provisions relating to representation in Parliament and in the state legislatures and other matters. The more important changes are:

Section 4 of the Act has amended the first schedule to the Constitution of India to give effect to the reconstitution of the former State of Bombay as two separate States of Gujarat and Maharashtra.

Section 6 of the Act has amended the fourth schedule to the Constitution, which provides for the allocation of seats in the Council of States to various States and union territories. By this amendment, the State of Gujarat has been allotted 11 seats and the State of Maharashtra 19 seats in the Council of States, making a total of 30 seats for these two new States together as against 27 seats originally allotted to the former State of Bombay.

Section 10 of the Act has provided for the representation of the States of Gujarat and Maharashtra in the House of the People. Out of the 66 seats originally allotted to the former State of Bombay in the House of the People, 22 seats have been allotted to the State of Gujarat and the remaining 44 seats to the State of Maharashtra.

The Act has further provided that of the two new States, the State of Maharashtra will have both a Legislative Assembly and a Legislative Council and the State of Gujarat will have only a Legislative Assembly. It has also made provision for the strength of the legislative assemblies of the States of Gujarat and Maharashtra and the strength of the Legislative Council of the State of Maharashtra.

2. *The Representation of the People (Amendment) Act, 1960*[3]
(Act No. 20 of 1960)

This Act of the Parliament of India has introduced a few changes in the Representation of the People Act, 1950[4] (Act No. 43 of 1950). The more important changes are described below.

Under the Act of 1950, although the duty of preparation and revision of electoral rolls was entrusted to electoral registration officers, claims and objections in respect of entries in the draft rolls had to be disposed of by a separate category of officers, namely, the revising authorities, who were appointed in pursuance of rules made under clause (*d*) of sub-section 2 of section 28 of the Act. This dual system was not only cumbrous and dilatory but resulted in making the electoral registration officers only nominally responsible for the accuracy of the electoral rolls. Section 3 of the Representation of the People (Amendment) Act, 1960, has accordingly amended sub-section 2 of section 28 of the Act of 1950 so as to omit therefrom clause (*d*) in order to do away with this dual system and place the responsibility for disposing of claims and objections in respect of entries in the draft rolls on the electoral registration officers themselves.

Section 4 of the Amending Act has amended section 31 of the Act of 1950 so as to make punishable any false statement or declaration in writing in connexion with the preparation, revision or correction of an electoral roll or the inclusion or exclusion of any entry in or from an electoral roll. The provisions of section 31 before this amendment were limited in scope.

Section 5 of the Amending Act has amended the lists of local authorities in relation to certain States as given in the Fourth Schedule to the Act of 1950 for the purposes of elections to the legislative councils of those States.

[1] Note furnished 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* of 25 April 1960, part II, section 1, pp. 249-311.

[3] Published in the *Gazette of India Extraordinary* of 9 May 1960, part II, section 1, pp. 363-364.

[4] See *Yearbook on Human Rights for 1951*, pp. 144 and 153-154.

B. Personal Freedom

The Preventive Detention (Continuance) Act, 1960[1]
(Act No. 61 of 1960)

This Act of the Parliament of India has extended the life of the Preventive Detention Act, 1950[2] (Act No. 4 of 1950) which was due to expire on 31 December 1960, for a further period of three years.

C. Social and Economic Rights

(1) *The Orphanages and other Charitable Homes (Supervision and Control) Act, 1960*[3]
(Act No. 10 of 1960)

This Act has been enacted by the Parliament of India to provide for the supervision and control of orphanages, homes for neglected women or children and other like institutions. The Act enjoins that no person shall maintain or conduct any home except under, and in accordance with, the conditions of a certificate of recognition granted under the Act. A "home" has been defined in the Act to mean an institution, whether called an orphanage, a home for neglected women or children, a widows' home or by any other name, maintained or intended to be maintained for the reception, care, protection and welfare of women or children. A "child" has been defined to mean a boy or girl who has not completed the age of eighteen years and a "woman" has been defined to mean a female who has completed that age. The Act empowers the state government to establish a board of control for the supervision and control of homes in the State and lays down the constitution, powers and functions of the board of control. The board will have the power to grant a certificate of recognition to a home. The board will also have powers of inspection and control and may in appropriate cases revoke a certificate of recognition granted under the Act. The Act contains certain other provisions for ensuring the proper working of homes. Power has also been conferred on the state government to exempt, after consultation with the board, any home or class of homes from the operation of all or any of the provisions of this Act subject to such conditions, restrictions or limitations, if any, as may be considered necessary. The Act does not apply to any hostel or boarding house attached to, or controlled or recognised by, an educational institution or to any protective home established under the Suppression of Immoral Traffic in Women and Girls Act, 1956,[4] or to any reformatory, certified or other school, or any home or workhouse governed by any enactment for the time being in force. As from the date of the commencement of this Act in any State, the Women's and Children's Institutions (Licensing) Act, 1956[5] or any other Act corresponding to this Act in force in that State will stand repealed.

(2) *The Delhi Primary Education Act, 1960*[6]
(Act No. 39 of 1960)

This Act of the Parliament of India makes provision for free and compulsory primary education for children in the union territory of Delhi. It enjoins the enforcement of compulsory education in specified areas and for specified age groups by stages under schemes to be operated by the local authorities in that territory with the sanction of the state government. The Act provides that in the area covered by any such scheme primary education will be compulsory for children ordinarily resident in that area and within such age group not being less than six or more than fourteen and up to such class or standard not beyond the eighth class or standard as may be specified in a declaration to be issued in that behalf by the local authority for giving effect to the scheme. The Act further provides that it shall be the duty of the parent of every such child to cause the child to attend an approved school unless there be a reasonable excuse for his non-attendance. Provision has been made in the Act for special schools for physically or mentally deficient children. Special provision has also been made for part-time education of a child who is unable to attend an approved school due to economic or other circumstances connected with the family to which the child belongs. The Act prohibits the employment of a child in a manner which shall prevent the child from attending an approved school. It also provides that the primary education which a child is to receive under the scheme will be free if the child attends an approved school which is under the management of the state government or a local authority or attends under certain circumstances an approved school which is under private management.

(3) *The Employees' Provident Funds (Amendment) Act, 1960*[7]
(Act No. 46 of 1960)

The Employees' Provident Funds Act, 1952[8] (Act No. 19 of 1952) was applicable only to establishments employing fifty or more persons and it was, therefore, not possible to extend the benefit of the compulsory contributory provident fund provided by the Act to establishments employing less than fifty persons. The Employees' Provident Funds (Amendment) Act, 1960, enacted by the Parliament of India has amended the Act of 1952 so as to reduce the limit of fifty or more to twenty or more persons

[1] Published in the *Gazette of India Extraordinary* of 29 December 1960, part II, section 1, p. 773.

[2] See *Yearbook on Human Rights for 1952*, pp. 113-115.

[3] Published in the *Gazette of India Extraordinary* of 11 April 1960, part II, section 1, pp. 237-247.

[4] See *Yearbook on Human Rights for 1956*, p. 122.

[5] See *Yearbook on Human Rights for 1956*, p. 122.

[6] Published in the *Gazette of India Extraordinary* of 21 September 1960, part II, section 1, pp. 531-540.

[7] Published in the *Gazette of India Extraordinary* of 13 December 1960, part II, section 1, pp. 675-677.

[8] See *Yearbook on Human Rights for 1952*, p. 113.

with a view to widen the scope of the benefit provided by the Act of 1952. Another amendment has been made by the amending Act in the Act of 1952 to provide therein that a temporary reduction in the number of employees in an establishment will not take that establishment outside the scope of the Act. The amending Act of 1960 has further amended the Act of 1952 so as to include therein provisions (i) excluding from the purview of the Act registered co-operative societies employing less than 50 persons and working without the aid of power and (ii) granting initial exemption from the provisions of the Act to small scale industries employing fifty or more persons, or twenty or more but less than fifty persons, until the expiry of three years in the case of the former and five years in the case of the latter.

(4) *The Children Act, 1960*[1]
(Act No. 60 of 1960)

This Act of the Parliament of India provides for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union territories. A "child" has been defined in the Act to mean a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. Section 4 of the Act provides for the setting up of Child Welfare Boards in different areas with at least one woman member in every such Board for dealing with neglected children. A "neglected child" has been defined to mean a child who —

(i) Is found begging; or

(ii) Is found without having any home or settled place of abode or any ostensible means of subsistence or is found destitute, whether he is an orphan or not; or

(iii) Has a parent or guardian who is unfit to exercise or does not exercise proper care and control over the child; or

(iv) Lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life.

Section 5 of the Act makes provision for the constitution of children's courts for different areas with at least one woman magistrate in every such court for dealing with delinquent children. A "delinquent child" has been defined to mean a child who has been found to have committed an offence punishable under any law for the time being in force. Section 6 of the Act provides that no person shall be appointed as a member of a child welfare board or as a magistrate in a children's court unless he has special knowledge of child psychology and child welfare.

[1] Published in the *Gazette of India Extraordinary* of 27 December 1960, part II, section 1, pp. 749-772.

Provisions have been made in sections 9-12 of the Act for the establishment and maintenance of children's homes for the reception of neglected children, of special schools for the reception of delinquent children and of observation homes for the temporary reception of children during the pendency of any inquiry regarding them and for the establishment or recognition of after-care organizations for the purpose of taking care of the children when they leave children's homes or special schools and of taking all necessary measures for enabling them to lead an honest, industrious and useful life.

Sections 13 to 17 of the Act contain provisions for dealing with neglected children. Under these provisions a neglected child is required to be brought before a child welfare board and if the child welfare board is satisfied on inquiry that a child is a neglected child and that it is expedient so to deal with him, it may (i) make an order directing the child to be sent to a children's home until he ceases to be a child, or (ii) make an order placing the child under the care of a parent, guardian, or other fit person on such parent, guardian or other fit person executing a bond with or without surety to be responsible for the good behaviour and well-being of the child and for the observance of such conditions as may be imposed by the Board.

Sections 18-26 of the Act contain provisions for dealing with delinquent children. Section 21 provides that where a children's court is satisfied on inquiry that a child has committed an offence, it may —

(*a*) allow the child to go home after advice or admonition;

(*b*) direct the child to be released on probation of good conduct and placed under the care of a parent, guardian or other fit person on such parent, guardian or other fit person executing a bond, with or without surety, for the good behaviour and well-being of the child for any period not exceeding three years;

(*c*) make an order directing the child to be sent to a special school;

(*d*) order the child to pay a fine if he is over fourteen years of age and earns money.

Section 22 provides that where a child who has attained the age of fourteen years has committed an offence and the children's court is satisfied that the offence committed is of a serious nature and that none of the measures referred to above is suitable or sufficient, the child may be detained at such place and on such conditions as may be considered fit for a period not exceeding the maximum period of imprisonment to which such child could have been sentenced for the offence committed, but no delinquent child can be sentenced to death or imprisonment, or committed to prison in default of payment of fine or in default of furnishing security.

It will thus appear that the object of the Act is to reform a juvenile delinquent and to mould him into a responsible citizen by improving his unfavourable environment and giving him suitable training and that the Act aims at rehabilitation rather than punishment of juvenile delinquents.

Certain offences in respect of children — namely, cruelty to a child, employment of children for begging, giving of any intoxicating liquor or dangerous drug to a child and exploitation of child employees — have been made punishable under the Act.

The Women's and Children's Institutions (Licensing) Act, 1956[1] will not apply to any children's home, special school or observation home established and maintained under the Act.

II. JUDICIAL DECISIONS

(1) Right to Acquire Property and to Carry on Trade or Business — Law Imposing Restrictions — Validity — Constitution of India, Articles 19 (1) (f), 19 (1) (g) and 14

Narendra Kumar and Others
v. *The Union of India and Others*

Supreme Court of India[2]

3 December 1959

The facts: On different dates prior to 3 April 1958, the petitioners Narendra Kumar and others who were dealers in imported copper entered into contracts of purchase of copper with importers at Bombay and Calcutta. But before they could take delivery from the importers, the Government of India issued on 2 April 1958, under section 3[3] of the Essential Commodities Act, 1955 (Act No. 10 of 1955) an order called the "Non-ferrous Metal Control Order, 1958". In this order "non-ferrous metal" was defined to mean "imported copper, lead, tin and zinc in any of the forms specified in the schedule to the order, and the order was made applicable from the beginning to imported copper. Clause 3[4] of the order controlled the price of non-ferrous metal. Clause 4[5] of the order sought to regulate the acquisition of non-ferrous metal by permit issued in this behalf by the controller in accordance with such principles as the central government might from time to time specify. Clauses 5 and 6 of the order made it incumbent on the importers to notify quantities of non-ferrous metal imported and to maintain certain books of account. Clause 7 conferred powers on the controller to enter and search any premises in order to inspect any book or document and to seize any non-ferrous metal in certain circumstances. This order was published in the *Gazette of India Extraordinary* on 2 April 1958, but no such principles as were required to be specified by the central government under clause 4 of the order were published either on that date or on any other date. Subsequently on 18 April 1958 certain principles were however specified by the central government in a communication addressed by the Deputy Secretary to the Government of India to the Chief Industrial Adviser to the Government of India, New Delhi, by virtue of which the controller could issue permits only to certain manufacturers as indicated therein and not to any dealer. The relevant portion of this communication read as follows:

"The following principles shall govern the issue of permits by the controller:

"(1) In respect of the scheduled industries under the control of the Development Wing, the controller will determine the 6 monthly requirements of actual users based on their production in the year 1956;

"(2) In the case of small scale industries the Chief Controller of Imports and Exports on the certificate of the State Directors of Industries will inform the controller of the quantities that the units would be entitled to and thereupon the controller will make such quantities available to these units from time to time;

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[1] See *Yearbook on Human Rights for 1956*, p. 122.

[2] Report [1960] (2) S.C.R. 375.

[3] Section 3 of the Essential Commodities Act, 1955, reads as follows:

3 (1) If the central government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

. . .

(5) An order made under this section shall —

(*a*) In the case of an order of a general nature or affecting a class of persons, be notified in the *Official Gazette*; and

(*b*) In the case of an order directed to a specified individual be served on such individual —

. . .

(6) Every order made under this section by the central government or by any officer or authority of the central government shall be laid before both Houses of Parliament, as soon as may be, after it is made.

[4] This clause reads as follows:

"3 (1) No person shall sell or offer to sell any non-ferrous metal at a price which exceeds the amount represented by an addition of 3½ per cent to its landed cost.

"(2) No person shall purchase or offer to purchase from any person any non-ferrous metal at a price higher than that at which it is permissible for that other person to sell to him under sub-clause 1".

[5] This clause reads as follows:

"4. No person shall acquire or agree to acquire any non-ferrous metal except under and in accordance with a permit issued in this behalf by the controller in accordance with such principles as the central government may from time to time specify".

"(3) The controller shall normally release one month's requirements at a time to the consuming units and the permit shall be valid for a period of two months; but if heavy imports are reported the controller shall have the discretion to issue stocks in larger quantities."

On 14 April 1958 the petitioners applied for permits to enable them to take delivery of the copper in respect of which they had entered into contracts with different parties. The applications for permits were, however, refused and no permits were issued to them. Thereupon the petitioners presented a petition to the Supreme Court under Article 32 of the Constitution challenging the validity of the order refusing the grant of the permit on the ground that it had infringed the fundamental rights conferred on them by Articles 14,[1] 19 (1) (*f*)[2] and 19 (1) (*g*)[3] of the Constitution. They contended, *inter alia* —

(i) That the fixation of the price at the landed cost plus 3½ per cent as the maximum under clause 3 of the Non-ferrous Metal Control Order, 1958, which had the effect of driving the dealer out of business in imported copper, and likewise the provisions of clause 4 of the said order read with the principles specified in the letter of the Deputy Secretary to the Government of India, dated 18 April 1958, which had the effect of completely eliminating the dealers from the trade in imported copper, violated the right to acquire property guaranteed by article 19 (1) (*f*) of the Constitution and also the right to carry on trade or business guaranteed by article 19 (1) (*g*) of the Constitution, and that such total elimination of the dealer amounting to not merely a restriction on but a prohibition of the exercise of any of those rights was outside the saving provisions of clauses 5 and 6 of article 19;[4]

(ii) That the principles specified in the said communication dated 18 April 1958 being discriminatory in nature as between the manufacturers and dealers in copper resulted in violating the right to equal protection of the laws and thus infringed the right guaranteed to the petitioners by article 14 of the Constitution;

(iii) That in any case the said principles had no legal force as they were neither mentioned in the Non-ferrous Metal Control Order, 1958, nor were they notified in the *Official Gazette* and laid before both Houses of Parliament in the manner provided in sub-sections 5 and 6 of section 3 of the Essential Commodities Act, 1955.

Held: That the petitions should be partly allowed. The word "restriction" in clauses 5 and 6 of article 19 of the Constitution included the case of total restraint or "prohibition". Where a restriction reached the stage of total restraint or prohibition of a right, the court should take special care to see that the test of reasonableness was satisfied. The greater the restriction the more the need for strict scrutiny by the court. In the present case the evil that was sought to be remedied by the fixation of a price and the introduction of a system of permits for the acquisition of imported copper was the rise in price which would have led to higher price of consumers' goods in the production of which copper formed a major ingredient, and as such clauses 3 and 4 of the Non-ferrous Metal Control Order, 1958, even though they resulted in the elimination of the dealer from the trade, were reasonable restrictions in the interests of the general public within the meaning of clauses 5 and 6 of Article 19 of the Constitution.

The contention of the petitioners that the principles specified in the communication dated 18 April 1958 were discriminatory as between manufacturers and dealers and so they violated article 14 of the Constitution, was of no substance. Although the dealers and manufacturers were by the principles so specified placed in different classes, the differentia which distinguished dealers as a class from manufacturers placed in the other class had a reasonable connection with the object of the legislation. The principles specified in the said communication did not therefore contravene article 14 of the Constitution.

Clause 4 of the Non-ferrous Metal Control Order, 1958, could not, however, be effective unless the principles referred to in that clause were specified by the central government in a legal manner as required by sub-sections 5 and 6 of section 3 of the Essential Commodities Act, 1955. So long as these principles were not specified by the central government by an order notified in the manner provided in sub-section 5 and laid before both Houses of Parliament in accordance with sub-section 6 of section 3 of the said Act, the regulation by clause 4 as it was worded could not be regarded as being within the saving provisions of clauses 5 and 6 of article 19 of the Constitution and it was, therefore,

[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."

[2] Article 19 (1)(*f*) of the Constitution provides:

"19 (1). All citizens shall have the right —

. . .

"(*f*) To acquire, hold and dispose of property;"

[3] 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."

[4] Clauses 5 and 6 of article 19 of the Constitution provide:

"(5) Nothing in sub-clauses (*d*), (*e*) and (*f*) 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, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

"(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".

void as taking away the rights conferred by articles 19 (1) (*f*) and 19 (1) (*g*).

(2) FREEDOM OF SPEECH AND EXPRESSION — LAW IMPOSING RESTRICTIONS — VALIDITY — CONSTITUTION OF INDIA, ARTICLE 19

The Superintendent, Central Prison, Fatehgarh v. *Ram Manohar Lohia*

Supreme Court of India[1]
21 January 1960

The facts: The U.P. (Uttar Pradesh) Government enhanced the irrigation rates for water supplied from canals to cultivators. The Socialist Party of India resolved to start an agitation against the said enhancement as they thought that it placed an unbearable burden on the cultivators. The respondent, Dr. Ram Manohar Lohia, who was the General Secretary of the Socialist Party, visited Farrukhabad and delivered speeches there at two public meetings instigating the audience not to pay enhanced irrigation rates to the Government. On 4 July 1954 Dr. Lohia was arrested and produced before the city magistrate, Farrukhabad, who remanded him for two days. On 6 July 1954 he was prosecuted under section 3[2] of the U.P. Special Powers Act, 1932 (U.P. Act No. XIV of 1932). The magistrate went to the jail to try the case against him but he took objection to the trial being held in jail premises. When the magistrate insisted upon proceeding with the trial, the respondent obtained an adjournment on the ground that he would like to move the High Court for transfer of the case from the file of the said magistrate. Thereafter the respondent presented a petition to the High Court for a writ of *habeas corpus* on the ground, among others, that section 3 of the U.P. Special Powers Act, 1932, was void under the Constitution. The petition then came up before a division bench of the High Court at Allahabad consisting of two judges. There was, however, a difference of opinion between the two judges on the main points raised before them. The matter was therefore referred to the Chief Justice for obtaining the opinion of a third judge. The third judge before whom the matter was placed gave the following answers to the questions referred to him agreeing with one of the two judges who first heard the case:

Question No. (i). "The provision of section 3 of the U.P. Special Powers Act, 1932, making it penal for a person by spoken words to instigate a class of persons not to pay dues recoverable as arrears of land revenue, was inconsistent with article 19 (1) (*a*) of the Constitution[3] on the 26th January 1950."

Question No. (ii). "The restrictions imposed by section 3 of the U.P. Special Powers Act, 1932, were not in the interests of public order."

The matter was then placed before the two judges who first heard the case, and on the basis of the majority view they allowed the petition and directed the respondent to be released.

Thereupon the State preferred an appeal to the Supreme Court against the said order of the High Court. The contention of the appellant was that the Legislature could make laws placing reasonable restrictions on the rights of a citizen to freedom of speech and expression in the interests of public order, among other grounds, and that the words "in the interests of public order" were wider in connotation than the words "for the maintenance of public order". The appellant also urged that the avowed object of section 3 of the U.P. Special Powers Act, 1932, was to prevent persons from instigating others to break the laws imposing a liability upon a person or class of persons to pay taxes and other dues to the State, any authority or to any landowner which might lead to breaches of public peace and order. It was therefore contended by the appellant that the impugned section was enacted in the interests of public order and therefore the section was protected by clause 2 of article 19 of the Constitution.[4]

Held: That the appeal should be dismissed. By the Constitution (First Amendment) Act, 1951, several new grounds of restrictions upon the freedom of speech were introduced, such as friendly relations with foreign States, public order and incitement to an offence. In order that an existing law or a new law made by the State, in so far as such law imposed restrictions on the exercise by a citizen of the right to freedom of speech, would be saved by clause 2 of article 19 of the Constitution, the following two conditions should be complied with — namely:

(i) That the restrictions imposed must be reasonable, and

(ii) That the restrictions should be in the interests of public order among other grounds.

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[1] Report [1960] (2) S.C.R. 821.

[2] Section 3 of the U.P. Special Powers Act, 1932, reads as follows:

"3. Whoever, by word, either spoken or written, or by signs or by visible representations, or otherwise, instigates, expressly or by implication, any person or class of persons not to pay or to defer payment of any liability, and whoever does any act, with intent or knowing it to be likely that any words, signs or visible representations containing such instigation shall thereby be communicated directly or indirectly to any person or class of persons, in any manner whatsoever, shall be punishable with imprisonment which may extend to six months, or with fine, extending to Rs. 250, or with both."

[3] Article 19 (1) (*a*) of the Constitution provides:

"19 (1). All citizens shall have the right —

"(*a*) To freedom of speech and expression;"

[4] Clause 2 of article 19 of the Constitution 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."

The expression "public order" as used in clause 2 of article 19 was synonymous with public peace, safety and tranquillity. It meant absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife and war, affecting the security of the State.

In order to be reasonable, a restriction must have reasonable relation to the object which the legislation sought to achieve and must not go in excess of that object. A restriction imposed in the interests of public order must also have reasonable relation to the object to be achieved, i.e., the public order. If the restriction had no proximate relationship to the achievement of public order but could be only remotely or hypothetically connected with it, the restriction could not be reasonable within the meaning of clause 2 of article 19 of the Constitution.

Thus, in the present case unless there was a proximate connection between the instigation prohibited under section 3 of the U.P. Special Powers Act, 1932, and the public order, the restriction would neither be reasonable nor be in the interest of public order. It could not, however, be said that the instigation prohibited under the said section could have any proximate or even foreseeable connection with public order. In this view of the matter the said section infringed the right to freedom of speech guaranteed by article 19 (1) (*a*) of the Constitution and it was therefore void.

The Supreme Court's judgement included the following passage:

"Have the acts prohibited under s. 3 any proximate connection with public safety or tranquillity? We have already analysed the provisions of s. 3 of the Act. In an attempt to indicate its wide sweep, we pointed out that any instigation by word or visible representation not to pay or defer payment of any exaction or even contractual dues to Government, authority or a land-owner is made an offence. Even innocuous speeches are prohibited by threat of punishment. There is no proximate or even foreseeable connection between such instigation and the public order sought to be protected under this section. We cannot accept the argument of the learned Advocate General that instigation of a single individual not to pay tax or dues is a spark which may in the long run ignite a revolutionary movement destroying public order. We can only say that fundamental rights cannot be controlled on such hypothetical and imaginary considerations. It is said that in a democratic set up there is no scope for agitational approach and that if a law is bad the only course is to get it modified by democratic process and that any instigation to break the law is in itself a disturbance of the public order. If this argument without obvious limitations be accepted, it would destroy the right to freedom of speech which is the very foundation of democratic way of life. Unless there is a proximate connection between the instigation and the public order, the restriction, in our view, is neither reasonable nor is it in the interest of public order. In this view, we must strike down s. 3 of the Act as infringing the fundamental right guaranteed under art. 19 (1) (*a*) of the Constitution."

INDONESIA

THE LEGAL POSITION OF THE MARRIED WOMAN IN INDONESIA ACCORDING TO ADAT LAW[1]

"Adat law" is "unwritten law" not enacted by the law-maker. In Indonesia, unwritten law is predominant. Unwritten law is based on custom and judicial precedents. Written law was introduced in Indonesia during the Dutch rule, in concordance with the system of law in the Netherlands, which codified its law as did most of the continental countries. Adat law has the same position in Indonesia as does common law in Anglo-Saxon countries. Adat law is only valid for Indonesians who belong to the autochton population.

1. Community of property between wife and husband in consequence of a marriage does not exist. What the wife brings into a marriage remains her own property. For example, property which she inherits or which is donated to her or which she acquires by her own effort before, during or after her marriage belongs to her alone and does not mix with the property of her husband. The married woman and also her husband hold property of their own, just as if they were not married. Property obtained by wife and husband during their marriage by labouring jointly together — i.e., by common labour and diligence, is common property and belongs to them both. To obtain common property, wife and husband have to labour together, for example, to till the earth; or that property is acquired as a result of their labouring together, although each of them may not do the same work. For example, the husband earns money by working in an office, whereas the wife manages the household and takes care of the children. If, from money they set aside, they buy a house, that house is then common property. Therefore, there is a presumption that property acquired during marriage is common property, but the contrary may be proved. If a wife has sold her own property and from the money buys other property, then that new property belongs to her alone.

If the marriage is dissolved by death or divorce, then the common property has to be divided equally between wife and husband — i.e., each of them or their heirs gets one-half of the common property. Only this common property is divided. The property belonging solely to wife or husband is never mixed after their marriage, and after dissolution of that marriage that property returns to the former owner. Formerly, in central and east Java, in the event of the dissolution of marriage, the husband got two-thirds of the common property and the wife one-third, on the ground that a man could carry a burden twice as heavy as a woman. The Supreme Court of Indonesia, however, recently changed this rule and determined that both wife and husband get one-half of the common property on the ground that the old rule cannot be upheld and must be changed in the light of the latest developments in the education of Indonesian women and their increasing importance in public life.

2. A married woman has the same full contractual powers as does her husband. She can act independently without the consent or assistance of her husband. Her contractual powers are not limited because of her marriage status. Any contract made by a married woman in general is valid for herself and does not bind her husband. If that contract benefits both or their household, or the husband voluntarily assumes responsibility for that contract, then man and wife are liable with their common property and the husband also with his own property.

3. A married woman can sue or be sued in court independently from her husband. She can proceed alone without the assistance or authorization of her husband.

From what is mentioned above, we see that during marriage the position of the married woman in Indonesia according to Adat law is the same as that of the man. The principle of equality of the sexes is upheld in Indonesia.

4. The law of nationality has been codified in Indonesia since 1958 (Act No. 62 of 1958). There are stipulations in this Act about the nationality of a married woman in cases when a woman of Indonesian nationality marries a foreigner or a woman of foreign nationality marries an Indonesian national. These matters do not belong to Adat law but to written law. Nevertheless, we shall mention them here because of their importance.

(*a*) According to article 8 of the Nationality Act, an Indonesian woman marrying a foreigner will not lose her Indonesian nationality unless, within one year of that marriage, she declares that she wants to give up her nationality. This declaration must be given to the court of the domicile of that woman

[1] Note prepared by Judge S. A. Hakim of the Indonesian Supreme Court, and forwarded by the Government of Indonesia.

or abroad to the representative of the Republic of Indonesia. This declaration cannot be given if, by so declaring, she will be without nationality — that is to say, if, in giving up her nationality she will not automatically acquire the nationality of her husband. We see that in this case the equality of the sexes is upheld in matters of nationality.

(*b*) Regarding a foreign woman marrying an Indonesian national, article 7 of the Nationality Act stipulates that she automatically acquires the nationality of her husband, i.e., the Indonesian nationality, unless within one year of that marriage her husband declares that he does not want the Indonesian nationality; i.e., he repudiates that nationality (because he is intending to acquire the nationality of his wife). This declaration must be given to the court or abroad to the representative of the Republic of Indonesia as mentioned above. This declaration cannot be given if, by so declaring, the husband will be without nationality — that is to say, he will not automatically acquire the nationality of his wife. Because it rarely happens that a husband, by marrying, takes the nationality of his wife, article 7 must be based on the principle that a foreign woman marrying an Indonesian national will automatically acquire the Indonesian nationality. If that foreign woman retains her own nationality, then she must try to persuade her husband, within one year of that marriage, to take her nationality. This difference of principle given in the Nationality Act regarding an Indonesian wife marrying a foreigner and a foreign wife marrying an Indonesian national can be explained because in the former case the Republic of Indonesia is intending to retain its own national, whereas, in the latter case, it is intending to uphold unity in an Indonesian household, and does not tolerate double nationality in such a household.

IRAN

NOTE[1]

1. *Amendment to the Nationality Act.* — An amendment to the Nationality Act laid down the conditions under which applications for naturalization could be made under articles 979 and 983 of the Civil Code.[2] Among the documents to be submitted by the applicant were: a certificate from the Ministry of Labour stating that the applicant's experience and education enable him to give service of which the country has need; proof of sufficient income and a law-abiding record; and proof of the applicant's. having sworn allegiance to the Iranian constitution The applicant must pass an examination in the Persian language and the history and constitution of Iran.

2. *Order of the Ministry of Justice of January 1962*[3] — This order deals with measures to be taken for the protection of children from the danger of drowning in pools and water reservoirs.

3. *Factory Ordinance of February 1960.*[4] — This ordinance provides for the establishment of a safety committee within each industrial undertaking employing more than 25 workers or, although the undertaking employs less than 25 workers, if the nature of the work involved so demands. Standards are laid down for ensuring maximum safety and favourable and healthy conditions of work.

4. *Factory Ordinance of August 1961.*[5] — This ordinance provides for standards of safety to be complied with in respect of the use of machinery concerned with the transformation of power.

5. *Factory Ordinance of December 1961.*[6] — This provides for standards to be complied with in factories for the purpose of prevention and extinction of fires.

6. *Factory Ordinance concerning Apprenticeship and Vocational Training, of January 1961.*[7] — This ordinance provides for apprenticeship and vocational training to be conducted in factories. Upon request by the Ministry of Labour, employers are required to undertake necessary measures, in accordance with regulations laid down by the Ministry and the high council of apprenticeship and vocational training, for vocational training and apprenticeship within their undertakings. Hours during which workers are engaged in vocational training are to be considered as working hours.

7. *Factory Ordinance for Elimination of Illiteracy.* — This ordinance aims at the establishment of up to fourth grade educational facilities for workers in factories owned by the Government or otherwise. The expenses are to be borne by the employer and the teaching hours to be arranged outside the working hours on the basis of a minimum of three consecutive hours per week. All illiterate workers are required to register at such classes within their factories. The penalty for absence without legitimate excuse is the deduction of one hour's pay for each hour of absence. However, this does not apply to women workers or those over fifty years of age. The Ministry of Labour is empowered to instruct the government or private agencies to abstain from providing any assistance to employers who do not comply with this ordinance.

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[1] Note based upon texts furnished by Professor A. Matine-Daftary, Member of the Senate of Iran, President of the Iranian Association for the United Nations, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] See United Nations Legislative Series: *Laws Concerning Nationality* (United Nations publication, Sales No. 1954. V.1), pp. 238 and 239.

[3] *Official Gazette*, No. 4938 (1 Bahman 1340).

[4] *Official Gazette* No. 4721 (12 ordibehesht 1340).

[5] *Official Gazette*, No. 4822 (13 Shahrivar 1340).

[6] *Official Gazette*, No. 4905 (20 Azar 1340).

[7] *Official Gazette*, No. 4726 (18 ordibehesht 1340).

IRAQ

ACT No. 61 OF 1959 ON EXAMINATION AND SUPERVISION OF FILMS AND PHOTOGRAPHS

Made on 1 April 1959 and put into force on 13 April 1959[1]

Art. 2. Films of all types and sizes imported or produced locally shall be submitted to supervision and shall be permitted to be shown partially or wholly, inside or outside Iraq, to a particular group or to the general public, in accordance with the provisions of this Act.

Art. 3. (1) The Minister shall assign a committee to be presided over by that one of its members whose grade is the highest, to examine the various kinds of films.

. . .

Art. 5. The committee shall have the authority to approve or prohibit a film show and its decision shall be subject to an appeal during a period of fifteen days from the date of notification.

. . .

Art. 14. Films shall be prohibited from being shown to the public if they are:

(1) Spoken in a foreign language and not translated into the Arabic language;

(2) Inciting to atheism, destructiveness or vandalism, corruption of morals, crime, or anything of a harmful nature;

(3) Containing scenes of violence which are harmful to the public;

(4) Against morality and the common good, and detrimental to the reputation of Iraq and that of the other Arab countries.

. . .

Art. 17. The Minister shall have the right to issue, from time to time, Notifications to be published in the local newspapers which prohibit the taking of photographs or films of certain scenes, conditions and areas. He shall also have the right to confiscate such photographs.

. . .

[1] Published in *Waqayi' al-Iraqiya* No. 153 of 13 April 1959. English text based upon that published in the *Weekly Gazette of the Republic of Iraq* of 18 May 1960, furnished by the Government of Iraq.

REGULATION No. 4 OF 1961 CONCERNING THE EMPLOYMENT OF WOMEN, YOUNG PERSONS AND CHILDREN

Made on 19 February 1961 and put into force on 26 February 1961[1]

Art. 1. For the purposes of this regulation, the following expressions shall have the meanings shown:

"Young person" is any person who has reached fourteen years, but has not reached eighteen years of age.

"Child" is any person who has not reached fourteen years of age.

. . .

Art. 2. (1) Women, young persons and children shall not be employed in the following works and undertakings:

(*a*) Quarries, mines, excavation for antiquities and other excavations;

(*b*) Driving or operating mechanical and steam motors and engines;

(*c*) River or sea-going ships and steamers, as crew members, stokers, trimmers or their assistants;

(*d*) Hard and strenuous work and jobs injurious to health.

(2) Women, young persons and children shall not be employed in any occupation or undertaking during the night, other than those in which only members of the same family are employed, except in emergency cases, exceptional circumstances, cases of force majeure or urgent work requiring night work, or in cases where the work has to do with raw materials, or materials in the course of treatment, which are subject to corruption or rapid deterioration.

(3) The provisions of paras. 1 and 2 of this article shall not apply to women holding responsible administrative positions who are not engaged in manual work, with due regard to the provisions of article 6, para. 3, of the Labour Act.

(4) Women, young persons and children may be employed in works and undertakings other than those mentioned in para. 1 of this article, provided

[1] Published in *Waqayi' al-Iraqiya* No. 490, of 26 February 1961. English text based upon that published in the *Weekly Gazette of the Republic of Iraq*, of 16 May 1962, furnished by the Government of Iraq. The regulation was adopted in implementation of article 24 of the Labour Act of 1958.

that the limitations of age and physical fitness determined by law for employment in such works are observed.

Art. 3. Children under fourteen years of age shall not be employed or work in any public or private industrial undertaking or in any branch thereof, except those in which only members of the same family are employed and in technical schools for the purpose of training, provided that such employment is approved and supervised by the Public Authority.

Art. 4. Children shall not be employed in shops, offices, hotels, restaurants, bars, public entertainment places and factories using mechanical power.

Art. 5. Children and young persons under eighteen years of age shall not be employed in industrial and non-industrial jobs unless they are considered fit for the work after a free and thorough medical examination carried out by an official doctor or an official medical board, . . .

Art. 6. Children may be employed on light work which is not harmful to their health or normal development, provided that this employment is not such as to prejudice their attendance at school and their education, progress and that the work shall not exceed two hours per day on either school days or holidays and five hours on other days. Their work on weekly rest days and official holidays shall be prohibited.

Art. 7. (*a*) Children and young persons may be employed on vessels, other than those upon which only members of the same family are employed, and on school ships for the purpose of training, with the approval and under the supervision of the competent authorities and subject to the following conditions:

(1) Qualification for the work in which they are employed must be proved by an examination made by the competent authority in accordance with the laws in force;

(2) Hours of work shall not exceed eight hours per day for young persons and five hours for children.

. . .

(*c*) Children and young persons shall enjoy, with pay, the annual leave to which they are entitled under the Labour Act, as amended, and also the public holidays at any port by mutual agreement.

(*d*) The annual leave due shall be given by mutual agreement at the first opportunity that the requirements of the service allow.

(*e*) Public holidays or weekly rest days falling due at sea (in the course of a voyage of the vessel) may be substituted by other days or compensated by cash payments equivalent to the full wage fixed.

Art. 8. (1) Any person under eighteen years of age shall not be employed on any vessel, other than vessels upon which only members of the same family are employed, except on production of a medical certificate attesting his fitness for work, . . .

(2) Young persons of 16-18 years of age may be employed as stokers when workers over eighteen years of age are not available, provided that two young persons shall be engaged in the place of one adult stoker.

(3) Young persons and children may be employed in urgent cases without a medical examination, provided that such examination is undergone at the first port at which the vessel calls.

. . .

Art. 12. This regulation shall not apply to fishing boats and ships or to wooden river ships or boats of primitive build.

Art. 13. The provisions of this regulation shall not apply to persons employed in any work or undertaking or on any vessel in which only members of the same family are employed, persons not remunerated in cash for their service, or remunerated only by nominal wage or by a share or fixed percentage of the profit, persons working exclusively on their own account, persons not employed by the shipowner, and workers employed in loading and unloading at docks (ambulatory dockers).

. . .

IRELAND

NOTE[1]

1. The Courts (Establishment and Constitution) Act, 1961, formally established, in pursuance of article 34 of the Constitution, a Court of Final Appeal, the Court of Criminal Appeal and Courts of First Instance, and disestablished the pre-existing courts. The Court of Final Appeal is called An Chuirt Uachtarach (The Supreme Court). The Courts of First Instance are An Ard Chuirt (The High Court), An Chuirt Chuarda (The Circuit Court) and An Chuirt Duiche (The District Court).

2. A supplementary Act, the Courts (Supplemental Provisions) Act, 1961, provides for the several matters specified in Article 36 of the Constitution as matters to be "regulated in accordance with law" — the number of judges of the different courts and their remuneration, age of retirement and pensions, the organization of the courts, the distribution of jurisdiction and business among the courts and judges and all matters of procedure.

3. The Civil Liability Act, 1961, achieves a great measure of reform in the law relating to civil liability. It amends and consolidates the law dealing with the survival of causes of action on death. With a few exceptions, causes of action vested in or subsisting against a deceased person now survive. It also amends and clarifies and restates the law relating to the liability of concurrent wrongdoers and contributory negligence and represented the first attempt at codification in the sphere of tort in any of the common law jurisdictions. For the purposes of this Act a wrong includes a breach of contract and a breach of trust as well as a tort. The Act provides for the apportionment of liability in cases of contributory negligence; where both the plaintiff and defendant are negligent, the plaintiff is awarded such damages as the court thinks equitable having regard to the degrees of fault of the plaintiff and the defendant. Contributory negligence on the part of the plaintiff no longer defeats him. Other provisions of the Act include the abolition of the so-called last opportunity rule, both for collisions on land and collisions at sea, and the applying of the law relating to wrongs to an unborn child for his protection, provided the child is subsequently born alive.

4. The Poisons Act, 1961, brings poisons legislation up to date and provides a code on the control of poisons which is more suited to present-day conditions. The Act provides for the establishing of a council to advise the Minister for Health on the making of regulations with respect to the manufacture, sale, storage, distribution, etc., of preparations containing poison.

5. The Health (Corporate Bodies) Act, 1961, was enacted to give power to the Minister for Health to set up statutory corporations to provide services relating to the protection and improvement of the health of the people and the care and treatment of the sick and infirm.

6. The Social Welfare (Miscellaneous Provisions) Act, 1961, increased non-contributory old age, blind and widows' pensions, unemployment assistance rates and old age contributory married persons' allowances. It also made substantial concessions in regard to the means conditions for receipt of unemployment assistance and provided other relaxations.

7. The Local Authorities (Education Scholarships) Act, 1961, enables an extended scheme for the provision of scholarships and other assistance to students at post-primary schools and in Universities to be carried out by local authorities. The State is enabled to make grants to local authorities towards the cost of such scholarships and assistance.

8. The Holidays (Employees) Act, 1961,[2] which is a consolidation Act with some amendments, increased by one week the statutory minimum holiday entitlement of workers in domestic, shop, industrial or other employment. They are now entitled to two weeks' annual leave each year and must be paid normal wages in respect of that leave. Where a worker is required to work on a public holiday — there are six in each year — his employer must allow him a day off in lieu, with pay, within a month or add an additional day, with pay, to his annual leave or pay him, in respect of the public holiday, twice the amount of a full day's pay.

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[1] Note furnished by the Government of Ireland.

[2] See International Labour Office: *Legislative Series* 1961 — Ire.1.

ISRAEL

HUMAN RIGHTS IN ISRAEL IN 1961[1]

I. LEGISLATION

1. An amendment to the Police Ordinance[2] abolishes the right of police officers, which was vested in them by British mandatory legislation, to withhold licences for public demonstrations or processions, or to stop or otherwise interfere with such demonstrations or processions, without assigning reasons therefor. Any citizen is now entitled to be given the reasons, verbally or in writing, for any such police refusal or interference.

2. Under the Courts (Capital Offences) Act, 5721-1961,[3] wherever a man is tried for a capital offence, a district court is to be presided over by a justice of the Supreme Court. The court may reject a plea of guilty to a charge with such an offence, and may proceed as if the accused had pleaded not guilty. The provision of the Criminal Code Ordinance, 1936 (Palestine), under which the punishment of death is carried out by hanging — which had been repealed — is now revived, to apply in cases in which capital punishment is still provided by law.

This enactment was rendered necessary when, in 1961, the prosecution of Adolf Eichmann under the Nazis and their Collaborators Punishment Act, 5711-1951, which imposes the death penalty on Nazi mass murderers and war criminals, was impending. The death penalty for murder had been abolished in 1954[4] and remains so abolished.

3. The Disciplinary Jurisdiction (Retrials) Act, 5721-1961,[5] extends the provisions for retrials of criminal matters in the courts[6] also to disciplinary tribunals. For the purposes of the Act, disciplinary tribunals are the various statutory bodies exercising disciplinary jurisdiction over judges (including religious and military judges), advocates, police officers, prison officers, notaries, auditors, valuers, medical practitioners, dentists, veterinary surgeons, pharmacists, architects and engineers.[7] Where a retrial results in a former adverse decision being quashed, the person disciplined or his estate may be awarded damages, and any rights taken away from him must, wherever feasible, be restored to him, notwithstanding anything contained in any other law.[8] The right to apply for a retrial is given not only to the person disciplined, and after his death to his next of kin, but also to the Attorney-General,[9] on any of the causes for which a retrial may be sought in court.[10]

4. A private member's bill which has become law,[11] seeks to abate nuisances interfering with the health and privacy of the individual. No person may cause excessive noise, excessive and offensive odours, or the contamination of air by smoke, gas, dust, or otherwise, where any such noise, odour or contamination is likely to disturb, or adversely affect the health of, any other person.[12] All licences to carry on any trade or industry are deemed to be issued subject to the provisions of the Act.[13] Where a particular noise, odour or contamination is found excessive and unreasonable, it is presumed to be likely to disturb, and adversely affect the health of, other persons, until the contrary is proved.[14]

A contravention of the Act is both a criminal offence, punishable with up to six months' imprisonment, and a civil tort giving rise to damages.[15] The Act adds to, and does not derogate from, any other law dealing with nuisances[16]. The Ministers of Health and Interior may issue rules for the implementation of the Act, whether generally, or addressed to any particular person directing him to do, or abstain from doing, any particular thing in order to comply with the Act or to prevent any further contravention thereof.[17] The compliance with any such directions of the ministers is a good defence to any charge under the Act.[18] Where the ministers are satisfied that some particular public right should override the right of a private person not to be disturbed by a contravention of the Act, they may so provide, by rules to be

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1 Note furnished by Justice Haim Cohn, Supreme Court of Israel, government-appointed correspondent of the *Yearbook on Human Rights*.

2 Police Ordinance Amendment Act, 5721-1961; *Sefer Ha-Hukim* 323 of 4 January 1961, p. 19.

3 *Sefer Ha-Hukim* 325 of 6 February 1961, p. 24.

4 See *Yearbook of Human Rights for 1954*, p. 161.

5 *Sefer Ha-Hukim* 332 of 23 March 1961, p. 56.

6 See *Yearbook of Human Rights for 1957*, p. 155.

7 Schedule to the Disciplinary Jurisdiction (Retrials) Act, 5721-1961.

8 Sections 5 and 6.

9 Section 3.

10 See footnote 6.

11 Nuisances Prevention Act, 5721-1961; *Sefer Ha-Hukim* 332 of 23 March 1961, p. 58.

12 Sections 2-4.

13 Section 9.

14 Section 10 (1).

15 Section 11.

16 Section 15.

17 Sections 5, 7, 8.

18 Section 10 (2).

gazetted.[1] The Act does not apply to anything done or omitted within a person's private premises, where the effects of such act or omission would not reach outside those premises.[2]

5. The independence and tenure of Muslim religious judges (Qadis) have now been established[3] on the lines laid down for rabbinical judges.[4] The Qadis are appointed by the President of the State upon nomination of a committee composed of the Ministers of Religious Affairs and one other member of the Cabinet; two Qadis to be elected by all Qadis in office; three members of Parliament, of whom two at least must be Muslims, to be elected by Parliament, and two advocates, of whom one at least must be a Muslim, to be elected by the Chamber of Advocates.[5] A Qadi is appointed for life, subject to compulsory retirement at the age of seventy,[6] and subject to the right of the President of the State to remove him for misconduct, when a disciplinary court composed of the senior Qadi in office, an advocate appointed by the Chamber of Advocates, and a third member appointed by the Minister of Religious Affairs, have found him guilty of such misconduct and recommended his removal from office.[7] A Qadi is not, in matters pertaining to the performance of his judicial duties, subject to any directions or control, but solely to the law and to his conscience.[8]

6. The Knesset Election Laws have been amended to render criminally liable any person who dismisses any worker or employee, or threatens with such dismissal, or withholds or threatens to withhold any work or employment from any person, by reason of having voted, or in order to induce the voting, for or against any particular list or candidate.[9]

Another amendment to the Election Laws prohibits the use of any public funds for election campaigns.[10] Public funds are defined as any funds belonging to the State, or to any body subject to the audit of the State Comptroller, or to any corporation in the management or capital whereof the government is participating; but excluding public halls and amenities normally let on hire.[11]

7. The law relating to the freedom of movemen abroad has been radically changed.[12] When the neighbouring States invaded Israel, a state of national emergency was proclaimed, and emergency regulations were issued to the effect that no person may leave the country without the permit of the Minister of the Interior or an officer authorized by him in that behalf. Though such permits were granted as a matter of course, except to persons who were liable to military service, the emergency regulations were prolongated from time to time and allowed to remain on the statute book. The Act now provides that everybody is at liberty to leave the country without any special permit being required, if his destination is any country other than Egypt, Iraq, Jordan, Lebanon, Saudi Arabia, Syria, or Yemen; it is only for departure to any of these latter countries that a special permit is still required.[13] The Minister of Interior may, however, prohibit the departure from Israel of any person, whatever his destination, if he has reason to believe that such departure might be detrimental to the security of the State.[14] As for military personnel, the requisite permits for their leave will in future be issued by the army authorities.[15]

8. The *major opus* of this legislative session was the Chamber of Advocates Act, 5721-1961.[16] Whereas under the British Mandatory regime, the bar associations were private organizations, in which the membership was entirely voluntary, and no statutory recognition was ever given to any of them, several Israeli statutes had already vested the Israel Bar Association with certain powers and privileges.[17] The present Act transforms the Israel Bar Association into the Chamber of Advocates — i.e., a private association with voluntary membership into a public body the membership in which is the qualification required for exercising the profession and enjoying the privileges of an advocate[18]. The profession of an advocate, which the Act reserves to advocates exclusively, consists of the representation of any person before any court, tribunal, arbitrator, and other judicial or quasi-judicial bodies, as well as before a dozen specified administrative agencies, including, for example, the registrars of companies and partnerships, land registries, and others; further the drafting of any document of a legal character for another person, and giving legal advice or opinions.[19] This monopoly of advocates does not derogate from the rights of the Attorney-

[1] Section 16.

[2] Section 17.

[3] Qadis Act, 5721-1961; *Sefer Ha-Hukim* 339 of 31 May 1961.

[4] Rabbinical Judges Act, 5715-1955; see *Yearbook of Human Rights for 1955*, p. 136.

[5] Section 4, Qadis Act, 5721-1961.

[6] Section 13.

[7] Sections 17-19.

[8] Section 9.

[9] Knesset Elections (Amendment No. 3) Act, 5721-1961; *Sefer Ha-Hukim* 340 of 1 June 1961, p. 124; section 7.

[10] Election Propaganda (Amendment) Act, 5721-1961; *Sefer Ha-Hukim* 346 of 21 June 1961, p. 166.

[11] Section 1.

[12] Emergency Regulations (Departures Abroad) (Amendment) Act, 5721-1961; *Sefer Ha-Hukim* 346 of 21 June 1961, p. 166.

[13] Sections 1 and 5.

[14] Section 6.

[15] Sections 8-10.

[16] *Sefer Ha-Hukim* 347 of 22 June 1961, p. 178.

[17] e.g., the participation in the appointment of judges (Judges Act, 5713-1953).

[18] Sections 1, 42, and 99-106.

[19] Section 20.

General and all his representatives and agents; nor from the rights of persons qualified and authorized to appear before religious courts, revenue authorities, the registrars of patents and trade marks, customs authorities, and the like; nor from the rights of trade union officials and other workers' representatives to represent workers in any labour dispute; nor from the right of any government agency or any advocate to request and obtain legal advice from another person (e.g., foreign consultants).[1]

The substantive law relating to legal education, law examinations and articled clerkship, and the like prerequisites for admission to the bar, has not been changed, save that the authorities previously in charge of these matters (the Law Council and the Ministry of Justice) are now replaced by the autonomous Chamber of Advocates.[2] The Chamber is also entrusted with the care for the observance of professional ethics; tribunals of discipline, as well as an appeal tribunal, are elected bi-annually from among the members of the Chamber, and are vested with wide disciplinary jurisdiction, including the powers of disbarment, suspension, imposing of fines, and censure.[3] An appeal lies to the Supreme Court from any conviction and sentence confirmed by the appeal tribunal.[4] "Disciplinary offences" in respect of which the tribunals exercise jurisdiction, are not only violations of such rules of professional ethics as are laid down in the Act or in any rules made thereunder, but any conduct unbecoming an advocate.[5] Among the rules of ethics laid down in the Act itself, there is the rule that an advocate shall perform his duties towards his client "with loyalty and devotion", and shall assist the court in administering the law.[6] In criminal cases, an advocate may not make his remuneration contingent upon the outcome of the case; and where an advocate makes his remuneration in a civil case contingent upon the outcome of the case, the Chamber may interfere, at the instance of the client, and if the remuneration appears to it excessive, may fix the amount of remuneration considered appropriate in the circumstances.[7] Anything (including any document) passed between advocate and client in connection with any professional services of the advocate to the client, is privileged from disclosure by the advocate in any judicial or investigative proceedings, unless the client waived the privilege.[8]

The various organs of the Chamber (national and district conventions, national and district councils) are elected in general, equal, proportional, secret and direct elections.[9] Among the thirty-one members of the national council, there are six who are to be appointed by the Minister of Justice;[10] this is the only vestige of governmental interference in the administration of the bar.

Apart from its main duties, the Chamber may also engage in a number of incidental activities, such as legislative sponsorship, legal aid, arbitration, insurance and pensions funds for members, legal research, and legal publishing.[11] It may finance its activities from compulsory membership fees and other payments imposed on its members,[12] and is subject to the audit and control of the State Comptroller[13].

9. The Academy of Sciences has also won statutory recognition.[14] The objects for which the Academy was established are the promotion and encouragement of scientific research and activities; advising government in matters pertaining to scientific planning and research of national import; organizing the best men of science residing in Israel, and fostering contacts with scientists and scientific bodies abroad; and representing Israeli science in international bodies and conventions.[15]

10. Under an amendment to the Public Health Ordinance, 1940 (Palestine), the provisions of the Criminal Procedure Revision (Inquiries into Crimes and the Causes of Death) Act, 5718-1958,[16] regarding investigations into the causes of deaths, are now being applied to all cases where the cause of death is uncertain, even though the death was not caused by unnatural means or by a criminal offence or did not occur in prison or in a mental hospital.[17]

II. JUDICIAL DECISIONS

1. GOVERNMENT POLICY — INTERFERENCE BY HIGH COURT

In the Supreme Court sitting as a High Court of Justice

Lehem Hai Ltd. v. *Minister of Commerce and Industry*[18]
30 January 1961

The petitioners, owners of a bakery, purchased from government substantial quantities of wheat.

[1] Section 21.
[2] Sections 2 and 24-40.
[3] Sections 1, 41, and 53-80.
[4] Section 71.
[5] Section 61.
[6] Section 54.
[7] Section 84.
[8] Section 90.
[9] Sections 7, 9, 11, 13 and 108.
[10] Section 9.
[11] Section 3.
[12] Section 93.
[13] Section 5.
[14] Israel Academy of Sciences Act, 5721-1961; *Sefer Ha-Hukim* 348 of 23 June 1961, p. 193.
[15] Section 2.
[16] See *Yearbook of Human Rights for 1958*, pp. 111-112.
[17] Public Health Ordinance (Amendment No. 2) Act, 5722-1961; *Sefer Ha-Hukim* 354 of 30 November 1961, p. 12.
[18] Reported 15 *Piskei-Din* 197.

On an increase in the price of the wheat, by order of the respondent, the petitioners applied for an order of mandamus to keep the price of wheat at its former level, asserting that the costs incurred by government in purchasing the wheat had not increased. The order was refused, and the petition dismissed.

Per Olshan, P.: ". . . The petitioners do not claim any right under any law, nor do they maintain that the respondent failed in any duty towards them. They do not claim that government is not entitled to act as a purchaser and seller of wheat. Their complaint is that the price policy of the respondent is bad and causes them damage and suffering.

It is quite true that even where a cause of action arises from the policy of government, this court is open to the citizen — provided he is aggrieved by the manner in which such policy is carried into effect. But this court will not interfere with the policy itself; in regard to that, the government is responsible to Parliament. As was said in an earlier case[1], this court will insist on satisfying itself that government carries its policies into effect in a just manner, that is to say, without discrimination or favouritism . . ."

Per Goitein, J.: ". . . There is no doubt that a citizen petitioning the government, may fall into the hands of an official who refuses his application not necessarily out of unlawful discrimination, but because of narrowmindedness, prejudice, excessive bureaucratism, or simply because of lack of understanding. In all of these cases the citizen will unduly suffer, unless he is given an efficient remedy. During the twelve years of its existence, this court has steadfastly stood by the citizen in his conflicts with officialdom — and wherever any deviation from the law, any arbitrariness, or any lack of attention to the issues involved, has been proved to the satisfaction of this court, it has interfered forthwith. . . . In the present case, however, I can find nothing to suggest, let alone to prove, any of these matters . . ."

Per Witkon, J.: ". . . I do not think that the words 'economic policy' have a mystic power, as if they need only be uttered in order to have the gates of this court hermetically closed before a citizen petitioning for his remedy. It seems to me that the distinction between the policy itself and the manner of its implementation is rather vague, and where a citizen comes and points to an arbitrary or discriminatory act of the administration, we will not send him away empty-handed, only because by annulling the unlawful act we would indirectly order the administration to go about attaining its purposes in some other, more reasonable and proper, manner . . ."

[1] *Contractors and Builders Union* v. *Minister of Commerce and Industry*, 5 *Piskei-Din* 1544.

2. PRIVATE PROPERTY — EXPROPRIATION FOR PUBLIC PURPOSES — COMPENSATION

In the Supreme Court sitting as a Court of Civil Appeals

Biderman v. *Minister of Communications*[2]

21 July 1961

The appellant owned land, part of which was compulsorily acquired by the respondent, in exercise of powers vested in him by the Roads and Railways (Defence and Development) Ordinance, 1943 (Palestine). In an action to recover compensation for such purchase, the respondent relied on a provision of that Ordinance to the effect that up to one-fourth of the area of land belonging to any particular owner may be compulsorily purchased without compensation. It appeared that the local authority had already expropriated one-fourth of the original area of the land, without compensation, in exercise of powers vested in it under the Town Planning Ordinance, 1936 (Palestine); similar powers are vested also in the Minister of Finance by the Lands (Acquisition for Public Purposes) Ordinance, 1943 (Palestine).

The district court had upheld the respondent in exercising his statutory power in respect of the area of the land remaining after the expropriation by the local authority. On appeal:

Held, confirmed.

Per Cohn, J.: "I agree with the learned judge that the true meaning of all these enactments is, that the one-fourth which may be expropriated without compensation is to be reckoned according to the area of the land at the time of the relevant expropriation; that is, where from that same land one-fourth was taken away in a previous expropriation, the remaining three-fourths is the area from which the one-fourth may now be expropriated; and so on with similar further powers of expropriation. The result is that under the various ordinances taken together, most of the area of a given plot of land may be expropriated without compensation; and while this result is theoretical and unlikely to occur in practice, I agree with the appellant that it is unbearable. But it appears to me that the legislator did not disregard this theoretical possibility, and found it unbearable too; surely it is one of the facets of the rule of law, even under such a colonial regime as that of the British Mandatory, that private property is not expropriated without compensation. In all the ordinances concerned, there is an express provision to the effect that the competent authority may pay compensation also in respect of that one-fourth which may be expropriated without compensation. In some of the ordinances, this power is subject to a finding that by expropriating without compensation, undue hardships would be caused . . . I have no doubt that in every case in which the various arms of

[2] Reported 15 *Piskei-Din* 1681.

the State exercise their various expropriating powers, each one claiming to be entitled to one-fourth of a given plot of land without compensation — there will be caused to the owner of that land, as from the second expropriation, undue hardship within the meaning of those provisions, and the competent authorities are justified, and, indeed, in duty bound, to pay full compensation in exercise of the discretion vested in them. This discretionary power is not one that the competent authority may or may not exercise, according to whim; it is a power on which fundamental rights of the citizen are depending, because it is the only safeguard provided by the legislator against expropriation without compensation. The intention of the legislator, as it appears from all these enactments read together, is that for certain purposes — which are in the nature not only of public purposes, but also of purposes connected with the land itself, as, for example, roadbuilding — one-fourth of a plot of land may be expropriated without compensation; but that whenever such expropriations are made more than once in respect of a particular plot of land, the government should be enabled to remedy the mischief of expropriating without compensation any area exceeding the first fourth, by paying compensation because of undue hardship. Were it not for that discretionary power vested in the government, it may well be that the ordinances would have to be interpreted as excluding each other, that is, that the expropriation of one-fourth under one ordinance precludes the expropriation of one-fourth under any other ordinance; but in view of this discretionary power being expressly vested in the competent authorities, and being vested in them apparently for this very purpose, there is no reason and no justification to construe the ordinances otherwise than according to their literal meaning, and not to leave the remedies required in the hands of those authorities with whom the legislator thought fit to entrust them. . . ."

3. FREEDOM OF TRADE — MONOPOLIES — GOVERNMENT CONTRACTS — AUTHORIZED BREACH

IN THE SUPREME COURT
SITTING AS HIGH COURT OF JUSTICE

Miller Ltd. v. *Minister of Communications*[1]
27 October 1961

The petitioners were importers of trucks and buses. The respondent entered into a contract with competing manufacturers for engines and other parts of trucks and buses to be imported by them to Israel and assembled in a plant to be built and maintained by them in Israel. The contract contained a stipulation to the effect that "government will not allocate to any (other) person, firm, or company . . . during a period of up to three years from the date of commencement of local manufacture and assembly . . . foreign currency for import into Israel of any diesel buses of whatever type and of diesel trucks of over seven tons carrying capacity . . ." The petitioners complained that their competitors were in fact granted an illegal monopoly, and that the contract was void as it fettered the discretion of the competent authorities to allocate foreign exchange in future and thus was against public policy. On the return to an order nisi to show cause why the contract should not be annulled or disregarded —

Held, order nisi discharged.

As regards the question of monopoly, there was nothing in the contract to prevent any persons from importing trucks and buses to Israel and to compete with the contractors, if he did not apply for the allocation, but was himself in the position to dispose, of any necessary foreign currency. The fact that by allocating foreign exchange to one importer, and by refusing such allocation to another importer, some discrimination necessarily results, is unavoidable and inherent in any control or licensing system; and the court would interfere only where such discrimination was prompted by unlawful or unreasonable considerations which were outside the scope of the discretion vested by law in the competent authority.

And as regards the question of validity of a government contract in which a discretion vested by law is fettered in advance, the Court quoted English authorities to the effect that such contract was void,[2] and American authorities to the effect that such contract was not void, but only unenforceable against the government,[3] and went on to say:

Per Sussman, J.: "The difference [between the English and the American doctrine] is that, according to American law, a party to a government contract which the government repudiates may be entitled to damages — even though the measure of such damages may not perhaps be tantamount to the measure of damages for breach of contract, as the breach here was not arbitrary but authorized by law; whereas under the English rule the contract is void, and its non-performance cannot give rise to damages. In this conflict of doctrines, I am inclined to follow the American approach, because there the citizen who contracted with the government is not left without remedy, but his rights against the State are, to some extent at least, secured. . . . In my view, the American rule is better calculated to achieve the ends of justice. On the one hand, the unfettered discretion of the competent authority is left intact notwithstanding the contract, which is what public policy requires; and, on the other hand, the citizen who relied on the performance of the promises made to him by government, is not left without remedy. . . ."

[1] Reported 15 *Piskei-Din* 1989.

[2] *Amphitrite* v. *R.* (1922) 3 K.B. 500; *Commissioners of Crown Lands* v. *Page* (1960) 3 W.L.R. 446.

[3] *City of Cincinnati* v. *Louisville and Nashville Railroad Co.* (1911) 223 U.S. 390; *Worthen* v. *Thomas* (1934) 292 U.S. 426.

In this particular case, the contract was therefore held valid, but it did not prevent any third party — including the petitioners — from applying for the allocation of foreign exchange for the importation of trucks and buses, nor did it operate to disable the competent authorities from allocating such foreign exchange in the exercise of their discretion, notwithstanding such contract, subject to the right of the contracting party to sue government for damages.

4. SUBSIDIARY LEGISLATION — PUBLICATION — UNLAWFUL CHARGES

IN THE SUPREME COURT
SITTING AS COURT OF CIVIL APPEALS

State of Israel v. *Haas*[1]
21 November 1961

The Postmaster-General is by law[2] authorized to make rules for the payment of fees to be paid for telephone installations and services; and it is expressly provided that such rules need not be gazetted. By virtue of this power, the Postmaster-General made the Post Office (Telephone Tariffs) Rules, 1958, which were gazetted, and in which certain fees were prescribed for various services, including the installation of a new telephone. The respondent applied for the installation of a new telephone and was charged fees exceeding those laid down in the said rules; he paid the excess amount under protest and obtained judgement for its recovery. On appeal by the State, it was argued that the excess fees had been duly prescribed by the Postmaster-General in rules which had not been gazetted and which had not in any other way been brought to the notice of the public.

The appeal was dismissed.

Per Cohn, J.: "... It is true that the law authorizes the making of rules imposing the payment of fees for telephone services, and does not require such rules to be gazetted; but this does not mean that such rules may be made without any publication whatsoever. The law itself speaks of post office guides and telephone guides which the Postmaster-General may publish, and had the Postmaster published these charges in any such guide, or in any other efficient and reasonable manner, there would conceivably be no cause of complaint against him ... But what did the Postmaster do? He fixed the charges on a piece of paper, and locked that piece of paper in his desk. When a citizen comes and asks for services to be rendered to him against payment of the fees fixed in the rules as published, the Postmaster unlocks his desk and waves his piece of paper in front of the dazzled citizen: 'I have made my own rules', he says, 'and the rules as published do not bind me at all. ...' All legislation, whether principal or subsidiary, must be published, whether or not it is expressly so provided by law; and even where the law expressly provides that any such legislation need not be gazetted, that does not mean that it need not be published at all. There are no secret laws in Israel. Legislation that is kept secret from the general public, is one of the characteristic symptoms of totalitarian rule, and is incompatible with the rule of law ..."

5. REMOVAL OF NUISANCES — INTERFERENCE WITH PRIVATE PROPERTY — DUE PROCESS OF LAW

IN THE SUPREME COURT
SITTING AS COURT OF CIVIL APPEALS

Tik v. *Krinitzi*[3]
30 January 1961

The appellant was the owner of land in Ramatgan. He had built on it without the requisite building licence. The respondent, the mayor of Ramatgan, ordered municipal workmen to pull down and demolish those buildings. His order was carried out, and subsequently confirmed by the municipal council. The council has power under the law[4] to remove any nuisance from streets and sidewalks. The appellant's claim for damages was dismissed on the ground that the ratification by the council authorized the respondent's action *ex post facto*, and that the respondent and the council acted in the honest, though mistaken, belief that the building concerned had been erected on a sidewalk in front of the appellant's land.

The appeal was allowed, and judgement for damages was given to the appellant.

Per Landau, J.: "... The respondent did not prove that the building was erected on a sidewalk; hence it could not have amounted to a nuisance which the council was entitled to remove without an order of the court, and it could not ratify an act by the respondent which it had no power to do itself ... The truth apparently is that it was not the desire to have a nuisance removed from a sidewalk that prompted the respondent to take the law into his own hands, but the desire to anticipate and create a *fait accompli*, lest the appellant on his part create a *fait accompli* and let tenants into possession of a building which was unlicensed. But the remedy available to the local town planning authorities against unlicensed building operations is an order from a court to stay such building operations, and possibly other remedies are provided for by law. The respondent thought that by circumventing the court and demolishing the building himself, he would achieve his purpose quicker and more efficiently and would teach the appellant a lesson. That is not

[1] Reported 15 *Piskei-Din* 2193.

[2] Post Office Ordinance, chap. 115 of the Laws of Palestine, § 3, 58, 107.

[3] Reported 15 *Piskei-Din* 237.

[4] Municipal Corporations Ordinance, 1934 (Palestine), Section 96 (1) (*c*).

the sort of good faith which is required of public officers, and which could stand them in good turn by way of defence when sued for compensation for the damage they have done . . ."

6. ELECTIONS — PROPAGANDA — FREEDOM OF EXPRESSION

IN THE SUPREME COURT
SITTING AS HIGH COURT OF JUSTICE

Israel Communist Party v. *Mayor of Jerusalem*[1]
8 August 1961

Under a municipal by-law, the respondent may prohibit the affixing on a municipal advertising board of any poster or placard by which an offence is committed under any law. The petitioners desired, during and in the course of an election campaign, to affix a poster containing, in the opinion of the respondent, libels on the Prime Minister, as well as seditious libels. On the return to an order nisi to show cause why the prohibition should not be lifted —

Held, order made absolute.

Per Cohn, J.: ". . . I think no municipal by-law can be allowed to add any restrictions on election campaigneering, to those contained in the Election (Propaganda) Act, 5719-1959.[2] Counsel for the respondent argued that that Act contained only restrictions of a technical nature, while restrictions in respect of the contents of election posters are still reserved to municipal regulation. If that argument were accepted, it would mean that local authorities could impose any such restrictions on election propaganda as they would think fit. That result would appear to me to be contrary not only to law, but also to fundamental conceptions of democracy . . ."

Per Sussman, J.: ". . . The intention of the legislator (in the Election (Propaganda) Act) obviously was to attempt to lead the election campaigns into quiet and fair channels. But, on the other hand, he intended also to secure the liberty of all candidates' lists to apply to the public, subject only to such restrictions as he may impose. Were any municipal council to provide by by-law that the mayor should have discretion whether to have posters affixed at all, or which posters to allow and which to disallow, and the mayor decided that no election posters be affixed, or that election posters of one party be affixed and of another party not — that would be inconsistent with the Act, because that would render all election propaganda illusory. But what about an election poster which violated the criminal law, for instance, openly incited to murder? My view is that such a poster would not be election propaganda at all, but an abuse of the campaigneering rights secured by the Act; and no local authority could be compelled to lend its hand to the commission of a crime, even under the cloak of election propaganda. In the particular case before us, I agree that the poster should not have been prohibited, and I regret that the respondent did not show the petitioners that liberal attitude to which a political party in an election campaign is entitled. Parliamentary elections provide lawful opportunity for the attempt to bring about changes in the regime, and all means of persuasion, even though clothed in strong language, are legitimate for this purpose. There won't be a local authority in Israel which would encounter any difficulty in allowing nicely worded posters of the political parties supporting it; but the test of true democracy is whether the voice of criticism is allowed to be heard; for where it is stifled, the parliamentary and democratic form of government is doomed to failure. . . ."

[1] Reported 15 *Piskei-Din* 1723.

[2] See *Yearbook of Human Rights for 1959*, p. 169.

7. RIGHT OF PRIVACY — NUISANCE — INDUSTRIAL AREA

IN THE SUPREME COURT
SITTING AS COURT OF CIVIL APPEALS

Azri v. *Klein*[3]
19 May 1961

The appellant lived in a rented flat in a neighbourhood which was, under town planning laws, designated as a mixed residential and industrial zone, in the heart of a large city. The respondents owned and operated, in the same house and adjacent premises, manufacturing plants in which they employed heavy machinery. The appellant sued in the magistrate's court for an injunction against the respondents, and obtained an order prohibiting the respondents from operating the plants at night. On appeal, the district court reversed the order and dismissed the claim, holding that a person who chooses to reside in a zone where industrial undertakings are permitted, must take the consequences and put up with the inconveniences involved. On further appeal —

Held, the order of the magistrate restored.

Per Berinson, J.: ". . . The magistrate found as a fact, not only upon the evidence of the witnesses but also upon his own inspection of the premises, that the noise is deafening and uninterrupted, and the floor and walls are quivering like in an earthquake, and that recently the plants started to work in several shifts, and the residents who come home after their work in the evenings and stay home at nights can find no quiet or relaxation whatever. The volume of the noise is not only the cause of serious inconvenience — which in itself would be sufficient to constitute a nuisance — but it has already caused actual damage to the health of the appellant and his family; indeed, the living conditions in which these people find themselves must unnerve

[3] Reported 15 *Piskei-Din* 1177.

and unbalance any normal person of good health and sound mind. In view of all this, the magistrate found that this noise was a private nuisance within the meaning of law;[1] and I consider this to be a finding of fact with which an appellate court ought not to interfere. The magistrate did not, however, order all work to be stopped, but considering the zoning of the area as both residential and industrial, issued a partial injunction which enables the respondents to continue work with one shift and only prohibits them from working with two or more shifts. . . . Where, as in the present case, industrial plants and living quarters have got to co-exist side by side, not only in the vicinity of each other, but even in the very same building, the law will find a way to enable both to do so and achieve their respective purposes to the greatest extent possible, without allowing the one to benefit or profit from the sufferings of the other. I can therefore find no fault with the magistrate's ruling, and would restore his order enjoining the respondents to stop all work in their plants as from 5 p.m. every day until 7 a.m. the next day."

8. PUNISHMENTS — DOUBLE JEOPARDY — SOLITARY CONFINEMENT

IN THE SUPREME COURT SITTING AS COURT OF CRIMINAL APPEALS

Attorney General v. *Zohri*[2]
20 March 1961

The respondent was a prisoner serving his sentence. He escaped from prison, and upon his recapture was placed for ten weeks in solitary confinement. He was charged with the offence of escaping from lawful custody, which is a felony punishable with seven years' imprisonment.[3] Under the Prisons Ordinance, 1946 (Palestine), escaping from prison is also a disciplinary offence triable by the director of the prison and punishable with two weeks' solitary confinement. It appeared that the respondent was not tried or punished under the Prisons Ordinance, but that he was placed in solitary confinement as a security measure. The district court convicted him and sentenced him to two weeks' imprisonment. On appeal by the Attorney-General —

Held, confirmed.

Per Cohn, J.: ". . . I understand the purpose of solitary confinement for security reasons to be that the prisoner be prevented from escaping again; but from the point of view of the prisoner, I can see no difference between solitary confinement by way of punishment, and solitary confinement as a security measure. . . . When the prison authorities see fit to adopt security measures which the law, and the courts, and the person involved, would or could regard as a punishment, they cannot be heard to complain if, in meting out punishment on their part, the courts take those measures into full account, whatever the name or description given to them. . . ."

9. FAIR TRIAL — FULL HEARING — UNREPRESENTED PRISONER

IN THE SUPREME COURT SITTING AS HIGH COURT OF JUSTICE

Ellenbogen v. *President of the Supreme Court*[4]
27 June 1961

The petitioner had been convicted of a criminal offence by a district court, and appealed against his conviction to the Supreme Court. When the appeal was heard, he was not represented, having dismissed counsel who appeared for him in the court below. He had prepared his pleadings in writing, and read them out in court. When he had read the first ten pages, the President interrupted him, and did not allow him to read any further. The petitioner alleged that he had still ten more papers of his pleadings to read, and as he was interrupted, no fair hearing had been given to him. He applied for an order to have his appeal restored to the list and an opportunity given to him to complete his argument on appeal.

Held, refused.

Per curiam: ". . . There is an inherent jurisdiction in every court to interrupt any litigant or witness, as well as counsel, whenever the court thinks that he is talking too much and not to the point or that he is abusing the time and process of the court. . . ."

10. PRISONERS — RIGHT TO PROPERTY — INTERFERENCE BY PRISON AUTHORITIES

IN THE SUPREME COURT SITTING AS HIGH COURT OF JUSTICE

Bader v. *Commissioner of Prisons*[5]
September 24, 1961

The petitioner was serving a sentence of life imprisonment. When arrested, he had in his possession a substantial amount of money, which was taken away from him and deposited with the respondent. Under the prison rules,[6] the respondent may, for special reasons, allow a prisoner to use any money in such deposit. The petitioner desired to lend his money on interest, and the respondent refused to allow him to use his money for that purpose. On the return to an order nisi to show cause why permission should not be given to the petitioner to make such use of his money as he desires —

[1] Civil Wrongs Ordinance, 1944 (Palestine), sections 44, 45.

[2] Reported 15 *Piskei-Din* 899.

[3] Section 133 (*a*), Criminal Code Ordinance, 1936 (Palestine).

[4] Reported 15 *Piskei-Din* 1354.

[5] Reported 15 *Piskei-Din* 1923.

[6] As amended in 1955.

Held, order made absolute.

Per curiam: ". . . For the respondent to refuse permission to a prisoner to do with his money whatever he wishes, there must be reasonable grounds. The reason advanced on behalf of the respondent in this case is that there may well be medical and other emergency expenses, to defray which the petitioner may be in need of money; he would therefore allow him to invest part, but not all, of his money. We cannot accept this reasoning. . . . A prisoner who is in possession of his mental faculties is at liberty to say, I do not care for possible emergencies, and I prefer to expend my money now in a manner and for a purpose which I consider suitable. And if he says that, the respondent cannot against his will compel him to provide for any such contingencies. Nothing in the law warrants the assumption that there is any sort of guardianship imposed on prisoners, or that the respondent enjoys rights or privileges of a guardian over the property of a prisoner in his custody. . . ."

ITALY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS (1961)[1]

I. LEGISLATION

The principle of the right of the individual to freedom of movement within the borders of a State, proclaimed by article 13 (1) of the Universal Declaration of Human Rights and confirmed, in so far as Italian citizens are concerned, by article 16, subsection 1, of the Italian Constitution,[2] has been given practical effect through the abrogation of some restrictive rules previously in force.

The purpose of *Act No. 5 of 10 February 1961* (*G.U.*, No. 43 of 18 February 1961) is to repeal the legislation governing internal migration and the legislation enacted to prevent a concentration of population in the towns; and to promote the geographical mobility of labour. The aim of this Act, in addition to repealing laws which clearly conflicted with the spirit and the letter of article 16 of the Constitution is to adjust the legislation to a state of affairs which is becoming increasingly widespread in Italy — namely the growing influx of workers from the mid-southern rural areas, in particular, to the large cities of northern and central Italy in search of employment. This phenomenon is caused by the existing economic imbalance between the north and south of Italy, by the depression in the agricultural economy, and by the still insufficient industrialization of the south. It should be noted, lastly, that, with these new rules intended to promote the workers' freedom of movement, Italy is gradually progressing towards the international free movement of labour.

The laws repealed by article 1 of the Act of 10 February 1961 are: Act No. 358, of 9 April 1931, to issue regulations for the organization and furtherance of migration and land settlement, and Act No. 1092, of 6 July 1939, providing for measures to prevent urbanism.[3] Articles 2, 3 and 4 introduce substantial amendments in Act No. 264, of 29 April 1949, which made "provision for the placement of, and assistance to, involuntarily unemployed workers."[4] Under article 2 (which amends section 8 of the 1949 Act) every person who desires to find employment shall cause his name to be registered in the placement lists at the employment offices in the area in which he resides. Without changing his residence a worker may transfer (and this is an important innovation) his registration to the placement lists of an office in another commune, if that commune is a provincial capital, has more than 20,000 inhabitants or is of major industrial importance, in the same or an adjacent province or within a radius of 150 km. A worker who transfers his registration to the placement lists of another office retains any priority of registration previously acquired.

Article 3 provides that alien workers wishing to be registered in a placement list must be in possession of a residence permit entitling them to work or an equivalent document instituted by international agreement. (This is added as a new paragraph to section 9 of the 1949 Act, which did not mention alien workers at all.)

Article 4 (which amends section 15 of the 1949 Act) provides that workers from other communes, either from the same province or from adjacent provinces, may be allocated to specified types of work that have to be done in a particular commune, if suitable rules are observed in connexion with the proportions so referred; the allocation of such workers must be authorized by the provincial placement committee; if such permission is refused, a decision is taken by the Minister of Labour and Social Welfare. (A worker who transfers as a consequence of this regulation must neither change residence nor transfer to another placement list.)

The Italian legislator based *Act No. 551, of 27 June 1961* (*G.U.* No. 172, of 14 July 1961) establishing

[1] Note prepared by Dr. Maria Vismara, Director of Studies and Publications of the Italian Association for the United Nations, Chief Editor of *La Communità internazionale*, a publication of that association, and government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Italian Constitution, art. 16: "All citizens may travel and sojourn freely in any part of the national territory, subject to the general restrictions provided by law on grounds of public health or security. No restrictions may be imposed on political grounds".

[3] The 1931 Act entrusted to the Migration and Land Settlement Commissariat, "placed under the direct and sole authority of the Head of the Government" the duty, in concert with the Ministry of Corporations, of distributing available labour throughout the country.

Under the terms of the 1939 Act, no person could transfer his residence to a provincial capital, or to an industrial centre, or to a commune with more than 25,000 inhabitants, unless he proved that he was compelled to do so by his office or profession or that he was assured of permanent profitable employment in the commune to which he emigrated (article 1); if he failed to comply with the aforesaid conditions, he could not be inscribed on the population register (article 4); there was even a prohibition against leasing or sub-leasing houses or rooms to a person who did not possess a residence certificate (article 5).

[4] See *Yearbook on Human Rights for 1951*, p. 193.

"measures for the benefit of large families" on article 31, first paragraph of the Italian Constitution,[1] which is fully in accord with article 16(3) of the Universal Declaration. When the bill was submitted to Parliament, it was stated that: "The aim of the constitutional provision was not to encourage population growth but rather to recognize as deserving of special protection that family situation which because of its composition has always attracted the attention of the legislator in all times and places."[2]

This Act is divided into four titles, providing special facilities in (1) access to work and housing, (2) schooling, (3) military obligations, and (4) taxation. For the purposes of titles I and II, a large family is, generally speaking, one with five dependent children; the Special Facilities Act provides for the setting aside of a percentage of posts in vocational training courses (article 1), the engagement of apprentices (article 2), and the allocation of low-cost housing (article 4); the exemption or partial exemption of large families, the total income of which is not subject to surtax, from school and university taxes (articles 5 and 6);[3] and preferential right for free admission to national or conventional (convenzionati) boarding schools (article 7).

Under the standards set in title III there has been a substantial reduction, in comparison with previous figures, in the number of dependent children or offspring required to qualify as a large family with respect to the grant of early discharge or exemption from military service to a son. The minimum number of dependent children required to take advantage of the tax benefits provided in title IV is seven; for families with five dependent children the benefits are reduced by half; in calculating the number of children, legitimized children and natural children who have been legally acknowledged are also included (article 10).

Act No. 211, of 5 March 1961 (*G.U.* No. 91, of 12 April 1961) to establish the "legal and economic regulations governing rural postmen" comes within the scope of article 23 of the Universal Declaration (relating to various forms of protection of labour).

Before the enactment of the present law, rural postal workers performed their service (transport of sacks of mail from a railway or motor-bus station, etc., to a post office, and vice versa; exchange of postal articles in the freight-yards; emptying of post boxes; delivery of parcels) on the basis of the clauses included in an agreement entered into between them and the Administration of Posts and Telecommunications, in return for compensation fixed by free negotiation. The employment relationship had gone on indefinitely and was terminated only by the physical unfitness of the worker, by serious breaches of discipline, or by the elimination of the service. The employment relationship originally resembled a work contract (independent contract) but was gradually losing that character because of the insertion into the regulations of elements of a different kind, some of which were characteristic of public service (cost of living adjustments, lump-sum payments, etc.; extension of general improved economic benefits granted to State employees, enjoyment of social welfare and assistance benefits provided by law for workers who do manual labour). Consequently, there was a need for the promulgation of rules laying down the fundamental provisions governing the institution of the rural postman.

By the Act of 5 March 1961 (which consists of twenty-five articles) the rural postal worker who works at least five hours a day is assimilated essentially to the mail carrier, in view of the similarity of the occupations. In fact, the present Act reproduces substantially the rules concerning mail carriers contained in presidential decree No. 656, of 5 June 1952, including "rules for the co-ordination and amendment of the provisions relating to telegraph and post offices, branch offices, collectors' offices, and rural mail carriers' services", and in Act No. 120, of 27 February 1958, which completes and amends that decree.

On the subject of the protection of the worker, we recall further *Act. No. 830, of 28 July 1961* (*G.U.* No. 214, of 30 August 1961) to make "provision for social security for the employees of public transport concessions and improved benefits for certain categories of pensioners of the Fund established by article 8 of R.D. Act No. 2311, of 19 October 1923."[4]

The 1961 Act has been enacted in response to the need to help railway and tramway pensioners by eliminating existing inequalities among the pensions payable by the particular Social Security Fund of the category concerned, established by the various pension assessment systems provided by the existing rules. To this end the Act provides for the transformation of the technical structure of the Fund, which has been turned from a partial into a complete substitute for compulsory general disability, old-age and survivors' insurance.

The Act, which consists of thirty-eight articles, provides for the revaluation of pensions assessed before 1 January 1955 (article 1) and of indirect and reversionary benefits (article 2) and, moreover, the

[1] Italian Constitution, article 31: "The republic shall, by means of economic and other measures, encourage the establishment of the family and the discharge of family responsibilities and shall give special consideration to large families".

[2] Atti Parlamentari, Camera dei Deputati, III Legislatura, Doc. No. 208.

[3] The provision of the existing laws, to the effect that the exemption or partial exemption is conditional on the student or pupil having a certain scholastic record, remains in force (Act No. 645, of 9 August 1954; Act No. 1551, of 18 December 1951).

[4] This legislative decree, which lays down rules for the fair treatment of employees of domestic railways, tramways and navigation lines managed by private industry, provinces or communes, establishes the "Social security fund for employees of public transport services".

extension of reversionary benefits to legitimized and natural children and to children placed on the same footing (article 3), and establishes minimum allowances for retirement on account of old age and disability (article 7). By the terms of article 10, participants who have reached sixty years of age, if they are men, and fifty-five if they are women, are entitled to an old-age pension, provided that they have contributed to the Fund for fifteen years, even if they have been dismissed from service at their request. An early retirement pension is provided (article 11) for any agent who has reached at least fifty-five years of age and has contributed to the Fund for a period which, added to the years still remaining before he becomes sixty years of age, totals not less than fifteen years. Article 12 includes a systematic general statement of the rules concerning the disability of railway and tramway employees to whom the fair treatment legislation is applicable, while article 13 accords the employees of motor-bus-line concessions — to whom the rules of fair treatment were not extended — the right to a disability or preferential pension, as the case may be. We note lastly, among the many detailed rules of this Act, the provision (article 25) for voluntary continuation of the contribution: those persons who cease to be compulsory participants in the fund, through the termination or modification of the employment relationship, and who have not earned the right to a pension, may continue their participation in the Fund on a voluntary basis, provided that they have contributed for at least five years; furthermore (article 29), if those participants who are not entitled to a pension when they leave the service after having paid contributions for at least fifteen years do not ask to continue their payments voluntarily, they remain participants in the fund without paying contributions; in such a case the fund will pay them only old-age and reversionary benefits; participants who have stopped paying contributions after twenty years of contribution are entitled to disability benefits as well.

II. TREATIES AND CONVENTIONS RELATING TO HUMAN RIGHTS, WHICH BECAME OPERATIVE IN ITALY IN 1961

European Convention on mutual assistance in criminal matters, signed at Strasbourg on 20 April 1959. Ratified and made effective in Italy by Act No. 215, of 23 February 1961 (*G.U.* No. 92 of 13 April 1961).

European convention on establishment, with annexed protocol, signed in Paris on 13 December 1955. Ratified and made effective in Italy by Act No. 277, of 23 February 1961 (*G.U.* No. 102 of 26 April 1961).

Convention between Italy and Norway on social security, with annexed final protocol, concluded at Rome on 12 June 1959. Ratified and made effective in Italy by Act No. 991, of 1 July 1961 (*G.U.* No. 249 of 5 October 1961).

III. JUDICIAL DECISIONS

The inviolability of *the right of defence* — a right sanctioned by article 24 of the Italian Constitution ("The right of defence at every stage and level of proceedings is inviolable") and proclaimed by article 11 (1) of the Universal Declaration — was reaffirmed by the Constitutional Court in two decisions noted here.

In decision No. 39, of 11 July 1961, the constitutional court asserted that a foreign judgement could not be recognized unless the accused's right of defence had been observed in the proceedings on which that judgement was based.

In a decision of 21 May 1957, the district court of Zurich had sentenced I. R., an Italian citizen, to a short term in detention and to several years' banishment from the country. State counsel at the Naples court of appeal subsequently applied for recognition of this judgement. The court, in its decision of 7 June 1958, denied recognition for lack of compliance with one of the conditions laid down in article 674, No. 1 of the Criminal Procedure Code,[1] specifically because the accused during the hearing had not been assisted by counsel, since the Swiss procedural law did not provide for the appointment of a defence counsel *ex officio*. State counsel filed an appeal with the court of cassation, contending that the foreign judgement should have been recognized since one of the conditions laid down in article 674, No. 1 of the Criminal Procedure Code (the presence of the accused at the hearing), had been satisfied. According to the appellant, the conditions laid down in this article should be construed as alternatives. The court of cassation granted the appeal on the grounds put forward by the appellant and sent the case back to another section of the same Naples court of appeal for a new trial.

In this court, counsel for I. R. raised an objection to the constitutionality of article 674, No. 1, in relation to article 24 of the Constitution. By its order of 10 March 1960 the court, contending that recognition of the foreign criminal judgement would be contrary to the principles of the Italian legal system because according to the second paragraph of article 24 of the Constitution the right of defence at every stage and level of proceedings was inviolable, referred the case to the constitutional court. In the order itself it was asserted that article 674, No. 1 of the C.P.C., seemed to conflict with both the Constitution and the contemporary juridical and sociological

[1] C.P.C., article 674: "The court of appeal shall not recognize a foreign judgement: (1) if the person against whom the judgement was issued had not been summoned to appear at the proceedings or had not been assisted or represented by defence counsel; . . ."

notion of the right of defence, a notion which had led to the formulation of a rule making failure to comply with the rules concerning defence one of the irremediable grounds of nullity.[1]

In its decision, the constitutional court rejects the interpretation of article 674, No. 1, given by the state counsel of the Naples court of appeal — namely, that positive proof of only one of the conditions laid down in that article (summons to appear in court, or assistance or representation of a party by defence counsel) would be sufficient to support recognition: interpreted in that fashion, article 674, No. 1, "would be unconstitutional, since it would permit the recognition of a foreign judgement even if the judgement had been issued at the conclusion of proceedings in which assistance by defence counsel had been lacking". On the contrary, it is clear from article 674, No. 1, that "for the recognition of the foreign judgement to be prohibited, it is sufficient to prove failure to comply with only one of the prescribed conditions, or in other words, the absence of either the summons to the hearing or of the assistance or representation of the party by defence counsel". Accordingly, in order that recognition can be allowed "it is indispensable that there should be resort to both the summons to the Court and assistance or representation by defence counsel".

On this basis, the constitutional court dismisses the contention "that article 674, No. 1, conflicts with the right of defence guaranteed by article 24 of the Constitution, a right which it . . . clearly reaffirms. It will be the task of the judge who is competent to recognize the foreign judgement, each time that he applies the regular rule, to establish, in relation to the details of each of the various orders, whether the right is given the practical protection reaffirmed in article 674".

In its decision No. 56, of 11 July 1961, the constitutional court declared that the ordinary rules of criminal procedure concerning the protection of the right of defence in accelerated proceedings were applicable to the special accelerated procedure provided for press offences.

In its two orders of 12 and 13 July 1960, the court at Trapani requested a judgement of the constitutional court on the constitutionality of article 21 of the Press Act, Act No. 47, of 8 February 1948, which provided that accelerated procedure should be applied in proceedings involving offences committed through the press. The orders were based on the premise that the general rules concerning accelerated proceedings in the Criminal Procedure Code could not be applied to the accelerated proceedings contemplated by the Press Act. In the two criminal proceedings which had given rise to the orders, counsel for the defendants (accused of offences committed through the press) had in fact raised the question of the constitutionality of article 21, on the ground that they had been denied the time for preparation of the defence provided in article 503, third paragraph of the Criminal Procedure Code. It was contended that article 21 of the Press Act conflicted with article 24 of the Constitution.

In view of the identity of the subject, the constitutional court settled the issues raised on both orders of the Trapani court in one decision.

The court found no basis for the contention that the accelerated proceedings contemplated in article 21 of the Press Act were not subject to the rules laid down in article 503, third paragraph of the Criminal Procedure Code for the analogous procedure. The stipulation in the third paragraph of article 21 of the Press Act that "the matter shall be decided in accelerated procedure" in fact referred by implication to accelerated proceedings already existing in the criminal law and to the corresponding rules laid down in the Criminal Procedure Code.

The only remaining question, the decision then states, is to ascertain whether specifically there may be any incompatibility between the special procedure laid down in article 21 for press offences and the rule of the Criminal Procedure Code concerning the granting of an interval for preparation of the defence.

"There can be no basis whatsoever for incompatibility, however, since on the one hand the granting of an interval for preparation of the defence is an expression of the principle, forcefully reaffirmed in the second paragraph of article 24 of the Constitution, that 'The right of defence at every stage and level of proceedings is inviolable', and on the other there is nothing in the purposes of the accelerated procedure contemplated by the Press Act that may be called contradictory to the general rule concerning the granting of an interval for preparation of the defence."

On the subject of the *status of the married woman*, we note two opinions of the Supreme Court of Cassation — one a decision on the merits, the other a procedural appeal. Both confirm the wife's right to retain and use her maiden name: a right which is included in the broader principle of the legal equality of the spouses with respect to marriage, affirmed in article 16 (1) of the Universal Declaration.

Decision No. 1692, of 13 July 1961, of the court of cassation (*Foro Italiano*, 1961, I, 1065) states, in general terms, that the woman who marries does not lose the right to the use of her own surname and acquires the right, but not the duty, to add her husband's surname.

In a note on this opinion it is correctly observed that: "The case annotated here is undoubtedly interesting because of its implications, which are far wider than the topic to which the opinion was directed would suggest. Behind the question of the surname there is another matter, broader and more complex, the possible autonomy of the woman within the family, an autonomy many aspects of which

[1] C.P.C., article 185, No. 3 and last paragraph.

civil law doctrines — and more particularly the interpretation of those doctrines in textbooks and judicial decisions — tend to restrain in the name of family interests, which the husband should represent and interpret exclusively."[1]

In the decision on the merits, Mr. S. had requested the Ancona court of appeal to enjoin the wife, Mrs. B., to use her husband's surname, since her failure to use that surname was an insult to the husband. The Ancona court, with a simple reference to article 144 of the Civil Code, had ordered B. "to use her husband's surname in all circumstances, in public and in private, orally and in writing, and in the press". B. appealed against that decision to the court of cassation, contending that the court of appeal had erroneously interpreted article 144 of the Civil Code.[2]

The court of cassation, in its decision reversing the decision of the court of appeal, stated that the provision of article 144 to the effect that the wife should assume the surname of the husband, "is to be understood not at all in the sense that on marriage the wife changes her maiden name for her husband's surname, losing the right to use her maiden name, but in the sense that she assumes the right to use her husband's surname, without thereby losing the right to the use of her own surname which is affirmed in article 6 of the Civil Code,[3] and hence the use of both surnames is lawful."

The Supreme Court then went on to inquire whether the wife had not only the right but the duty of adding her husband's surname to her own name. Excluding the matter of declarations to the public authorities which was not relevant to the case at issue, the Supreme Court limited the question to the use of the husband's surname in social and professional relations. Having stated the distinction between a "legal duty", which was enforceable *per se*, and "another kind of" duty, which was not enforceable, the Supreme Court declared: "The mere fact that the sphere of social relations, friendship, courtesy, etc. is by definition an extra-legal area makes it impossible to conceive of a legal duty to use one's surname, or a married woman's duty to add her husband's surname to her maiden name, in those surroundings. In such relations a person may be known, according to the circumstances, by his first name only, by a nickname, by a pet name. . . . Compulsory use of the husband's surname would, therefore, be unjustified and would constitute an invasion of an extra-legal field reserved to individual freedom."

Having recalled that there was a limitation on every freedom, however, and that in the present case the limitation arose from the rules governing personal separation because of the fault of one of the spouses, the Supreme Court affirms that the precept which requires each of the spouses not to commit serious offences against the other's self-respect may also be reflected, according to the circumstances, in the wife's use of her maiden name: when this name is used not for innocent reasons but "with the intention of showing contempt or scorn for the husband, there is indeed a violation of a legal precept".

The Supreme Court comes to the same conclusion concerning the wife's duty to use her husband's surname in professional activities; it limits its consideration of the question, however, to the wife's exercise of an intellectual profession. (The Supreme Court ignores hypothetical cases concerning the wife's use of her maiden name in commercial, literary, scientific, theatrical, motion picture and other activities.) In this sort of case, the opinion states, "the duties established by the laws regulating the exercise of the profession, which do not specifically concern the husband as such, should be distinguished from the wife's behaviour towards the husband, which is the only point at issue". It therefore affirms that "the wife's use of her maiden name may be prohibited only in so far as . . . this use constitutes behaviour that is a grave insult to the husband." In any other case, "the husband's demand appears to be without reason, or the reason, if it exists, is the desire to harm the wife's development of her professional activities, or . . . a spirit of chicane which is certainly not commendable."

In its decision No. 801, of 14 April 1961 (*Foro Italiano* 1961, I, 733), the Supreme Court of Cassation held that a married woman was entitled to bring an action for usurpation of her maiden name.

In an appeal on a procedural point which arose in an action to establish the right to the use of a particle before a surname belonging to a family of the nobility but not connected with a title, the appellant, Professor A. Ac., contended before the Supreme Court that Mrs. G. Ac. d'Ar., whose married name was To., was not entitled to contest his use of the particle "d'Ar".

In its decision on this procedural appeal, the Supreme Court affirmed that the action brought by Mrs. G. Ac. d'Ar. should be defined as a direct action for the protection of her maiden name (the only protection allowed by Italian legislation), not for the protection of her title of nobility;[4] and specifically as an action brought against the usurpation of a name, on the basis of article 7 of the Civil Code. With this introduction, the Supreme Court states: ". . . such an action may undoubtedly be brought, not by the 'family' (an entity which does

[1] Note by Dr. Diana Vincenzi, *Foro Italiano*, 1962, I, 89.

[2] Article 144 of the Civil Code states as follows: "The husband shall be the head of the family; the civil status of the wife shall follow that of the husband, and she shall assume his surname. . . ."

[3] Article 6, Civil Code: "Every person shall have the right to the name which is attributed to him by law. The name includes the given name and the surname. . . ."

[4] On the basis of article XIV of the final provisions of the Constitution, which provides that "titles of nobility shall not be recognized".

not exist in our law) or by the 'head of the family' alone, but by any person who bears the name and therefore has an interest in keeping others from using it improperly; therefore, the married woman, who undoubtedly retains the right to her maiden name, and who in any event is expressly authorized to bring suit under the terms of article 8 of the Civil Code, has an interest based on family reasons worthy of protection to prevent the improper use of her maiden name". The foregoing is sufficient "to demonstrate the existence of Mrs. G. d'Ac. d'Ar.'s capacity to sue". The objection to the plaintiff's capacity to sue was therefore rejected.

The decision handed down by the Milan court on 6 April 1961 (*Giurisprudenza Italiana*, 1961, first part, section II, 404; *Foro Italiano*, 1961, I, 697) concerning a topic vitally important to the working woman — *the legality or illegality of the marrying clause* — referred to many principles of the Universal Declaration in the form of corresponding articles of the Italian Constitution. The constitutional provisions on which the decision is based are articles 3, 31, 35 and 37, which correspond chiefly with articles 1 and 2 (1), 25 and 23 of the Universal Declaration respectively.

The facts from which the proceedings arose are the following: the Conv. Company, ten months after it had employed R., informed her that it intended to insert a proviso in her contract, stipulating that she would be obliged to accept the termination of the employment relationship, upon the usual notice, in the event of her marriage. For the sake of peace R. accepted; some time later, however, she married without informing the Conv. Company. The latter, having learned the truth and considering it "just cause" for dismissal, summarily terminated the employment on the basis of article 3, second paragraph, letter *a* of Act. No. 860, of 26 August 1950.[1] R. brought an action against Conv. Company.

In its decision, the court first deals with the question of whether the violation of the so-called "marrying clause" is a valid reason for the rescission of the labour contract, and points out that the continuing insertion in many women workers' contracts of provisos terminating the employment relationship because of marriage is cause for concern. This much debated question has given rise to conflicting conclusions.

After noting the contentions of those upholding the validity of the clause, the opinion asserts: "That view is not shared by the court, as the marrying clause conflicts with a number of constitutional provisions and clashes with those ethical principles which constitute public morality. . . . It is well known that the Constitution of the republic has accorded special protection to the human personality (article 3), not only recognizing but even guaranteeing the inviolable rights of citizens, who are granted equal social dignity and equality, before the law without distinction as to sex. As may be readily deduced, the marrying clause is in direct conflict with the principle, since in practice the woman is put at a disadvantage in comparison with men."

The decision then cites article 35 of the Constitution, according to which the State "protects labour in all its forms and applications", and affirms that this principle may not be subjected to limitations based on sex or on any special status of the citizen; and article 31 of the Constitution sanctioning the *favor familiae*, with which the clause under consideration conflicts, since the woman's participation in the economic and social activity of the country should not deprive her of the right either to have a family or to perform her obligations to her family, as laid down in article 37 of the Constitution which states: "Their [women's] conditions of employment must allow for the discharge of their essential family functions . . ."

Turning next to social considerations, the opinion notes that, save for rare exceptions, "working wives contribute decisively to the support of the family, and often without their contribution the state of the family budget would be seriously endangered, since the salary of the head of the family alone, particularly in large cities, is insufficient to meet the cost of living and cannot assure the family a decent existence. Moreover, frequently young people establishing a family rely on the economic contributions of both spouses, which in most cases are made up exclusively of the proceeds of their labour, to meet the economic obligations arising from marriage. It follows that to make the woman choose between work and marriage is an infringement of the aforementioned constitutional principle; setting the choice in itself becomes a real and literal abuse of the right of forming a family."

The decision notes lastly that the clause in question induces attempts at evasion by secret marriages or extramarital unions, and concludes that there is no doubt "that the marrying clause conflicts not only with the constitutional rules cited (articles 3, 31, 35 and 37) but also with public morality because of the consequences to which this arrangement may give rise".

[1] See the text of Act No. 860, of 26 August 1950, in the *Yearbook on Human Rights for 1951*, p. 201.

IVORY COAST

ACT No. 61-415, OF 14 DECEMBER 1961, PROMULGATING THE IVORY COAST NATIONALITY CODE[1]

TITLE I
GENERAL PROVISIONS

Art. 1. The law determines which persons possess Ivory Coast nationality at birth as their nationality of origin.

Ivory Coast nationality may be acquired or lost after birth by operation of law or pursuant to a decision of a public authority in accordance with the statutory procedure.

Art. 2. For the purposes of this code, majority is attained on the expiry of twenty-one years of age.

Art. 3. Provisions relating to nationality contained in duly ratified and published international treaties or agreements shall apply even if they conflict with the provisions of the municipal law of the Ivory Coast.

Art. 4. Change of nationality may in no case result from an international convention except in virtue of an express provision thereof.

Art. 5. Where under the terms of a convention a change of nationality is contingent on an act of option, the form of that act shall be determined by the law of the contracting State in which the act is to be performed.

TITLE II
ATTRIBUTION OF IVORY COAST NATIONALITY AS NATIONALITY OF ORIGIN

Art. 6. Any person born in the Ivory Coast shall be an Ivory Coast national, unless both his parents are aliens.

Art. 7. A person born outside the Ivory Coast, one of whose parents is an Ivory Coast national, shall be an Ivory Coast national.

Art. 8. A child who is an Ivory Coast national by virtue of the provisions of this Title shall be deemed to have been an Ivory Coast national at birth, even if the statutory requirements for the attribution of Ivory Coast nationality are not proved to be satisfied until after his birth:

Provided that in the last-mentioned case, the attribution of Ivory Coast nationality at birth shall not affect the validity of instruments executed by the person concerned or rights acquired by third parties in virtue of his apparent nationality.

Art. 9. Birth or filiation shall affect the attribution of Ivory Coast nationality only if proved by a certificate of the civil registry or by a judgement.

Provided that a child of unknown parentage found in the Ivory Coast shall be presumed, failing proof of any kind to the contrary, to have been born there.

Art. 10. The provisions of the preceding articles shall not apply to children born in the Ivory Coast of diplomatic agents or of career consuls of foreign nationality.

TITLE III
ACQUISITION OF IVORY COAST NATIONALITY

Chapter I
METHODS OF ACQUIRING IVORY COAST NATIONALITY

Section 1
Acquisition of Ivory Coast Nationality by Operation of Law

Art. 11. A child who has been legitimated by adoption shall acquire Ivory Coast nationality if one of his adoptive parents is an Ivory Coast national.

Art. 12. Subject to the provisions of articles 13, 14 and 40, an alien woman who marries an Ivory Coast national shall acquire Ivory Coast nationality upon the celebration of the marriage before a registrar.

Art. 13. If, under her national law, the woman may retain her nationality, she shall have the right to declare, before the celebration of the marriage, that she declines Ivory Coast nationality.

She may exercise that right without authorization even if she is a minor.

Art. 14. Within six months from the date of the marriage the Government may, by decree founded on a joint report by the Ministers of Justice, the Interior, Health and Population, bar the acquisition of Ivory Coast nationality.

For that purpose a copy of the marriage certificate shall be transmitted within eight days of the ceremony by the registrar to the Minister of Justice for registration.

Where the Government makes such a decree, the woman shall be deemed never to have acquired Ivory Coast nationality.

[1] Text published in the *Journal officiel de la République de Côte d'Ivoire*, 3rd year, No. 70, special issue of 20 December 1961.

Provided that, where the validity of instruments executed before the decree was made depends on the acquisition of Ivory Coast nationality by the woman, their validity may not be contested on the ground that she could not acquire that nationality.

Art. 15. Where a marriage is contracted abroad, the period prescribed in the foregoing article shall run from the date on which the particulars of the marriage certificate are entered in the civil status records of a diplomatic or consular agent of the Ivory Coast.

Art. 16. A woman shall not acquire Ivory Coast nationality if her marriage, even if contracted in good faith, with an Ivory Coast national is annulled by an order of an Ivory Coast court or by an order having effect in the Ivory Coast:

Provided that where the validity of instruments executed before the court order annulling the marriage depends on the acquisition by the woman of Ivory Coast nationality, their validity may not be contested on the ground that she could not acquire that nationality.

Section 2

Acquisition of Ivory Coast Nationality by Declaration

Art. 17. A minor born in the Ivory Coast of alien parents may claim Ivory Coast nationality by making a declaration in accordance with the provisions of articles 57 *et seq.* if on the date thereof he has been habitually resident in the Ivory Coast for at least five consecutive years and if proof of birth is furnished in the form of an entry in the civil register, no other evidence being admissible.

Art. 18. A minor eighteen years of age may make his declaration without authorization.

A minor over sixteen but under eighteen years of age may claim Ivory Coast nationality only if authorized to do so by whichever of his parents exercises parental authority or, in default of such parent, by his guardian.

In the event of divorce or legal separation the said authorization shall be given by whichever parent has custody of the child; if custody has been given to a third party, the authorization shall be granted by that party if approved beforehand by the civil court of the place of residence of the minor, sitting in chambers.

Art. 19. If the child is under sixteen years of age, a person specified in the second and third paragraphs of the foregoing article may declare as the child's legal representative that he claims Ivory Coast nationality for the child; provided that if he is an alien, such legal representative shall have resided in the Ivory Coast for at least five years.

Art. 20. Children born in the Ivory Coast of diplomatic agents or career consuls of foreign nationality may claim Ivory Coast nationality by making a declaration in accordance with the provisions of articles 17, 18 or 19 hereof.

Art. 21. A child adopted by an Ivory Coast national may at any time before he comes of age claim Ivory Coast nationality by making a declaration in accordance with the provisions of articles 17 18 or 19.

The same shall apply in the case of a child who has been for at least five years in the charge of a public or private child welfare institution, or to a child who has been given a home in the Ivory Coast and brought up there by an Ivory Coast national.

Art. 22. Ivory Coast nationality shall be acquired on the date on which the declaration was signed.

Art. 23. Within six months from the date of signature of the declaration the Government may by decree bar acquisition of Ivory Coast nationality on any ground whatsoever.

Section 3

Acquisition of Ivory Coast Nationality by Decision of a Public Authority

Art. 24. Ivory Coast nationality is acquired by decision of a public authority where naturalization or recovery of nationality is granted to an alien on his application.

§ 1. *Naturalization*

Art. 25. Naturalization as an Ivory Coast national shall be granted by decree after inquiry.

A person may not be naturalized unless habitually resident in the Ivory Coast at the time of signature of the decree of naturalization.

Art. 26. Save as otherwise provided in articles 27 and 28, naturalization may not be granted to an alien unless he can prove habitual residence in the Ivory Coast during the five years preceding the submission of his application.

Art. 27. The period of residence required by article 26 shall be reduced to two years:

1. Where the alien was born in the Ivory Coast or is married to an Ivory Coast national;

2. Where the alien has rendered important services to the Ivory Coast, for example through the exercise of distinguished artistic, scientific or literary talent, the introduction of useful industries or inventions, or the establishment in the Ivory Coast of industrial or agricultural undertakings.

Art. 28. The following persons may be naturalized without any condition as to length of residence:

1. An alien minor born outside the Ivory Coast, if one parent acquires Ivory Coast nationality during the lifetime of the other;

2. The minor child of an alien who acquires Ivory Coast nationality, not having himself yet acquired that nationality by right in virtue of article 46 hereof;

3. The wife and children of full age of an alien who acquires Ivory Coast nationality;

4. An alien of full age who has been adopted, while a minor, by an Ivory Coast national;

5. An alien who has rendered outstanding services to the Ivory Coast or whose naturalization would be of exceptional interest to the Ivory Coast.

Art. 29. Except for minors to whom the provisions of article 28 apply, no person who has not reached the age of eighteen years may be naturalized.

Art. 30. A minor eighteen years of age may apply for naturalization without authorization.

In applying for naturalization, a minor under eighteen years of age to whom the provisions of article 28 apply shall be authorized or represented in accordance with articles 18 and 19 of this code.

Art. 31. A person may not be naturalized unless he is of good conduct and moral character.

Art. 32. A person may not be naturalized unless: (1) he is found to be of sound mind; (2) his physical health is found to be such that he is not likely to be a charge on or a danger to the public. Provided that this requirement shall be waived in respect of an alien to whom the provisions of the last paragraph of article 29 apply.

Art. 33. The manner of verifying the state of health of an alien who has applied for naturalization shall be specified by decree.

A registration fee payable to the Treasury, the amount and method of payment of which shall be specified by decree, shall be charged at the time of each naturalization.

§ 2. *Recovery of Nationality*

Art. 34. Recovery of Ivory Coast nationality shall be granted by decree after enquiry.

Art. 35. Ivory Coast nationality may be recovered at any age and without any residence requirement:

Provided that a person may not recover Ivory Coast nationality unless he is habitually resident in the Ivory Coast at the time of recovery.

Art. 36. A person applying for recovery of nationality shall prove that he formerly possessed Ivory Coast nationality.

Art. 37. A person who has been deprived of Ivory Coast nationality under article 54 of this code on the ground of a conviction may not recover it unless his full rights have been restored by the court.

Art. 38. A person to whom the preceding article applies may recover his nationality, if he has rendered outstanding services to the Ivory Coast or his recovery of nationality would be of exceptional value to the Ivory Coast.

Section 4

Provisions common to Certain Ways of acquiring Ivory Coast Nationality

Art. 39. Where acquisition of Ivory Coast nationality is conditional on residence in the Ivory Coast, a person may not acquire nationality unless he fulfils the statutory obligations and conditions governing residence of aliens in the Ivory Coast.

Art. 40. An alien in respect of whom an expulsion or restricted residence order has been made may not acquire Ivory Coast nationality in any manner whatsoever nor recover the same unless the order has been revoked in the terms in which it was made.

Art. 41. Residence in the Ivory Coast while a restricted residence order is in effect or during a term of imprisonment shall not be reckoned in the qualifying period of residence required by the various provisions governing acquisition of Ivory Coast nationality.

Chapter II

Effects of Acquisition of Ivory Coast Nationality

Art. 42. A person acquiring Ivory Coast nationality shall from the date of such acquisition enjoy all the rights attaching to that nationality, subject to the disabilities prescribed in article 43 of this Code or in special statutes.

Art. 43. A naturalized alien shall be subject to the following disabilities:

1. During the period of ten years following the naturalization decree he may not be appointed to an elective function or office which may be discharged only by an Ivory Coast national;

2. During the period of five years following the naturalization decree he may not vote in an election for which only Ivory Coast nationals may be registered as electors;

3. During the period of five years following the naturalization decree he may not be appointed to a public office remunerated by the State, or be called to a bar, or hold ministerial office.

Art. 44. A naturalized person who has rendered outstanding services to the Ivory Coast, or whose naturalization would be of exceptional value to the Ivory Coast, may be relieved by the naturalization decree of some or all of the disabilities prescribed in article 43.

Art. 45. A minor one of whose parents would acquire Ivory Coast nationality on the decree of the other shall become an Ivory Coast national by right on the same grounds as his parents, provided that filiation is attested by a certificate of the civil registry or by a judgement.

Art. 46. The provisions of the preceding article shall not apply: (1) to a married minor; (2) to a person who is serving or has served in the armed forces of his country of origin.

Art. 47. A minor may not benefit by article 45 if:

1. An expulsion order or a restricted residence order has been made in respect of him and not revoked in the terms in which it was made;

2. He has been sentenced to a term of imprison-

ment exceeding six months for a crime or offence [délit];

3. He is debarred by the provisions of article 39 from acquiring Ivory Coast nationality;

4. A decree barring the acquisition of Ivory Coast nationality has been made in respect of him under article 23.

TITLE IV

LOSS AND DEPRIVATION OF IVORY COAST NATIONALITY

Chapter I

LOSS OF IVORY COAST NATIONALITY

Art. 48. An Ivory Coast national of full age who voluntarily acquires or states that he possesses a foreign nationality shall lose Ivory Coast nationality.

Nevertheless, for a period of fifteen years from the date of entry on the population register such loss shall be subject to authorization by the Government, granted by decree following a report by the Keeper of the Seals, Minister of Justice, and after consultation with the Minister of Public Health and the Minister of National Defence.

Art. 49. An Ivory Coast national, even if a minor, who possesses a second nationality by right through the operation of a foreign law may be authorized by decree to relinquish Ivory Coast nationality.

In a case to which article 18 or 19 applies, the minor shall be authorized or represented in accordance therewith.

Art. 50. An Ivory Coast national who loses Ivory Coast nationality shall be released from his allegiance to the Ivory Coast:

1. In a case to which article 48 applies, on the date on which the foreign nationality is acquired;

2. In a case to which article 49 applies, on the date of the decree authorizing him to relinquish Ivory Coast nationality.

Art. 51. An Ivory Coast woman who marries an alien shall retain Ivory Coast nationality unless before the celebration of the marriage she makes an express declaration in accordance with the conditions and procedure laid down in article 57 *et seq* that she renounces her nationality.

The declaration may be made without authorization, even if she is a minor.

The declaration shall be valid only if she acquires or may acquire her husband's nationality under the law of his country.

In that case she shall be released from her allegiance to the Ivory Coast on the date of the celebration of the marriage.

Art. 52. An Ivory Coast national who in fact behaves as a national of a foreign State may, if he also possesses the nationality of that State, be declared by decree to have lost Ivory Coast nationality.

In that case, he shall be released from his allegiance to the Ivory Coast on the date of the decree.

The said measure may be extended to his spouse and minor children if they possess a foreign nationality, but not to his minor children without his spouse.

Art. 53. An Ivory Coast national who holds a post in a public service of a foreign State or in a foreign army, and retains the same though directed to resign it by the Government of the Ivory Coast, shall lose Ivory Coast nationality.

Six months after notification of such direction, the national shall be declared by decree to have lost Ivory Coast nationality if during that period he has failed to resign the said post, unless it is proved that he was totally unable to do so, in which case the six months' period shall run only from the date on which the impediment was removed.

He shall be released from his allegiance to the Ivory Coast on the date of the decree.

Chapter II

DEPRIVATION OF IVORY COAST NATIONALITY

Art. 54. A person who has acquired Ivory Coast nationality may be deprived thereof by decree if:

1. He is convicted of an act constituting a crime or offence [délit] against the internal or external security of the State;

2. He is convicted of an act constituting a crime or offence against the established institutions;

3. He has done, to the advantage of a foreign State, acts incompatible with the nationality and detrimental to the interests of the Ivory Coast;

4. He is convicted in the Ivory Coast or abroad of an act constituting a crime under Ivory Coast law and sentenced therefore to a term of not less than five years' imprisonment.

Art. 55. A person may not be deprived of nationality unless the acts specified in article 54 with which he is charged occurred within the ten years following the date on which he acquired Ivory Coast nationality.

Deprivation of nationality may only be ordered within the two years following the commission of those acts.

Art. 56. Deprivation of nationality may be extended to the spouse and minor children of the national if they are of foreign origin and have retained a foreign nationality.

Provided that it may not be extended to his minor children without his spouse.

TITLE VII

TRANSITIONAL PROVISIONS

Art. 101. An alien woman who has married an Ivory Coast national before this Act was published

may within a period of six months from the date of publication of the Act decline Ivory Coast nationality.

Art. 102. An Ivory Coast woman who has married an alien before this Act was published and acquired his nationality through the operation of his national law may within a period of six months from the date of publication of the Act renounce Ivory Coast nationality.

. . .

JAPAN

NOTE[1]

I. LEGISLATION

1. *Act amending the Act concerning Encouragement of Attendance at Schools for the Blind, Schools for the Deaf and Schools for the Handicapped (Act No. 5, of 25 March 1961)*

Hitherto, the cost of the purchase of schoolbooks of students attending the primary and secondary schools for the blind, for the deaf and for handicapped, the cost of their school lunches, transportation fares for them and their escorts to school and back, expenses attendant upon their living in the school dormitory and those for school excursions have been disbursed by "To", "Do", "Fu" and the prefectures, in whole or in part, and half the amount defrayed has been borne by the State. Through such means the education in these schools has been encouraged. The amendment provides for the expenses for stationery to be handled in the same way.

2. *Act amending the Act concerning the State Subsidy for supplying Destitute Schoolchildren and Students with Schoolbooks and Expenses for School Excursions (Act No. 6, of 25 March 1961)*

While the original Act was passed with a view to furthering the enforcement of compulsory education in primary and secondary schools by providing for a state subsidy for such expenses as buying schoolbooks for destitute school children and paying for school excursions in the sixth grade of primary school and third grade of secondary school, this amendment provides for a more comprehensive coverage of such expenses, including those for stationery and travel to school, and makes provisions for the subsidy for school excursions to cover not only the expenses in the sixth grade of primary school and the third grade of secondary school, but also for those in all the other grades. The name of the Act has been changed to "Act concerning State Aid for Encouragement of Destitute Schoolchildren and Students to Attend School".

3. *Act amending the Act concerning Loans from the Maternity and Child Welfare Fund (Act No. 104, of 1 June 1961)*

The aim of the original Act was to secure the financial independence of families consisting of only a mother and her child and the welfare of children in such families, by providing that prefectural authorities may lend, at low interest, to women who have no spouses but who have children, funds to start a business or to carry on a business, funds necessary for the child's employment, funds for acquiring the knowledge and skill necessary to start a business or an employment and funds for support while the women are in the process of acquiring such knowledge and skill. The amendment makes the provisions of the Act applicable to expenses necessary for repair and reconstruction of dwellings of such families.

4. *Act on Compensation for Nuclear Damage (Act No. 147, of 17 June 1961)*

As utilization of atomic energy is being developed, it is feared that damage may be suffered by people in general in the course of the operation of nuclear reactors, and the processing, etc., of nuclear fuel materials. This Act provides for the liability of nuclear reactor operators to compensate for any damage caused by the effects of the process of fission of nuclear fuel materials, the effects of the radiation of such materials or materials contaminated by nuclear fuel, and the effect of the toxic nature of such materials. This liability placed upon operators does not depend upon the existence of intention or negligence on their part.

5. *Act amending the Child Welfare Act (Act No. 154, of 19 June 1961)*

The institutions for promoting the welfare of children, operated at the cost of the State and prefectural authorities, have, heretofore, consisted of the lying-in homes, infant homes, mother and child homes, day nurseries, children's recreational centres, homes for dependent children, homes for mentally-retarded children, homes for blind, deaf and dumb children, homes for physically weak children and homes for juvenile training and education. The amendment to the Child Welfare Act has added to these "the short-term treatment centre for mentally retarded children" to accommodate children, usually under 12 years of age, who are slightly retarded mentally for a short term or to enable them to visit the centre for treatment.

6. *The Children's Allowances Act (Act No. 238, of 29 November 1961)*

For the purpose of promoting the welfare of children not living with their fathers, this Act

[1] Information furnished by Mr. Tatsuo Inagawa, Director of the Civil Liberties Bureau, Ministry of Justice, government-appointed correspondent of the *Yearbook on Human*

provides that a certain amount of money is to be paid monthly by the state to the mother who is supporting a child who has not completed the course of compulsory education (six years in primary school and three years in secondary school), generally under fifteen years of age, whose father is dead, or is unable or unwilling to support it due to divorce from the mother, etc., or to any other person who is supporting a child who has not completed the above-mentioned school course and whose parents are unknown, dead or unable to provide support.

II. OTHER EVENTS

1. *Outline of Conditions and Activities under the System of Civil Liberties Commissioners*

The Civil Liberties Commissioners are increasing in number each year, so that they are now stationed in every town and city in the whole country. There were 8,476 of them at the end of December 1961. They are making efforts to carry out their mission of protecting human rights in their respective local communities. At the same time they are engaged in more vigorous and effective activities to protect human rights through assemblies of commissioners and federations of such assemblies, irrespective of the localities to which they have been assigned.

Of these Civil Liberties Commissioners, 751 (8.9 per cent) are women, and it is presumed that their number will gradually increase.

The general meeting of the All-Japan Federation of Consultative Assemblies of Civil Liberties Commissioners for 1961 was held on 22 September at Sapporo City, when discussions were held, declarations made and resolutions adopted.

2. *Human Rights Week*

The week from 4 December to 10 December was designated as the thirteenth Human Rights Week, and during this week various events took place for the publicizing of human rights.

3. *System of Legal Aid*

The cases involving legal aid are increasing each year. The following took place in 1961: application for aid (including cases carried over from previous year), 1,042 cases; aid decided on, 379 cases; aid found unnecessary, 530 cases; pending, 133 cases.

4. *Trend of Cases in Human Rights*

In 1961, as in the previous year, cases of infringement of human rights by public services personnel decreased, showing the lowest record for the past ten years, and this trend can also be seen in nearly all other kinds of cases of violation of human rights. On the other hand, cases of undue infringement on the privacy of the individual and cases of public nuisance occurred more frequently as the result of the extraordinary progress of mass communications and the rapid development of industry, constituting serious social problems. Furthermore, traffic accidents caused by motor vehicles and other means of transportation increased rapidly. This has aroused the concern of the people since the increase of such accidents is attributable, according to some, to a trend towards disrespect for human life.

JORDAN

PROVISIONAL ACT No. 24 OF 1960 ON ELECTIONS TO THE CHAMBER OF DEPUTIES[1]

Chapter II

The Right to Vote

Art. 3. (*a*) A Jordanian may vote in an election of members of the Chamber of Deputies if (1) he has completed twenty solar years of age; (2) his name is entered in a final electoral register.

(*b*) A person shall not be entitled to vote if (1) he is not a Jordanian; (2) he claims alien nationality or protection; (3) he is an undischarged bankrupt; (4) his civic rights have been withdrawn and not restored; (5) he has been sentenced to imprisonment for a term exceeding one year for a non-political offence and has not been pardoned; (6) he is insane or mentally defective; (7) he is related to the King in a degree specified in the Royal Family Act.

. . .

Art. 5. Officers, non-commissioned officers and other ranks serving in the Army, security force or national guard may not vote.

Chapter III

Eligibility

. . .

Art. 17. A candidate for election shall —

(*a*) Have been a Jordanian national for at least five years;

(*b*) Be a fully-qualified elector registered in the electoral register;

(*c*) Have completed thirty years of age by 1 January of the year in which the election is held;

(*d*) Not have been convicted of an immoral crime or offence [délit];

(*e*) Stand for election in one constituency only.

Art. 18. Neither an official in the permanent civil service, nor an employee of the State or of a State-controlled public administration or institution, paid out of the state treasury or out of a public fund belonging to or controlled by the State, nor a staff member of an international organization operating in Jordan, may stand for election as a deputy unless he has resigned from his post within ten days after the date on which the Prime Minister has announced the date of the general election or by-election.

Chapter V

Art. 26. Deputies shall be elected in one stage by secret ballot.

Chapter VII

Election Publicity

Art. 59. (*a*) Except as provided by this Act, election publicity shall be permitted without restriction from the date of presentation of candidates until the day appointed for the holding of the election.

(*b*) Election publicity includes organization of election meetings, delivery of speeches, distribution of publications, and display of posters.

Art. 60. No election meeting whatsoever may be held in a religious or educational building or a building occupied by a state-controlled public administration or institution;

Art. 61. (*a*) A candidate may distribute publications announcing his candidature or stating his plans or purposes or any matter relating to his programme, provided that his name shall be clearly shown therein.

(*b*) Election publications shall be exempt from stamp duty.

(*c*) The State emblem may not be used in any election publication, notice or other writing, design or picture.

Art. 62. The following acts of election publicity are prohibited:

(*a*) Touring by a candidate accompanied by more than five persons;

(*b*) Direct or indirect expenditure by a candidate during or on an election campaign of a total sum exceeding 300 dinars;

(*c*) Inclusion in a speech, publication or notice issued by a candidate of any matter defaming or attacking another candidate;

(*d*) Appeal to the tribal family or communal emotions of any section of the public.

. . .

[1] Published in *Official Gazette* of the Hashemite Kingdom of Jordan, No. 1494, of 11 June 1960.

LAOS

ACT No. 57/30, OF 1 OCTOBER 1957, DEFINING PUBLIC RIGHTS AND FREEDOMS[1]

Title I
Public Rights and Freedoms of Laotian Citizens

Art. 1. The public rights and freedoms summarily stated in the preamble of the Constitution of the Kingdom of Laos include the following: equality before the law; freedom of the person; freedom and the right to ownership of correspondence, place of residence, and property; freedom of speech, writing, printing and publication; freedom of movement, occupation and establishment; freedom of association and assembly; freedom to elect and be elected.

Title II
Equality before the Law

Art. 2. All men are equal before the law. Except as otherwise provided by the constitution and regulations, titles acquired by birth or in any other manner shall confer no privileged status on the holder.

Everyone, without discrimination, has the right to govern his own person and his own property. Violation of the rights of others is prohibited.

Art. 3. In no case may a person be oppressed or compelled to become the slave or serf of another person.

Any violation of articles 2 and 3 shall be punished by the penalties provided in articles 4 and 111 of the Penal Code.

Title III
Freedom of the Person

Art. 4. No one may be imprisoned, unless found guilty of a criminal offence and only upon written order of the competent judicial authorities.

The arrest of a person without lawful cause constitutes a violation of the provisions of article 112 of the Penal Code.

Art. 5. Except in the case of *flagrante delicto*, a person may be arrested and detained only on a written order of the competent judicial authorities. The arrest or detention of a person carried out in contravention of the above provisions constitutes a violation of article 183 of the Penal Code.

Art. 6. Anyone arrested or detained, must, regardless of the circumstances, be brought before the examining magistrate for interrogation within twenty-four hours. In the absence of adequate proof of his guilt, he must be released immediately. If he is proved to be in fact guilty, he may be detained only under a committal order.

Any violation of the above provisions constitutes an infringement of the provisions of article 38 of the Code of Criminal Procedure and article 112 of the Penal Code.

Art. 7. During an interrogation, it is forbidden to strike or to torture the accused.

Any corporal punishment constitutes a violation of the provisions of article 112 of the Penal Code.

Title IV
Freedom and the Right to Ownership of Correspondence

Place of residence, and property

Art. 8. No one may read, steal or destroy the private correspondence of another person, except where otherwise provided by law in the event of proclamation of a state of siege.

Any contravention of the foregoing constitutes a violation of the provisions of article 193 of the Penal Code.

Art. 9. No one may enter the premises or dwelling of another person without the permission of the owner or a written warrant issued by the competent authority in accordance with the laws and regulations.

A search of premises ordered by a court may be carried out only in the day-time between 6 a.m. and 6 p.m. It is prohibited, except in the case of hot pursuit of an offender, to enter the grounds of a dwelling or to enter a house during the night without the permission of the owner.

A violation of the foregoing provisions constitutes an infringement of the provisions of articles 185, 186 and 187 of the Penal Code.

Art. 10. Everyone has the right to own property. He may be dispossessed only in accordance with the provisions of the laws and regulations and for reasons of public necessity or in the over-riding interest of the State, and must receive fair compensation for the loss he has suffered.

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[1] Text furnished by the Government of Laos. This Act was promulgated by royal decree No. 318, of 19 December 1957 (*Journal officiel*, No. 2, of 8 January 1958).

Title V

Freedom of Speech, Writing, Printing and Publication

Art. 11. Everyone has the right to express his opinion orally or in writing provided there are grounds for the opinion and it is not expressed in an offensive manner. This freedom of expression may not be prejudicial to the King, to religion, to peace, to democracy, or to national solidarity and unity.

Art. 12. Everyone has the right to petition the Government. Everyone has the right to request state officials and employees to perform their duties with respect to the subject of his petition, provided the request is made in the form prescribed by the regulations and in a proper manner.

Art. 13. Everyone has the right to express himself in writing or in print and is personally responsible for everything he so expresses. All printed matter produced by means of a typewriter or by any other method must mention the name and address of the author or printer.

Art. 14. Everyone has the right to publish. Two copies of published works shall be deposited at the head office of the competent administrative authority.

If the publications are prejudicial to democratic principles and public order, the government may order their confiscation.

Art. 15. Everyone has the right to publish daily or weekly newspapers and other periodicals. The authorities must be advised of their publication and of the date thereof and of the names of the owner, manager and printer; this information must appear in each issue of the publication.

If the matter published threatens democratic principles and public order, the Government may order the confiscation of the periodicals involved.

Art. 16. The import into and dissemination in the kingdom of newspapers and publications printed abroad and the export from the country of newspapers and publications printed in the kingdom are free. However, newspapers and publications printed abroad must be transmitted to the Government in accordance with the regulations.

Art. 17. It is prohibited to enter a newspaper office, printing works or circulation office belonging to a private individual or to an organization without the permission of the owner or a warrant from the authorities.

Art. 18. Words spoken or written in contravention of the above provisions render the offender liable to a police penalty as provided by article 6 of the Penal Code.

A person restricting the freedom of speech, writing and printing of another person without lawful cause shall be punished by a police penalty as provided by article 235 of the Penal Code.

Violation of the privacy of a newspaper, office, printing works or circulation office is deemed a violation of the integrity of the home. The offender shall be punished by a penalty under articles 185, 186 and 187 of the Penal Code.

Title VI

Freedom of Movement, Occupation and Establishment

Art. 19. Everyone shall enjoy freedom of movement, occupation and establishment throughout the kingdom and shall have the right to the protection and assistance of the local authorities except where prohibited by the laws and regulations.

Art. 20. No Laotian may be expelled from the kingdom.

Art. 21. Any person interfering without lawful cause in freedom of movement, occupation or establishment, in violation of the provisions of article 20 above, shall be prosecuted and punished by the penalties provided in article 235 of the Penal Code.

Title VII

Freedom of Assocation and Assembly

Art. 22. Everyone shall be free to establish political, commercial or professional associations and to join associations founded by other persons.

Art. 23. Notice of the establishment of the above-mentioned associations must be given to the Ministry of the Interior together with two copies of the statutes. Associations thus established may not have as their purpose anything which is prejudicial to the King, religion, peace, unity, democracy and the independence of Laos.

Art. 24. Associations must function in accordance with the provisions of the laws and regulations on associations.

Art. 25. Any lawfully established association may meet in a house or public place to make known its purpose in accordance with the provisions of its statutes, but must give the local authority twenty-four hours' notice of such meeting.

Art. 26. Any person violating the provisions of articles 24 and 25 concerning the freedom of association and assembly shall be prosecuted and punished in accordance with the provisions of article 21 above.

Title VIII

Freedom of Belief

Art. 27. Everyone shall enjoy freedom of religion and belief provided that the practice of his faith

does not threaten public decency or public order, solidarity, democracy, unity, and the development of the country, and does not interfere with the belief of others.

Art. 28. Any person violating the provisions of article 27 above shall be prosecuted and punished in accordance with the provisions of article 21 of this Act.

Title IX

FREEDOM TO ELECT AND BE ELECTED

Art. 29. Everyone shall be free to elect and be elected in accordance with the provisions of the electoral law.

Art. 30. This Act modifies and supplements the provisions of the laws now in force in the kingdom.

LEBANON

REPORT ON LEBANESE LEGISLATION CONCERNING HUMAN RIGHTS[1]

Lebanon is a parliamentary democracy; its positive law safeguards the exercise of the public freedoms set forth in the Universal Declaration of Human Rights (to the formulation of which it made an active contribution,[2] freedoms which have been raised to the level of constitutional principles.

The scope of this report permits only a general summary of the most prominent trends in Lebanese positive law, which will be considered from the standpoint of the individual's relationship first with the political unit of which he is a member, then with his conscience, and finally with the community to which he belongs.

The present report is a continuation of the communication by First President Choucri Cardahi published on pages 177 to 182 of the *Yearbook on Human Rights for 1946*, which should be consulted as a preliminary.

I. FREEDOM OF THE INDIVIDUAL

This freedom, often defined as a synonym of "physical freedom" (that is to say, all the freedoms of the physical person put together), covers three distinct but complementary realities (personal security, freedom of movement and inviolability of the dwelling), the principles of which are laid down in two articles of the Lebanese Constitution. Article 14 proclaims the inviolability of the dwelling, while article 8 lays down the general principle that "personal freedom shall be guaranteed and protected", followed by the statement of two principles regarding personal security: that no offence may be established and no penalty imposed except by law, and that no person may be arrested or kept in custody except in accordance with the law.

1. Personal Security

Personal security is a guarantee against arbitrary treatment, and constitutes the prime condition for freedom.

Article 8 of the Lebanese Constitution is designed to prevent arbitrary arrest or detention on the one hand, and arbitrary action regarding offences and penalties on the other.

Para. 1. — *Legality of action regarding offences, penalties, and education and security measures*

Article 8 of the Constitution prescribes that "No offence may be established and no penalty imposed except by law".

Lebanese law applies the two principles "*Nullum crimen sine lege, nulla poena sine lege*" [no offence may be established, and no penalty imposed except by law]. These principles, like those relating to educational and security measures, are laid down in chapter I of the Penal Code, and may be regarded as representing immense progress in the safeguarding of human rights, compared with the Ottoman Code previously in force.

Article 1

No infringement of the law may be punished by a penalty or by a security or educational measure, unless such infringement was provided for by law at the time of its commission.

Article 6

No penalty may be inflicted unless it was prescribed by law at the time the infringement was committed.

Article 12

No security or educational measure may be imposed except under the conditions and in the cases provided for by law.

Para. 2. — *Arrest and detention: subjection to the rule of law and primacy of the judiciary*

Under Lebanese law, arrest and detention are subject to the principle of the rule of law, and the primacy of the judiciary, both as a source of justice and as a sanction, is recognized.

Article 8 of the Lebanese Constitution, mentioned above, stipulates that "no person may be arrested or kept in custody except in accordance with the law". Article 196 of legislative decree No. 138, of 12 June 1959, provides that "except in cases of *flagrante delicto*, no person may be arrested by the members of the security forces except in virtue of an order or warrant issued by the competent authorities".

[1] Note prepared by Mr. Hassan-Tabet Rifaat, Deputy State Councillor, delegate to the Disputes and Legislation Board, government-designated correspondent to the *Yearbook on Human Rights*.

[2] See, *inter alia*, G. Tchirkovitch, "La Déclaration universelle des droits de l'homme et sa portée internationale", *Revue générale de Droit international public*, 1949, Nos. 3-4 (July-December), p. 378.

Article 367 of the Penal Code stipulates that "any official arresting or detaining any person in cases other than those provided for by law shall be liable to the penalty of a term of hard labour".

The Code of Criminal Procedure of 18 September 1948 contains a wealth of provisions relating to warrants issued by examining judges; there is no point in studying these provisions in detail, as the primacy of the judiciary, which is the source of action in the matter of arrest and detention (court decisions, warrants to compel attendance, summonses to appear, and warrants for arrest), raises no thorny problems.

Other legal provisions establish the primacy of the judiciary in regard to supervision of arrest or detention; thus, article 15 of decree No. N/14310, of 11 February 1949, expressly invests the competent officers of the law with the right of supervision over prisons and places of detention, particularly with respect to the legality of detention and to release, and with the right to inspect the registers of untried prisoners, convicted prisoners and prisoners held *incomunicado.*

Article 425 of the Code of Criminal Procedure of 18 September 1948 provides that places of custody and detention shall be inspected at least once every three months by the presidents of the criminal courts and at least once a month by the examining judge and the cantonal judge. It also entitles certain law officers to order those responsible for places of custody and detention coming within their jurisdiction to take any measures required by the preliminary investigation and later progress of the case.

Holding a prisoner *incomunicado* is a serious measure which Lebanese legislators have hedged around with effective precautions, the primacy of the judiciary in this field being affirmed (decree No. N/14310, referred to above). This type of imprisonment is imposed by a civil officer of the law, and it is his responsibility to order the ending of it and to authorize any visits, which are, in principle, forbidden (article 74). A special authorization from the examining judge is required before a prisoner held *incommunicado* can contact anyone (article 31).

Article 61 of the same decree makes the competent law officer responsible for authorizing interviews between detained persons and their lawyers during the hours fixed for visiting, and also gives the law officer the right to authorize, in exceptional cases, such interviews outside normal visiting hours, provided that they do not take place at night.

Article 69, governing visiting, makes the presence of a member of the security forces an essential requirement, except in the case of lawyers visiting their clients. The duration of visits is fifteen minutes for everyone, except for lawyers (article 69, para. 3).

However, the Military Penal Code of 12 January 1946, as amended by the Act of 28 February 1956, lays down more severe rules, which are to be explained by the special nature of the offences punishable under military law. Thus, article 28 stipulates that "lawyers may not be present at a hearing before a military examining judge". The same Code, which provides for preventive custody, prescribes that the length of time spent in preventive custody shall be deducted from any sentence of imprisonment imposed (article 152); while article 153, which defines preventive custody as a measure consisting of depriving someone of his liberty, stipulates that any previous disciplinary measures involving deprivation of liberty form an integral part of preventive custody.

The latter is the subject of a special provision of legislative decree No. 138 (article 199): "Preventive custody is not arrest in the true sense of the word; its object is to prevent any embarrassment (such as drunkenness) or to enable the identity of persons under suspicion to be verified.

"Preventive custody must not exceed twenty-four hours in duration."

Two provisions of the Code of Criminal Procedure which relate to arbitrary detention should be noted: articles 102 and 103 of this code fix a time-limit for the questioning of arrested persons. In the case of the issue of a summons to appear, the questioning must be carried out immediately; in the case of a warrant to compel attendance, it must be carried out within twenty-four hours. After that time-limit has expired (article 102 continues) it is the responsibility of the director of the place of custody to bring, on his own initiative, the defendant before the State Counsel-General, who will ask the examining judge to question him. In the event of the refusal or absence of the examining judge, or if for some legitimate reason the questioning is prevented, the State Counsel-General will ask the president of the court to question the accused or to delegate that duty to one of the president's subordinate law officers. If the questioning of the accused proves impossible, the State Counsel-General shall order his release.

Article 103 provides that "if a person arrested on a warrant to compel attendance has not been questioned within twenty-four hours following his arrest or brought before the State Counsel-General, such arrest shall be considered an arbitrary act, responsibility for which shall fall upon the official who has proceeded to such act involving deprivation of liberty, prohibited by article 368 of the Penal Code."

This article provides for a penalty of one to three years' imprisonment for "governors and warders of penal or disciplinary establishments or houses of corrective training, and all other officials fulfilling such duties, who have held an individual without a warrant or court decision or have detained him beyond the legal term".

Article 369 of the Penal Code provides for a penalty of one month's to one year's imprisonment for persons mentioned in article 368 above and, more generally, for "all law enforcement officers and all administrative officials who refuse or delay the bringing before a competent judge, when the latter so requires, of an arrested or detained person".

The concern of Lebanese legislators to safeguard individual freedom and prevent all acts likely to undermine it is confirmed by legislative decree No. 27 of 5 March 1959:

"*Art. 1.* Whosoever shall deprive another person of his individual freedom, whether by abduction or by any other means, shall be punished with a term of hard labour. This penalty shall be reduced to a minimum of six months and a maximum of three years if the person deprived of his liberty is freed within twenty-four hours, provided that he has been subjected to no other treatment constituting a crime or correctional offence. . . .

"The above penalty shall be increased to hard labour for life if deprivation of liberty has lasted more than one month, if the person deprived of his liberty has suffered physical or moral cruelty, or if the crime in question has been committed against a public servant in the execution of his duty.

"Persons committing such crimes shall not benefit from extenuating circumstances."

Para. 3. — The independence of the judiciary — guarantee of the security of the individual

The Lebanese judiciary is governed at the present time mainly by two instruments: decree-law No. 119, of 12 June 1959, which concerns the organization of the *Conseil d'Etat*, and decree No. 7855, of 16 October 1961, which promulgated three Bills relating to judicial order, in accordance with article 58 of the Constitution.[1] An Act of 9 July 1962 amending article 9 of the decree regarding the organization of the judiciary referred to above, as well as certain temporary provisions concerning the nomination of new judges, should also be mentioned. In addition, the Institut des Etudes juridiques provided for in articles 9 *et seq.* of the decree in question has just been organized by decree.[2] There is no need to go into the detail of these legal texts; it is sufficient to quote article 20 of the constitution:

"*Art. 20.* The judicial power, operating within the framework of a statute established by law and giving to both judges and judged the guarantees which are indispensable, is exercised by courts of various orders and degrees. The law fixes the limits and conditions for the irremovability of judges. Judges are independent in the exercise of their office. The orders and judgements of all courts are given and carried out in the name of the Lebanese people."

Article 2 of the Statute of the Judiciary (Bill No. 3 promulgated by virtue of decree No. 7855 referred to above) provides that "Judges are independent in the exercise of their functions and can be transferred or dismissed only within the limits provided for by the present law."

Article 3 of the same statute should also be noted. It stipulates that "the officers of the Ministère public are subject to the orders and the control of their superiors and to the authority of the Minister of Justice. They are recognized as having complete freedom of speech in hearings."

The independence of the judiciary is strengthened by the existence of the Conseil Supérieur de la Magistrature (see the second part of decree No. 7855, referred to above), to which all law officers are subject.

The law officers of the Conseil d'Etat enjoy a special status (see legislative decree No. 119, mentioned above) which supplies the necessary guarantees of independence.

Restrictions

(1) The competence of the Conseil de l'Inspection judiciaire (the third bill promulgated under decree No. 7855, referred to above) extends both to judicial and administrative courts and to the Cour des Comptes [the Audit Court].

(2) Suing a judge for denial of justice is a difficult procedure; it was generally resorted to only when there had been a serious professional fault.

The new legislation (articles 86 to 97) has made a number of desirable innovations in this field.

Articles 325 to 336 of the Act concerning the judges of Sunnite and Shiite Charieh (religious) courts,[3] which are competent in matters of personal status,[4] provide for the suing of judges for denial of justice. Serious professional faults are not expressly mentioned in these articles, but paragraph 3 of article 325 stipulates that a suit for denial of justice can be brought "if a judge, by reason of his negligence, assumes a responsibility which is established by the law and for which compensation is warranted".

[1] *Art. 58* (Constitutional Law of 17 October 1927, article 32).

The President of the Republic may give executive force, by a decree already adopted on the advice of the Council of Ministers, to any bill which the Government has previously declared urgent by a decree of transmission adopted on the advice of the Council of Ministers, if the Chamber has taken no action on the said decree during the forty days following its submission to the Assembly.

[2] No. 10494, of 4 September 1962.

[3] Act of 18 July 1962.

[4] See "Rights of the Individual Communities", below.

2. Inviolability of the Dwelling

(1) *Constitutional basis*: "*Art. 14.* Dwellings shall be inviolable. No one may enter therein except in the circumstances and in the manner prescribed by law."

(2) *Penal Code*: "*Art. 370.* Any official who, acting in his official capacity, enters the dwelling or the outbuildings of the dwelling of a private citizen, except in the circumstances and in the manner prescribed by law, shall be punished with a term of imprisonment of from three months to three years.

"If such action was accompanied by a search or any other arbitrary act, the penalty shall not be less than six months' imprisonment."

(3) Article 194 of *legislative decree No. 138, of 12 June 1959*, mentions the searching of houses as one of the rights granted to the internal security forces in police matters. The exercise of this right is, however, the subject of strict definition: it is stated, at the end of article 198, that "the arrest of persons inside houses is authorized only during the daytime, in accordance with the conditions established for the searching of houses and provided that the agreement of the householder is obtained."

Article 205 stipulates that "the dwelling . . . is sacred and inviolable. No one may enter therein except in the circumstances and in the manner prescribed by law. Any member of the internal security forces who illegally enters a dwelling shall be considered as having exceeded his authority and shall incur the penalties provided in article 370 of the Penal Code."

Article 206 specifies that "the members of the internal security forces may enter dwellings in order to save persons in danger and may enter establishments which are open to the public by day and by night (at times when the public is admitted to such establishments or is in fact present in them); they may also enter any house with the express permission of the householder."

(4) Under article 28, paragraph 2, of the Act of 27 November 1947, the moukhtar [mayor] has the duty of accompanying officers of the security forces when they are searching dwellings.

(5) Articles 91 to 95 of the Code of Criminal Procedure give to examining judges the right to enter the dwellings of others, but impose strict limitations on that right.

Article 91 authorizes the examining judge to take such a measure only if the person sought is a suspect. Otherwise, the judge's behaviour will be regarded as an arbitrary act rendering him liable to proceedings.

Article 92 gives to the examining judge the right to inspect all premises likely to contain anything having a bearing on the investigation, "subject to the provisions of article 91 above".

Articles 93 and 94 require the presence of the person concerned, or of his representative.

Article 95 provides that "if a search must be made in premises other than the accused's dwelling, the presence of the person whose house is to be searched is required, or, if he is not available, that of two members of his family or two witnesses."

In connexion with the inviolability of the dwelling, another right concerning the safeguarding of privacy should be mentioned: freedom of correspondence, which in Lebanon is complete.

There is to be recorded but one restriction of this right: that imposed by decree No. N/14310 above, which governs both printed papers received by prisoners and letters sent by them.

Article 21 of this decree states a general principle: that of the submission of all correspondence of prisoners for the inspection and approval of the prison governor alone, who may, if need be, delegate the right to the chief warder. Letters addressed to the judicial authorities or to the central administrative authority are excepted from this rule.

Article 60 prohibits daily newspapers, but authorizes books and magazines which are likely to be a source of moral and intellectual benefit.

Article 63 gives to prisoners the right to receive letters and gifts in cash or in kind, within the limits set forth by the same decree.

Paragraph 2 of this article authorizes the sending of only two letters per week, which must be short and clear and must be sent on days fixed by the prison authorities.

Paragraph 3, however, makes an important exception to this rule: the restrictions mentioned above are not applicable to letters sent by prisoners to their lawyers, to the Ministère public, or to examining judges.

3. Freedom of Movement

Paragraph 1

There is complete freedom of movement within the country, except in so far as movement is subject to the provisions of the Highway Code (legislative decree No. 140 of 12 June 1959). The other restrictions provided for by law concern certain categories of people or else govern access to certain areas of the country.

(*a*) There are certain areas to which access is strictly controlled, for military reasons. There is no need for further comment on this point. Suffice it to mention the Act of 10 July 1962 which entitles foreigners in Lebanon to travel everywhere except in areas to which access is forbidden by the competent authorities (article 4), and the Act of 19 February 1960 which forbids itinerant photographers to photograph plant or structures of vital or military importance, such as airports, docks, bridges, etc.

(article 5) and to walk about or stop in the vicinity of military structures or buildings (article 6).

(*b*) Freedom of movement within the country is restricted for certain categories of person. The Penal Code provides for various security measures (only those having reference to freedom of movement are considered here): article 70 stipulates that the measures involving deprivation of liberty shall be:

(1) Detention in a security establishment;
(2) Rigorous imprisonment;
(3) Consignment to a labour establishment.

Article 71 provides that the security measures involving restriction of liberty shall be:

(1) Prohibition to enter places where alcoholic drinks are sold;
(2) Prohibition of sojourn;
(3) Supervised freedom;
(4) Protective supervision;
(5) Deportation.

The Penal Code also provides for educational measures "applicable to minors from seven to fifteen years of age" (article 118), which include placement in a reformatory or disciplinary establishment.

Article 124 stipulates that "minors sent to a reformatory shall be accommodated in a special scholastic establishment" where they shall receive "primary education, vocational training and physical, moral and religious instruction".

Article 125 provides that "minors sent to a disciplinary establishment shall be accommodated in premises different from those used for the detention of adults.

"They shall be employed upon one of the trades organized in the disciplinary establishment, due regard being had to their age and physical and intellectual aptitudes. Their civil and religious instruction shall be continued."

In connexion with these general measures, three special types of provision should be quoted:

Prostitution

Under an Act of 6 February 1931 for the control of prostitution, the manageress of a brothel is under the obligation never to be absent at night except for good reason, and then only on condition that she informs the police beforehand and finds a responsible woman to take her place (article 15). Article 16 lays down that the maximum length of time for which a brothel manageress may be absent is two months. Article 19 prohibits prostitutes from leaving their places of occupation except between 9 a.m. and 4 p.m. An extension of this time-limit, which may in no circumstances exceed 1 a.m., can be granted to them, in exceptional circumstances, by the police. Prostitutes are forbidden to go out into the street veiled.

At the end of the same article, prostitutes are prohibited from going out on Sundays or holidays or to frequent cafés, public gardens, and so forth.

Vagrants[1]

These are described in the Penal Code as being "Lebanese or foreign gypsies or bedouins travelling about Lebanon without any fixed habitation, even if they have means and are following a trade".

This article repeats the definition given in article 1 of legislative decree No. 34/L, of 26 August 1932, although in the latter there was no mention of bedouins.

Article 620 of the Penal Code provides for "a penalty of three months' to one year's imprisonment and a fine of ten to 100 Lebanese pounds" for "any vagrant travelling about Lebanese territory for not less than one month without holding an identity card or being able to prove that he has applied to the authorities for one". Such persons can "also be placed in a state of supervised freedom" (paragraph 2).

"The identity card must be produced by its holder whenever requested by officers of the criminal police or of the security forces" (article 6 of legislative decree No. 34/L, referred to above). Article 5 of the same legislative decree provides that "every vagrant staying in any part of Lebanon must present his identity card, on arrival in and departure from the area in question, at the local police station or gendarmerie post" (same article).

Vagabonds and Beggars

The Penal Code defines a beggar as "any person having means, or being in a position to obtain them by work, who has, in any place, asked for public charity in his own interests, either openly or under the guise of a commercial transaction", or as any person who "through idleness, drunkenness or gambling, has put himself in the position of having to apply for public assistance or charity".

Article 614 defines vagabonds as "all able-bodied individuals, having neither habitation nor means of subsistence, who have done no work for at least a month and cannot prove that they have taken the necessary steps to obtain work".

Vagabonds may be consigned to a workhouse, and will obligatorily be placed in one if found guilty of vagabondage more than once.

In addition to the penalties of imprisonment stipulated by the Penal Code and the confiscation of the property of beggars, which is provided for by the Act of 21 June 1950 and may be ordered only by the competent judicial authority, mention should be made of penalties restricting freedom of movement:

[1] Also subject to the Act of 10 July 1962, as they correspond to the definition given in it of "foreigners".

Article 610 of the Penal Code provides for the placing in a work-house of any beggar who has means or could obtain them by work. This penalty is not mandatory, but becomes so in the event of a second offence.

Article 611 concerning beggars of the second category (see above) provides for the placing of the convicted person in a work-house and his banning from places where alcoholic beverages are sold.

Article 613 stipulates the same penalty, as well as the possibility of putting the convicted person under supervised freedom in certain circumstances (menace, assault and battery, simulation of wounds or infirmities, self-disguise, the carrying of arms, etc.).

Articles 614 and 615 provide for similar penalties for vagabonds.

Minors are to be placed in a reformatory, as provided for by article 124 of the Penal Code and set up by virtue of articles 136 to 151 of decree No. 14310, of 11 February 1949, which links such institutions with the Ministry of Education, and prescribes (article 150) inspection by the Ministère public. The said institutions are now linked to the Ministry of Social Affairs by legislative decree No. 64, of 8 April 1953, article 2 of which stipulates that certain private institutions designated by the Minister for Social Affairs may be made responsible for the remand of young prisoners or for the taking of measures of discipline or re-education.

Paragraph 2

Freedom to enter and leave the country is safeguarded, because it is the duty of Lebanon, a country of tourism and political and economic liberalism, to keep its frontiers open. Nevertheless, disorder is an evil, and it is therefore necessary to regulate this freedom.

(*a*) Legislative decree No. 161, of 12 June 1959, concerning the passports of Lebanese citizens stipulates that such citizens must hold passports in order to leave or return to Lebanon (article 1).

Article 15 gives the Ministry of Foreign Affairs the right to issue special and diplomatic passports, the granting and withdrawal of which are governed by decree No. 780 of 22 July 1960. Special passports are granted to certain categories of official, such as judges.

Article 5, as amended by decree No. 10817, of 9 October 1962, entitles the head of any Lebanese diplomatic mission abroad to take away the passport of any Lebanese citizen who is likely, by his actions, to harm the reputation of his country.

(*b*) The Act of 10 July 1962 governs the conditions of entry into, sojourn in, and exit from the Lebanese Republic.

Under this Act, political asylum is considered as a "right" which will be granted to any foreigner proceeded against or convicted for a political offence, or whose life or liberty are threatened for political reasons (article 26). Political refugees must not engage in any political activity, on pain of deportation.

Article 31, however, prohibits the sending of a deported person to any place where his life or liberty might be in danger.

4. Prohibition of Travel

Prohibition of departure from the country is a serious measure. It is therefore decided upon by judicial authority, subject to certain provisions of legislative decree No. 169. The following is a particularly important decision (No. 857 of 7 October 1960), handed down as a matter of urgency by the President of the Civil Court of Beirut:

"Whereas prohibition of travel . . . is a measure restricting the liberty of the individual in that it imposes on a person a form of prescribed residence . . .

"Whereas it restricts individual liberty, which is inherent in the human personality and has nothing to do with citizenship, and there are thus no grounds for distinguishing between a Lebanese citizen and a foreigner . . .

"Whereas, since it restricts individual liberty, it should be imposed only when it is certain that the application for it is justly made."

Mention should be made of article 21 of the Act of 16 July 1962 on the organization of the charieh [religious] courts, which entitles the judge to prescribe prohibition of travel for defendants in two types of case: on the one hand, in cases where speed is necessary (these cases are specified in article 20 of the same act); on the other hand, in the event of an application for maintenance. The same article 21 provides that the defendant may contest and appeal against the judge's decision prohibiting him from travelling, within the space of eight days, and that judgement on the appeal must be passed within the same period of time.

The last paragraph establishes the principle of a fine for the applicant and compensation for the defendant if the applicant is shown to have acted in bad faith.

Three provisions of legislative decree No. 161 have special reference to freedom to leave the country:

Article 3 requires the Administrator [Mohafez] to make sure that a person applying for a passport is not the subject of any judicial warrant, any court order involving deprivation of liberty, or any attachment order the execution of which has not yet been completed.

Article 4 specifies that prohibition of travel may result only from a court order or warrant, and is not justified simply by a prosecution, of whatever nature, which is under way.

Article 5 gives the Administrator the right to refuse, exceptionally by administrative action, to issue a passport if he is aware, through the Sûreté générale, that the applicant's departure might harm the security of the State.

In such circumstances, the same article provides that the Administrator may forbid the applicant to travel, even if he is the holder of a passport.

It should be noted that, as administrative decentralization is not yet complete, the Sûreté générale continues to be the only competent authority in the matter of passports, except for the powers of the Ministry of Foreign Affairs laid down in decree No. 4780, referred to above.

Conclusion

Freedom of the individual, which is provided for and protected by law, is essential to any democratic régime. Under Lebanese judicial precedents it is rightly regarded as the very foundation of "ordre public": in an expropriation case, the Court of Appeal of Békaa, called upon to define "ordre public", gave the following definition:

"Whereas the expression 'ordre public' is a term which is not strictly defined, and has not been defined by the legislators, who have left that responsibility to the judicial authorites . . .

"Whereas the court . . . defines 'ordre public' as the entire series of rules made with a view to safeguarding the interests of society represented by the Ministère public, which relate to affairs whose outcome influences society . . . such as competence, capacity and individual liberty."

II. ECONOMIC AND SOCIAL RIGHTS

The subjects dealt with in the first part have been treated from the standpoint of the relationship between the individual and the State as the holder of police powers — the Etat-gendarme.

In addition to its traditional powers, the State today has a further category of resources, accounted for by the increasing intervention of the public authorities, particularly in the economic and social fields. It is in his relationship with the State as an intervening power that the individual will now be considered.

1. Social Rights

(1) For the organization of labour, the freedom of the trade unions and the right to strike, see Mr. Choucri Cardahi's communication mentioned above, p. 209.

(2) Social security.

Lebanon is at the dawn of a fine and generous achievement, destined to solve many of the social problems weighing on the middle and working classes.

The measure designed to give effect to it is now being considered in the Social Affairs Committee of the Lebanese Parliament. Until this measure has been finally approved and implemented, the provisions of the Labour Code (and, for Government employees, those of Legislative Decrees Nos. 112 and 113 of 12 June 1959) will continue to operate.

2. Economic Rights

Para. 1. — Freedom of Trade and Industry

Lebanon is a country of economic liberalism, where private enterprise enjoys very extensive freedom, limited only by a few prerogatives of the Conseil supérieur des Douanes[1] [Higher Council of Customs], the Minister of National Economy and the Minister of Agriculture.

In order to encourage trade, there has been created, in addition to the free zone of the Port of Beirut, a further free zone at Beirut International Airport (legislative decree No. 16, of 16 October 1956), organized in accordance with a decision of the Conseil supérieur des Douanes (No. 623, of 8 February 1957).

Another aspect of the facilities made available in the field of trade is illustrated by the stipulations of annex 9 (paragraph 4.13) of the Chicago Convention on International Civil Aviation, to which Lebanon is a signatory:

"Stores imported into the territory of a Contracting State by an airline of another Contracting State for use in connexion with the establishment or maintenance of an international service operated by that airline shall be admitted free of customs duties and other taxes or charges subject to compliance with the regulations of the Contracting State concerned. Such regulations shall not unreasonably interfere with the necessary use by the airline concerned of such stores."

The Lebanese Government exempts from all taxes "equipment and spare parts required for aircraft, equipment and spare parts required for repairs, clothing for the crew, food and provisions for the use of the crew and passengers, and table-ware for use on board the aircraft (decision No. 78, of 6 December 1950, declared to be in force until further notice).

Under a later decision (No. 112, of 20 July 1961), exemption is refused for food and provisions except in the case of those ready for re-export in the state in which they were admitted, before any preparation or transformation.

Para. 2. — Right of Ownership

A. *Principles and Applications*

The safeguarding of the right of ownership is a permanent feature of Lebanon's economic policy, and

[1] It may be mentioned that, by virtue of a practice which has now become accepted, the Chamber of Deputies delegates to the Government its powers of legislation in customs matters, while the Government delegates its powers in the fixing of tariffs to the Conseil supérieur des Douanes.

the inevitable restrictions applied to it in no way detract from the force of the principle stated in article 15 of the constitution:

"Rights of ownership shall be protected by law. No person may be expropriated except on grounds of public utility in the circumstances defined by law and on condition that fair compensation is paid beforehand."

It is sufficient to mention two interesting applications of this principle:

1. RIGHT OF OWNERSHIP AND BANK ASSETS

The right of ownership of bank assets is safeguarded by two Acts. First, the Act of 3 November 1956 established banking secrecy, regarded as an advantage to be enjoyed by certain banks with the express authorization of the Minister of Finance.

Secondly, the institution of the joint account, provided for by the Act of 19 December 1961, might appear to be a means of by-passing the laws regarding inheritance. But from the standpoint which interests us its institution, coupled with that of banking secrecy, reflects a concern to ensure maximum protection for bank deposits, and hence for individual ownership of such assets.

2. THE PROTECTION OF LITERARY, INDUSTRIAL, COMMERCIAL AND ARTISTIC PROPERTY

This matter is carefully regulated in Lebanon by a whole series of texts which it would be pointless to examine in detail. It should simply be noted that the holders of commercial, industrial, artistic or literary rights are protected against any infringement which might harm their interests.

(a) LEGAL TEXTS

Basic text. — Order No. 2385, of 17 January 1924, governs the question of trade marks and patents, and ensures their protection by imposing time-limits and taxes for filing. The penalties provided for in this Order were replaced by later provisions of the Penal Code, which punishes the counterfeiting of trade marks (articles 701 to 706), the infringement of patents (articles 707 to 709) and the pirating of industrial models or designs (articles 710 to 712). It is laid down, in article 713 of the Penal Code, that "if the properly filed trade mark, patent or industrial design or model had not been published when the offence was committed, the offender shall be subject to the penalty provided for if it is established that he was aware of the filing".

The Penal Code also punishes unfair competition (article 714) and the usurpation of trade names (articles 715 to 717), leaving it to the courts to decide whether there is "evidence of counterfeiting and fraudulent imitation, by putting itself in the place of the consumer or buyer and having regard to over-all resemblance rather than to differences of detail".

It should in conclusion be noted that literary and artistic property, as defined in articles 722 to 725, is protected in articles 726 to 729 by the stipulation of combined penalties of fines and imprisonment.

An Act of 26 February 1946 governs copyright in musical matters.

Article 1 of this act deals with cinematograph films, which it considers as a whole, without any distinction between the musical, artistic or literary features, except where the subject of the film is exclusively a musical, artistic or literary feature.

Paragraph 3 states that: "Only the producer of the film has the right to authorize its projection, unless the contrary is expressly stipulated, and then only on condition that the producer is formally notified."

Article 2 stipulates that a composer shall not oppose the performance of his work if the performer has paid the taxes provided for in the annex.

Finally, it should be noted that Lebanon signed on 8 March 1955 a Convention with the Federal Republic of Germany regarding the protection of commercial and industrial property, which was ratified by the Chamber of Deputies under an Act promulgated on 10 August 1955. Lebanon is also a party to the Berne Convention, the Union Convention of Paris, and the Madrid Arrangement.

(b) JUDICIAL PRECEDENTS

Three recent decisions of the Court of Cassation should be noted: decision No. 8, of 8 January 1960; decision No. 62, of 3 May 1960; decision No. 4, of 30 January 1961.

The first of these convicts a firm which adopted a name closely resembling that of another, pre-existing firm.

The second defines the principle that a trade mark must be original in order to benefit from the protection of the law.

The third states that there is effective bad faith if the over-all resemblance between two trade marks is such as to mislead the purchaser, apart from any secondary distinguishing marks.

B. *Restrictions*

Two types of limitation must be considered: some involve dispossession, others restrict the exercise of the right of ownership without actually prejudicing it.

1. EXERCISE

(a) ABUSE OF RIGHTS

Lebanese law embodies the theory of the abuse of rights. Suffice it to mention a provision of the Code of Obligations in this respect:

"*Art. 124.* Compensation must also be paid by anyone who causes damage to another person's interests by exceeding, in the exercise of his rights, the limits imposed by good faith or by the purpose for which the rights had been granted to him."

(b) BUILDINGS

In Lebanon, rents are "frozen" except in the case of luxury buildings, in the sense that the owner of an ordinary apartment building cannot evict a tenant except for the reasons enumerated by law (articles 3, 4 and 6 of the Act of 31 July 1962).

Article 3 lists grounds for expulsion which confer no right to compensation (such as refusal to pay the rent, damage caused to the building, etc.).

Article 4 (family reasons) and article 6 (demolition and reconstruction), however, provide for compensation, to be assessed by the court. At the same time, article 4 stipulates that such compensation must not exceed the sum total of the rent paid by the tenant, while article 6 provides that compensation must not be less than five times the difference between the rent paid and the true rent nor greater than ten times that difference.

2. DISPOSSESSION

(a) WATER

Order No. 144/S, of 10 June 1925, which is still in force, contains rules governing public property, which it defines in its first two articles. Article 3 preserves the various rights belonging to certain categories of person:

"Persons possessing, on public property as defined in the present Order, rights of property, enjoyment or usufruct by virtue of established usage, or by regular and definitive titles preceding the entry into force of the present Order, can be dispossessed, if dispossession is required in the public interest, only after payment of fair compensation."

(b) EXPROPRIATION

Legislative decree No. 4, of 13 November 1954, amended *inter alia* by decree No. 6778, of 14 April 1961, adopted under article 58 of the Constitution and hence having legal force, lays down the procedure for expropriation, and stipulates, in article 1, that: "Real estate may be expropriated only for reasons of public utility and after payment of fair compensation".

(c) REQUISITIONING

Four different authorities have the right of requisition:

(1) The President of the Council of Ministers is empowered to requisition buildings and premises required for the services of the Lebanese Government throughout the territory of the Lebanese Republic (legislative decree No. 289/NI, of 14 December 1942, article 3 of which provides that compensation shall be fixed by a committee designated by order of the President of the Council of Ministers).

(2) The Minister of Health and Public Assistance may requisition buildings and premises required for the needs of Public Health throughout the territory of the Lebanese Republic. The compensation to be paid for such requisitioning shall be fixed by a special committee designated by the minister in question.

(3) The Minister of National Defence has the right, under an Act of 10 May 1948, to proceed to all requisitioning required for the army. The committees provided for by this Act are competent to deal with all compensation made necessary by the obligations imposed by the armed forces in time of war or in the event of the proclamation of martial law or military government.

By way of exception, it is laid down, at the end of article 1, that "it is the duty of the Minister of Defence to decide, if need be, whether requisitioned premises or objects should be handed back, prior to any assessment and regardless of any opposition."

(4) Under article 3 of legislative decree No. 149, of 7 March 1942, the Minister of Supply[1] may be empowered by presidential decree to requisition, temporarily or permanently, partially or completely, *on condition that payment is later made*, all products of all industrial, commercial or agricultural enterprises, all premises, all means of transport and all the labour necessary for the proper functioning of the supply services.

(d) REPURCHASE OF CONCESSIONS

This section deals with the right of ownership of concessionaires when the conceding authority intervenes to recover the concession or restrict its exploitation. This is a very large problem, which cannot be dealt with fully within the limits of this report. Only a summary of the position can be given:

Article 89 of the constitution provides that: "Neither a concession having as its object the exploitation of a natural source of wealth within the country or a public utility service, nor a monopoly, shall be granted except by virtue of an Act of Parliament and for a limited period."

As concessions affect public services, and therefore spheres of national sovereignty, their cancellation before the expiry of their term may be necessary for economic, financial and political reasons.

Although a number of countries have adopted the system of nationalization, Lebanon has preferred the system of repurchase, which is less violent and presupposes *preliminary* negotiations leading to the conclusion of a repurchase agreement.

[1] Now replaced by the Minister of National Economy

III. FREEDOM OF OPINION

1. Freedom of the Press

(1) The press is a political force of ever-increasing importance. Certain restrictions on it are required, however, by the country's socio-political structure. Two recent orders should be noted.

The first (dated 11 March 1961) recalls, *inter alia*, the mission which the press has in view of the special nature of the country:

"Whereas the freedom of the press in Lebanon stems from the essential mission of the press, which ought to be, particularly in the circumstances that the country has just experienced, to appeal for co-existence, fraternity, etc. . . .

"Whereas the press, by straying from this line of action, loses the special protection guaranteed to it by the Constitution . . ."

The second (dated 14 March 1961) defines freedom of opinion and its limits:

"Whereas in Lebanon, which is a democratic country, freedom of conscience and freedom of opinion are guaranteed within the limits of the law, in the sense that, while every person has the right to believe or not to believe in the fundamental principles and rules in force . . ., this freedom incurs action by the law if it goes beyond inner conviction and becomes external expression. . . ."

(2) The new Act on the Press, dated 14 September 1962, is notable for its liberalism.

Article 1 of this act affirms the principle of the freedom of the press established by article 13 of the Constitution. Apart from that, the most remarkable contribution made by this act is the suppression of the three-day administrative suspension which could be imposed by the Minister of Information, and the affirmation of the primacy of the judiciary in that field.

Henceforth, it is only the State Counsel-General to the Court of Appeal who can impose the suspension, not exceeding five days in duration, of any printed organ which has published articles likely to prejudice national unity (article 62) or infringing one of the prohibitions stated in article 56 (these concern, *inter alia*, state secrets and the safeguarding of public morality).

(3) An *ad hoc* Act of 6 June 1962 designed to protect foreign Heads of State against abusive and defamatory campaigns should be noted. Its article 1 provides that in such cases a prosecution shall be brought regardless of whether there is any complaint by the injured party, while article 2 stipulates that any printed organ responsible for prejudicing the dignity of a foreign Head of State or the security or unity of the country shall be suspended for not more than five days by order of the Minister of Guidance, Information and Tourism.

(4) Apart from the legal provisions, reference should be made to a practice which does honour to Lebanese journalism. When the national interest requires that personal interests should be mute (particularly since 1958), the Syndicat de la Presse [Press Union] imposes temporary self-censorship which journalists agree to accept until the special circumstances requiring it no longer exist.

Also worth mentioning is a "code of honour" under which journalists refrain, spontaneously and without recourse to self-censorship, from making any comment likely to prejudice national unity.

The creation (planned for October 1962) of an Institute of Journalism within the framework of the Lebanese University will help to free the Lebanese Press from all coercion and leave it solely responsible for the restrictions which it must impose on itself.

2. Radio, television and film

Para. 1. — Radio

The Lebanese radio service is a state organization, under the direct control of the Department of Guidance, Information and Tourism (decree No. 7276, of 7 August 1961, article 3, para. 5); its employees are either permanent civil servants, or special civil servants, in accordance with the provisions of annex No. 1 (part 5) of decree No. 8254 of 20 December 1961, and are subject to the conditions of employment set forth in decree No. 8255, of 20 December 1961.

Para. 2. — Television

Two private limited companies each operate a television channel under identical conventions signed with the Lebanese State, the first dated 30 August 1956 and the second 31 August 1959. Only the following provisions, which concern freedom of opinion, will be mentioned:

Television programmes must be confined to moral, cultural and recreative subjects. The televising of commercial announcements is permitted provided that such announcements do not exceed, on the average, 25 per cent of the programmes as a whole (article 8).

All the special programmes are subject to the control of the State. The latter is represented by the inspectors of the Ministry of Guidance, Information and Tourism, to whom all programmes and films must be submitted before showing, and who are entitled to forbid or alter any part of the programmes which is not in accordance with the obligations resulting from the conventions signed (articles 6 and 7). These conventions establish general principles forbidding all programmes which may harm public order, public morals, good understanding between races and creeds, or the dignity of the national and foreign authorities, or which include an element of personal, partisan or political propaganda.

Under article 1, paragraph 5, of decree No. 7276 of 7 August 1961, the Minister of Guidance, Information and Tourism is competent to decide all questions concerning information and to arrange for the imposing of all the checks and penalties provided for by law.

Article 5 of the same decree entrusts the exercise of this right to the Press and Judicial Affairs Service, which is a branch of the Department itself.

Para. 3. — Film

The showing of cinematograph films is subject to *preliminary* censorship enjoined by article 3 of the Act of 27 November 1947, under which responsibility therefore is entrusted to the Sûreté générale, or, when it is a question of total or partial prohibition, to a committee provided for in the same article.

Article 9 gives the Minister of the Interior the right to order, at the proposal of the authorities of the Sûreté générale, the prohibition, for reasons of security and public order, of the showing of any film, even if its showing has already been authorized.

3. Freedom of Opinion of Public Officials

(*a*) Article 15 of legislative decree No. 112, of 12 June 1959, concerning public officials, forbids all government officials to take part in political activities or to belong to any political party. It also forbids them to make any speeches, publish any articles or issue any publications without the permission of their superior officer (paragraph 1). Paragraph 2 forbids public officials to belong to any trade union or professional organization, and paragraph 3 forbids them to strike.

(*b*) Article 149 of legislative decree No. 138, of 12 June 1959, concerning the internal security forces, forbids all members of these forces to take part in any political activities or to belong to any political party, any trade union or any association of any nature whatever.

(*c*) The same provisions are contained in legislative decree No. 33, of 19 January 1955, concerning the Lebanese Army (article 152, amended by legislative decree No. 126, of 12 June 1959).

The same article forbids all members of the armed forces (whether on the active list or on the reserve) to give any lectures or write any articles concerning the Lebanese Army, any foreign army or any questions of military interest and civil defence, or to give any lecture or write any article of such a nature as to harm the political régime or the community, without the authorization of the highest military authorities.

Lectures and articles not coming within the above categories may be given or published without authorization, provided that the author assumes responsibility for them and sends a copy to the Second Bureau.

All these measures, particularly those concerning the armed forces, are inspired by a desire for technical correctness and moral and professional integrity.

IV. Rights of the Individual Communities

1. Socially and politically, Lebanon consists of a patchwork of religious communities which, for historical and politico-sociological reasons, have preserved their individuality and enjoy their own special rights.

Number of such Communities

(1) Order No. 60 L.R., of 13 March 1936, recognizes ten Christian communities, five Moslem communities and three Jewish communities.

(2) The Act of 2 April 1951, which is applicable only to the Christian and Jewish communities, lists those communities in its article 1. In this list, the Protestant community is added to the ten Christian communities specified in order No. 60 L.R.; and the Act mentions only one Jewish community, since order No. 60 L.R., recognizing the synagogues of Aleppo, Damascus and Beirut, was applicable in the countries under French mandate.

(3) The Lebanese Moslem body at present consists of three communities: the Sunnite community, the Shiite (Jaafarite) community and the Druse community.

2. STATEMENT OF RIGHTS OF COMMUNITIES[1]

Para. 1. — "Religious" rights

(1) Freedom of conscience and the free exercise of religion are provided for by article 8 of the Lebanese Constitution: "There shall be complete freedom of conscience. While acknowledging the Most High, the Government shall respect all creeds and safeguard and protect the free exercise of all forms of worship, on condition that public order is not interfered with . . ."

(2) The Penal Code provides for penalties for anyone who attacks freedom of conscience and of worship[2].

(3) Decree No. N/14310, of 11 February 1949, guarantees to prisoners the free exercise of their religion and provides that, if so recommended by the prison governor, the Minister of the Interior may authorize a spiritual leader (priest or ulema), or a person who is a member of a welfare organization, to celebrate religious ceremonies, preach, or visit the sick, provided that good order is not disturbed and that the person in question celebrates religious services only with other persons of the same religion (article 56). The same article stipulates that, except on the most important holy days, only one celebrant per community shall be allowed, and that all facilities

[1] See, as a preliminary, First President Cardahi's communication to *Yearbook on Human Rights for 1946*, section III, p. 178.

[2] See *Yearbook on Human Rights for 1954*, p. 192.

shall be given for the celebration of religious services.

(4) Mention should be made of legislative decree No. 55 of 1943, article 2 of which stipulates that permanent exemption from taxes shall be granted to "buildings and parts of buildings used for any recognized form of worship, and to the residences of ministers of religion provided that these residences are connected to the place of worship or form part of its immediate outbuildings, and are not rented".

(5) The Lebanese Government continues to apply certain provisions, regarding community councils and places of worship, contained in the Imperial Ottoman Firman known as "Hatti-Hymayaoun" of 10 Djem. II. 1272 (Hegira) — i.e., of 18 February 1956 — which granted a number of privileges to non-Moslem communities:

"5. There shall be no interference with the movable and non-movable property of the various Christian faiths, but the temporal administration of the Christian communities and of the other non-Moslem religions shall be placed under the safeguard of an assembly chosen from members of the clergy and laity of each of the said communities.

"6. In cities, towns and villages in which the population belongs entirely to the same religion, no difficulties shall be placed in the way of the repair, in accordance with the original plans, of buildings intended for religious purposes, schools, hospitals and cemeteries. In the case of new buildings, the plans of such buildings, after approval by the Patriarchs or heads of communities, shall be submitted to my Sublime Porte, which will approve them through my Imperial Order, or will make observations within a fixed time-limit.

"7. Each creed, in areas where there are no other religious creeds, shall be subject to no form of restriction in the public celebration of its religion. In cities, towns and villages where creeds are mixed, each community inhabiting a specific area can also, if it conforms with the stipulations mentioned above, repair and improve its churches, hospitals, schools and cemeteries. When it is desired to erect new buildings, the necessary permission shall be applied for, by the patriarchs or heads of the communities, to my Sublime Porte, which will take a sovereign decision and will, failing administrative obstacles, grant the permission. Action by the administrative authority in all matters of this type shall be entirely free of charge. My Sublime Porte will take energetic steps to ensure that every creed, no matter how many followers it has, enjoys complete freedom to exercise its religion."

The construction of new churches thus continues to be subject to special authorization given by decree.

The historical explanation for this measure is that the Ottoman Porte was responsible for places of worship intended for Moslems. The provisions of article 6 of the 1956 Firman referred to above constitute a guarantee of social peace and are calculated to preclude the abuses that might flow from a "church-building race" in areas in which members of a rival community predominate.

There is at present talk of harmonizing the legal provisions so as to maintain equality between the religious communities, while preserving public order, which necessitates some form of control over the building of new churches.

Para. 2. — Personal status

Article 8 of the Lebanese Constitution stipulates that the State guarantees that "the personal status and religious interests of the populations, to whatever creed they belong, shall be respected".

Personal status is a much-studied question which involves the autonomy of the communities on both the legislative and the jurisdictional plan.

It should be noted that the autonomy of communities on the legislative plane does not mean that they are independent of the Chamber of Deputies, which, in accordance with article 58 of the Constitution, is the only body competent to pass laws. What it means is that the relevant draft legislation is prepared in complete agreement with the communities involved (and often at their initiative), and is passed by the Chamber of Deputies after similar agreement has been obtained.

In the matter of personal status it is enough to refer to the communication, previously mentioned, of First President Cardahi.

Only the following relatively recent Acts need be recorded:

(*a*) An Act of 2 April 1951 determining the competence of the Christian and Jewish religious authorities;

(*b*) An Act of 23 June 1959 concerning inheritance by non-Moslems;

(*c*) An Act of 16 July 1962 organizing the Sunnite and Shiite (Jaafarite) Courts and prescribing their competence;

(*d*) Four legal measures concerning the Druse community:

(1) An Act of 24 February 1948 concerning matters of personal status dealt with as of sovereign rights by the Druse community;

(2) A Decree of 5 March 1960 adopted in application of article 58 of the Constitution;

(3) An Act of 13 July 1962 concerning the election of Sheikh Akl, spiritual head of the Druse community;

(4) A further Act of 13 July 1962 regarding the establishment of a Druse community council for the management of the community's property and financial affairs.

In Lebanon, marriage is celebrated by a religious ceremony within each of the communities.

Through agreements with the Ministry of Justice, however, the Moslem religious authorities (notably the Mufti of the Republic, who is the spiritual head of the Sunnite community) recognize the validity of civil marriages performed abroad by official representatives of Lebanon.

Para. 3. — Education

Article 10 of the Constitution stipulates that: "There shall be no interference with public instruction as long as it is not contrary to public order and morals and does not affect the dignity of the various creeds. The communities shall be entitled to maintain their own schools, provided that they conform to the general requirements relating to public instruction laid down by the State."

The various religious communities have their own primary and secondary schools, and now also have institutes of higher education, particularly in the field of legal studies.

Decree No. 1436, of 23 March 1950, which prescribes the conditions governing the establishment of private schools, should be noted.[1]

Para. 4. — Political and administrative rights

The proportional representation of the religious communities, both politically and administratively, is well known in Lebanon under the name of "confessionalism" — which should not be confused, as is often done, with "community reflex."

Confessionalism is on the one hand a system of government, and on the other a psychological element which forms its basis.

(1) *Political Confessionalism*

The Chamber of Deputies, which is elected by universal direct suffrage open to both men and women, consists of representatives of the various religious communities; but care has been taken to avoid the election of deputies solely by members of their own religion. Thus, as the law establishes the number of deputies for each community in each electoral district, it is for all the members of a given electoral district to elect their deputies.

The present chamber was elected under the Electoral Act of 26 April 1960, which stipulates, in article 3, that "the number of deputies of each religious community in each electoral district is laid down in the annex". There are ninety-nine deputies, of whom forty-five are Moslems and fifty-four Christians.

(2) *Administrative Confessionalism*

The representative of the various communities in the Government Departments is based on article 95 of the Constitution,[2] reflected in article 96 of legislative decree No. 112, of 12 June 1959, which lays down the rules governing State officials and stipulates that such officials shall be appointed in accordance with the provisions of article 95.

It should be noted that this applies to all government departments, both judicial and administrative, and to the judiciary. Article 43 of the decree on the organization of the judiciary, which was issued in 1961, and article 28 of legislative decree No. 119, of 12 June 1959, which laid down the organization of the Conseil d'Etat, refer to the rules concerning State officials (legislative decree No. 112, mentioned above) for all provisions which do not contradict their own special provisions (article 96 above is thus implicitly mentioned).

CONCLUSION

It might seem that the abolition of confessionalism was necessary, on the pretext that the present state of affairs was anachronistic.

In reality, there is an error of terminology to be avoided, and a distinction should be made between confessionalism as a system of government and confessionalism as a psychological element which has the effect of giving many people a feeling of belonging to a religious community in the first place and to a political community in the second. While it might seem that the suppression of confessionalism as a system of government was relatively easy and would involve simply the formal process of abolishing a legislative text, the second (the psychological) factor has its roots in the ethnic composition of Lebanon, which is the result of historical and socio-political circumstances. Confessionalism may be defined simply as the projection, on both the political and the administrative plane, of Lebanon's demographic composition.

It would be better to speak of rationalizing politico-administrative confessionalism, than of abolishing it.

[1] A summary of this decree will be found in *Yearbook on Human Rights for 1950*, p. 187.

[2] Article 95 of the Constitution states: "As a transitional measure, and in the interests of justice and harmony, the communities shall be equally represented in public employment and in the composition of the government, provided that the well-being of the State is not thereby impaired".

LIBERIA

NOTE

The publication entitled *Acts Passed by the Legislature of the Republic of Liberia During the Session 1960–1961*[1] includes the texts of various chapters of the new title 19A (Labour Practices Law) of the Liberian Code of Laws.[2] Among these chapters are the following: Chapter 1, Labour Practices Review Board; Chapter 6, Minimum Wages; Chapter 8, Maximum Hours; Chapter 9, Weekly Rest Days and Public Holidays; Chapter 10, Annual Leave; Chapter 16, Recruitment of Labour; Chapter 21, Conciliation of Grievances; Chapter 26, Retirement Pensions; Chapter 27, Schools for Employees' Children Living in Camps; and Chapter 36, Workmen's Compensation.

[1] Published by the Government Printing Office, Monrovia, 1961.

[2] See *Yearbook on Human Rights for 1956*, p. 150; *Yearbook on Human Rights for 1957*, pp. 171-7; and *Yearbook on Human Rights for 1958*, pp. 133-7.

MADAGASCAR

NOTE[1]

1. Act No. 61-013, of 19 July 1961, establishes the Supreme Court.

2. Act No. 61-024, of 9 October 1961, defines the status of judges with delegated powers.

3. Act No. 61-007, of 5 July 1961, ratifies International Labour Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, making it applicable in Madagascar.

4. Act No. 61-047, of 13 December 1961, authorizes the President of the republic to ratify the General Convention relating to Personal Status and Conditions of Establishment, dated 12 September 1961.[2]

[1] Information based on texts furnished by the Government of the Malagasy Republic.

[2] See pp. 451–2.

ACT No. 61-035 OF 29 NOVEMBER 1961 CONCERNING PROTECTION OF DWELLING-PLACE[1]

Art. 1. The dwelling of any person residing in the territory shall be an inviolable refuge.

At night, no person may enter the same save in case of fire, flood, or a call from within.

By day, it may be entered for a special purpose determined by law or by an order made by a public authority.

Art. 2. Night is the time between seven o'clock in the evening and five o'clock in the morning.

Art. 3. House visitation and search are prohibited at night.

By day, they may take place under the conditions laid down by law. However, in an emergency the requirements of form may be waived by consent of the party concerned, given freely and with knowledge of the facts. Such consent shall be specially entered in the record of the case.

Art. 4. The prohibition on entry into dwellings shall not apply to places open to all, such as cafes, inns, bars, shops, public places and other premises in fact open to the public; to premises in which games of chance are habitually played.

Art. 5. Article 1037 of the Code of Civil Procedure is hereby amended as follows:

"No writ or distress warrant may be served by night or on a legal holiday, except by leave of the magistrate in a case where delay would be dangerous. Night is defined in Act No. 61-035, of 29 November 1961, article 2."

[1] Text published in the *Journal Official de la Republique Malgache*, 2 December 1961, and communicated by the Government of the Republic.

MAURITANIA

NOTE[1]

Three texts concerned more or less directly with human rights were adopted during 1961 by the Islamic Republic of Mauritania.

1. The *Constitution of 20 May 1961*,[2] in its brief preamble, proclaims adherence to the Declaration of the Rights of Man of 1789 and the Universal Declaration of 10 December 1948.

This introductory proclamation is corroborated by the democratic character of the political institutions defined in the body of the Constitution.

[1] Note furnished by the Government of the Islamic Republic of Mauritania.

[2] See pp. 224–5

2. *Act No. 61-123, of 27 June 1961*,[3] reorganized Mauritanian justice on new foundations, to accord with the new political conditions born of independence. In it, all the great principles of judicial procedure and administration — the separation and independence of the judiciary, the equality of citizens before the law and the right of appeal to a higher court — are respected.

3. *Act. No. 61-141, of 12 July 1961*,[4] instituted a new Code of Criminal Procedure which, while seeking to rid justice of its delays and unnecessary formalities, maintains its respect for individual liberty and the rights of the defence.

[3] See p. 225.

[4] See pp. 226–31

ACT No. 61-095 OF 20 MAY 1961 TO ENACT THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF MAURITANIA[1]

Preamble

Trusting in the omnipotence of God, the Mauritanian people proclaim their resolve to guarantee the integrity of their territory and to promote its free political, economical and social advancement.

They proclaim their adherence to the Moslem religion and to the principles of democracy, as set out in the Declaration of the Rights of Man and of the Citizen of 1789 and in the Universal Declaration of 10 December 1948.

Title I

Art. 1. The Islamic Republic of Mauritania is a republican, indivisible, democratic and social State.

The republic shall ensure equality for all before the law, without distinction as to race, religion or social condition.

Any particularist propaganda of a racial or ethnic nature shall be punished by 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 policy.

. . .

Art. 7. National sovereignty shall be vested in the people, who shall exercise it through their representatives and by means of the referendum.

It shall not be lawful for any section of the people or any individual person to assume the exercise of sovereignty.

It shall not be lawful to decide on the partial or total relinquishment of sovereignty without the consent of the people.

Art. 8. Suffrage may be direct or indirect under 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.

Art. 9. The political parties and groups shall assist in the exercise of the franchise. They may be constituted and engage in their activities freely, on conditions 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 II

The President of the Republic

Art. 10. The President of the republic shall be the Head of the State. He shall be of the Moslem religion.

. . .

[1] Printed separately.

Art. 13. He shall be elected for a term of five years by direct universal suffrage.

Any citizen of the republic who is not less than thirty-five years of age and is in full possession of his civil and political rights may be a candidate.

Title III

THE NATIONAL ASSEMBLY

Art. 26. Legislative power shall be vested in the National Assembly.

Art. 27. 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 shall be eligible.

. . .

Art. 30. The right of members of the Assembly to vote is personal. Any compulsory mandate shall be null and void.

. . .

Title IV

RELATIONS BETWEEN THE PRESIDENT OF THE REPUBLIC AND THE ASSEMBLY

. . .

Art. 41. The President of the republic shall promulgate laws and ensure their publication in the *Official Journal* within a maximum time of fifteen days after their transmission to him by the President of the National Assembly.

The President of the republic may, during this period, return the draft or bill for a second reading. If the National Assembly decides to adopt the law by a majority of its members, the law shall be promulgated and published within a second maximum time limit of fifteen days. He may also appeal to the Supreme Court on grounds of unconstitutionality.

. . .

Title VI

JUSTICE

Art. 47. The judicial authority shall be independent of the executive power and the legislative power. The statute of the judiciary shall be established by law. The judges of the bench shall be irremovable.

. . .

Art. 49. No person shall be arbitrarily detained in custody. The judicial authority, as the guardian of personal freedom, shall ensure respect for this principle under the conditions laid down by law.

Art. 50. The President of the republic shall guarantee the independence of the Judiciary. He shall be assisted by the Superior Council of the Judiciary.

. . .

Title VIII

AMENDMENT OF THE CONSTITUTION

Art. 54. It shall not be lawful to entertain any proceedings for revision if the proposal . . . derogates from the republican form of government.

ACT No. 61-123 OF 27 JUNE 1961 ESTABLISHING THE JUDICIAL ORGANIZATION OF THE ISLAMIC REPUBLIC OF MAURITANIA[1]

Title I

GENERAL PROVISIONS

Art. 1. In the territory of the Islamic Republic of Mauritania justice shall be dispensed in accordance with the provisions of this Act by the courts of the *caids*, the courts of first instance, a criminal court and a supreme court.

Art. 4. Hearings in all courts shall be public, unless a public hearing would be prejudicial to law and order or to public morals, or is prohibited by law. In such cases the court shall direct by order or preliminary judgement that the proceedings shall take place *in camera.*

In every case, except where expressly provided by law, the order or the judgement shall be given in public, and shall have effect only if accompanied by a statement of reason.

Art. 5. Justice shall be free, subject only to the provisions of taxation law concerning stamp duty and registration fees. The fees of advocates, public defence counsel and other judicial officers, and the costs of the proceedings before trial and of the execution of the decisions of the court, shall be paid by the losing party. Such costs shall be paid into court beforehand by the party for whose benefit they are to be incurred.

Legal aid shall be granted according to the nature of the proceedings and the position and circumstances of the parties, either of right or upon application after the preliminary investigation.

Art. 6. In neither a civil nor a criminal case may judgement be given against a person unless he has had an opportunity to present his defence.

Advocates shall have audience in all civil and criminal courts.

Defence and the choice of defence counsel shall be free.

No person may be separated from his natural judges.

Consequently only a court appointed by law may pronounce a sentence.

[1] Text communicated by the Government of the Islamic Republic of Mauritania.

ACT No. 61,141, OF 12 JULY 1961, ESTABLISHING A CODE OF CRIMINAL PROCEDURE[1]

BOOK I
PROSECUTION AND JUDICIAL INQUIRY

Title I
AUTHORITIES RESPONSIBLE FOR PROSECUTION AND JUDICIAL INQUIRY

Art. 11. Save when the law provides otherwise, and without prejudice to the rights of the defence, the proceedings during the investigation and judicial inquiry shall be secret.

All persons taking part in such proceedings shall be bound to observe professional secrecy in the conditions and subject to the penalties provided for in the Criminal Code.

. . .

Title II
INVESTIGATION

Chapter I
CRIMES AND OFFENCES COMMITTED "FLAGRANTE DELICTO"

. . .

Art. 49. If the nature of the crime is such that conclusive evidence of it may be obtained by seizing papers, documents or other objects in the possession of persons who appear to have taken part in the crime or to have documents or objects relating to the alleged offence, the officer of the criminal police shall go forthwith to the domicile of such persons and effect a search, on which he shall make out a report.

Together with the persons referred to in the next article, he shall have the sole right to acquaint himself with the papers or documents before seizing them.

He shall, however, be in duty bound to see that all due measures are taken to ensure that religion is treated with proper respect and that professional secrecy and the rights of the defence are safeguarded.

All objects and documents seized shall be inventoried and placed under seal forthwith.

Art. 50. Subject to the provisions of the foregoing article regarding respect for religion and the safeguarding of professional secrecy and of the rights of the defence, the operations provided for in that article shall be carried out in the presence of the persons suspected of having taken part in the crime or appearing to have documents or objects relating to the alleged offence; if that cannot be done, the officer of the criminal police shall be in duty bound to invite such persons to appoint a representative of their choice; failing such appointment, the officer of the criminal police shall appoint two witnesses selected by him for that purpose.

The report on these operations, made out as prescribed in article 58, shall be signed by the persons mentioned in the preceding paragraph; if they should refuse or be unable to sign it, it shall so be stated in the report.

. . .

Art. 52. Save in the event of a complaint from within the house or of the exceptions provided for by the law, domiciles may not be searched or visited before 5 a.m. or after 10 p.m.

If the formalities mentioned in articles 49 and 50 and in this article are not complied with, the operation shall be null and void.

. . .

Art. 57. In all cases in which a person is kept under surveillance, and regardless of the length of time involved, the officer of the criminal police shall explain to the responsible magistrate the reasons for the measures taken by him.

Chapter II
PRELIMINARY INVESTIGATION

Art. 66. The officers of the criminal police shall undertake preliminary investigations either following the instructions of the public prosecutor or *ex officio.*

Such operations shall come under the supervision of the public prosecutor.

Art. 67. Searches and visits to domiciles shall not be carried out and items of evidence shall not be seized without the express assent of the person in whose premises the operation is to take place.

Such assent shall be given in a statement made in writing by the person concerned, or if he is unable to write, that fact, and the fact of his assent, shall be stated in the report.

The provisions of articles 49 and 52 (first paragraph) shall be applicable.

Art. 68. If, for the purposes of the preliminary investigation of an offence, the officer of the criminal police considers it necessary to keep a person at his disposal for more than forty-eight hours, he shall take express steps to hasten the investigation and shall use the first available means of transportation to bring such person before the public prosecutor.

Art. 69. Any surveillance carried out in the course of the preliminary investigation shall be subject to the provisions of article 57.

. . .

[1] Text published in the *Journal Officiel de la République Islamique de Mauritanie,* third year, No. 69, of 2 October 1961.

Title III

EXAMINING AUTHORITIES

Chapter I

EXAMINING JUDGES: EXAMINING AUTHORITIES OF THE FIRST DEGREE

. . .

Section III

Visits, Searches and Impounding of Evidence

Art. 82. The examining judge may visit the scene for the purpose of conducting any investigation deemed useful or of effecting searches.

. . .

Art. 84. Searches shall be carried out in all places in which objects likely to be of assistance in ascertaining the truth may be found.

Art. 85. If a search is made in the domicile of the defendant, the examining judge shall comply with the provisions of articles 50 and 52.

. . .

Section V

Interrogation and Confrontation

Art. 102. At the first appearance, the examining judge shall verify the identity of the accused, shall inform him of the acts he is alleged to have committed and shall take his statements.

If the charge is not dropped, the judge shall notify the accused of his right to a choice of counsel from the barristers residing at the seat of the judicial inquiry. However, in places where no barristers are available, the accused may choose a counsel from the roll of barristers registered at one of the jurisdictions of Mauritania or of neighbouring countries, who in the event of acceptance may take up temporary residence at the seat of the judicial inquiry. If the accused fails to make a choice and is a minor under eighteen years of age, the examining judge may appoint a counsel *ex officio*.

At the first appearance, if he considers such a course likely to prove of assistance in ascertaining the truth, the examining judge may immediately proceed to an initial interrogation on the facts of the case and undertake confrontations, in the absence of counsel and of the public prosecutor.

Art. 103. An accused person held in custody may communicate freely with his counsel immediately after his first appearance.

The examining judge shall have the right to order that accused shall be kept incommunicado for a period of fifteen days. Such order may be renewed, but only for a further period not exceeding fifteen days.

The order of incommunicado shall in no case apply to counsel for the accused.

. . .

Art. 105. Save as provided for in the last paragraph of article 102, the defendant and the civil claimant may be heard or confronted with one another in the course of the investigation only in the presence of their respective counsel or when the latter have been duly summoned, unless they have expressly waived their rights in that respect, or unless urgency exists either because a witness or co-defendant is in critical condition or because certain existing evidence is about to disappear.

If he resides at the seat of the judicial inquiry, counsel shall be notified at least twenty-four hours in advance.

In the case of counsel for the defendant, the file of the case shall be placed at his disposal on the day before each interrogation; it shall also be placed at the disposal of counsel for the civil claimant on the day before the latter is heard.

Section VI

Warrants and Their Execution

Art. 109. The examining judge may issue either a summons, a warrant to compel attendance, an order for committal or a warrant for arrest, as the case requires:

The object of the summons is to serve notice on the accused that he is required to appear before the judge at the date and time stated therein;

The warrant to compel attendance is an order issued by the judge requiring the police to bring the accused before him;

The order for committal is an order issued by the judge to the chief warden of the place of detention requiring him to receive the accused and keep him in custody. This order also conveys the power to seek out or to transfer the accused when it has been previously served on him;

The warrant for arrest is an order given to the police to find the accused and convey him to the place of detention indicated on the warrant, where he will be received and kept in custody.

Art. 110. All warrants shall specify the identity of the accused and shall be duly signed, dated and sealed by the issuing magistrate.

In the case of warrants to compel attendance, orders for committal and warrants for arrest, the nature of the charge and the applicable legal provisions shall also be stated.

. . .

Art. 112. The examining judge shall immediately proceed to interrogate an accused person on whom a summons has been served.

The same procedure shall be followed in respect of the interrogation of an accused person who has been arrested under a warrant to compel attendance; however, if the interrogation cannot take place immediately, the accused shall be taken to the place of detention, where he may be held for not more than twenty-four hours.

At the end of that time, he shall automatically be brought by the chief warden before the public prosecutor, who shall request the examining judge, or failing him the president of the court or a judge appointed by the latter, to conduct the interrogation forthwith, failing which the accused shall be set free. In the jurisdiction of the sections, the chief warden shall bring the accused before the section judge.

. . .

Art. 118. An accused person taken into custody under a warrant for arrest shall be conveyed forthwith to the place of detention stated in the warrant, subject to the provisions of paragraph 2 of the following article.

. . .

Art. 119. The accused shall be interrogated within forty-eight hours after his incarceration. If the interrogation has not taken place by the end of that period, the provisions of article 112, paragraph 3, shall apply.

. . .

Art. 120. The officer responsible for carrying out the warrant for arrest may not enter the domicile of a citizen before 5 a.m. or after 10 p.m.

He may choose to be accompanied by a force sufficient to ensure that the accused cannot evade the law. Such force shall be levied in the place nearest to that in which the warrant for arrest is to be executed, and shall comply with the provisions of the warrant.

. . .

Section VII

Remand in Custody

Art. 123. Remand in custody is an exceptional measure. When an order is made for remand in custody, the following rules shall be observed.

Art. 124. In correctional cases, when the maximum sentence provided for by the law is less than two years' imprisonment, an accused person domiciled within the jurisdiction may not, subject to the provisions of article 120, paragraph 1, be kept in custody for more than fifteen days after his first appearance before the examining judge, unless he has already been sentenced either for a crime or to a term of more than three months' imprisonment for an offence under ordinary law.

Art. 125. In all cases, when it is not granted as a right, provisional release may be ordered *ex officio* by the examining judge after consultation with the public prosecutor, provided the accused pledges himself to be present at all the acts of the proceedings as soon as he is summoned thereto, and to keep the examining magistrate informed of all his movements. In the sections, the examining judge may issue an order for provisional release *ex officio* without consulting the public prosecutor.

The public prosecutor may also request a provisional release at any time. The examining judge shall adjudicate on such request within five days after receiving it.

. . .

Art. 130. In all cases, provisional release may be made conditional on the deposit of a sum of money as security.

. . .

BOOK II

COURTS OF JUDGEMENT

Title I

THE CRIMINAL COURT

. . .

Chapter IV

PROCEDURE IN PREPARATION FOR SESSIONS OF THE CRIMINAL COURT

Section I

Obligatory Acts

Art. 230. The remand order shall be notified to the accused and he shall be given a copy thereof.

. . .

Art. 234. The president of the criminal court or the president of the court of first instance at the seat of the criminal court shall proceed to interrogate the accused as soon as possible after the latter has entered the place of detention and his file has been sent to the court office.

The president of the criminal court may designate one of the assistant judges to conduct such interrogation.

The services of an interpreter shall be used if the accused does not speak or does not understand French.

Art. 235. The president of the criminal court or the magistrate acting in his stead shall question the accused regarding his identity and shall verify that the remand order has been notified to him.

Art. 236. The accused shall then be asked to choose a counsel to assist in his defence.

If the accused fails to choose a counsel, the president of the criminal court or the magistrate acting in his stead shall appoint one *ex officio* from among the barristers admitted to practice in the Mauritanian courts, or, failing such, from among the citizens capable of assisting the accused in his defence.

Such appointment shall be null and void if the accused subsequently chooses a counsel.

. . .

Art. 239. After he has been interrogated, the accused may communicate freely with his counsel.

Counsel may have access to all the documents in the case on the spot, provided, however, that the proceedings are not delayed thereby.

. . .

Chapter VI
Hearings

Section I
General Provisions

Art. 255. Hearings shall be public, unless a public hearing would be prejudicial to law and order or to public morals. In that case, the court shall so state in a ruling given in public.

Nevertheless, the president may forbid access to the court to all or some minors.

When it has been ordered that the hearings shall be held *in camera*, that ruling shall also apply to the delivery of any judgements that may be made regarding the controversies on points of law referred to in article 265.

The judgement on the merits of the case shall always be given in public.

. . .

Art. 257. As soon as the hearings are declared open, the use of sound-recording or reproducing devices of any kind, and of motion picture, television or hand cameras shall be prohibited, under penalty of a fine of 15,000 to 3 million francs, which may be ordered under the procedure for dealing with violations committed in the course of hearings.

. . .

Art. 261. . . .

The defendant or his counsel may put questions, through the president, to the co-defendants and to the witnesses.

. . .

Art. 264. The defendant, the civil claimant and their respective counsel may make submissions on which the court must adjudicate.

Art. 265. All controversies on points of law shall be decided by the court after hearing the public prosecution and the parties or their counsel.

Such decisions shall not prejudge the merits of the case.

Any application to have them quashed must coincide with an application to secure the quashing of the judgement on the merits of the case.

Section II
Appearances by the Defendant

Art. 266. At the hearings, the defendant must be accompanied by his counsel.

If the counsel chosen or appointed in conformity with article 236 fails to appear, the president shall appoint another *ex officio*.

. . .

Section III
Production and Discussion of Evidence

. . .

Art. 278. The witnesses called by the parties shall be heard during the proceedings, even if they made no statements during the investigation, or were not summoned, provided that their names were notified pursuant to the provisions of article 242.

. . .

Art. 293. If the defendant, the witnesses or any one of them is insufficiently acquainted with the French language, or if it is necessary to translate a piece of documentary evidence produced at the hearing, the president, acting *ex officio*, shall appoint an interpreter, who shall be at least eighteen years of age, and cause him to take an oath to the effect that he will carry out his duties faithfully.

The public prosecution, the defendant and the civil claimant may object to the interpreter, stating the grounds for their objection. The court shall rule on the objection. Its decision shall be final.

The interpreter may not be appointed from among the judges of the court, the jury, the parties or the witnesses, even with the consent of the defendant and of the public prosecution.

Art. 294. If the defendant is a deaf mute and cannot write, the president, acting *ex officio*, shall appoint the person who is most accustomed to communicating with him to act as interpreter.

The same shall be done in the case of a deaf mute witness.

The other provisions of the previous article shall also be applicable.

If the deaf mute is able to write, the clerk of the court shall write down the questions or comments that are made to him; they shall be handed to the said defendant or witness, who shall make his replies or statements in writing. The whole exchange shall be read out by the clerk of the court.

Art. 295. When the arraignment has been concluded, the civil claimant or his counsel shall be heard. The public prosecutor shall make his address to the court.

The defendant and his counsel shall state their case in defence.

The civil claimant and the public prosecution shall be entitled to reply, but the defendant or his counsel shall always be the last to be heard.

. . .

Chapter VII
Judgement

. . .

Section II•
Decision on the Case

Art. 303. The criminal court shall then return to the court room. The president shall summon the defendant and shall deliver the judgement condemning, discharging or acquitting him.

The grounds for the judgement need not be stated.

. . .

Art. 304. If the defendant is discharged or acquitted, he shall immediately be set free, unless he is being detained on another charge.

Art. 305. No one, having once been legally acquitted, may be detained or accused again in respect of the same facts, even if a different charge is made.

. . .

Art. 307. After delivering the judgement, the president, if appropriate, shall draw the attention of the defendant to the fact that he is entitled to appeal, and to the time-limit within which the appeal must be lodged.

. . .

Title II
JUDGEMENT OF OFFENCES

Chapter I
CORRECTIONAL COURT

. . .

Section III

Public Hearing and Policing of Proceedings

Art. 337. Hearings shall be public.

Nevertheless, if the court should find that a public hearing would be prejudicial to law and order or to public morals, it may direct, in an order given in public, that the hearings shall be held *in camera.*

When it has been so ordered, the requirement of privacy shall also apply to the delivery of any separate judgements that may be made in respect of points of law or objections, as mentioned in article 395, paragraph 4.

The judgement on the merits of the case shall always be given in public.

. . .

Art. 340. As soon as the hearings are declared open, the use of sound-recording or reproducing devices of any kind, and of motion picture, television or hand cameras shall be prohibited, under penalty of a fine of 15,000 to 3 million francs, which may be ordered under the procedure for dealing with violations committed in the course of hearings.

. . .

Section IV
Hearings

1. *Appearances by the Defendant*

. . .

Art. 344. If the defendant is insufficiently acquainted with the French language, or if it is necessary to translate a piece of documentary evidence produced at the hearing, the president, acting *ex officio,* shall appoint an interpreter, who shall be at least eighteen years of age, and cause him to take an oath to the effect that he will carry out his duties faithfully.

The public prosecution, the defendant and the civil claimant may object to the interpreter, stating the grounds for their objection. The court shall rule on the objection and its decision shall be final.

The interpreter may not be appointed from among the parties or the witnesses, even with the consent of the defendant and of the public prosecution.

Art. 345. If the defendant is a deaf mute and cannot write, the president, acting *ex officio,* shall appoint the person who is most accustomed to communicating with him to act as interpreter.

The other provisions of the previous article shall also be applicable.

If the said defendant is able to write, the clerk of the court shall write down the questions or comments that are made to him; they shall be handed to the defendant, who shall give his replies in writing. The whole exchange shall be read out by the clerk of the court.

. . .

Art. 348. The defendant shall be entitled to be represented by a lawyer.

. . .

Art. 354. A defendant appearing in court is entitled to the assistance of counsel.

If he has not chosen a counsel before the hearings the president may appoint one *ex officio.*

Counsel may be chosen or appointed only from, among the barristers admitted to practice in the Mauritanian court, or failing such, from among the citizens capable of assisting the defendant in his defence.

Assistance by counsel is compulsory when the defendant is suffering from an infirmity which is liable to jeopardize his defence, or when he is threatened with rigorous imprisonment.

. . .

3. *Production of Evidence*

. . .

Art. 390. After every statement, the president shall ask the witness such questions as he may deem necessary, and also, depending on the circumstances, any questions that may be suggested to him by the parties.

. . .

4. *Arguments of the Parties*

. . .

Art. 396. When the arraignment has been concluded, the application by the civil claimant shall be heard, the public prosecution shall deliver its address, and the defendant, as well as the party incurring civil liability, if any, shall present their defence.

The civil claimant and the public prosecution shall be entitled to reply. The defendant or his counsel shall always be the last to be heard.

. . .

Section V
Judgement

. . .

Art. 407. Whether or not he lodges an appeal, a defendant held in custody who has been acquitted or discharged, or who has been sentenced either to a term of imprisonment subject to probation or to the payment of a fine, shall be set free immediately after the judgement.

The same shall be done in the case of a defendant held in custody who has been sentenced to a term of imprisonment, as soon as the duration of his detention becomes equal to the term of the sentence.

. . .

Art. 421. Every judgement shall contain a statement of grounds and a decision.

The statement of grounds shall provide the basis for the decision.

The decision shall enunciate the offences of or for which the persons therein named are declared guilty or responsible, as well as the sentence, the applicable legal provisions and the penalties in civil law. Fines, costs and damages shall always be set in local currency.

. . .

Chapter II

THE HIGHER COURT OF APPEAL IN CORRECTIONAL MATTERS

Section I

Exercise of the Right of Appeal

Art. 432. Judgements delivered in correctional cases may be appealed against.

The appeal shall be made before the Higher Court of Appeal. . . .

Chapter VI

TRIAL PROCEDURE IN THE POLICE COURT

. . .

Art. 470. The provisions of articles 337 to 342 and 343 to 345 shall apply to the procedure followed in the police court.

. . .

Art. 471. The rules contained in the following articles shall also apply: . . . articles 363 to 393 regarding the production of evidence, subject to the provisions of article 472; articles 394 to 397 concerning the arguments of the parties. . . .

Art. 476. If the police court considers that the act does not constitute an offence under criminal law, or that the act has not been established or that it cannot be imputed to the defendant, it shall dismiss the proceedings against the latter.

. . .

Chapter VI

APPEALS AGAINST JUDGEMENTS OF THE POLICE COURTS

Art. 481. The defendant, the party incurring civil liability, and the public prosecutor shall have the right of appeal if the judgement involves a prison sentence, or if the penalty is more than five days of imprisonment or a fine of 6,000 francs.

. . .

ACT No. 61-112 OF 20 JUNE 1961 ESTABLISHING THE MAURITANIAN NATIONALITY CODE[1]

Title I

GENERAL PROVISIONS

Art. 1. The law shall determine which individuals, at birth, possess Mauritanian nationality as their nationality of origin.

Mauritanian nationality is acquired or is lost after birth through the operation of law or pursuant to decisions taken by the public authorities under the conditions prescribed by law.

Art. 2. New legislation relating to the attribution of Mauritanian nationality as the nationality of origin shall apply even to individuals, born before the date on which such legislation becomes operative, who have not attained their majority by that date.

Nevertheless, such application shall not affect the validity of instruments executed by the person concerned or the rights acquired by third parties under earlier legislative provisions.

Art. 3. The conditions governing the acquisition and loss of Mauritanian nationality after birth shall be those prescribed by the legislative provisions in force at the time of the occurrence of the events or acts entailing such acquisition or loss.

Art. 4. For the purpose of this Act, a person shall have attained his majority upon completion of his twenty-first year.

Art. 5. The validity of instruments executed by a person or the rights acquired by third parties on the basis of his apparent nationality shall not be contestable on the ground that another nationality has been acquired or revealed.

Art. 6. The provisions relating to nationality contained in duly ratified and published international treaties or agreements shall apply even when contrary to the provisions of Mauritanian domestic legislation.

Art. 7. When, under the terms of an international convention, a change of nationality is contingent upon an act of option, the form of that act shall be determined by the law of the contracting country in which it is to be performed.

Title II

MAURITANIAN NATIONALITY AS NATIONALITY OF ORIGIN

Art. 8. The following persons are Mauritanian: (1) a child born of a Mauritanian father; (2) a child born of a Mauritanian mother and of a father without nationality or of unknown nationality; (3) a child born in Mauritania of a Mauritanian mother and of

[1] Text published in the *Journal officiel de la République Islamique de Mauritanie,* No. 62, of 13 June 1961.

a father of foreign nationality, with the option of repudiating such status during the year preceding his majority.

Art. 9. The following persons are Mauritanian: (1) a child born in Mauritania of a father himself born there; (2) a child born in Mauritania of a mother herself born there, with the option of repudiating such status during the year preceding his majority.

The provisions of this article shall not apply to children born in Mauritania of diplomatic and consular agents of foreign nationality.

Art. 10. A new-born child of unknown parents, found in Mauritania, is Mauritanian.

Nevertheless, he shall cease to be Mauritanian if, during his minority, his filiation is proved with respect to an alien and if, in conformity with the national legislation of such alien, he possesses the nationality of the latter.

Art. 11. A child who is Mauritanian under the provisions of this Title shall be deemed to have been Mauritanian from birth, even if proof of the conditions prescribed by law for the attribution of Mauritanian nationality is not produced until after his birth.

Nevertheless, in the last-mentioned case, the attribution of Mauritanian nationality at birth shall not affect the validity of instruments executed by the person concerned or the rights acquired by third parties on the basis of the child's apparent nationality.

Art. 12. In the determination of Mauritanian territory, modifications resulting from acts of the Mauritanian public authorities and from international treaties shall at all times be taken into account.

Title III

ACQUISITION OF MAURITANIAN NATIONALITY

Chapter 1

ACQUISITION OF NATIONALITY BY FILIATION, BIRTH OR ADOPTION

Art. 13. The following persons may opt for Mauritanian nationality during the year preceding their majority: a child born abroad of a Mauritanian mother and of a father having the nationality of the foreign country; a child born in Mauritania of alien parents who has resided in Mauritania for at least five years; a child adopted by a person of Mauritanian nationality, if such child has resided in Mauritania for at least five years.

Art. 14. During the year following either the declaration or the judicial decision recognizing the validity of the declaration, the Government may by decree prevent the acquisition of Mauritanian nationality, on grounds of unworthiness, lack or insufficiency of assimilation, or serious physical or mental disability.

Art. 15. A minor child of a father or mother acquiring Mauritanian nationality shall become Mauritanian as of right, on the same grounds as in the case of his parents.

This article shall not apply to a minor child who is married or who is serving or has served in the armed forces of his country of origin.

Chapter 2

ACQUISITION OF NATIONALITY BY MARRIAGE

Art. 16. A foreign woman who marries a Mauritanian shall acquire Mauritanian nationality at the time of solemnization of the marriage.

Nevertheless, if her own law permits her to retain her nationality, a foreign woman may, before the marriage is solemnized, decline to acquire Mauritanian nationality.

Chapter 3

NATURALIZATION

Art. 17. Mauritanian nationality is bestowed by decree, at the request of the party concerned and after an investigation has been made.

Art. 18. No person shall be naturalized who has not been habitually resident in Mauritania for at least five years at the time of submission of his request.

Nevertheless, that period of time shall not be required in the case of a person who was born in Mauritania, or is married to a Mauritanian woman, or has rendered exceptional services to Mauritania.

Art. 19. No person may be naturalized:

1. Who is not recognized to be sound in body and mind;

2. Who does not fluently speak one of the following languages: Toucouleur, Sarakole, Wolof, Bambara, Hassani, Arabic and French;

3. Who is not of good conduct and moral character, or who has incurred, for an offence under ordinary law, a sentence privative of liberty not effaced by rehabilitation in rights or by amnesty.

Sentences imposed abroad for political offences may, however, be excluded from consideration in the application of this article.

Art. 20. A foreigner against whom an order of expulsion has been issued may be naturalized only if that order has been rescinded.

Art. 21. A minor may apply for naturalization only if he is eighteen or more years of age. He may do so without authorization.

Art. 22. Where, after naturalization has been decreed, it is found that the person in question failed to meet the requirements for naturalization stipulated by law, the decree of naturalization may be revoked during the year following the date of its publication, or, if the alien has knowingly committed a fraud in order to obtain his naturalization, during the two years following the discovery of such fraud.

Art. 23. A person acquiring Mauritanian nationality shall, from the date of such acquisition, enjoy all the rights attaching to Mauritanian nationality.

Nevertheless, for a period of five years following the decree of naturalization, a naturalized alien may not be appointed to an elective function or office unless he has been relieved of that disability under a decree of the Council of Ministers, based on a joint report by the Ministers of Justice and the Interior stating the grounds for such decision.

Art. 24. A registration fee, payable to the Treasury may be charged at the time of each naturalization.

Chapter 4

Recovery of Nationality

Art. 25. Recovery of Mauritanian nationality shall be granted by decree, after an investigation has been made.

Art. 26. Nationality may be recovered at any age and without any condition as to length of residence.

Art. 27. A person applying for recovery of nationality shall submit proof that he, his father or his paternal grandfather has belonged to a Mauritanian community.

Art. 28. A person who has been deprived of Mauritanian nationality may not recover it unless, where the ground for such deprivation was a judicial conviction, he has been restored to his full rights.

Art. 29. The provisions of article 22 concerning the decree of naturalization shall also apply to the decree of reintegration.

Title IV

LOSS AND DEPRIVATION OF MAURITANIAN NATIONALITY

Art. 30. A Mauritanian who voluntarily acquires a foreign nationality shall lose his Mauritanian nationality.

Art. 31. A Mauritanian, even if a minor, who has a foreign nationality may at his request be authorized to lose his Mauritanian nationality. Such authorization shall be granted by decree.

Art. 32. A Mauritanian woman who marries an alien shall lose her Mauritanian nationality only if she expressly makes a declaration to that effect before solemnization of the marriage.

Such declaration shall be valid only if the wife is in a position to acquire the nationality of her husband.

Art. 33. The following persons may be deprived of Mauritanian nationality by decree within the ten years following their acquisition of such nationality:

1. Persons convicted of an act held to constitute a crime or offence against the internal or external security of the State;
2. Persons convicted of an act held to be a crime and punished by not less than five years' imprisonment;
3. Persons who have engaged, to the advantage of a foreign State, in acts incompatible with the status of a Mauritanian and prejudicial to the interests of Mauritania.

Art. 34. Deprivation of nationality may be extended to the wife and minor children of the person concerned, if they are of foreign origin and have retained a foreign nationality.

Nevertheless, it may not be extended to his minor children unless it is also extended to his wife.

. . .

MEXICO

HUMAN RIGHTS IN MEXICO DURING 1961[1]

The statutory enactments promulgated and published in 1961 included decrees, amendments to the laws and decisions to regulate the provisions of the Political Constitution of the United States of Mexico respecting safeguards of the individual.

This body of legislation includes various decrees that make collective contracts of employment compulsory in several branches of national industry and lay down rules highly advantageous to the working class which are fully in accord with the principles of the Universal Declaration of Human Rights.

In addition to the foregoing, a list is given below of the statutory provisions which were promulgated and published in 1961 and may be regarded as contributing to the development of the principles of the Universal Declaration of Human Rights, together with a brief survey of the most important judgements pronounced by the Supreme Court of Justice of Mexico and related to the Universal Declaration.

I. LEGISLATION

1. Decree to establish a Decentralized Public Body under the title of National Institute of Child Welfare

Published in the Diario Oficial No. 27, section 2, of 1 February 1961

Article 2 defines the purpose of the National Institute of Child Welfare which is to provide pupils of primary and pre-primary schools in the Federal District, whose economic situation warrants it, with additional welfare services, in particular by means of the provision of school lunches, the same services to be extended to the other regions of the republic.

2. Decision to establish the School for Day Nursery Assistants

Published in the Diario Oficial, No. 20, of 24 November 1961

This school owes its establishment to the need to carry out the provisions of the regulations under article 110 of the Federal Labour Code, that lays down the obligation to provide the services of technically and professionally trained staff in the day nurseries which employers are required to instal on the premises for the children of their women workers.

3. Ruling made by the Central Conciliation and Arbitration Board of the Federal District to fix the minimum wage for the Federal District for the two-year period 1962-1963

Published in the Diario Oficial of 22 December 1961

Article 1 fixes the minimum wage for workers in the various areas of the Federal District, and in Mexico City for the two-year period 1962-1963, as $17.50.

Article 2 provides that for agricultural workers in the Federal District whose employer provides them with housing, means for working the land or wood-cutting, or similar benefits that reduce the cost of living during the two-year period, the minimum wage shall be $17.

II. JUDGEMENTS OF THE SUPREME COURT OF JUSTICE OF MEXICO DURING 1961

1. Labour Contracts

In accordance with the general principle of law that the fulfilment of contracts may not be subject to the will of one of the parties, the execution of work on which specified workers are employed may not depend exclusively on the will of the employer, who if he decides to terminate these activities shall be responsible for the wages which his workers cease to draw.

2. Collective Labour Contracts

A collective labour contract, in addition to establishing the rules governing the employer-worker relationship and the way in which the performance of the agreed services is to be carried out, contains provisions establishing reciprocal rights and obligations between the trade union members making up the organization entering into the collective labour contract; it is therefore not lawful for a worker to disregard rights and obligations laid down on behalf of the organization and of the other workers who are members of it.

3. Dismissal from Employment

If an employer who is the defendant in a labour suit definitely denies the existence of a legal labour relationship with the plaintiff, and if the latter proves the existence of a contractual relationship, then the

[1] Information furnished by the Government of Mexico.

benefits claimed by the plaintiff for his work are deemed *ipso facto* to be proved and payable by the defendant, on the ground that the plaintiff is not employed and that the employer has not proved that the plaintiff abandoned his employment or was dismissed for good and sufficient reasons but that the employer resorted instead to a defence later shown to be false; the decision in the proceedings will therefore be that the claim of unjustified dismissal made by the plaintiff will be accepted by the court as true, on the grounds that no proof has been offered to the contrary by the defendant, on whom the burden of proof rested, and who, in order to avoid bringing evidence, chose to deny the contractual relationship which in fact existed.

4. Workers' Temporary Contracts

If an employer pleads inability to grant a permanent promotion on the ground that he issued to a worker, who applied for a promotion to the grade in question, a temporary contract, any ruling which the Conciliation and Arbitration Board may make requiring him to regard as being on his establishment all workers in the grade in question does not violate any guarantees, because the law places certain limitations on this kind of contract and because power to make such a plea could not be accepted as it would be tantamount to the indefinite prolongation of a situation harmful to workers already promoted, who would thus be deprived of the possibility of applying for further promotion.

5. Offence of Abuse of Authority — Legislation for the Federal District and Territories

The police are not empowered to detain any person without complying with the terms of articles 14 and 16 of the Federal Constitution, with which they should comply in their acts, and in default the members of the police render themselves guilty of the offence of abuse of authority referred to in articles 213 and 214, part IV of the Penal Code.

6. Tax Exemption for Low-cost Dwellings

The Low-cost Dwellings Tax Exemption Act in the Federal District and Territories laid down as the sole requisite for such exemption that the monthly rent should not exceed 350 pesos, and therefore the departmental regulation of the office of the Under-Secretary for Internal Revenue, which laid down in connexion with the said Act that in order to grant the exemption in question it was in addition necessary that the housing should be of specified dimensions, establishes a new condition not contained in the original Act and is therefore obviously unlawful.

7. Guarantee of Audience

The circumstance that rule 28 of the regulations of the Federal District police force empowers the chief of police freely to dismiss members of the force does not exempt him from the obligation to grant the person to be dismissed a hearing in his own defence, since the members of such bodies do not fall outside the protection of the Constitution, which clearly stipulates in article 14 that "no person" may be deprived of his rights "save by a judgement of the courts already established, in which the essential formalities of the proceedings are carried out", that is in which the person suffering the deprivation is heard. The right to be given a hearing obtains, therefore, in connexion with all those governed by the State, without exception, for transgression of that right would be a violation of the Constitution.

8. Old-age Pension

The application of article 74 and transitional article 8 of the Act to establish the Social Insurance Institute — relating to the regulation and computation of annual invalidity and old-age pensions — is correct because these legal provisions contain the rules governing the juridical act consisting in the granting of old-age pensions to workers, although in view of the corresponding provisions which may be taken as regulating this article, such as transitional article 8 referred to above, article 74 of the Act does not have to be applied in isolation; that would be tantamount to a partial application of the precepts in question, contrary to law, since it is essential in the interpretation of laws that they should be applied in their entirety, taking into account all the provisions relating to the juridical act the legal validity of which is to be determined.

"*Art. 74*: Annual invalidity and old-age pensions shall consist of a basic amount and of increments calculated according to the number of weekly contributions which the insured person can prove were paid to the institution after the first 500 contribution weeks. The basic amount and increments shall be calculated according to the following table, the average wage earned during the last 250 weeks — or during the last weeks, irrespective of the number, if it is less than 250 — being deemed to be the daily wage.

"If the insured person has reached the age of 65 and can prove that he has paid the institution not less than 500 weekly contributions, he may defer his old-age pension; in this case the increments obtained in respect of subsequent contributing weeks shall be increased by 200 per cent above the amounts fixed for the increments in the table.

"In no case shall an old-age or invalidity pension be less than 150 pesos a month.

"The institution may award an increment equal to not more than 20 per cent of the value of the invalidity, old-age or survivor's pension, if the physical state of the pensioner is such that he inevitably requires the permanent or continuous assistance of another person."

"*8th transitional provision*: Within a period of 60 days, agricultural workers who retain in their possession booklets of coupons which they should have handed over to the institution in accordance with the provisions of the relevant regulations, must hand them over to the administrative offices of the institutions. A special regulation shall lay down the procedures for the certification of the weeks covered by the coupons; the same regulation shall fix the time-limits for certification for the purpose of computing the right to invalidity, old-age and death benefits. After the period of 60 days, all those booklets not lent to the Institution shall lose their validity as documents certifying contribution weeks."

MONACO

NOTE[1]

A. LEGISLATION

1. *Legislative ordinance No. 702, of 4 January 1961,* respecting procedure for appeal against administrative action (*Journal de Monaco* of 16 January 1961)

Art. 1. Ordinances necessary for the execution of Acts and decisions or measures relating to administrative matters may be submitted to the Supreme Court, which shall judge them as the court of highest instance, by any person who can prove a direct, personal interest, for annulment on the grounds of violation of the law or abuse of power.

Appeals against violations of the regulations governing the Civil Service shall continue to lie within the exclusive competence of the Council of State.

Art. 2. The ordinance relating to the organization and procedures of the Supreme Court, of 21 April 1911, as amended by the ordinance of 15 June 1946, shall apply to the appeals referred to in the preceding article.

Art. 3. Sovereign ordinance No. 1792, of 7 May 1958, is rescinded.

It will be recalled that the Supreme Court was established by the sovereign ordinance of 5 January 1911, which set up a constitutional régime in Monaco.[2]

Title II of that ordinance is concerned with the public rights of individuals and public liberties.

Article 14 reads as follows:

"A Supreme Court is established for deciding appeals involving infringements of the rights and liberties laid down in this chapter."

The legislative ordinance of 4 January 1961 endows the Supreme Court with another function, that of an administrative tribunal. There had previously been no tribunal of this kind. An ordinance of 7 May 1958 established a procedure for appeal out of court to the sovereign prince; it was based on the exercise of the royal prerogative.[3] This ordinance was rescinded by the legislative ordinance of 4 January 1961 (art. 3 above), which conferred on the Supreme Court exclusive power to judge all appeals against administrative action as the court of highest instance, on the principle of delegated jurisdiction, which is already generally applied in civil and commercial cases in Monaco.

It will be noted that the Supreme Court, sitting as an administrative tribunal, is concerned only with appeals for the annulment of administrative decisions, not with all appeals against administrative action. It may annul any administrative decision, whether the decision is contained in a royal ordinance or in a ministerial decree; but it cannot award damages in compensation for any prejudice caused.

In addition, the Council of State continues to be the court which is competent to judge complaints made by civil servants against the administration.

Article 2 of the legislative ordinance of 4 January 1961 lays down the procedure to be followed in appeals to the Supreme Court acting as an administrative tribunal. It is the same procedure as was laid down for appeals to this court in constitutional matters (protection of human rights), a procedure which comprises written evidence and hearings, including the submission of memoranda and pleadings, the proceedings being public.

2. *Legislative ordinance No. 703, of 4 January 1961,* on the Court of Judicial Revision (*Journal de Monaco* of 16 January 1961)

Art. 1. By virtue of the powers vested in it by this legislative ordinance, the Court of Revision shall have exclusive competence henceforth to decide, in penal matters, on appeals for revision and on appeals for retrial.

. . .

Art. 3. The Court of Revision shall consider the appeals solely on the basis of documentary evidence and shall render its judgement within thirty days from the date on which the presiding judge receives the files.

This legislative ordinance, like legislative ordinance No. 702 of the same date, reflects the desire to eliminate from the Monegasque judicial structure the last vestiges of the sovereign's prerogative.

The Court of Judicial Revision, which is the Monegasque Court of Cassation (if a judgement is quashed on legal grounds, it may revise the substance without referring the case to the court of appeal, which is why it is called the "Court of Revision") had been the court of highest instance for civil and commercial cases since the adoption of Act No. 138 of 5 February 1930).

[1] Note prepared by Dr. Louis Aureglia, National Councillor, Monte Carlo, government-appointed correspondent of the *Yearbook on Human Rights.*

[2] See *Yearbook on Human Rights for 1946,* p. 204.

[3] See *Yearbook on Human Rights for 1958,* pp. 142 and 143.

In penal matters a judgement used to be quashed or revised by a royal order on the basis of a report drawn up by the court responsible for revision (article 477 of the Code of Penal Procedure). Henceforward, the Court of Revision will be the court of highest instance (article 5 above).

B. INTERNATIONAL AGREEMENTS

1. *Sovereign ordinance No. 2507, of 22 April 1961*, giving effect to an administrative agreement laying down the regulations for the application of the convention relating to social security between France and Monaco of 28 February 1952 (*Journal de Monaco*, of 8 May 1961, p. 435).

Art. 1. Article 3 of the administrative agreement of 5 November 1954 shall be deleted and replaced by the following:

"When workers earning wages or otherwise gainfully employed are subject, under article 3 of the convention, to the social security legislation of the country to which the employer is not normally subject, the following provisions shall apply to the employer:

"(*a*) If French legislation applies, the competent body for registration and the collection of contributions shall be the body of the Department of the Alpes-Maritimes which is competent for the profession concerned;

"(*b*) If Monegasque legislation applies, the body which is competent for registration and the collection of contributions shall be the Social Services Equalization Fund."

The convention of 28 February 1952 had been given effect in Monaco by sovereign ordinance No. 937, of 17 March 1954.[1]

The administrative agreement to which the sovereign ordinance of 22 April 1961 relates had been signed in Paris on 24 March 1961.

2. *Sovereign ordinance No. 2661, of 27 October 1961*, giving effect to the administrative agreement laying down the regulation for the application of the convention between Italy and Monaco of 6 December 1957, which had been put into effect in Monaco by the sovereign ordinance of 19 February 1960, on insurance against work accidents and occupational diseases (administrative Agreement of 27 July 1961, *Journal de Monaco* of 13 November 1961, p. 1019)

3. *Sovereign ordinance No. 2662, of 27 October 1961*, giving effect to the administrative agreement laying down regulations for the application of the Agreement between Italy and Monaco on the social security scheme applicable to migrant Italian workers (administrative agreement of 27 July 1961, *Journal de Monaco*, of 13 November 1961, p. 1020)

The agreement relates to the convention of 6 December 1957 between Italy and Monaco, which was given effect in Monaco by the ordinance of 19 February 1960.

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[1] See *Yearbook on Human Rights for 1954*, p. 206.

MONGOLIA

SOCIAL, ECONOMIC AND POLITICAL RIGHTS AND FREEDOMS GUARANTEED BY THE MONGOLIAN PEOPLE'S REPUBLIC TO ITS CITIZENS[1]

The rights and freedoms underlying the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948 have from the first been a matter of prime concern for the people's democratic State in Mongolia. They were given their first statutory formulation in the Constitution of the Mongolian People's Republic adopted in 1924. As society developed economically and its democratic principles and institutions took firmer root, these rights and freedoms were increasingly expanded and legally consolidated in the Mongolian People's Republic's subsequent constitutions of 1940 and 1960, and in other legislation.

The legislation of the Mongolian People's Republic lays stress mainly on the material guarantees for citizens' rights and freedoms.

1. *General political rights and freedoms*

Article 3 of the Constitution[2] states: "All power in the Mongolian People's Republic belongs to the working people. The working people exercise state power through representative state organs — the Khurals of People's Deputies."

Article 76 of the Constitution provides that: "Citizens of the Mongolian People's Republic enjoy equal rights irrespective of sex, racial and national origin, religion or social origin and standing."

Article 81 of the Constitution proclaims that: "Citizens of the Mongolian People's Republic have the right to participate freely in the administration of the State and society, and also in the management of the economic life of the country, both through their representative bodies and directly. This right is guaranteed by granting to all citizens the opportunity to play an extensive part in all spheres of the country's state, political, economic and cultural life, and in particular to participate in elections and referendums, in the organization of various democratic societies, etc."

Article 83 of the Constitution states: "Citizens of the Mongolian People's Republic, irrespective of their national origin, enjoy equal rights in all spheres of the country's state, economic, cultural and social and political life.

"All direct or indirect curtailment of the rights of citizens on grounds of racial or national origin, and the preaching of chauvinistic and nationalistic ideas, are prohibited by law.

"The Mongolian People's Republic guarantees to the representatives of all nationalities inhabiting its territory the possibility of developing their national culture and of studying and transacting their affairs in their mother tongue."

Article 84 of the Constitution lays down that: "Women in the Mongolian People's Republic are accorded equal rights with men in all spheres of economic, State, cultural, social and political life. The exercise of these rights is guaranteed by the granting to women of equal conditions with men in work, leisure, social insurance and education, by state promotion of mother-and-child welfare, by state assistance for mothers of large families, by the provision of pregnancy and maternity leave on full pay, and by the extension of the network of maternity hospitals, nurseries and kindergartens.

"Obstruction, in any form whatsoever, of the exercise by women of equal rights with men is prohibited by law."

2. *Right to inviolability of the person and of the home and to privacy of correspondence*

Article 88 of the Constitution prescribes that "Citizens of the Mongolian People's Republic are guaranteed inviolability of the person and of the

[1] Note furnished by the Government of the Mongolian People's Republic.

Attention may also be drawn to the following provisions of the Constitution of the Mongolian People's Republic:

"*Art. 4.* The khurals of People's Deputies are elected by citizens of the Mongolian People's Republic on the basis of universal, equal and direct suffrage by secret ballot.

. . .

"*Art. 69.* Court proceedings are conducted in the Mongolian language, persons not knowing that language being guaranteed the right to acquaint themselves fully with the material of the case through an interpreter and likewise the right to use their own language in court.

"*Art. 70.* All cases are heard in public and the accused are guaranteed the right to defence. Courts may sit *in camera* in cases for which special provision is made in the law.

. . .

"*Art. 77.* Citizens of the Mongolian People's Republic have the right to work and to payment for their work in accordance with its quantity and quality. This right is ensured by the advantages accruing from the socialist system of economy established in the Mongolian People's Republic, which gives each citizen every opportunity to employ his knowledge and labour in any branch of economy and culture without let or hindrance, and to receive a guaranteed recompense according to the labour expended."

[2] The constitution referred to herein was adopted on 6 July 1960.

home, and privacy of correspondence. No person may be placed under arrest except by decision of a court or with the sanction of a public prosecutor."

This provision is further developed in the Criminal Code and the Code of Criminal Procedure of the Mongolian People's Republic.

Right to Inviolability of the Person

Article 144 of the Criminal Code lays down that:

"(*a*) An official conducting the preliminary examination, or an official of an agency conducting the preliminary investigation, who arrests a person without a court decision or the sanction of a public prosecutor to that effect shall be liable to deprivation of liberty for a term not exceeding two years or to corrective labour for a term not exceeding eighteen months, or shall be banned from holding certain offices in investigating agencies.

"(*b*) An official conducting the preliminary examination or an official of an agency conducting the preliminary investigation or a public prosecutor who, for gain or other personal reasons, arrests a person knowing such arrest to be unlawful, shall be liable to deprivation of liberty for a term of from three to seven years."

It is stated in article 210 of the Code of Criminal Procedure of the Mongolian People's Republic that "An official conducting a preliminary examination may effect a search only when there is good reason to believe that objects relevant to the case are in the possession of a particular person or are situated in particular premises, a decision with a statement of grounds being drawn up in that sense."

It is laid down in article 70 of the Criminal Code of the Mongolian People's Republic that wilful homicide:

"(*a*) For gain, in the performance of an act of hooliganism or for other base motives;

"(*b*) Committed during the execution by the victim of his duties or public activities and in the absence of the elements provided for in article 47 of the present code;

"(*c*) Committed by a person previously convicted of the same offence or of the infliction of grievous bodily harm or of robbery;

"(*d*) Of two or several persons at once, or of a woman whom the culprit knew to be pregnant, or committed by a method endangering many lives;

"(*e*) Involving particular cruelty;

"(*f*) Committed with a view to concealing another crime or in the furtherance thereof,

is punishable with deprivation of liberty for a term of from ten to fifteen years, or with death; in the case of murder for gain, the said penalty may be accompanied by confiscation of property."

Article 73 of the Criminal Code provides that:

"(*a*) A person who wilfully causes injury whereby life is endangered or which results in the loss of eyesight, hearing or an organ or in the loss of a bodily function, or which causes permanent disfigurement, the termination of pregnancy, mental illness or ill-health accompanied by persistent impairment of not less than one third of the victim's capacity, shall be liable to deprivation of liberty for a term of from three to eight years;

"(*b*) Where any of the aforesaid acts results in the death of the victim or amounts to torture, or is performed by a person previously convicted of the same offence or of wilful homicide or robbery, the penalty shall be deprivation of liberty for a term of from five to twelve years;

"(*c*) A person who commits any of the acts referred to in paragraph (*a*) above while in a state of acute mental agitation, brought about by unlawful violence or a grievous insult on the part of the victim or by some other unlawful act of the latter resulting or likely to result in serious consequences for the first-mentioned person or his relatives, shall be punishable by deprivation of liberty for a term not exceeding five years."

Article 77 of the same Code provides that:

"(*a*) A person guilty of wilful assault and battery or other violence whereby pain is inflicted shall be punishable by corrective labour for a period not exceeding one year or by a fine not exceeding 300 tughriks, or shall be subjected to measures of social influence;

"(*b*) Systematic battery or other actions amounting to torture shall be punishable with deprivation of liberty for a term not exceeding three years or by corrective labour for a term not exceeding eighteen months."

It is provided in article 78 of the same code that "A person threatening to kill another person in circumstances in which there is good reason to believe that the said threat might be carried out shall be liable to deprivation of liberty for a term not exceeding two years or to deportation."

Article 94 of the Criminal Code states: "Any person who, by resorting to violence, threats or obsolete local customs, compels a woman to enter into marriage or prevents a woman from entering into marriage at her own discretion, or compels a woman to dissolve a marriage in established form, shall be liable to deprivation of liberty for a term not exceeding one year, or to corrective labour for a term not exceeding eighteen months, or to public censure, or to subjection to measures of social influence."

Right to Inviolability of the Home

Article 100 of the same Code provides that: "An official who carries out an unlawful search or unlawful eviction or performs any other unlawful act whereby the inviolability of a citizen's home is infringed shall be liable to deprivation of liberty for a term not

exceeding one year or to corrective labour for a term not exceeding eighteen months, or may be banned from holding certain posts during a term not exceeding two years."

Right to Privacy of Correspondence

Article 101 of the Criminal Code states:

"(*a*) An official violating a citizen's privacy of correspondence shall be liable to corrective labour for a term not exceeding eighteen months or to public censure, or may be banned from holding certain posts during a term not exceeding two years;

"(*b*) A private person who violates a citizen's privacy of correspondence for gain or for other base motive shall be liable to corrective labour for a term not exceeding six months, or to a fine not exceeding 100 tughriks, or to public censure."

3. *Cases are heard by independent courts on the basis of the law alone*

Article 71 of the Constitution says that "Judges trying a case shall be independent and shall be answerable to the law alone."

The Judicial Procedure Act of the Mongolian People's Republic provides that "Judges shall not be dependent upon any person but shall be answerable to the Law alone."

Article 145 of the Criminal Code of the Mongolian People's Republic states that "A judge who, for gain or other personal motive, pronounces a judgement, decision or ruling known to be unlawful shall be liable to deprivation of liberty for a term not exceeding five years."

4. *Under the legislation in force, a defendant is presumed innocent until proved guilty and, without such proof, is not subject to a legal sanction*

Article 152 of the Code of Criminal Procedure states that "Where there is adequate evidence to warrant the preferment of a charge against a person, the official conducting the preliminary examination shall draw up a decision accompanied by a statement of grounds, summoning the said person as a defendant." Article 235 of the same code provides that ". . . if no evidence [for preferring a charge] is obtained, the proceedings shall be not suspended, but terminated."

5. *Right of asylum*

Article 83 of the Constitution provides that ". . . the Mongolian People's Republic affords a right of asylum to aliens persecuted for their defence of the interests of the working people, for their struggle for national liberation, for their activities for the strengthening of peace, or for their scientific activities."

6. *Right to own property*

Article 13 of the Constitution proclaims that: "The right of citizens to the private ownership of their earnings and savings, their dwellings, the products of their individual subsidiary plots and their personal and household effects, and the right to inherit the private property of citizens, are guaranteed by law. The right to private ownership shall not be used to the detriment of the interests of the State or society."

According to article 33 of the Civil Code, "Private ownership shall extend to the property indicated in article 13 of the Constitution of the Mongolian People's Republic."

Article 299 of the Civil Code states that a person may inherit by law or by will provided that the conditions laid down in article 300 of the Civil Code are fulfilled. The latter article prescribes that "Only the following persons may be legal heirs or testamentary heirs:

"1. A surviving spouse; the children, including adoptive and posthumous children; and the parents of the deceased who are incapable of work;

"2. Able-bodied parents, a grandfather or grandmother, grandchildren, brothers and sisters, and persons incapable of work, or indigent persons, who were in effect fully dependent upon the deceased for their livelihood."

NOTE: The right of inheritance belongs in the first place to the persons listed in paragraph 1 of this article. It devolves upon the other persons in the absence of any of the heirs enumerated in article 1 or in the event of their renouncing the inheritance.

Article 109 of the Criminal Code lays down that:

"(*a*) The surreptitious or overt theft of the private property of citizens which does not involve the use of violence or threats shall be punishable with deprivation of liberty for a term not exceeding five years or by corrective labour for a term not exceeding eighteen months.

"(*b*) The aforesaid acts, when performed by a person previously convicted of the same offence or by an organized group, or involving the use of technical means, or resulting in serious loss to the victim, or committed at a railway station, in a train, market-place, shop or other public place, or by persons availing themselves of a public calamity, shall be punishable with deprivation of liberty for a term of from two to seven years, with or without the total or partial confiscation of property;

"(*c*) Petty theft committed without any of the aggravating circumstances referred to in paragraph (*b*) of this article shall involve the application of measures of social influence."

Article 110 of the Criminal Code states:

"(*a*) A person who acquires the private property of citizens or the right thereto by means of fraud or breach of trust shall be liable to deprivation of liberty for a term not exceeding three years or to corrective labour for a term not exceeding eighteen months;

"(*b*) The aforesaid acts, when performed by a

person previously convicted of the same offence or by an organized group, or resulting in serious loss to the victim, shall be punishable with deprivation of liberty for a term not exceeding seven years, with or without the total or partial confiscation of property."

Pursuant to article 112 of the Criminal Code, "A person who misappropriates valuable property or strayed cattle which he has found and which belongs to citizens shall be liable to deprivation of liberty for a term not exceeding two years or to corrective labour for a term not exceeding eighteen months, or shall be subjected to measures of social influence."

Article 113 of the Criminal Code states:

"(*a*) A person who demands property or the right thereto by threatening violence or the publication of defamatory information about the victim or his relatives, or by threatening to destroy their property, shall be liable to deprivation of liberty for a term not exceeding three years or to corrective labour for a term not exceeding eighteen months;

"(*b*) The aforesaid acts, when committed by a person previously convicted of the same offence, shall be punishable with deprivation of liberty for a term not exceeding seven years."

In article 115 of the Criminal Code it is provided that:

"(*a*) Wilful destruction of or damage to the property of a citizen, resulting in considerable loss to the victim, shall be punishable with corrective labour for a term not exceeding one year or by a fine not exceeding 1,000 tughriks, or by deprivation of liberty for a term not exceeding two years;

"(*b*) Wilful destruction of or damage to the property of citizens brought about by arson or by any other socially dangerous method, or resulting in serious consequences, shall be punishable with deprivation of liberty for a term of from three to ten years."

Article 116 of the Criminal Code provides that: "Destruction of or damage to the property of citizens caused by negligence shall, if it involves serious consequences, be punishable with deprivation of liberty for a term not exceeding three years or with corrective labour for a term not exceeding eighteen months."

7. *Freedom of thought, conscience and religion*

According to article 86 of the Constitution of the Mongolian People's Republic: "In the Mongolian People's Republic religion is separated from the State and the school. Citizens of the Mongolian People's Republic enjoy freedom of religion and of anti-religious propaganda."

Article 107 of the Criminal Code provides that: "A breach of the laws relating to the separation of religion from the State and of the school from religion shall be punishable with corrective labour for a term not exceeding eighteen months or by a fine not exceeding 300 tughriks."

Article 108 of the Criminal Code states that:

"A person obstructing the performance of religious rites which do not result in a breach of the peace and are not accompanied by the infringement of citizens' rights shall be liable to corrective labour for a term not exceeding one year or to a fine not exceeding 300 tughriks, or to public censure."

Article 85 of the Constitution of the Mongolian People's Republic provides that: "All citizens of the Mongolian People's Republic have the right freely to apply to all State authorities and departments and submit written and oral complaints and statements concerning unlawful acts performed by the authorities or individual officials of the State or concerning manifestations of bureaucratism and procrastination. State authorities and officials shall immediately examine the statements or complaints received, shall take steps designed to eliminate any breach of the laws or regulations, and shall give the complainant a reply bearing upon the substance of the statement or complaint."

Article 87 of the Constitution states that: "In the interests of the working people and with a view to developing and strengthening the State system of the Mongolian People's Republic, the citizens of the Mongolian People's Republic are guaranteed, by law: (1) freedom of speech; (2) freedom of the press; (3) freedom of assembly and public meeting; (4) freedom of demonstration and street procession.

"The above rights and freedoms are guaranteed by the granting to the working people and their organizations of the material conditions necessary for their enforcement."

8. *Right of assembly and association*

Article 82 of the Constitution of the Mongolian People's Republic states: "Citizens of the Mongolian People's Republic have the right to associate in public organizations: trade unions, co-operative societies, youth, sports and other organizations; cultural and scientific societies, societies for strengthening peace and friendship among peoples, etc.

"The most active and politically-conscious citizens in the ranks of the workers, the members of Arat co-operatives and the working intelligentsia are united in the Mongolian People's Revolutionary Party which is the vanguard and leader of all State and other mass organizations of the working people."

9. *The right to vote and be elected*

". . . All citizens of the Mongolian People's Republic who have attained the age of eighteen, with the exception of persons certified as insane,

have the right to vote and be elected to all organs of State authority" (article 81 of the Constitution, second part).

10. *The right to social security*

Article 79 of the Constitution of the Mongolian People's Republic provides that: "Citizens of the Mongolian People's Republic have the right to material assistance in old age and in the event of disability or illness or of loss of the breadwinner.

"This right is guaranteed by means of assistance rendered to the working people through a system of social insurance, State pensions, and special funds of co-operative organizations, together with an extensive network of medical institutions and resorts, free medical care for the working people and the development of a system of labour safety measures."

Article 114 of the Labour Act states: "Citizens of the Mongolian People's Republic working for remuneration are entitled to material assistance in old age and also in the event of illness or disability. This right is guaranteed by a system of social insurance for workers and employees financed by the State and the employers, by free medical care for the working people, and by the development of a system of medicinal springs."

Article 115 of the Labour Act provides that: "The social insurance of persons working for remuneration shall comprise:

"(*a*) The provision of medical care;

"(*b*) The granting of benefits during temporary incapacity, such as illness, injury suffered in connexion with production, quarantine, pregnancy, confinement;

"(*c*) The granting of invalidity pensions;

"(*d*) The granting of old age pensions to persons working for remuneration;

"(*e*) The granting of pensions, upon the death of a manual or non-manual worker, to those members of the family of the deceased who had been maintained by and were resident with him.

"NOTE 1: The procedure and conditions for the approval, payment, suspension and termination of the aforesaid forms of benefit, the determination of the requisite length of qualifying service for the various categories and age-groups, the amount and forms of benefit, the method of assessing financial circumstances, etc., shall be governed by separate legislation."

Article 116 of the Labour Act states: "All establishments, undertakings, organizations and private persons employing hired labour shall pay into the social insurance fund a percentage of the sum total of the wages paid by them, as follows:

"(*a*) Undertakings of the coal industry — 9 per cent;

"(*b*) Establishments and organizations financed under the State budget or a local budget — 3 per cent;

"(*c*) Financially self-supporting undertakings and organizations — 10 per cent.

"The aforesaid contributions shall be payable by the employer, who shall not be entitled to exact them from the insured persons or to deduct them from their wages.

"The insurance monies may be spent solely for the purpose for which they are directly intended, and on objectives and in the manner laid down in the regulations and instructions approved by the Government; the expenditure of the said monies for any other purpose shall be regarded as misappropriation and the culprits shall be prosecuted.

"Supervision over the correct use of the fund shall be within the competence of the Ministry of Health and the Ministry of Finance."

Article 117 of the Labour Act provides that: "The procedure governing disbursements, from the social insurance fund, of benefits to manual and non-manual workers in the event of temporary incapacity (illness, injury suffered in connexion with production, pregnancy and confinement, quarantine, on the basis of medical certificates) shall be prescribed in the social insurance regulations to be approved by the Council of Ministers."

Sick leave may be granted only by medical institutions and must be certified by the issue of medical certificates.

Article 118 of the Labour Act states that: "Any person who delays the transfer of the insurance monies, calculated in accordance with the provisions of the present Act, and their payment into the social insurance fund shall be liable at criminal law. Supervision over the correct and timely transfer of the social insurance monies shall be exercised by the Central Council of Trade Unions and the Ministry of Finance."

Article 119 of the Labour Act provides that: "Failure by an employer to pay the insurance contributions due from him may not be invoked as grounds for the non-payment, or even the temporary postponement of payment, to the employed worker of the benefits to which he is by law entitled."

Article 78 of the Constitution of the Mongolian People's Republic provides that: "Citizens of the Mongolian People's Republic have the right to leisure. This right is guaranteed by fixing the maximum duration of the working day at eight hours, reducing the working day for a number of special occupations, instituting a weekly day of rest and an annual vacation on full pay for manual and non-manual workers, and providing sanatoria and rest-homes, theatres, clubs and other services for the working people.

"The Mongolian People's Republic pursues a policy of further increasing the amount of free time available to the working people, as the country's forces of production develop, by way of reducing the hours of work, as well as improving various

services and making them more accessible to the working people, so that the latter may be able to make increased use of their free time not only for rest but also for their physical and intellectual development and the acquisition of additional knowledge."

Article 68 of the Labour Act provides that: "Pursuant to the Fundamental Law (Constitution), citizens of the Mongolian People's Republic have the right to leisure, which is ensured by the reduction of the working day of manual and non-manual workers to eight or seven hours, the institution of annual leave on full pay for manual and non-manual workers, and the provision of theatres, clubs, sanatoria and rest-homes serving the working people."

Article 69 of the Labour Act states that: "Every person employed for remuneration who has worked uninterruptedly for eleven and a half months shall be granted ordinary leave amounting to two weeks a year. A person holding two or more posts simultaneously who has worked for eleven and a half months shall be granted ordinary leave amounting to two weeks a year.

"The categories of working people entitled to three weeks' or one month's leave shall be determined by the Central Council of Trade Unions and approved by the Council of Ministers.

"The entitlement to ordinary leave of minors working for remuneration shall not be less than one month."

NOTE 1: The transfer of an employed person from one establishment or undertaking to another on the administration's orders or his transfer to an elective office, is not to be deemed to interrupt the qualifying period entitling the said person to regular leave.

NOTE 2: Temporary manual and non-manual workers, i.e. those employed for a period of less than six months, and seasonal workers are not entitled to regular leave.

Article 71 of the Labour Act states that: "Sick leave and pregnancy leave shall not be reckoned as regular leave."

Article 72 of the Labour Act provides that: "An employed person who was not granted regular leave and was not paid compensation in lieu thereof shall have his entitlement of leave in the following year extended by a corresponding period. Leave may not be withheld or accumulated during a period exceeding two years."

Article 73 of the Labour Act states: "The duration of the working day of manual and non-manual workers in State institutions and organizations on the eve of New Year's Day, of 1 May, the day of international solidarity, and of the anniversaries of the Mongolian People's Revolution and the October Socialist Revolution, as well as on Saturdays, shall be reduced by two hours — i.e., it shall amount to six hours for a full day's pay."

12. *Right to education*

Article 80 of the Constitution of the Mongolian People's Republic provides that: "Citizens of the Mongolian People's Republic have the right to education. This right is guaranteed by the provision of free education, the expansion of the system of general, specialized and secondary schools and of higher educational establishments, the provision of training for additional skills and qualifications, and the institution of a system of scholarships available to students attending specialized secondary schools and higher educational establishments."

MOROCCO

NOTE[1]

1. Decree No. 2-57-0571, of 19 Zu'lhijjah 1376 (17 July 1957), on industrial associations, authorized the General Secretary of the Government to object to the formation of an industrial association within three months of the deposit of the association's rules. This decree has been rescinded by a decree of 16 Rabia II 1380 (8 October 1960), and as a consequence complete trade-union freedom is guaranteed in Morocco.

2. Since the entry into force of Dahir No. 1-57-076, of 16 Ramadan 1376 (17 April 1957), on collective agreements,[2] many establishments have concluded such agreements. Thirty-three agreements have been deposited with the Ministry of Labour thus far. They serve to improve, *inter alia*, the conditions of employment and work of the workers concerned by ensuring them better treatment than that prescribed as a minimum in the labour legislation.

3. Dahir No. 1-59-148, of 30 Jumada II 1379 (31 December 1959), establishing a system of social security,[3] amended and supplemented by dahir No. 1-60-104 of 30 Zu'lhijjah 1379 (25 June 1960) and dahir No. 1-60-256 of 16 Rabia I 1380 (8 September 1960). Decree No. 2-60-319, of 30 Muharram 1380 (25 July 1960), concerning the benefits payable by the National Social Security Fund, published in the *Bulletin officiel* of 5 August 1960. Decree No. 2-60-313, of 11 Safar 1380 (5 August 1960), on the affiliation of employers and the enrolment of wage-earners in the National Social Security Fund, published in the *Bulletin officiel* of 12 August 1960. These decrees deal with matters covered by article 22 of the Universal Declaration of Human Rights (the right of everyone to social security).

4. Decree No. 2-61-046, of 29 Zu'Lkadah 1380 (15 May 1961), establishing an institute of political studies, and decree No. 2-60-661, of 30 Rabia I 1381 (11 September 1961), establishing an institute of sociology. The object of these two decrees is to ensure to everyone the enjoyment of the right to education embodied in article 26 of the Universal Declaration of Human Rights.

5. Dahir No. 1-61-205, of 1 Safar 1381 (15 July 1961), on Rural Development (later "National Development"), and dahir No. 1-60-106, of 26 Jumada II 1381 (4 December 1961), on the organization of agricultural credit. These two dahirs deal with the principle stated in article 25 (1) of the Universal Declaration that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.

6. Dahir No. 1-61-082, of 14 Jumada I 1381 (24 October 1961), amending the dahir of 5 Safar 1365 (9 January 1946) on annual holidays with pay. This dahir is concerned with the principle stated in article 24 of the Universal Declaration that everyone has the right to periodic holidays with pay.

7. Dahir No. 1-61-223, of 14 Jumada I 1381 (24 October 1961), amending and supplementing annex 1 of the dahir of 28 Jumada II 1337 (31 March 1919) promulgating a Maritime Commerce Code, published in the *Bulletin officiel* No. 2558, of 3 March 1961, p. 1600. This dahir comes under the heading of international co-operation referred to in article 22 of the Universal Declaration. Inasmuch as dahir No. 1-58-078 of 19 Ramadan 1377 (9 April 1958) ratified the conventions adopted by the International Labour Conference, including Convention 22 concerning Seamen's Articles of Agreement, it was necessary to add to the Commerce Code new provisions relating to the Convention. The dahir of 24 October 1961 is designed to safeguard the rights of a category of workers whose contractual obligations are henceforth made subject to a number of formal requirements which give practical force to the idea of protective economic public policy. Thus, article 1 of the dahir requires that seamen's articles of agreement shall specify whether the agreement is concluded for an indeterminate period or for a single voyage.

[1] Information furnished by the Government of Morocco.

[2] See *Yearbook on Human Rights for 1957*, p. 185.

[3] See *Yearbook on Human Rights for 1959*, p. 208.

DAHIR No. 1-61-167 OF 17 ZU'LHIJJAH 1380 (2 JUNE 1961) ENACTING THE FUNDAMENTAL LAW OF THE KINGDOM OF MOROCCO[1]

Art. 1. Morocco is an Arab and Moslem kingdom. It is in the process of establishing a constitutional monarchy which shall enable the Nation, through representative institutions, to choose the appropriate means for the achievement of the principal national objectives.

[1] Published in the *Bulletin Officiel* No. 2357, of 9 June 1961, and transmitted by the Government of Morocco.

Art. 2. Islam is the official religion of the State.

Art. 3. Arabic is the official and national language of the country.

. . .

Art. 7. Moroccans are equal. They have the same rights and the same duties.

Art. 8. The State shall protect the dignity of the individual and guarantee the exercise of public and private freedoms.

Art. 9. All Moroccans have the right to obtain justice.

The State shall ensure the enjoyment of this right by the separation of powers, the independence of the judiciary and all other democratic guarantees.

Art. 10. There is neither offence nor penalty except as provided under a law previously enacted. Penalties are personal.

Art. 11. The State shall protect all persons against abuse of authority, excess of authority, abuse of power and illegal exaction and deal severely with any threat to the institutional foundations of the kingdom.

Art. 12. The economic structures of the country shall have as their purpose the achievement of social justice, the expansion of production, the raising of the level of living and the Moroccanization of the natural wealth.

Art. 13. The State shall mobilize its nationals under plans already prepared or to be prepared with a view to the national organization of the country's economic development, population growth and the social advancement in accordance with a precise schedule of objectives and target dates.

Art. 14. The State shall provide education in accordance with national Arab and Islamic concepts and according to the requirements of the Nation, with regard to technical, vocational and scientific training.

Art. 15. So far as foreign relations are concerned, Morocco practices a policy of non-dependence, convinced that this is the best way of helping to safeguard world peace.

It proclaims its adherence to the Bandung principles and its loyalty to the League of Arab States, which it is striving to strengthen, and to the Charter of the United Nations.

Art. 16. Morocco is doing everything possible to implement the Charter of Casablanca and the resolutions adopted at the Casablanca Conference to promote the achievement of African unity and the campaign against racial discrimination and colonialism in all its forms.

Art. 17. This Fundamental Law shall enter into force on 17 Zu'lhijjah 1380 (2 June 1961).

NEPAL

NOTE[1]

On Jestha, 1915 B.E., the Representation of the People Act was promulgated. It provides for the organization of elections to the House of Representatives: the delimitation of constituencies, the qualifications of electors, the qualifications and disqualifications for membership of the House of Representatives, the preparation of electoral rolls, the conduct of elections and the determination of doubts and disputes arising out of, or in connection with, such elections.

Subject to the provisions of the Act, each male or female who has attained the age of 21 years is entitled to vote. No witness or other person is to be required to state for whom he has voted at an election. Doubts and disputes arising out of, or in connection with, an election are to be decided upon by the Election Tribunal. In some cases an appeal lies to the Supreme Court.

[1] Information furnished by the Government of Nepal.

NETHERLANDS

NOTE[1]

A. LEGISLATION

1. *Criminal Law and Criminal Procedure as Applicable to Juveniles*

The Acts of 9 November 1961 (*Statute Book* Nos. 402 and 403, 1961) introduced new provisions of criminal law and criminal procedure as applicable to juveniles, including the enforcement of the penalties and measures to be imposed by the judge.

One of the new provisions is that nobody may be prosecuted under criminal law for any act committed before attaining the age of twelve years.

The new laws continue the tradition of allowing freedom of action to private organizations and private individuals concerned with the welfare of children who have appeared before a criminal court.

2. *Compensation for Tenants in the Event of Expropriation of Business Premises*

The Act of 8 December 1961 (*Statute Book* No. 425, 1961) provides for a temporary measure to lapse on 1 January 1964, whereby, in the event of the expropriation of immovables used in the pursuance of business, the tenant is given a higher compensation than that usually granted to tenants in the event of expropriation. The compensation allowed to a tenant of business premises must not exceed the profits made by the business over the last three years or, if more advantageous for the tenant, the rental paid over the last eight years. Final legislation is in course of preparation.

3. *Right to Education*

The Scientific Education Act of 22 December 1960 (*Statute Book* No. 559, 1960) entered into force on 1 January 1961. This Act provides an entirely new legal basis for all scientific education, both public and private, with the exception of the scientific education at the State Agricultural University at Wageningen. The Higher Education Act of 1876 was thereby partly repealed. The Scientific Education Act introduces new university regulations to replace the existing ones, which date from 1921. The Act also lays down that 95 per cent of the expenditure on scientific education of the non-state universities and institutes of higher education (such as the Roman Catholic University at Nijmegen, the Economic University at Rotterdam and the Roman Catholic Economic University at Tilburg) will be borne by the State, on the condition that the education provided conforms to certain standards of good quality.

[1] Note furnished by the Government of the Netherlands.

B. JUDICIAL DECISIONS

1. *Freedom of Opinion and Expression*

On 18 April 1961 the Supreme Court of the Netherlands gave a decision relating to article 10 of the European Convention on Human Rights, which guarantees the right of freedom of expression.[2] The offence on which the proceedings were based was the offering for sale in the street of devotional pictures at a time when it is forbidden to offer anything for sale in the streets under article 8 of the Shop Hours Act of 1951. This article provides that it is forbidden to offer for sale or to sell wares in the street on Sundays, and on workdays before 5 a.m. and after 7 p.m. The Supreme Court was of the opinion that article 8 of the Shop Hours Act was not at variance with article 10 of the European Convention on Human Rights, since the restrictions imposed by the Shop Hours Act are called for by the exigencies of public order as referred to in paragraph 2 of article 10 of the European Convention. Among other things, the Supreme Court based itself on the consideration that the provisions of the Shop Hours Act, including article 8, have neither the purpose nor the effect of preventing the sale of writings expressing certain opinions but rather aim at preventing shopkeepers and other retailers from having their shops open or carrying on at all hours, which would be highly undesirable from a social point of view, since in this way these persons would be deprived of the hours of relaxation and recreation reasonably due to them.

2. On 23 May 1961, the Supreme Court ruled that the provisions of the Licensing Decree for Printing and Allied Trades, 1952, which prohibit the establishment of a book printing firm by those not in possession of a licence issued by the chamber of Commerce were at variance with article 7 of the Constitution which reads: "No person shall require previous permission to publish thoughts or feelings through the printing press, without prejudice to any person's responsibility under the law." The Supreme Court based itself on the same consideration as put forward in its decisions of 22 March 1960 and 29 November 1960 relating to similar cases.[3]

C. EXECUTIVE ORDERS

1. *Right to Medical Care and Necessary Social Services*

(*a*) The royal decree of 12 January 1961 (*Statute Book* No. 16) extends and amends the application of

[2] See *Yearbook on Human Rights for 1950*, p. 421.

[3] See *Yearbook on Human Rights for 1960*, p. 244.

the Labour Act of 1919. One of the provisions of the decree is the inclusion of municipal bathing and swimming establishments under the definition of "enterprise" in the Labour Act.

(*b*) The royal decree of 20 July 1961 (*Statute Book* No. 234) lays down rules concerning the composition, duties and working methods of an assistance and advisory board for industrial medicine within the framework of preventive medical care in factories and workshops.

(*c*) The royal decree of 20 July 1961 (*Statute Book* No. 235) lays down the requirements an industrial medical service will have to meet.

(*d*) The royal decree of 20 July 1961 (*Statute Book* No. 236) lays down that factories and workshops employing a staff of 750 or more workers shall have an industrial medical service.

(*e*) The caisson decree was amended by the royal decree of 25 July 1961 (*Statute Book* No. 221). The object of the amendment is to afford better guarantees against the incidence of caisson disease by improving the system used for leaving rooms where work has to be done under more than ordinary air pressure.

2. *Freedom of Opinion and Expression*

The royal decree of 18 September 1961 (*Statute Book* No. 294) repeals the Licensing Order for the Book-selling Trade, 1958. This decree was issued as a result of the judgement of the Supreme Court of 22 March 1960, holding the Licensing Order for the Book-selling Trade at variance with article 7 of the Netherlands Constitution.[1]

D. INTERNATIONAL INSTRUMENTS

1. *Stateless Persons and Refugees*

(*a*) The Convention of 28 September 1954 relating to the Status of Stateless Persons (*United Nations Treaty Series*, vol. 360, p. 130). The convention was approved for the entire kingdom by kingdom Act of 13 December 1961. It entered into force on 11 July 1962. The Netherlands has made two reservations. In the first place the Netherlands has reserved the right not to apply the provision of article 8 to stateless persons who at any time were nationals of an enemy country or of one regarded by the kingdom as such. Secondly the Netherlands has reserved the right, in connection with the provision of Article 26, to restrict, for reasons of public order, the settlement of certain stateless persons or groups of stateless persons.

(*b*) The agreement relating to refugee seamen of 23 November 1957 between the Governments of the Kingdom of Belgium, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the United Kingdom of Great Britain and Northern Ireland, the Kingdom of the Netherlands, the Kingdom of Norway and the Kingdom of Sweden (*Netherlands Treaty Series* 1958, No. 111). The agreement entered into force with respect to the Netherlands on 27 December 1961. It relates to refugee seamen who, because they are seafarers, are generally not lawfully staying in one of the States referred to in the convention relating to the status of refugees. The agreement imposes upon a contracting State the obligation to issue a travel document for refugees to a refugee seaman who has a certain tie with that State as defined in the agreement.

2. *Right to Freedom of Movement*

(*a*) The exchange of notes dated 21 February 1961, between the governments of the Netherlands and the United Kingdom of Great Britain and Northern Ireland, complementing the agreement of 1 April 1960 concerning the abolition of visas and the recognition of travel documents. The provisions contained in the notes entered into force on 15 March 1961 (*Netherlands Treaty Servies* 1962, No. 65).

(*b*) The exchange of notes, dated 7 April 1961, between the governments of the Netherlands and Chile concerning the abolition of visas. The agreement entered into force on 8 April 1961 (*Netherlands Treaty Series* 1962, No. 69).

(*c*) The agreement of 8 April 1961 between the Kingdom of the Netherlands and the Spanish State concerning the migration, recruitment and employment of Spanish workers in the Netherlands. The agreement entered into force on 8 April 1961 (*Netherlands Treaty Series* 1961, No. 59).

(*d*) The exchange of notes, dated 30 September 1961 between the governments of the Netherlands and Bolivia concerning the reciprocal abolition of visas. The agreement entered into force on 10 October 1961.

3. *Right to Security in the Event of Old Age*

The agreement between the Kingdom of the Netherlands and the Federal Republic of Germany of 8 March 1961, on the application of the Netherlands legislation concerning general old-age pensions. The agreement entered into force with retroactive effect as from 1 January 1957 (*Netherlands Treaty Series* 1961, No. 33).

[1] See *Yearbook on Human Rights for 1960*, p. 244.

NEW ZEALAND

NOTE[1]

I. LEGISLATION

1. *Births and Deaths Registration Amendment Act, 1961*

This enactment revokes prior legislation providing for the separate registration of Maori births and deaths. All births and deaths in New Zealand are now registered in the same manner.

2. *Child Welfare Amendment Act, 1961*

The Children's Court has been given power—

(1) After the expiry of twelve months from the making of a supervision or committal order, to review the order and to cancel it;

(2) In making a supervision order, to order that it be followed by probation when the child attains the age of seventeen years;

(3) To substitute a term of probation for a supervision order made previously in respect of a child who has committed an offence;

Traffic offences committed by a child are now dealt with in the Magistrate's Court and not the Children's Court, except where the penalty is imprisonment.

3. *Crimes Act, 1961*

The new enactment was a revision of the Criminal Code, which went back with little alteration to 1893. Many changes in the law, both substantive and procedural, were made and in the following notes the more important changes relating directly or indirectly to human rights are dealt with.

Capital Punishment: The death sentence for murder and piracy has been replaced by a mandatory sentence of life imprisonment.

Penalties: These have been revised, with the general object of placing more emphasis on the seriousness of offences against the person as compared with those against property rights.

Infanticide: Infanticide is taken out of the class of murder or manslaughter and becomes a separate offence with a smaller penalty. It applies to a woman who kills her child while the balance of her mind is disturbed as a result of childbirth.

Infancy: The Act changed from seven to ten the minimum age at which a child can be convicted of an offence. A new provision was enacted that this provision shall not affect the guilt or otherwise of another party to the offence, for example an aider and abettor.

Husband and Wife: A husband and wife are now capable of conspiring together. A husband does not now become an accessory after the fact for receiving, comforting, or assisting his wife, or his wife and any other person who has been a party to the offence, to escape. This new provision gives the same protection to the husband as was enjoyed by the wife.

Slave Dealing: The provisions relating to slave dealing have been extended to give express effect to the provisions of the United Nations supplementary convention of 1956 on the abolition of slavery and practices similar to slavery.

Indecent Acts: The new law is extended to include acts done within the view of a public place; and the word "place" is given an extended meaning. A new defence — that the accused had reasonable grounds for believing he would not be observed — has been made available.

Rape: The crime of rape has been extended to cases where consent of complainant is extorted by fear of death or grievous bodily injury to a third party.

Sexual Crimes: (*a*) It is now an offence for a man to have or attempt to have sexual intercourse with a girl under twenty-one years of age who is under his care or protection and is living with him as a member of his family, unless she is his wife or *de facto* wife.

(*b*) It is also an offence for a man to induce a woman or girl to have sexual intercourse with him by a wilfully false representation that they are married.

(*c*) It is an offence for a woman of twenty-one years of age or more to do an indecent act with a girl under the age of sixteen years, or to induce or permit any such girl to do an indecent act with her.

Crimes against Public Welfare: The keeping or managing of premises used as a place of resort for the commission of indecent acts between males is a new crime, as also is living on the earnings of or soliciting for any prostitute. The definition of a brothel has been extended to include a place used by only one woman for the purposes of prostitution.

Procuring: It is no longer an ingredient of the offence of procuring that the procuring should be by fraudulent means nor that the woman or girl is under the age of twenty-one years. Agreeing or offering to procure has also been made a crime.

[1] Information furnished by the Government of New Zealand.

Crimes against the Person: Parent or guardian has been substituted for "head of a family" as the person whose duty it is to provide necessaries for any child under sixteen years of age. A person unlawfully abandoning or exposing a child under the age of six years now commits an offence. Under the previous law the age was two years.

Suicide: Killing another person in pursuance of a suicide pact is manslaughter — not murder. Attempted suicide is no longer a crime. (Special provisions relating to attempted suicide were included in the Health Amendment Act 1960 and referred to in the last year's note.)

Feigned Marriage: This is a new crime. It deals with going through a form of marriage, other than a bigamous one, which the accused knew would be void. A shorter term of imprisonment is provided for if the other person also knew that the marriage would be void.

Kidnapping: Kidnapping has become a separate offence.

Abduction of Child under sixteen: This section of the Act re-enacted the previous law, but with the age reduced from eighteen to sixteen.

Receiving: Under the old law to prove guilty knowledge, evidence could be given of previous convictions for offences involving fraud or dishonesty. Under the new law evidence of previous convictions is limited to convictions for receiving.

Arrest: A constable who has power to arrest anyone without warrant may enter premises to arrest any person if that person was found committing an offence punishable by death or imprisonment or if the constable suspects that anyone has committed such an offence on the premises. He may also enter on premises to prevent the commission of an offence likely to cause immediate and serious injury to any person or property.

Procedure: The grand jury has been abolished. The power which the grand jury had to reject an indictment has been given to a judge of the Supreme Court.

Appeals: Any person found guilty by a supreme court of contempt of court committed in the face of that court or of any other court may appeal to the court of appeal against any sentence imposed in respect of his contempt. In respect of any other criminal contempt, a right of appeal to the court of appeal lies against conviction and sentence.

4. *Criminal Justice Amendment Act, 1961*

A sentence of preventive detention may now be imposed on a second conviction for rape.

Driving licences may now be cancelled when the holder of such licence commits certain offences (not being traffic offences) while driving or in charge of a motor vehicle. The provisions were transferred from the Police Offences Amendment Act, 1960 and enlarged.

5. *Indecent Publications Amendment Act, 1961*

Sound recordings have been included in the definition of indecent publications.

6. *Juries Amendment Act, 1961*

This Act reduces in one minor respect the discrimination between the sexes as regards their qualifications to serve as jurors. The minimum age for women jurors has been lowered to twenty-one years and the maximum age extended to sixty-five years. These are the same ages as for men.

7. *Mental Health Amendment Act, 1961*

A person who has been found unfit to plead on the ground of insanity has the right to apply to a judge, who can order him to be brought up for trial or direct that the charge be dismissed.

8. *Penal Institutions Amendment Act, 1961*

An inmate may now be required to undergo medical examination and treatment in certain cases.

II. REGULATIONS

Penal Institutions Regulations, 1961

The above regulations effect the following important changes in the administration of prisons and borstals.

1. Bread and water diet as a punishment has been replaced with a more nutritious diet, while still preserving the element of punishment. There are two forms of restricted diet; under the first an inmate will not work, whereas under the second he will. In both cases, the medical officer has to certify that the inmate is fit for work.

2. The right to shoot an escaping prisoner after he has been called upon to desist has been omitted. The right of an officer to use force is now in conformity with the provisions as to force in the United Nations Minimum Rules for the Treatment of Prisoners.

III. JUDICIAL DECISIONS

1. *Hawke's Bay Raw Milk Producers Co-operative Co. Ltd.* v. *New Zealand Milk Board* [1961] N.Z.L.R. 218

The court of appeal reaffirmed the principle that a delegated power of legislation must be exercised strictly in accordance with the powers creating it and, in the absence of express provisions permitting further delegation, cannot be so delegated.

2. *In re Lolita* [1961] N.Z.L.R. 541

Under the Indecent Publications Act, 1954, a publication that "unduly emphasizes matters of sex, horror, crime, cruelty or violence" is *prima facie* indecent. In the *Lolita* case, the court of appeal held in a majority decision that unduly emphasizing

matters of sex means dealing with matters of sex in a manner which offends against the standards of the community in which the book or document in question is published or distributed.

Of the majority judgements one expressed the view that even a publication which does not unduly emphasize matters of sex may nevertheless be held to be indecent if it tends to deprave or corrupt persons whose minds are open to immoral influence and that it is sufficient to satisfy this test of depravation or corruption that it might have this effect on young persons. The other suggested that before indecency could be established there must be both an undue emphasis on matters of sex and a tendency to deprave or corrupt.

It is clear from the majority judgements that a book may be held indecent as tending to deprave or corrupt, although it may have this effect only on adolescents if adolescents are at liberty to read the book.

IV. INTERNATIONAL INSTRUMENTS

1. *Medical Examination of Young Persons (Sea) Convention, 1921, adopted by the International Labour Conference at Geneva on 11 November 1921 (No. 16), as modified by the Final Articles Revision Convention, 1946*

New Zealand instrument or ratification was deposited on 5 December 1961. It came in force for New Zealand on 5 December 1961. The instrument of ratification was accompanied by a declaration that the convention does not apply to the Cook Islands (including Niue) and the Tokelau Islands.

2. *Certification of Able Seamen Convention, 1946, adopted by the International Labour Conference at Seattle on 29 June 1946 (No. 74), as modified by the Final Articles Revision Convention, 1946*

New Zealand instrument of ratification was deposited on 5 December 1961. It came in force for New Zealand on 5 December 1962. The instrument of ratification was accompanied by a declaration that the convention does not apply to the Cook Islands (including Niue) and the Tokelau Islands.

NICARAGUA

RADIO AND TELEVISION CODE

DECREE No. 523, OF 13 AUGUST 1960[1]

Title I

FUNDAMENTAL PRINCIPLES

Single Chapter

Art. 1. The sovereignty of the nation over its territory, air space and stratosphere includes direct dominion over the medium through which electromagnetic waves are transmitted. This dominion is inalienable and imprescriptible (arts. 5 and 6 of the Constitution). Consequently, all wireless stations are subject at all times to control and regulation by the State.

Art. 2. The space channels referred to in the preceding article may be used as vehicles of information and expression for the broadcasting of news, ideas and pictures, only under licence or permit issued by the Executive Power under the terms of this Act.

. . .

Art. 4. Radio and television constitute an activity of public interest and, as such, shall be protected and overseen by the State with a view to ensuring the proper fulfilment of their social task.

Art. 5. Radio and television have the social task of helping generally to improve the tone of community life, and in particular to raise the cultural level of the country. To that end, they shall endeavour through their transmissions:

I. To affirm respect for the principles of social morality, for human dignity and for the ties of the family;

II. To eschew influences calculated to harm or disrupt harmonious development of children and young persons;

III. To preserve the national characteristics, the customs and traditions of the country and the purity of the language, and to extól the values of Nicaraguan nationality;

IV. To promote and disseminate social guidance in the interest of the public good;

V. To strengthen democratic convictions and international friendship and co-operation.

Title II

JURISDICTION AND COMPETENCE

Single Chapter

Art. 6. Jurisdiction in all matters pertaining to radio and television is vested in the Executive Power, which shall exercise it through the Ministry of the Interior and the various bodies specified in this Act.

The Ministry of the Interior

Art. 7. It shall be the responsibility of the Ministry of the Interior, through the appropriate organs:

I. To ensure that radio and television transmissions do not disturb the public order and the public peace, do not provoke the commission of any offence and do not prejudice the rights of third parties, and that they observe the bounds of respect for private life, personal dignity and morality;

II. To exercise the other powers conferred upon it by the relevant laws.

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Title V

PROGRAMMES

Single Chapter

Art. 44. The right of information and expression through radio and television is free and shall be exercised by stations authorized in conformity with the Constitution and the laws.

Art. 45. Stations, of whatever kind, shall be required to transmit free of charge and as a matter of priority:

I. Bulletins relating to the security or defence of the national territory or to the maintenance of the public order, or announcing measures designed to prevent or remedy any public disaster. So far as possible, such bulletins shall occupy not more than fifteen minutes of reading time and shall be broadcast within twenty-four hours of their receipt, unless their importance causes the authorities to designate a specific hour;

II. Messages, or any notice, relating to ships or aircraft in distress and calling for assistance.

Art. 46. All stations shall be required to form a hook-up for the purpose of transmitting information deemed by the Ministry of the Interior to be of outstanding national importance. Nevertheless, the stations shall in no event incur responsibility towards a third party who suffers injury thereby.

Art. 47. The transmission of the following shall be prohibited:

(*a*) News, messages, or propaganda of any kind contrary to the peace and security of the State, the public order or the good name of the country;

[1] Published in *La Gaceta*, vol. LXIV, No. 188, of 18 August 1960.

(*b*) False reports liable to disturb the public order or to cause injury to third parties;

(*c*) Attacks on international harmony, private life, personal honour and personal interests;

(*d*) Marxist propaganda concerning the abolition of private property, or militant atheism, and political injunctions dictated by international communism;

(*e*) Incitement to violation of the Constitution or laws of the State, or subversive attacks upon the republican and democratic system of government;

(*f*) Incitement to repudiate the authorities or to demand the dismissal of any public official, the release of any prisoner, the punishment of a delinquent or any similar measure;

(*g*) Apologias of violence or crime, and programmes which are pornographic or contrary to public morality;

(*h*) False distress signals or distress calls;

(*i*) Incitement to the commission of any offence, particularly offences referred to in title II of the Criminal Code;

(*j*) Propaganda in any way encouraging strikes which have political objectives, which have been declared illegal or which provide incitement to disorder;

(*k*) News or comments which jeopardize the international or economic policy of the State or are liable to cause commercial panic.

Art. 48. Programmes sponsored by a foreign Government, a foreign cultural group or an international organization of which Nicaragua is not a member shall be transmitted only by prior permission of the Ministry of the Interior.

Art. 49. Broadcasting enterprises shall not disseminate or make use of messages, news or information which are not intended for the public at large and which are received through the medium of radio apparatus.

Art. 50. Commercial advertisements transmitted by radio and television shall conform to the following principles:

I. Publicity shall not be given to unlawful organizations;

II. Upon being cautioned by the appropriate authority, a station shall cease to transmit advertisements for industrial or commercial products or activities which in any way deceive or are harmful to the public by reason of exaggerated or false statements concerning their uses, applications or properties;

III. The transmission of entertainment programmes and commercial announcements recorded abroad, on disc or on tape, shall be prohibited.

Art. 51. In advertising beverages with an alcoholic content in excess of 20°, commercial broadcasting stations shall refrain from any exaggeration and shall not combine or alternate such advertisements with information designed to improve health and the national diet. Minors shall not be employed in the broadcasting of such advertisements; such beverages, when advertised, shall not be consumed or appear to be consumed in the sight of the audience, and words indicating that the speaker intends to consume them shall not be used.

Art. 52. Lotteries, raffles and other enterprises of chance shall be advertised or announced only when they have been approved in advance by the National Assistance and Social Security Board.

Art. 53. The promotion or endorsement of appeals for money or other articles which are not sponsored by social welfare institutions or philanthropic societies duly recognized or publicly operating for such purposes shall be prohibited, except in special cases involving a specified objective and a specified limit to contributions, which shall be remitted by the donors directly to the beneficiaries or to a person nominated by the beneficiaries.

Art. 54. Commercial programmes involving competitions, or questions and answers and similar contests that are not purely artistic or cultural, in which prizes are offered, must be authorized and supervised by the Ministry of the Interior with a view to protecting the good faith of competitors and the public.

Art. 55. Broadcasting stations shall, in their transmissions, use the national language. In special cases, the Ministry of the Interior may authorize the use of other languages, provided that the transmission is followed by a version in Spanish, in full or summarized form, as the Ministry may decide.

Art. 56. In any tests or trial transmissions made by stations, and during the course of the programmes, the letters forming the call-sign of the station, followed by the name of the place at which the station is established, shall be spoken in Spanish at intervals of not more than thirty minutes.

Art. 57. In radio reports, the source of the information and the name of the speaker shall be stated, and steps shall be taken to avoid creating alarm or panic among the public.

Art. 58. The following also constitute offences under this Act:

I. Any substantial alteration, by speakers, of the texts of bulletins or reports officially supplied by the Government for transmission; likewise, the broadcasting of texts of announcements or commercial advertisements which require prior approval;

II. The commencement of transmissions without prior technical inspection of the installations;

III. Any other action of commission or omission which violates this Act.

Art. 59. Radio or television broadcasting enterprises shall not be owned or managed by persons engaging in communist activities or supporting similar ideologies, or belonging to international

political parties, unless such party is sponsored by the Central American Union.

Art. 60. All radio or television broadcasting enterprises shall be required to retain, for fifteen days after the date of broadcasting, the original scripts used in their transmissions. If the programmes have not been written or recorded in advance, they shall be recorded during transmission and shall be retained for the period stated above. The archives of radio and television broadcasting enterprises may be examined at any time by order of the Ministry of the Interior or of the National Radio and Television Control Board.

Art. 61. In the event of international conflict, civil commotion, riots or other acts which disturb the public order, the police authorities may, as a precautionary measure, enter a station for the purpose of preventing violations of this Act.

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Title VIII

Inspection and Supervision

Single Chapter

Art. 66. The National Radio and Television Control Board may make such visits of inspection to stations and studios as it deems appropriate.

Art. 67. Visits of inspection shall be made during the hours of operation of the station and in the presence of the licensee or permit-holder or of one of his employees.

The results of such visits shall be strictly confidential and shall be communicated, on the same confidential basis, only to the Ministry of the Interior.

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Title XI

Amateur Radio Stations

Single Chapter

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Art. 70. Owners of amateur radio stations shall submit a report to the National Radio and Television Control Board annually and at such other times as the latter may specify.

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Final Provisions

Art. 73. This Act shall enter into force upon publication in the official journal, *La Gaceta.*

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NIGER

ACT No. 61-27 OF 15 JULY 1961 INSTITUTING A PENAL CODE[1]

BOOK I. — GENERAL PRINCIPLES OF PENAL LAW

PRELIMINARY PROVISIONS

. . .

Art. 4. An offence (petty offence, correctional offence or crime) shall not render the agent liable to penalties other than those provided for by law at the time the act was committed.

TITLE I

PENALTIES IN CRIMINAL AND CORRECTIONAL MATTERS, AND THEIR EFFECTS

Art. 6. The penalties in correctional matters are:

. . .

(3) The temporary loss of certain civil, personal or family rights.

. . .

Art. 8. Any period of detention pending trial shall be deducted in its entirety from the term of the penalty imposed by the sentence of the court.

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Chapter I

PENALTIES IN CRIMINAL MATTERS

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Art. 14. If a woman under sentence of death states that she is pregnant, and this statement is found to be true, she shall not be executed until after child-birth.

. . .

Art. 19. A penalty of imprisonment in criminal matters shall entail a declaration of disability, civic degradation, publication of the sentence and restriction of movement.

Art. 20. A sentenced offender who has been declared under disability shall be deprived of his civil rights for the duration of his sentence. A guardian and deputy guardian shall be appointed to manage and administer his estate, in the manner prescribed by law. After the offender has served his sentence, his estate shall be returned to him, and the guardian shall render him an account of his administration.

During the entire term of his sentence, the offender shall not be allowed to receive any sum, any advance or any part whatsoever of his income.

Art. 21. Civic degradation shall take effect as from the date on which the sentence becomes final or, in the case of a judgement by default, the date on which an extract of the sentence is posted up.

Civic degradation shall consist of:

(1) The dismissal and exclusion of the offender from every public function, employment or office;

(2) Deprivation of the right to vote, to be elected and to stand for election and in general of all civil and political rights, as well as the right to wear any decoration;

(3) Disqualification from acting as a sworn expert, from witnessing legal instruments and from testifying in court otherwise than for the sole purpose of supplying information;

(4) Disqualification for membership of any family council, and from acting as a guardian, trustee, deputy guardian or legal administrator, save in respect of one's own children and subject to the express approval of the family;

(5) Deprivation of the right to bear arms, to keep a school or to teach or be employed in any educational establishment as a professor, teacher or supervisor.

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Chapter II

PENALTIES IN CORRECTIONAL MATTERS

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Art. 25. The courts, in dealing with correctional matters and in the cases provided by law, may prohibit in whole or in part, for a period of not less than two nor more than ten years, the exercise of the civil, personal and family rights enumerated in article 21.

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Chapter III

PENALTIES AND OTHER SANCTIONS APPLICABLE TO CRIMES AND OFFENCES

Section I

Restriction of Movement

Art. 26. Restriction of movement shall consist in prohibiting a sentenced offender from frequenting certain places.

It shall, in addition, entail supervisory measures.

In correctional matters, its duration shall be from one to ten years.

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Chapter IV

EFFECTS OF CRIMINAL AND CORRECTIONAL PENALTIES ON ELECTORAL RIGHTS

Art. 38. Registration on the electoral roll shall automatically be barred or cancelled, and the right

[1] Text published in the *Journal Officiel de la République du Niger*, 28th year, special issue No. 7, 15 November 1961.

to stand for election shall automatically be forfeited, by reason of:

A sentence imposed for the commission of a crime;

A sentence, whether or not suspended, to imprisonment for a term of more than two months, with or without the addition of a fine, for: theft, false pretences or fraudulent conversion; a correctional offence subject to the penalties for theft, false pretences or fraudulent conversion; misappropriation committed by a trustee of public funds; perjury; false certification; corruption and influence-peddling; or a sex offence;

Subject to the provisions of article 40, a sentence, not suspended, to imprisonment for a term of more than six months, or a suspended sentence to imprisonment for a term of more than one year, for a correctional offence other than those enumerated in the preceding sub-paragraph.

Art. 39. Subject to the provisions of article 40, registration on the electoral roll shall be automatically cancelled or barred, and the right to stand for election shall automatically be forfeited, for a period of five years by reason of a sentence, not suspended, to imprisonment for a term of not less than two nor more than six months, or a suspended sentence to imprisonment for a term of not less than six months nor more than one year, for a correctional offence referred to in article 38, third sub-paragraph, or by reason of a sentence, not suspended, imposing a fine of more than 200,000 francs for a correctional offence of any kind whatever.

However, in pronouncing the sentences referred to in the preceding paragraph, the courts may exempt an offender from such temporary loss of the right to vote and to be elected.

The aforementioned period of five years shall run from the date on which the sentence becomes final.

Art. 40. Registration on the electoral roll and the right to stand for election shall not be affected by:

A sentence imposed for a correctional offence which is punishable without proof of bad faith and is subject only to a fine.

TITLE II

RESPONSIBILITY AND DETERMINATION OF PENALTY

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Chapter II

DETERMINATION OF PENALTY

. . .

Section III

Multiple offences

Art. 55. If a person is convicted of several crimes or offences, the severest penalty shall alone be imposed.

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BOOK II. — CRIMES, OFFENCES AND THEIR PUNISHMENT

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TITLE II

CRIMES AND OFFENCES AGAINST THE CONSTITUTION AND PUBLIC ORDER

Chapter I

CRIMES AND OFFENCES OF A RACIALIST, REGIONALIST OR RELIGIOUS NATURE

Art. 102. Any act of racial or ethnic discrimination, any regionalist propaganda and any demonstration contrary to freedom of conscience and freedom of worship whereby discord among the citizens is apt to be aroused shall be punishable by imprisonment for a term of not less than one nor more than five years and by restriction of movement.

Where the act of racial or ethnic discrimination, the regionalist propaganda or the demonstration contrary to freedom of conscience or of worship has as its aim or consequence the commission of one of the crimes or offences against the security of the State or the territorial integrity of the republic, the perpetrator or instigator of the said act, propaganda or demonstration shall be prosecuted as an accomplice or accessory as the case may be.

Chapter II

CRIMES AND OFFENCES RELATING TO THE EXERCISE OF CIVIL RIGHTS

Art. 103. Where one or more citizens are prevented by a riot, acts of violence or threats from exercising their civil rights, each of the guilty parties shall be punished by imprisonment for a term of not less than six months nor more than two years and shall be deprived of his civil rights for a period of not less than five nor more than ten years.

. . .

Chapter III

CRIMES AND OFFENCES COMMITTED BY PUBLIC OFFICALS

Section I

Infringements of Liberty

Art. 108. Any public official, or any agent or servant of the Government, who orders to be done or does any act in abuse of authority or any act infringing the liberty of an individual or the civil rights of one or more citizens, or the Constitution, shall be punished by imprisonment for a term of one to five years and may in addition, as provided in article 25, be deprived of some or all of the rights specified in article 21.

If, however, he gives proof that he acted on the order of his superiors in a matter within their jurisdiction and was compelled by virtue of his subordinate status to follow such order, he shall be exempt

from the said penalty, which shall in this case be applied solely to the superiors who gave the order.

. . .

Section II

Abuse of Authority against Individuals

Art. 114. Any administrative or judicial officer or member of the police force who, acting in his official capacity, enters the dwelling of a citizen without his consent, otherwise than in the circumstances and in the manner prescribed by law, shall be punished by imprisonment for a term of three months to two years and by a fine of 10,000 to 100,000 francs, or by one of such penalties alone.

Art. 115. Any judge or court, or any administrator or administrative authority, who, under any pretext whatsoever, including the silence or obscurity of the law, denies to the parties the justice due to and requested by them, and who persists in such denial after a warning or order from his superiors, may be prosecuted and shall be punished by a fine of 10,000 to 100,000 francs and by disqualification from holding public office for a period of five to twenty years.

Art. 116. Any official or employee of the Government or of the Administration of Posts and Telecommunications who withholds, wilfully delays the forwarding or distribution of or opens any mail entrusted to the Administration of Posts and Telecommunications shall be punished by imprisonment for a term of three months to five years and by a fine of 10,000 to 100,000 francs.

The guilty party may in addition, as provided in article 25, be deprived of some or all of the rights specified in article 21.

Apart from the cases provided for in the first paragraph of this article, any person who in bad faith withholds or opens mail addressed to other persons shall be punished by imprisonment for a term of six days to one year and by a fine of 5,000 to 100,000 francs, or by one of such penalties alone, without prejudice to the penalties for theft if there is evidence that theft has been committed.

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Chapter V

CRIMES AND OFFENCES AGAINST CITIZENS DISCHARGING A PUBLIC FUNCTION

Section II

Insults

Art. 169. Any person who, by means of spoken words, gestures, threats, written matter or drawings which are not published, or by sending any objects, insults a public official or officer or a citizen discharging a public function, in the exercise or in connexion with the exercise of his functions, in such a way as to impugn his honour or his tactfulness shall be punished by imprisonment for a term of three to six months and by a fine of 10,000 to 100,000 francs, or by one of such penalties alone.

Art. 170. Any person who with the same intent as, and by any of the means, specified in the preceding article insults an administrative or judicial official or a juryman or in connexion with the exercise of his functions shall be punished by imprisonment for a term of three months to two years and by a fine of 10,000 to 100,000 francs, or by one of such penalties alone.

If the insult takes place in the course of proceedings in a court or tribunal, the penalty shall be imprisonment for a term of two to five years and a fine of 10,000 to 1,000,000 francs.

Art. 171. Any person who publicly, in speech or in writing, attempts to discredit an act or decision of a court in circumstances likely to impair the authority or independence of the judiciary shall be punished by imprisonment for a term of one to six months and by a fine of 50,000 to 500,000 francs, or by one of such penalties alone.

The same penalties shall be incurred by any person who, before judgement has become final, publishes comments intended to influence the testimony of witnesses or the decision of the court at either the preliminary investigation or the trial stage.

The court may, in addition, order its decision to be displayed or published as provided in article 25, paragraph 2, and article 22, paragraph 2.

The foregoing provisions may in no case be applied to purely technical comments or to spoken or written words designed to cause a sentence to be reviewed.

Art. 172. Where the offence referred to in the preceding article is committed through the medium of the Press, the editors or publishers shall, by the mere fact of publication, be liable as principals in the first degree to the penalties laid down in the said article.

In their absence, the author, and in the absence of the author, the printers, distributors and displayers, shall be prosecuted as principals in the first degree.

If the author is not prosecuted as a principal in the first degree, he shall be prosecuted as an accessory.

Any persons to whom article 49 could apply may be prosecuted as accessories in all cases.

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TITLE III

OFFENCES AGAINST PERSONS

Chapter I

DISTORTION OF TRUTH, AND DISCLOSURE

. . .

Section V

Disclosure of Secrets

Art. 221. Physicians, surgeons, pharmacists, midwives, nurses and other persons to whom secrets

have been entrusted by reason of their position or profession or of the temporary or permanent functions that they exercise, and who disclose secrets in cases other than those in which they are compelled or authorized by law to do so, shall be punished by imprisonment for a term of two months to one year and by a fine of 10,000 to 20,000 francs, or by one of such penalties alone.

Where, however, the aforesaid persons, not being required to disclose abortions considered by them to be criminal which have come to their knowledge in the exercise of their profession, do in fact disclose the same, they shall not thereby be liable to the penalties provided for in the preceding paragraph; if summoned to appear in court in connexion with a case of abortion, they may testify freely before the bench without incurring any penalty.

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Chapter VI

INFRINGEMENTS OF INDIVIDUAL LIBERTY

Section I

Arbitrary Arrest and Detention

Art. 265. Any person who arrests, imprisons or detains any person whatsoever without a warrant from the constituted authorities, except in cases in which the law prescribes the arrest of an accused person, shall be punished by imprisonment for a term of one to ten years.

. . .

Section II

Conveyance of the Liberty of Another Person

Art. 269. Any person who has given or taken another person in pawn for whatever reason shall be punished by imprisonment for a term of two months to two years and by a fine of 10,000 to 100,000 frans, or by one of such penalties alone

. . .

Section III

Violation of Domicile

Art. 271. Any person who gains entry into the dwelling of another person by resorting to threats or violence shall be punished by imprisonment for a term of three months to two years and by a fine of 10,000 to 100,000 francs, or by one of such penalties alone.

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TITLE IV

CRIMES AND OFFENCES AGAINST PROPERTY

Chapter IX

VIOLATION OF REGULATIONS CONCERNING TRADE

Section V

Infringement of Patent and Copyright

Art. 372. Any publication, in whole or in part, of written matter, musical compositions, drawings, paintings or any other printed or engraved object in violation of the laws and regulations concerning authors' property shall constitute the offence of infringement of copyright.

Any person who in Nigerian territory infringes the copyright on works published in Niger or abroad shall be punished by imprisonment for a term of fifteen days to six months and by a fine of 50,000 to 500,000 francs, or by one of such penalties alone.

The same penalties shall be incurred by any person who sells, exports or imports works in violation of copyright.

Art. 373. Any reproduction, performance or broadcasting by any means whatever of a work of the intellect in violation of the author's rights as defined and regulated by law shall also constitute an infringement of copyright.

Art. 374. Any violation of the right of the beneficiary of a patent, either through the manufacture of products or through the use of methods covered by the patent, shall constitute the offence of infringement of patent and shall be punishable by the penalties provided for in article 372.

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ACT No. 61-33 OF 14 AUGUST 1961 ESTABLISHING THE CODE OF PENAL PROCEDURE[1]

BOOK I

PROSECUTION AND EXAMINATION

. . .

Title II

INVESTIGATION

Chapter I

Flagrante Delicto Offences

Art. 48. A crime or a correctional offence is termed *flagrante delicto* if it is in the process of being committed or has just been committed. A crime or a correctional offence is also *flagrante delicto* if, within a very short time of the offence, the suspect is pursued by hue and cry or is found in possession of objects or bears traces or marks which give reason to believe that he has participated in the crime or offence.

Any crime or correctional offence which, even though not committed in the circumstances specified in the preceding paragraph, was committed in a house the head of which requests the Chief State Counsel or an officer of the criminal police to establish the facts shall be treated as a *flagrante delicto* offence.

[1] Text published in the *Journal officiel de la République du Niger*, 28th year, special number, No. 10, of 28 December 1961.

Any correctional offence, even of long standing, admitted by its author or authors in the presence of the Chief State Counsel or for which specific and concordant evidence has been received may also be subject to the procedure applicable to *flagrante delicto* offences.

. . .

Art. 51. If the nature of the crime is such that proof thereof may be acquired by the seizure of papers, documents or other objects in the possession of persons who appear to have participated in the crime or to hold documents or objects relating to the alleged acts, the officer of the criminal police shall proceed without delay to the dwelling of the said persons in order to undertake a search, of which he shall draw up a written report.

He alone, with the persons designated in article 52 and those whose assistance he may ask in application of article 55, shall have the right to examine the papers or documents before seizing them.

Nevertheless, he shall be under a duty to take all measures necessary to ensure that professional secrets and the rights of the defence are respected.

All seized objects and documents shall immediately be inventoried and placed under seal. If an inventory on the spot presents difficulties, however, they shall be placed under seal provisionally — until they are inventoried and finally sealed — in the presence of the persons who were present at the search according to the procedure laid down in article 52.

With the consent of the Chief State Counsel, the officer of the criminal police shall retain possession only of such seized objects and documents as are useful in establishing the truth.

Art. 52. Subject to the provision of the preceding article concerning respect for professional secrets and the rights of the defence, the operations prescribed by the said article shall be carried out in the presence of the person at whose dwelling the search is made.

If this is impossible, the officer of the criminal police shall be under a duty to invite him to appoint a representative of his choice; if he fails to do so, the officer of the criminal police shall select two witnesses — not persons under his administrative authority — whom he shall ask to give assistance to this end.

The written report of these operations, drawn up in the manner stated in article 60, shall be signed by the persons specified in this article; if they refuse to sign, mention of that fact shall be made in the report.

Art. 53. Any communication or disclosure, without the authorization of the defendant or his representatives or of the signatory or addressee of a document secured in a search, to a person not qualified by law to receive it shall be punishable by a fine of 30,000 to 300,000 francs and by imprisonment for a term of three months to three years.

Art. 54. Unless requested by a person in the house or unless an exception is provided by law, searches and house visits may not begin before 5 a.m. or after 9 p.m.

Art. 55. If it is necessary to proceed with inquiries which cannot be deferred, the officer of the criminal police shall ask the assistance of any qualified persons.

The persons thus called upon shall take an oath, in writing, to state their opinion on their honour and according to their conscience.

Art. 56. The officer of the criminal police may forbid any person to leave the site of the offence until his operations have been concluded.

Any person whose identity it appears necessary to establish during the judicial investigation must, at the request of the officer of the criminal police, co-operate in the operations required for that purpose.

Any infringement of the provisions of the preceding paragraphs shall be punishable by a penalty which may not exceed ten days' imprisonment and a fine of 50,000 francs.

Art. 57. The officer of the criminal police may summon and hear all persons who are able to furnish information on the facts.

The persons summoned by him shall be under a duty to appear and give evidence. If they do not comply with this obligation, notice of this fact shall be given to the Chief State Counsel, who may compel them to appear by means of the police force.

He shall draw up a written record of their statements. The persons who give evidence shall read the record themselves, may have their observations entered upon it, and shall sign it. If they state that they do not know how to read, the record shall be read to them by the officer of the criminal police before they sign it. If a person refuses to sign the record, mention of that fact shall be made therein.

Art. 58. The officer of the criminal police may call upon the services of an interpreter who is not less than twenty-one years of age.

If he is not under oath, the interpreter shall take an oath to translate faithfully the statements of the persons who give evidence. He shall sign the written record drawn up.

Art. 59. If for the purposes of the investigation the officer of the criminal police considers it necessary to keep one or more of the persons mentioned in article 56 and 57 at his disposal, he may not hold them for more than forty-eight hours.

If there is serious and concordant evidence calculated to result in the bringing of charges against any person, the officer of the criminal police must bring the person before the Chief State Counsel and may not keep him at his disposal for more than forty-eight hours, excluding the time required to bring him.

The time-limit of forty-eight hours laid down in the preceding paragraph may be extended by a further forty-eight hours by permission from the Chief State Counsel or the examining judge.

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Chapter II

Preliminary Investigation

. . .

Art. 70. Searches, house visits and seizures of material evidence may be made only with the express consent of the person in whose dwelling the operation takes place.

This consent must be given in a hand-written statement of the person concerned, or, if he does not know how to write, mention of that fact and of his consent shall be made in the written record.

The procedures laid down in articles 51 and 54 shall apply.

Art. 71. If, for the purposes of the investigation, the officer of the criminal police considers it necessary to keep at his disposal one or more persons against whom evidence of guilt exists, he may not hold them for more than forty-eight hours. After this time-limit has expired, he must release them or bring them before the Chief State Counsel.

The Chief State Counsel may, however, grant permission to prolong the period of surveillance for another forty-eight hours.

Title III

EXAMINING AUTHORITIES

Chapter I

Examining Judge:

Examining Authorities of First Instance

Section I. — *General Provisions*

Art. 72. The preliminary examination shall be mandatory for a crime. In the absence of special provisions, it shall be optional for a correctional offence. No preliminary examination may be held for a petty offence.

. . .

Section III. — *Visits, Searches and Seizures*

Art. 89. Searches shall be made in all the places where objects may be found, the discovery of which would be useful in establishing the truth.

Art. 90. If the search is made at the defendant's dwelling, the examining judge must comply with the provisions of articles 52 and 54.

Art. 91. If the search is made in the dwelling of a person other then the defendant, the person at whose dwelling it is to be made shall be invited to be present. If this person is absent or refuses to attend, the search shall be made in the presence of two of his relatives by blood or marriage who are present on the spot or, in the absence of such persons, in the presence of two witnesses.

The examining judge must comply with the provisions of article 52, second paragraph, and article 54.

Nevertheless, he shall be under a duty to take beforehand all measures necessary to ensure respect for professional secrets and the rights of the defence.

Art. 92. When it becomes necessary, during the preliminary investigation to search for documents, and subject to the requirements of the said investigation and, where applicable, to respect for the obligation stipulated in the third paragraph of the preceding article, only the examining judge or the officer of the criminal police delegated by him shall have the right to examine them before seizing them.

All objects and documents seized shall be immediately inventoried and placed under seal.

These seals may be opened and the documents examined only if the defendant assisted by his counsel is present or if they have been duly invited to attend. The third person at whose dwelling the seizure was made shall also be invited to be present at this operation.

The examining judge shall retain possession only of those seized objects and documents which are useful in establishing the truth or the communication of which would be likely to be prejudicial to the examination. If the requirements of the examination do not forbid it, the persons concerned may obtain at their expense, within the shortest possible time, copies or photocopies of the documents which are kept in official custody.

If the seizure is one of cash, gold bullion, securities or shares which do not have to be preserved in kind in order to establish the truth or to guarantee the rights of the parties, he may authorize the registrar to deposit them with the superintendent of records or his local representative.

Art. 93. Subject to the requirements of the judicial preliminary investigation, any communication or disclosure, without the authorization of the defendant or his representatives or of the signatory or addressee of a document secured in a search, to a person not qualified by law to receive it shall be punishable by a fine of 10,000 to 100,000 francs and by imprisonment for a term of two months to two years.

Art. 94. The defendant, the civil claimant or any person claiming to have a right to an object placed in the hands of justice may demand its restitution from the examining judge.

. . .

Section IV. — *Hearing of Witnesses*

Art. 96. The examining judge, by a bailiff or by a police officer, shall summon to appear before him all the persons whose testimony will in his view be useful. A copy of this summons shall be delivered to them.

Witnesses may also be summoned by simple letter, by registered letter or through the administrative channel; they may also appear voluntarily.

Art. 100. The examining judge responsible for a preliminary investigation, as well as judges and officers of the criminal police acting pursuant to a letter of request, may not, on pain of the judgement being declared null and void, hear as witnesses persons against whom there exists serious and concordant evidence of guilt, when such hearing would result in an evasion of the guarantees of defence.

. . .

Section V. — *Interrogations and Confrontations*

Art. 108. At the defendant's first appearance before the examining judge, the latter shall verify the identity of the defendant, inform him expressly of the acts he is alleged to have committed, and caution him that he is prepared to receive his statement immediately. Mention of this warning shall be made in the written record of the examination.

If the defendant makes statements, they shall immediately be received by the examining judge.

The judge shall notify the defendant of his right to select counsel from the roll of defence advocates registered in the Niger or in a State which has concluded a reciprocity agreement with the Niger.

A properly constituted civil claimant shall also have the right to the assistance of defence counsel from the time of his first hearing.

At the defendant's first appearance before the judge, the latter shall caution the defendant that he must inform him of all changes of address; the defendant must, when necessary, take up residence within the jurisdiction of the court.

. . .

Art. 110. The defendant under detention may communicate freely with his defence counsel immediately after his first appearance before the examining judge.

The examining judge shall have the right to order a prohibition on communications for a period of fifteen days. He may renew this prohibition, but only for a further period of fifteen days.

The prohibition on communications shall not in any event apply to the defendant's counsel.

. . .

Art. 112. Unless they expressly renounce that right, the defendant or the civil claimant may be heard or confronted only in the presence of their counsel or if the counsel have been duly invited to attend.

Defence counsel shall be invited by registered letter not later than two days before the interrogation.

The records of the proceedings must be placed at the disposal of counsel for the defendant not later than twenty-four hours before each interrogation. They must also be placed at the disposal of counsel for the civil claimant not later than twenty-four hours before any hearing of the latter.

The formalities specified by this article shall be required only when counsel resides or reside in the area where the examination is held.

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Section VI. — *Warrants and their Execution*

Art. 116. The examining judge may, according to the circumstances, issue a summons to appear, a warrant to compel attendance, an order for committal to prison or a warrant for arrest.

The purpose of the summons to appear is to call upon the defendant to appear before the judge at the date and hour indicated by such summons.

The warrant to compel attendance is the order given by the judge to the police force to bring the defendant before him immediately.

The order for committal to prison is the order given by the judge to the jail warden to receive and detain the defendant. This order also permits the defendant to be sought or transferred, when he has been previously notified of it.

The warrant for arrest is the order given to the police force to find the defendant and to bring him to the jail indicated in the warrant, where he will be received and detained.

. . .

Art. 120. Any defendant arrested pursuant to a warrant to compel attendance who is held in the jail in the area where the court sits for more than twenty-four hours without being interrogated shall be deemed to be arbitrarily detained.

. . .

Section VI. — *Detention pending Investigation or Trial*

Art. 131. Remand in custody is an exceptional measure. When an order therefor is made, the following rules must be observed.

Art. 132. If the offence charged is a correctional offence for which the maximum penalty prescribed by law is less than six months' imprisonment, a defendant domiciled in the Niger may not be detained for more than fifteen days after his first appearance before the examining judge, unless he had been previously sentenced to imprisonment for a crime or correctional offence under ordinary law.

Art. 133. In any case where it is not accorded *ipso jure*, provisional release may be ordered *ex officio* by the examining judge with the concurrence of the Chief State Counsel, provided that the defendant undertakes to appear immediately, whenever required, at any stage of the proceedings and to keep the examining judge informed of all his movements.

The Chief State Counsel may also request an order of provisional release at any time. The examining judge shall give his ruling within five days from the date of such requests.

The judges of the sections and the cantonal judges, acting as examining judges, may order the provisional

release of a defendant without the prior concurrence of the Chief State Counsel.

Art. 134. An application for provisional release, subject to the obligations laid down in the preceding article, may be made to the examining judge at any time by the defendant or his counsel.

. . .

Section XI. — *Orders concluding the Examination*

. . .

Art. 168. If the examining judge considers that the facts do not constitute a crime, a correctional offence or a petty offence, or if the author is still unknown, or if the evidence against the defendant is insufficient, he shall issue an order of *nolle prosequi.*

Defendants remanded in custody shall be released.

At the same time the examining judge shall rule on the restitution of the seized objects.

. . .

Art. 169. If the judge considers that the facts constitute a petty offence, he shall order the transfer of the proceedings to the Police Court and the defendant shall be released.

Art. 170. If the judge considers that the facts constitute a correctional offence, he shall order the transfer of the proceedings to the Correctional Court.

. . .

Art. 172. If the examining judge considers that the facts constitute a violation classified by law as a crime, he shall order that the file of the proceedings and a list of the material evidence be transmitted without delay by the Chief State Counsel to the State Counsel General at the Court of Appeal, to be dealt with in the manner indicated in the chapter on the chambre d'accusation.

. . .

Section XIII. — *Resumption of the Proceedings on the Basis of New Evidence*

Art. 180. The defendant with respect to whom the examining judge has issued a *nolle prosequi* may not thereafter be prosecuted for the same act, unless new evidence arises.

Art. 181. Statements of witnesses, documents and records which could not be submitted to the examining judge but which are calculated either to strengthen evidence that would have been found too weak, or to give fresh interpretations of the facts useful in establishing the truth, shall be deemed to be new evidence.

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Chapter II

The chambre d'accusation
Examining authorities of second instance

Section I. — *General Provisions*

. . .

Art. 205. If the chambre d'accusation considers that the facts do not constitute a crime, a correctional offence or a petty offence, or if the author is still unknown, or if the evidence against the defendant is insufficient, it shall declare a *nolle prosequi.*

Defendants remanded in custody shall be released.

In the judgement establishing the *nolle prosequi,* the chambre d'accusation shall rule on the restitution of the seized objects; it shall retain competence to rule on this restitution, if necessary, after the judgement of *nolle prosequi* has been issued.

Art. 206. If the chambre d'accusation considers that the facts constitute a correctional offence or a petty offence, it shall order the transfer of the proceedings, in the former case, to the Correctional Court and, in the latter case, to the Police Court.

Where the proceedings are transferred to the Correctional Court, if the offence is punishable by imprisonment, and subject to the provisions of article 132, the defendant under arrest shall remain in custody.

In the event of transfer to the Police Court, the defendant shall be released.

Art. 207. If the acts with which the defendants are charged constitute a violation classified by law as a crime, the chambre d'accusation shall commit the defendants for trial before the Assize Court.

It may also seize this court of related offences.

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BOOK II
TRIAL COURTS

Title I
ASSIZE COURT

. . .

Chapter IV
Preparation for the Assize Session.

Section I. — *Mandatory Acts*

. . .

Art. 262. The defendant shall then be invited to select counsel to assist him in his defence.

If the defendant does not select counsel, the president or his deputy shall appoint one for him *ex officio.*

This appointment shall be cancelled if the defendant subsequently selects counsel.

Art. 265. . . .

The defendant shall without interruption be able to communicate freely with his counsel.

. . .

Chapter VI
The Trial

Section I. — *General Provisions*

Art. 293. The trial shall be public, unless a public hearing is prejudicial to order or morals. In that event, the court shall so declare by a decision rendered in open court.

Nevertheless, the president may forbid minors, or some of them, access to the court room.

When the hearing has been ordered closed, the order shall apply to the pronouncing of decisions which may be made on the procedural questions referred to in article 303.

The judgement on the substance must always be pronounced in open court.

. . .

Art. 296. The employment of sound recording or broadcasting equipment, television or cinema cameras, or photographic equipment may be authorized by the president.

. . .

Section III. — *The Production and Discussion of the Evidence*

. . .

Art. 319. After the testimony of each witness, the president may put questions to the witnesses.

The ministère public, counsel for the defendant and the civil claimant, the defendant and the civil claimant shall have the same right, on the terms specified in article 299.

. . .

Art. 331. Where the defendant or one or more of the witnesses do not speak French adequately or it is necessary to translate a document submitted at the trial, the president shall appoint *ex officio* an interpreter who is not less than twenty-one years of age, and shall administer to him an oath to perform his duties faithfully.

. . .

Chapter VII

Judgement

. . .

Section II. — *Decision on the Public Prosecution*

. . .

Art. 343. No person legally acquitted may be arrested or arraigned again for the same acts, even under a different classification.

. . .

Title II

TRIAL OF CORRECTIONAL OFFENCES

Chapter I

Correctional Court

. . .

Section IV. — *Public Hearings and their Conduct*

Art. 386. Hearings shall be public.

Nevertheless, the Court may, by a decision rendered in open court in which it notes that a public hearing will be prejudicial to order or morals, order that the trial shall be closed.

When the hearing has been ordered closed, the order shall apply to the pronouncing of the separate decisions that may be made on procedural questions or exceptions as provided in article 445, paragraph 4.

The judgement on the substance must always be pronounced in open court.

. . .

Art. 389. The employment of sound recording or broadcasting equipment, television or cinema cameras, or photographic equipment may be authorized by the president.

. . .

Section V. — *The Trial*

First Paragraph. — Appearance of the Defendant

. . .

Art. 393. Where the defendant does not speak French adequately or it is necessary to translate a document submitted at the trial, and in the absence of an official interpreter, the president shall appoint *ex officio* an interpreter who is not less than twenty-one years of age, and shall administer to him an oath to perform his duties faithfully.

. . .

Art. 404. The defendant who appears shall have the right to assistance by a defence counsel.

. . .

Paragraph 4. — Discussion by the Parties

. . .

Art. 446. After the judicial examination has ended, the civil claimant shall be heard at his request; the ministère public shall deliver its address; the person civilly liable, if there is one, and the defendant shall submit their defence.

The civil claimant and the ministère public may reply. The defendant or his counsel shall always enjoy the right to speak last.

. . .

Title III

TRIAL OF PETTY OFFENCES

. . .

Chapter V

Judicial Examination before the Police Court

. . .

Art. 531. The provisions of articles 386 to 391, 392 to 394, shall be applicable to the procedure before the Police Court.

. . .

Art. 532. The rules laid down by articles 396 to 413 concerning the constitution of the civil claimant, by articles 414 to 443 relating to the submission of evidence subject to the provisions of article 533, by articles 444 to 447 concerning discussion by the parties, and by article 448 relating to the judgement shall also be applicable.

. . .

ACT No. 61-26 OF 12 JULY 1961 DETERMINING NIGER NATIONALITY[1]

TITLE I
GENERAL PROVISIONS

Art. 1. The law determines which persons possess Niger nationality at birth as their nationality of origin.

Niger nationality may be acquired or lost after birth by operation of law or pursuant to a decision of a public authority in accordance with the statutory procedure.

Art. 2. For the purpose of this Act majority is attained on the expiry of twenty-one years of age.

Art. 3. Provisions relating to nationality contained in duly ratified and published international treaties or agreements shall apply even if they conflict with the provisions of the municipal law of the Niger.

Art. 4. Change of nationality may in no case result from an international convention except in virtue of an express provision thereof.

Art. 5. Where under the terms of an international convention a change of nationality is contingent on an act of option, the form of that act shall be determined by the law of the contracting State in which the act is to be performed.

Art. 6. In the determination of the territory of the Republic of the Niger, modifications resulting from acts of the Niger public authorities and from international treaties shall at all times be taken into account.

TITLE II
ATTRIBUTION OF NIGER NATIONALITY AS NATIONALITY OF ORIGIN

Art. 7. Any person born in the Niger of an ascendant in the first degree who was himself born in the Niger shall be a Niger national.

A person who is habitually resident in the territory of the Republic of the Niger shall be presumed to fulfil these two conditions.

He may produce evidence to the contrary. The President of the Republic possesses the same right.

Art. 8. The provisions of article 7 shall not apply to children born in the Niger of diplomatic or consular agents of foreign nationality.

Art. 9. A new-born child of unknown parentage found in the Niger shall be a Niger national.

Nevertheless, he shall cease to be a Niger national if during his minority his filiation is proved with respect to an alien and under the national law of such alien he possesses the nationality of the latter.

Art. 10. The following persons shall be Niger nationals:

1. A legitimate child born of a Niger father;
2. A legitimate child born of a Niger mother and of a father who has no nationality or whose nationality is unknown;
3. A natural child in the case where the parent with respect to whom filiation is proved to exist in the first place is a national of the Niger;
4. A natural child, where the parent with respect to whom filiation is proved to exist in the second place is a national of the Niger and the other parent has no nationality or his nationality is unknown.

Art. 11. The following persons shall be nationals of the Niger, though they possess the right to renounce that status within the six months preceding their attainment of majority:

1. A legitimate child of a Niger mother and an alien father;
2. A natural child where the parent with respect to whom filiation is proved to exist in the second place is a Niger national and the other parent is an alien.

The renunciation provided for in this article shall be carried out by the signing of a declaration in the presence of the presiding judge of the civil court within whose jurisdiction the declarant resides.

If the declarant is abroad, the declaration shall be signed in the presence of the consular agents of the Niger.

The declaration shall be registered with the Ministry of Justice at the instance of the presiding judge of the civil court or of the consular agents concerned.

Art. 12. Birth or filiation shall affect the attribution of Niger nationality only if proved by a certificate of the civil registry or by a judgement.

Art. 13. A child who is or becomes a Niger national by virtue of the provisions of this Title shall be deemed to have been a Niger national at birth, even if the statutory requirements for the attribution of Niger nationality are not proved to be satisfied until after his birth.

Provided that in the last-mentioned the attribution of Niger nationality at birth shall not affect the validity of instruments executed by the person concerned or rights acquired by third parties in virtue of his apparent nationality.

TITLE III
METHODS OF ACQUIRING NIGER NATIONALITY

Section I
ACQUISITION OF NIGER NATIONALITY BY MARRIAGE

Art. 14. An alien woman who marries a Niger national shall acquire Niger nationality upon the celebration of the marriage:

[1] Text published in *Journal officiel*, 28th year, special number 5, of 31 August 1961, and communicated by the Government of the Republic of the Niger.

Provided that where under her national law she may retain her nationality she shall have the right, before celebration of the marriage, to decline Niger nationality.

If she is a minor, she may exercise that right without authorization.

The said right shall be exercised: in the presence of the presiding judge of the civil court within whose jurisdiction the marriage is to be celebrated, if the marriage is to be celebrated in the Niger; in the presence of the Niger consular authorities in the country concerned, if the marriage is to be celebrated abroad.

The declaration declining Niger nationality shall be registered with the Ministry of Justice at the instance of the presiding judge of the court or of the consular agents concerned.

Art. 15. The President of the republic may by decree bar the acquisition of Niger nationality by an alien woman for a period of one year, which shall run: where the marriage has been celebrated in the Niger, from the date of the marriage; where the marriage has been celebrated abroad, from the date on which the particulars of the marriage certificate are entered in the civil status records of the Niger consular agents in the country concerned.

Art. 16. If the President of the republic bars the acquisition of Niger nationality, the woman concerned shall be deemed never to have acquired Niger nationality:

Provided that, where the validity of instruments executed before the decree barring acquisition was made depends on the acquisition of Niger nationality by the woman, their validity may not be contested on the ground that she could not acquire that nationality.

Art. 17. A woman shall not acquire Niger nationality if her marriage, even if contracted in good faith, with a Niger national is annulled by an order of a Niger court or by an order having effect in the Niger:

Provided that where the validity of instruments executed before the court order annulling the marriage depends on the acquisition by the woman of Niger nationality, their validity may not be contested on the ground that she could not acquire that nationality.

Section II

Acquisition of Niger Nationality by Filiation

Art. 18. A natural child legitimated during his minority shall acquire Niger nationality if his father is a Niger national.

A child who has been legitimated by adoption shall acquire Niger nationality if his adoptive father is a Niger national.

Art. 19. The following persons shall acquire Niger nationality by right on the same grounds as their parents, provided that their filiation is proved in conformity with the law or with custom:

(1) A legitimate or legitimated minor child whose father or widowed mother acquires Niger nationality;

(2) A natural minor child, where the parent with respect to whom filiation was first proved to exist or the surviving parent, as the case may be, acquires Niger nationality.

These provisions shall not apply to a married minor.

Section III

Acquisition of Niger Nationality by Declaration

Art. 20. A minor born in the Niger of alien parents may claim Niger nationality by making a declaration on the date thereof he has been resident in the Niger for at least five years.

Art. 21. A minor eighteen years of age may make his declaration without authorization.

A minor over sixteen but under eighteen years of age may claim Niger nationality only if authorized to do so by whichever of his parents exercises parental authority or, in default of such parent, by his guardian.

In the event of divorce or legal separation, the said authorization shall be given by whichever parent has custody of the child. If custody has been given to a third party, the authorization shall be granted by that party if approved beforehand by the civil court of the place of residence of the minor, sitting in chambers.

Art. 22. If the child is under sixteen years of age, a person specified in the second and third paragraphs of the foregoing article may declare, as the child's legal representative, that he claims Niger nationality for the child; provided that if he is an alien, such legal representative shall have resided in the Niger for at least five years.

Art. 23. A child adopted by a Niger national may at any time before he comes of age claim Niger nationality by making a declaration in accordance with the provisions of articles 20, 21 and 22. The same shall apply in the case of a child who has been for at least five years in the charge of a public or private child-welfare institution or to a child who has been given a home in the Niger and brought up there by a Niger national.

Art. 24. Niger nationality shall be acquired on the date on which the declaration was signed.

Art. 25. Within six months from the date of signature of the declaration, the President of the republic may by decree bar acquisition of Niger nationality on any ground whatsoever.

Section IV

ACQUISITION OF NIGER NATIONALITY BY DECISION OF A PUBLIC AUTHORITY

Art. 26. Niger nationality is acquired by decision of a public authority where naturalization or recovery of nationality is granted to an alien on his application.

I. *Naturalization*

Art. 27. Niger nationality shall be granted by decree after inquiry on the application of the person concerned. The decree shall be made in the year following such application. If it is not, the application shall be deemed to have been rejected. A decree granting naturalization shall not include a statement of grounds.

There shall be no appeal from the formal or implicit rejection of an application for naturalization.

Art. 28. A person may not be naturalized unless he has had his habitual residence in the Niger for at least five years when the application is submitted.

The period of residence shall be waived in the case of a person who is married to a Niger woman or has rendered outstanding services to the Niger.

Art. 29. A person may not be naturalized unless he is of good conduct and moral character or, having been sentenced to deprivation of liberty for an offence against the ordinary law, he has regained his civic rights. Convictions abroad need not be considered.

Art. 30. A minor may not apply for naturalization until he has reached the age of eighteen years. He may do so without authorization.

Art. 31. A person acquiring Niger nationality shall from the date of such acquisition enjoy all the rights attaching to that nationality.

. . . .

II. *Recovery of Nationality*

Art. 33. Recovery of Niger nationality shall be granted by decree, after inquiry.

Art. 34. Nationality may be recovered at any age and without any residence requirement:

Provided that a person may not recover Niger nationality unless he is resident in the Niger at the time of recovery.

Art. 35. A person applying for recovery of nationality shall prove that he formerly possessed Niger nationality.

Art. 36. A person who has been deprived of Niger nationality under article 42 on the ground of a conviction may not recover it unless his full rights have been restored by the court.

Art. 37. A person to whom the preceding article applies may recover his nationality if he has rendered outstanding services to the Niger or his recovery of nationality would be of exceptional value to the Niger.

TITLE IV

LOSS AND DEPRIVATION OF NIGER NATIONALITY

Art. 38. A Niger national of full age who voluntarily acquires a foreign nationality shall lose Niger nationality.

Art. 39. A Niger national, even if a minor, who possesses a foreign nationality may on application be authorized to relinquish Niger nationality. Such authorization shall be granted by decree.

Art. 40. A Niger woman who marries an alien shall lose Niger nationality only if she makes an express declaration to that effect. The declaration shall be valid only if she may acquire her husband's nationality. In that case, article 14 shall apply.

Art. 41. A Niger national who holds a post in a public service of a foreign State or in a foreign army, and retains the same though directed to resign it by the Government of the Niger, shall lose Niger nationality.

Six months after notification of such direction, the national shall be declared by decree to have lost Niger nationality if during that period he has failed to resign the said post, unless it is proved that he was totally unable to do so, in which case the six months' period shall run only from the date on which the impediment was removed. He shall be released from his allegiance to the Niger on the date of the decree.

Art. 42. During the period of ten years following the acquisition of Niger nationality a person may be deprived thereof if:

1. He is convicted of an act constituting a crime or offence [délit] against the security of the State;

2. He is convicted of an act constituting a crime and sentenced therefor to a term of more than five years' imprisonment;

3. He has done, to the advantage of a foreign State, acts incompatible with the nationality and detrimental to the interests of the Niger.

Deprivation of nationality shall be pronounced by decree and may not be extended to minor children unless it is also extended to the wife.

. . .

TITLE VII

TRANSITIONAL PROVISIONS

Art. 53. The following persons may opt for Niger nationality if they do not fulfil the conditions laid down in article 1:

1. Members of the Government;
2. Deputies to the National Assembly and municipal councillors.

Such option shall be exercised within a period of one month from the entry into force of this Act by a declaration made in the presence of the presiding judge of the civil court within whose jurisdiction the declarant has his residence.

Such declaration shall be transmitted by the presiding judge of the court to the Ministry of Justice, which shall register it.

Art. 54. Any person who on the date of the entry into force of this Act: (1) has for more than ten years held a public office or carried on a liberal profession governed by regulations of the Niger State; (2) is married to a Niger woman, may opt for Niger nationality.

Art. 55. Any person born in one of the States which have emerged from the former A.O.F. and A.E.F. groups of territories of French West Africa and French Equatorial Africa, in Togo, Cameroun or Madagascar who, on the date of the entry into force of this Act, is habitually resident in the Niger, may opt for Niger nationality.

Art. 56. The options provided for in the two preceding articles shall be exercised within a period of three months from the entry into force of this Act.

They shall be exercised by a declaration made in the presence of the presiding judge of the civil court within whose jurisdiction the declarant has his residence.

In order to be valid, such declaration must be registered with the Ministry of Justice.

Within a period of one year from the exercise of such option, the President of the Republic may by decree bar the acquisition of Niger nationality on the ground that the person concerned has lost civic rights, or has failed to assimilate.

Such decision, which shall be communicated to the person concerned not later than one month after the period of one year prescribed in the foregoing paragraph, shall not be subject to appeal except on the ground of failure to observe the time-limits.

Art. 57. A person who acquired Niger nationality either through the automatic operation of this Act or through the options for which it provides shall be deemed to have possessed Niger nationality at birth.

This provision shall not affect the validity of instruments executed by the person concerned or rights acquired on the basis of earlier legislation.

Art. 58. For the purposes of articles 10 and 11 of this Act, an ascendant in the first degree who died before the promulgation of this Act but satisfied when alive the requirements of article 7 shall be deemed to have been a Niger national.

Art. 59. An alien woman who has married a Niger national and wishes to retain her own nationality where permitted to do so under her national law shall have the right to make a declaration to that effect during a period of one year from the entry into force of this Act.

Such declaration shall be made and received in the manner prescribed in article 14.

Art. 60. A Niger woman who has married an alien and wishes to acquire his nationality may make a declaration to that effect within the time-limit prescribed in the foregoing article.

Art. 61. The time-limit of one year within which the President of the Republic may bar the acquisition of Niger nationality on any ground whatsoever shall be suspended until 1 January 1963.

. . .

NIGERIA

OBSCENE PUBLICATIONS ACT, 1961

ACT No. 51 OF 1961, ASSENTED TO ON 29 SEPTEMBER 1961[1]

3. (1) An article shall be deemed to be obscene for the purposes of this Act if its effect taken as a whole is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant cricumstances, to read, see or hear the matter contained or embodied in it.

(2) The provisions of this section shall extend to any article of two or more distinct items the effect of any one of which is such as to tend to deprave and corrupt; but nothing in this section shall apply to exhibitions in private houses to which the public are not admitted or to anything done in the course of television or sound broadcasting.

4. (1) Subject to the provisions of this Act, any person who, whether for gain or not, distributes or projects any article deemed to be obscene for the purposes of this Act, commits an offence punishable on conviction by a fine not exceeding two hundred pounds or by imprisonment for a term not exceeding three years or by both.

(2) 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) In any proceedings against a person under this section the question whether an article is obscene shall be determined without regard to any publication by another person unless it could reasonably have been expected that the publication by the other person would follow from publication by the person charged.

(4) No prosecution for an offence against this section shall be commenced more than two years after the commission of the offence.

[Section 5 deals with the power of search and seizure.]

6. (1) No person shall be convicted of an offence against this Act, and no order for forfeiture shall be made 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.

. . .

[1] *Supplement to Official Gazette Extraordinary* No. 71, vol. 48, of 5 October 1961, part A. On 13 March 1963 the Government of Nigeria indicated that this Act applied only to the Federal Territory of Lagos.

CHILDREN AND YOUNG PERSONS (HARMFUL PUBLICATIONS) ACT, 1961

ACT No. 52 OF 1961, ASSENTED TO ON 29 SEPTEMBER 1961[1]

2. . . .

(2) This Act applies to any book or magazine which is of a kind likely to fall into the hands of children or young persons and consists wholly or mainly of stories told in pictures (with or without the addition of written matter), being stories portraying —

(*a*) The commission of crimes; or

(*b*) Acts of violence or cruelty; or

(*c*) Incidents of a repulsive or horrible nature,

in such a way that the work as a whole would tend to corrupt a child or young person into whose hands it might fall.

3. No person shall import any book or magazine to which this Act applies or any plate prepared for the purpose of printing copies of any such book or magazine or any photographic film prepared for that purpose.

4. (1) Any person who prints, publishes, sells or lets on hire any book or magazine to which this Act applies, or has any such book or magazine in his possession for the purpose of selling the book or magazine or letting the book or magazine on hire, shall be guilty of an offence and liable, on summary conviction, to imprisonment for a term of six months or to a fine of one hundred pounds, or to both.

(2) It shall be a defence for any person charged under this section to prove that he had not examined the contents of the book or magazine and had no

[1] *Supplement to Official Gazette Extraordinary* No. 71, vol. 48, of 5 October 1961, part A. On 13 March 1963 the Government of Nigeria indicated that this Act applied only to the Federal Territory of Lagos.

reasonable cause to suspect that the book or magazine was one to which this Act applies.

(3) A prosecution for an offence under this section shall not be instituted except by, or with the consent of, a law officer.

[Section 5 of the Act deals with the power to search for and dispose of works and articles used for publishing them.]

NORWAY

NOTE[1]

A. LEGISLATION

1. *Act of 3 March 1961 (No. 1), regarding the extradition of offenders to Denmark, Finland, Iceland and Sweden*

This Act was promulgated in co-operation with the other Nordic countries and, in the main, it corresponds to similar laws in force in Denmark, Finland, Iceland and Sweden (Swedish Act of 5 June 1959; Danish Act of 5 February 1960; Finnish Act of 3 June 1960 and Icelandic Act of 14 March 1962). These Acts replace the former extradition treaties between the Nordic countries. In Norway the 1961 Act will replace the provisions of the General Extradition Act of 13 June 1908 as far as the above-mentioned countries are concerned. The foundation for a special arrangement between the Nordic countries is based on the extensive degree of similarity in the administration of justice as practised in all of them.

There are two particularly important differences between the 1961 Act and the General Extradition Act of 1908; the extradition of Norwegian subjects and the extradition of political offenders.

According to the 1908 Act, Norwegian subjects could not be extradited. In contrast, the 1961 Act does permit the extradition of Norwegian subjects under certain conditions. The possibility of extraditing Norwegian subjects is not, however, as extensive as the possibility of extraditing persons who are not subjects of the Nordic countries. Norwegian subjects may in no case be extradited for political offences. Furthermore, a Norwegian subject may not be extradited if the offence in question was committed wholly in Norway; extradition proceedings can, however, be instituted in cases where the offence alleged constituted a direct contribution to one committed outside the borders of Norway or in cases where the petition for extradition also covers a punishable act committed outside the borders of that country. In addition, the condition for extradition is that the person concerned was, for at least two years prior to the offence, resident in the country petitioning for his extradition. But even if this condition is not fulfilled, extradition may still take place if the offence is of so serious a character that it would, according to Norwegian legislation, lead to a more severe punishment than four years' imprisonment.

The Act of 1908 stipulated that a person may not be extradited for political offences. The 1961 Act does not contain such a general stipulation and extradition to the other Nordic countries for political offences can be effected. There is a condition, however, that the offence in question, or a similar offence, is punishable according to Norwegian legislation, and there is no inescapable obligation on the part of the country petitioned to consent to extradition (see below). Furthermore, as mentioned above, extradition will not be effected at all if the case concerns a Norwegian subject.

In other respects also the conditions for extradition, pursuant to the 1961 Act, are far less restrictive than the provisions of the General Extradition Act of 1908. With the exception of certain groups of punishable offences, the 1908 Act required that the offence for which extradition is requested, or a similar offence committed in Norway, should entail more severe punishment, according to the General Civilian Criminal Code, than one year's imprisonment. The 1961 Act, however, restricts the condition to more severe punishment than fines, in accordance with the legislation of the country petitioning for extradition.

An important innovation, as compared with former legislation, is the fact that according to the 1961 Act the Norwegian authorities are not *obliged* to comply with the petition for extradition, even though the conditions described by the Act exist. Extradition may be denied without any reason therefor being given. It is however, generally assumed that, unless special reasons in an individual case preclude extradition, a petition for extradition will be complied with if the conditions prescribed by the Act are fulfilled.

Unless the person in question consents in court to extradition or has confessed to having committed the offence for which extradition has been requested, the basis for extradition must be either a condemnatory verdict or a court decision showing that, in the opinion of the court, there are reasonable grounds to presume that the person is truly guilty of the offence. The method of treatment of petitions for extradition has also been simplified as compared with the Extradition Act of 1908. Whereas that Act required that petitions for extradition should always be forwarded through diplomatic channels and instructed the Ministry of Justice to make a decision in each individual case, the 1961 Act permits direct contact between the police and prosecuting authorities of the respective Nordic countries and extradition may, as a rule, be effected without involving the Ministry, provided that the person in

[1] Note furnished by the Government of Norway.

question has agreed to extradition. If he had not, his case must be referred to the Ministry of Justice for final decision. The person whose extradition has been requested has the right to demand a verdict by the examining court as to whether the conditions prescribed by the Act exist. He has also the right to be assigned a public defence counsel if either he or the prosecuting authorities should so request.

2. *Act of 7 April 1961 (No. 1), amending the Act of 26 April 1957, regarding prepayment of maintenance contributions for rearing and upbringing*

In accordance with this amendment prepayment of maintenance contributions for rearing and upbringing may also be made in cases where the contribution is stipulated in the legislation of a foreign state, provided its authorities are able to produce proof of the fact that the contribution is open to claim in that state. Formerly the payment of contributions, on the basis of maintenance decisions made in a foreign state, could only take place if Norway and that state had signed an agreement with regard to prepayment of maintenance contributions. The new amendment has eliminated this condition, but a basic condition is that at least one of the parents is a Norwegian subject or a foreign refugee.

3. *Act of 28 April 1961 (No. 2), regarding care of the mentally deranged*

This Act replaces the Act of 17 August 1848, regarding the care and treatment of the mentally deranged. Particular stress is put on the effort to guarantee full legal rights in cases of internment in a psychiatric institution. A focal question during the preparation of the Act was that of the re-evaluation by a higher authority of decisions regarding compulsory internment in a psychiatric institution, or retention in such an institution. In the first instance the decision, in accordance with the provisions of the Act, is to be made by the chief physician of the institution concerned. The patient, his next of kin, or the authority which has requested the internment may refer the case to the controlling commission. The commission, which is appointed by the ministry for a period of six years, consists of a judge, who acts as chairman, a physician and two other members. With a view to securing all the necessary information and guaranteeing that the patient's interests are well taken care of, the Act makes detailed provisions regarding the treatment of such cases. In accordance with general legal principles the decision of the controlling commission may be brought before the usual courts in order that the application of the Act and the treatment of the case may be tried and verified. The new Act also aims at further improvement in the arrangements for the care of the mentally deranged and at the creation of more stringent control of institutions in which the mentally deranged are cared for.

4. *Act of 12 May 1961 (No. 2), regarding property rights in scientific, literary and artistic works*

This Act was drawn up in co-operation with the other Nordic States and replaces the Act of 6 June 1930 on scientific, literary or artistic works.

A person who has created a scientific, literary or artistic work has the property rights therein. The Act covers scientific, literary or artistic works of any kind irrespective of the method or form of expression used. Photographic pictures are not covered by this Act; neither does it protect legal texts, administrative regulations, judicial or court decisions or other public documents.

Within the limits stipulated by this Act, property rights give the owner the sole right to dispose of a scientific, literary or artistic work by making copies of it and making the work available to the general public in its original form and shape or in a modified form, translated or adapted, in any other literary or artistic form, or by means of other techniques. Transposal of a work to an instrument which can reproduce it is, for the purpose of this Act, tantamount to producing a copy of the work. A scientific, literary or artistic opus is considered to have been made available to the general public if it is shown or produced outside private premises, if it is offered for sale, or distributed in any other manner.

When a scientific, literary or artistic work is made available to the public, the name of the author is to be stated in accordance with proper usage. If another person has the right to alter a scientific, literary or artistic work, or to make it available to the public, the alterations must not be made in a manner prejudicial to the author's scientific, literary or artistic reputation, or to his individuality, or prejudicial to the reputation or the individuality of the work. The author may not waive the right, mentioned above, to have his name stated in his work unless the use of the work is limited by its nature and dimension.

The author may not deny other persons the use of his work for the creation of new and independent works. The property rights in the new work are not restricted by the property rights in the work which has been used. If a work is translated, adapted, or transferred to another literary or artistic form, the property rights in the new work devolve on the person who has carried out its translation or adaptation. That person may not, however, dispose of the work in such a way as to prejudice the property rights in the original. If a composite creation is achieved by joining together a number of scientific, literary or artistic works, its creator has the property rights therein, but his rights shall in no way restrict the property rights in the individual works of which the composite item consists. If there are two or more authors of one single opus and it cannot be separated so as to constitute independent parts, the right of property shall devolve on all the authors jointly.

The Act defines a number of limitations of the right of property. Provided this is not done with a view to financial gain, single copies of a work which has been made available to the public may be produced for private use. The right to engage other persons in the production of copies is limited, however, to certain groups of scientific, literary or artistic works, and copying an architectural work for the construction of a building is not permitted. Furthermore, a disseminated scientific, literary or artistic work may, irrespective of property rights, be quoted from, in such manner as is compatible with proper usage, and to the extent necessary for the purpose of the context. With the same limitation, works which have been made available to the public may be reproduced in connection with the text of critical or scientific treatises. Articles on current religious, political or economic questions may be reproduced in newspapers or periodicals, unless reprinting is explicitly prohibited. The Act also contains limitations of property rights with regard to the use of scientific, literary or artistic works in divine services, education, archives, libraries, broadcasting, etc.

The property rights in a scientific, literary or artistic work may be transferred, wholly or in part. The transfer, however, does not accord the right to alter the work, unless an explicit agreement to that effect is made. Neither may property rights be transferred to other persons without the permission of the author, unless the rights belong to a business or to a department of a business and are transferred together with the business or department. If an agreement regarding the property rights in a scientific, literary or artistic work is incompatible with proper usage or leads to obviously unreasonable results, a claim may be filed to alter the agreement.

On the death of the author the provisions regarding inheritance, joint marital estate, and the right of the surviving spouse to retain possession of an undivided estate also come into effect regarding the property rights in scientific, literary or artistic works. The author can, however, by will and testament give instructions, with binding effect on his surviving spouse and heirs, as to the exploitation of his property rights.

An author's property rights as regards scientific, literary or artistic works cannot be made the object of distraint or any other form of coercive measures by creditors.

The Act contains special regulations regarding agreements for the production of scientific, literary or artistic works, agreements with publishers and agreements for filming.

Property rights continue during the life time of the author and for fifty years after the end of the year of his death.

The Act also contains certain provisions regarding the protection of rights other than author's property rights. Amongst other things, protection is given to press reports, to gramophone records and other sound recordings, and to the work of performing artists.

Finally, with regard to the scope of the Act, its provisions come into immediate effect for scientific, literary or artistic works created by Norwegian subjects, by persons permanently resident in Norway, or by stateless persons or refugees habitually resident in this country. Protection is also given to scientific, literary or artistic works first published in this country, or published here within thirty days after being first published in a foreign country. Moreover, the King may, on the basis of reciprocity, decide that the provisions of this Act are to apply wholly or partly to scientific, literary or artistic works created by a foreign author, or to scientific, literary or artistic works which are protected in other countries.

5. *Act of 9 June 1961 (No. 8), concerning amendments to section 135 of the General Civilian Criminal Code of 22 May 1902*

This Act introduced a new provision into the General Civilian Criminal Code applying to persons who deride, or incite hatred or contempt towards a given group of people characterized by their religious faith, race or origin, or who threaten such a group, or disseminate false accusations against it.

Offences of this type are punishable by fines or imprisonment for a period not exceeding one year. Co-operation in or abetting such offences is similarly punishable. This regulation is mainly aimed at the prevention of grosser forms of antisemitic activity.

B. JUDICIAL DECISIONS

1. *Verdict of the Supreme Court of 13 April 1961*

The case was brought before the Supreme Court by a group of civilian workers (conscientious objectors) with the assertion that the State had no right to use a civilian workers' camp for military purposes. The camp was mainly built by civilian workers during their term of public service which, for them, took the place of conscripted military service. The case was based on an interpretation of the Act of 17 June 1937 (No. 10), section 3. The first and second paragraphs of this section read as follows:

"Enrolled civilian workers shall carry out civilian work for the public good to the extent provided for by the present Act.

"Civilian work described in this Act shall have no connection with military institutions or concerns, and shall be carried out under control of civilian leaders. The gains obtained by the work shall devolve on the Public Treasury".

The Supreme Court unanimously supported the decision of the City Court, stating that the transfer of the civilian workers' camp to military purposes was in this particular case not in contravention of the Act. The Supreme Court agreed that the provision

referred to not only constituted a limitation of the type of work which could be imposed upon the civilian workers — judged on the basis of the situation at the time of the performance of the work — but also to a certain extent was an obstacle to the State's subsequent disposal of the results of the work for military purposes. Under changed conditions, however, a disposal of this kind could be justifiable. During the appraisal of the case it was stressed that the Act concerning civilian workers constituted exceptional legislation for the benefit of a restricted group of persons, and that on this ground it was unjust to make claims that *imperative* reasons must be present before a transfer to military purposes could take place. Furthermore, it was stressed that the demand for a civilian workers' camp of that size had been reduced, and that the employment of the camp for military purposes appeared to be a highly practical solution because of conditions which had materialized subsequent to the construction of the camp which had no connection with the work carried out by the civilian workers. It was emphasized that a special situation had arisen, and that the probability of a similar situation arising in the future was so small that the civilian workers need not anticipate it.

2. *Decision of the Supreme Court of 16 December 1961*

A dentist was fined the sum of Kr. 2,000 for having refused to serve in the public dental service, made compulsory by the provisional Act of 21 June 1956 (No. 11), concerning compulsory civil service for dentists. The provisional Act aims at relieving the acute shortage of dentists, particularly in certain parts of the country, by imposing upon dentists who, on the strength of examinations passed in Norway or abroad, have acquired the right to practice in Norway, the duty to perform remunerable service for a period of eighteen months (previously two years) in the public dental care organization. The dentist in this case maintained that the Act should be repealed because it was in contravention to the spirit and the principles of the Constitution, and was contrary to the European Convention on Human Rights of 4 November 1950, article 4, which prohibits forced or compulsory labour. His contention was not sustained. With regard to his reference to the Convention on Human Rights the first voting judge — supported by the remaining judges of the court — made the following statement:

"In my opinion it is doubtful whether the Convention's ban on the imposition of 'forced or compulsory labour' can be given such comprehensive interpretation as also to include the duty of public service of a kind discussed in this case. In this instance it is a question of well paid service of limited duration in the person's own profession and in direct continuation of the person's professional education and training. Even though an imposition of this kind in some cases may be contrary to the immediate interests of the person in question, in my opinion it is quite clear that this order cannot rightfully be characterized as an encroachment on, or a violation of, any human rights."

C. INTERNATIONAL AGREEMENTS

Norway has not, in the course of 1961, made any international agreements of interest to human rights, outside of the United Nations, the specialized agencies of the United Nations and the Council of Europe.

PAKISTAN

NOTE[1]

1. The Government of Pakistan had appointed a Commission on Marriage and Family Laws in August 1955, which submitted its report in March 1960. In order to give effect to certain recommendations of the Commission the President of Pakistan promulgated on 2 March, 1961 the Muslim Family Laws Ordinance, 1961, which provides as follows:

(*a*) It grants the right of succession *per stirpes* to the children of a predeceased child;

(*b*) It provides for the compulsory registration of every marriage solemnized under Muslim law;

(*c*) It places restrictions on the contracting of subsequent marriage by a man during the continuance of a previous marriage without the permission of the Arbitration Council;

(*d*) It invalidates the pronouncement of *talaq* as vehicle of immediate divorce and makes it operative only at a subsequent time and upon certain conditions;

(*e*) It provides for conciliation of conjugal disputes through an arbitration council; and

(*f*) It raises the minimum age of marriage for girls from fourteen years to sixteen years.

2. Relevant extracts from the ordinance follow:

6. *Polygamy.* — (1) No man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this ordinance.

(2) An application for permission under sub-section 1 shall be submitted to the chairman in the prescribed manner, together with the prescribed fee, and shall state the reasons for the proposed marriage, and whether the consent of the existing wife or wives has been obtained thereto.

(3) On receipt of the application under subsection 2, the chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such conditions, if any, as may be deemed fit, the permission applied for.

(4) In deciding the application, the Arbitration Council shall record its reasons for the decision, and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision, in the case of West Pakistan, to the collector and, in the case of East Pakistan, to the sub-divisional officer concerned, and his decision shall be final and shall not be called in question in any court.

(5) Any man who contracts another marriage without the permission of the Arbitration Council shall —

(*a*) Pay immediately the entire amount of the dower, whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and

(*b*) On conviction upon complaint be punishable with simple imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

7. *Talaq.* — (1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever contravenes the provisions of sub-section 1 shall be punishable with simple imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both.

(3) Save as provided in sub-section 5, a talaq, unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under sub-section 1 is delivered to the chairman.

(4) Within thirty days of the receipt of notice under sub-section 1, the chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the period mentioned in sub-section 2 or the pregnancy, whichever be later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by talaq effective under this section from re-marrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective.

8. *Dissolution of marriage otherwise than by talaq.* — Where the right to divorce has been duly delegated

[1] Note furnished by the Government of Pakistan.

to the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than by talaq, the provisions of section 7 shall, *mutatis mutandis*, and so far as applicable, apply.

9. *Maintenance.* — (1) If any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives may in addition to seeking any other legal remedy available apply to the chairman who shall constitute an Arbitration Council to determine the matter, and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.

(2) A husband or wife may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision of the certificate, in the case of West Pakistan, to the Collector and, in the case of East Pakistan, to the Sub-Divisional Officer concerned and his decision shall be final and shall not be called in question in any court.

(3) Any amount payable under sub-section 1 or 2, if not paid in due time, shall be recoverable as arrears of land revenue.

10. *Dower.* — Where no details about the mode of payment of dower are specified in the nikah nama, or the marriage contract, the entire amount of the dower shall be presumed to be payable on demand.

PARAGUAY

NOTE

1. Article 1 of Act No. 704, recognizing the political rights of women, of 5 July 1961, provided that: "Women shall have the same political rights and obligations as men".

2. Act No. 729, of 31 August 1961, approved a Labour Code.

PERU

ACT No. 13683, OF 25 AUGUST 1961

(On workers' holidays with pay)[1]

Art. 1. Workers shall be entiled annually to thirty consecutive days' holiday with pay.

Art. 2. Annual entitlement to holidays is acquired upon the completion of a minimum of 260 days' work or upon having received forty weeks' pay.

If the work schedule of an enterprise is based on a four- or five-day week or is temporarily suspended by decision of the employer, the attendance requirements shall be deemed to be fulfilled if the unjustified absences of the worker do not exceed ten during the course of any one year.

Art. 3. By agreement between the worker and the employer, an equivalent number of days' wages may be paid in lieu of not more than twenty days' holidays;

Art. 4. If an employment contract expires without the holiday entitlement having been used or if, during the term of the contract, compensatory cash payments are made in lieu of holidays, the daily wage paid during the last fortnight shall serve as the basis for such compensation.

Art. 5. In the case of irregular and temporary work, a worker shall be entitled to holidays in proportion to the time he has worked, provided he has worked for the minimum period specified in the Regulations or agreed upon in collective labour contracts or agreements designed to cover special situations.

Art. 6. Within sixty days of the promulgation of this Act, the Executive shall establish regulations to govern its enforcement.

Art. 7. To the extent that they are so, any Act or other provisions that may be inconsistent with this Act are hereby repealed.

[1] Text furnished by the Government of Peru.

PHILIPPINES

HUMAN RIGHTS DEVELOPMENTS IN THE PHILIPPINES DURING 1960 AND 1961[1]

I. LEGISLATIVE ENACTMENTS

1. *Article 29 (2) of the Universal Declaration of Human Rights*

Republic Act No. 1888, otherwise known as the "Anti-graft and Corrupt Practices Act", which declares it the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of public officers and private persons which constitute graft and corrupt practices or which may lead thereto.

2. *Article 25 (2) of the Universal Declaration*

Republic Act No. 2644, regulating the training and practice of midwives.

II. EXECUTIVE ORDERS AND PROCLAMATIONS

1. *Article 23 (1) of the Universal Declaration*

Proclamation No. 737, calling a national conference of representatives of employers and labour organizations on 11-13 May 1961.

2. *Article 25 (1) of the Universal Declaration*

Executive order No. 386, s. 1960, creating a Productivity Commission and defining its powers and duties.

Proclamation No. 668, authorizing the Elks Cerebral Palsy, Inc. to conduct a national fund-raising campaign.

Proclamation No. 672, declaring the period from 13-19 June 1960, as National Health Week.

Proclamation No. 691, authorizing the Philippine Tuberculosis Society, Inc. to conduct a national fund-raising and educational campaign from 19 August to 30 September 1960.

Proclamation No. 713, proclaiming the existence of a state of national calamity in the cities of Manila, Quezon, etc. and the provinces of Rizal, Bulacan, etc.

Proclamation No. 785, fixing a maximum price for rice and corn and requiring all retailers to observe it.

Proclamation No. 6, s. 1962, adopting a programme to stabilize the price of palay, rice and corn, and creating a Presidential Rice and Corn Committee.

[1] Note furnished by the Government of the Philippines.

3. *Article 26 (1) of the Universal Declaration*

Administrative order No. 341, providing for speedy implementation of the Philippines-United States Agreement known as Textbooks Production Project.

Proclamation No. 727, authorizing the Children's Museum and Library, Inc. to conduct a national educational, membership and fund-raising campaign.

Proclamation No. 750, calling a Congress of Educators on 14-19 June 1961, in the City of Manila.

4. *Article 27 (1) of the Universal Declaration*

Proclamation No. 671, declaring the period from 11-17 July 1960 as National Science and Technology Week.

5. *Article 29 (2) of the Universal Declaration*

Administrative order No. 359, s. 1961, prohibiting public officers and employees from entering into certain kinds of official transactions or dealing with the spouses and relatives of the President, Vice-President, etc.

III. JUDICIAL DECISIONS

1. *Article 7 of the Universal Declaration*

An ordinance which requires drivers of animal-drawn vehicles to pick up, gather and deposit in receptacles the manure emitted or discharged by their vehicle-drawing animals on any public highway, street, plaza, park or alley of the city does not violate the "equal protection of the laws" provision of the Constitution (*People* v. *Solon*, G.R. No. L-14864, 23 November 1960).

The equal protection of the laws granted by the Constitution is not violated by the refusal of a justice of the peace during preliminary investigation to allow the defence to cross-examine the prosecutor's witnesses. In being denied confrontation of the prosecution's witnesses, during preliminary investigation, the accused was not deprived of a right but was merely refused the exercise of a privilege (*Abrera* v. *Muñoz*, G.R. No. L-14743, 26 July 1960).

2. *Article 11 (1) of the Universal Declaration*

Although a motion for a new trial may be granted when it is made to appear that there is no evidence sustaining the judgement of conviction other than the testimony of the recanting witness, the rule does not apply where the judgement is supported

by other evidence on record (*People* v. *Dagundong*, et al., G.R. No. L-1039, 30 June 1960).

The rule is that where after the first prosecution a new fact supervenes, for which the defendant is responsible and which changes the character of the offence and, together with the facts existing at the time, constitutes a new and different offence, the accused cannot be said to be in second jeopardy if indicted again (*People* v. *Buling*, G.R. No. L-13315, 27 April 1960).

While the constitutional guarantee against self-incrimination protects a person in all kinds of criminal, civil, or administrative cases, this privilege, in proceedings other than criminal, is considered an option of refusal to answer incriminating questions and not a prohibition of inquiry (*Suarez* v. *Tengco*, G.R. No. L-17113, 23 May 1961).

Where the accused was assisted by counsel at the time he entered a plea of guilt, after the information had been read to him and translated into local dialect and he had been asked whether he understood its meaning, the court was no longer duty bound to warn him of the seriousness and consequences of his plea and he could not later profess ignorance of the import of his act and claim that he had been deprived of a fundamental right (*People* v. *Abejero*, G.R. No. L-13470, 27 March 1961).

3. *Article 18 of the Universal Declaration*

The Filipino flag is not an image that requires religious veneration; it is a symbol of the Republic of the Philippines, of sovereignty, an emblem of freedom, liberty and national unity. The flag salute is not a religious ceremony but an act and profession of love and allegiance to the fatherland which the flag stands for; the requirement of observance of the flag ceremony does not violate the constitutional provision about freedom of religion and exercise of religion (*Balbuena, et al.* v. *Secretary of Education*, G.R. No. L-14283, 29 November 1960).

4. *Article 19 of the Universal Declaration*

Our constitution enshrines parliamentary immunity, which is a fundamental privilege cherished in every legislative assembly of the democratic world. It guarantees the legislator complete freedom of expression without fear of being made responsible in criminal or civil actions before the courts or any other forum outside of the Congressional Hall. But it does not protect him from responsibility before the legislative body itself whenever his words and conduct are considered by the latter disorderly or unbecoming of a member thereof. Thus, for unparliamentary conduct, members of Congress have been, or could be censured, committed to prison, suspended, even expelled by the votes of their colleages (*Osmeña* v. *Pendatun, et al.*, G.R. No. L-17144, 28 October 1960).

POLAND

NOTE[1]

1. *The implementation of the right to an effective remedy before the competent tribunals (art. 8 of the Universal Declaration of Human Rights)*

In the *Journal of Laws*, No. 41, item 215, 1961, a consolidated text of the Act of 28 July 1939, on social insurance courts, was promulgated. These courts administer justice in lawsuits for allowances payable to pensioners and their families. This Act regulates the organization of these courts and establishes detailed provisions for proceedings before them. The consolidated text has incorporated many legislative amendments of past years.

2. *The implementation of the right to a public hearing by an independent and impartial tribunal (art. 10 of the Universal Declaration of Human Rights)*

(*a*) In the *Journal of Laws*, No. 58, item 320, 1961, an Act on maritime chambers — i.e., maritime courts — of 1 December 1961, was promulgated. The task of these courts is to deal with cases relating to accidents on the sea. This Act establishes the competence and organization of, and the procedure before, the maritime courts.

(*b*) Important legislation in the field of criminal law was promulgated in the *Journal of Laws* 1961 — namely: a consolidated text of the Act of 29 May 1957 on the release on probation of persons serving sentences in prisons (*Journal of Laws*, No. 58, item 321) and the order of the Minister of Justice of 7 July 1961 concerning the supervision of persons released on probation and guarantees given in relation to such persons (*Journal of Laws*, No. 34, item 174). The law on release on probation provides that the court may release conditionally on probation a person serving a sentence of imprisonment when this person has served at least three-quarters of this original sentence and not less than six months. The period of probation lasts from one to five years. The court may make the release on probation of the sentenced person subject to a guarantee by a chosen individual, social organization or institution. Such guarantee is worded to the effect that the probationer shall comply with the principles of social life and especially, that he will not return to the paths of crime. When supervision is decided on, the court imposes upon the person released on probation the duty of proper behaviour during the period of probation — e.g., the obligation to abstain from excessive drinking, obligation to do suitable work and so on.

[1] Note furnished by the Government of Poland.

3. *The implementation of the right to protection of th family (art. 16, para. 3, of the Universal Declaration of Human Rights)*

(*a*) In the *Journal of Laws*, No. 22, item 109, 1961, an order of the Minister of Health and Social Welfare of 19 April 1961 on the social and medical commissions dealing with the compulsory medical treatment of habitual drunkards was promulgated.

(*b*) In the *Journal of Laws*, No. 17, item 87, 1961, there was promulgated the convention on the recovery abroad of maintenance, approved in New York on 20 June 1956 and ratified by Poland.

4. *Art. 23 of the Universal Declaration of Human Rights*

(*a*) In the matter of implementation of the right to work and of securing conditions for full employment for women looking for work, the resolution of the Council of Ministers No. 391 of 25 November 1960 on the National Economic Plan for the year 1961 (section XV, item 17):

(i) Imposes on the ministers and the presidiums of Voivodship People's Councils the obligation to take measures to implement the planned growth of employment possibilities, especially in commerce and the communal economy through an increase in the employment of women;

(ii) Authorizes the presidiums of Voivodship People's Councils to establish, according to the needs of a locality, the minimum percentage of employed women in relation to the toal number of persons employed in various branches of the economy or in places of work.

Pursuant to this resolution, the competent economic authorities issued instructions to the subordinate enterprises in which they established positions especially suitable for women, which until then were considered as professions for men.

Owing to these steps there has been an increase in the professional activity of women. In 1961 more than 63 per cent of the general growth of employment in the socialized economy concerned women. The share of employed women in relation to general employment in the socialized economy increased from 32.9 per cent in 1960 to 34 per cent in 1961.

(*b*) In order to secure employment for persons temporarily unemployed, especially in the centres with insufficient development of industry, special funds were allocated in the National Economic Plan for 1961 for the organization of occasional work and vocational training for women. Owing to these funds

all persons looking for employment, who were the sole support of a family, have been employed.

(*c*) Order of the Minister of Agricultural Foodstuffs and Purchases, of the Minister of Agriculture and of the Chairman of the Committee for Small-scale Industry of 31 December 1960 on the safety and hygiene of work in mills, in production of fodder and in granaries (*Journal of Laws*, No. 3, item 19, 1961).

(*d*) Order of the Minister of the Chemical Industry of 15 December 1960 on the safety and hygiene of work in the production of synthetic poliamide fibres (*Journal of Laws*, No. 3, item 21, 1961).

(*e*) Order of the Minister of the Chemical Industry of 15 December 1960 on the safety and hygiene of work in the production of artificial viscous fibres (*Journal of Laws*, No. 4, item 22, 1961).

(*f*) Order of the Ministers of Health and Social Welfare, of Home Affairs and of National Defence of 26 January 1961 on the safety and hygiene of work in hospitals involving the use and keeping of bottles containing compressed oxygen (*Journal of Laws*, No. 9, item 52, 1961).

(*g*) Order of the Minister of Navigation of 24 February 1961 on the safety and hygiene of work in sea and river harbours (*Journal of Laws*, No. 16, item 86, 1961).

(*h*) Order of the Minister of Internal Trade of 6 August 1961 on the safety and hygiene of work in establishment of the gastronomic and ready-made dishes industry [przemysłu gastronomicznego i garmażeryjnego] (*Journal of Laws*, No. 39, item 199, 1961).

(*i*) Order of the Council of Ministers of 20 October 1961 on the safety and hygiene of work involving the use of microwave apparatus (*Journal of Laws*, No. 48, item 255, 1961).

(*j*) Furthermore, in relation to *art. 23 read together with art. 2 of the Universal Declaration of Human Rights*, the text of Convention No. 111 of the International Labour Organisation concerning discrimination in respect of employment and occupation, ratified by Poland, had been published in the *Journal of Laws*, No. 42, item 218, 1961.

5. *The right to rest and leisure (art. 24 of the Universal Declaration of Human Rights)*

An order of the Council of Ministers of 21 April 1961 concerning additional holidays for workers employed in the anti-tubercular nursing-homes was promulgated in the *Journal of Laws*, No. 24, item 115, 1961.

6. *The right to education (art. 26 of the Universal Declaration of Human Rights)*

(*a*) Order of the Council of Ministers of 26 May 1961, amending the order of 16 January 1959 relating to scholarships for high school students (*Journal of Laws*, 1961, No. 28, item 137).

(*b*) Ordinance of the Minister of Higher Education of 14 June 1961 (*Polish Monitor*, No. 67, item 291, 1961) concerning scholarships for high school students extends the scope of the granting of scholarships to students by establishments in which they work and other establishments. It creates better conditions of life for students during the time of their studies and, after termination of studies, it insures employment in the establishment they have previously chosen.

(*c*) Ordinance No. 42 of the Chairman of the Committee for Labour, Wages and Salaries of 20 December 1961 concerning professional information imparted by the employment divisions of the presidiums of people's councils.

Pursuant to this enactment there are organized, in greater urban areas, centres of professional information where persons concerned, especially young people, may become acquainted with the possibilities of vocational training, with the need of trained personnel on the local and general labour market and with the requirements connected with the choice of a profession.

REPUBLIC OF KOREA

NOTE[1]

1. The Act amending the Labour Standards Act (Act No. 791, promulgated on 4 December 1961) made the following amendments to the extracts from the Labour Standards Act (Act No. 286 of 15 May 1953), which appeared in *Yearbook on Human Rights for 1953*, pp. 179-181:

(i) In the proviso to the second paragraph of article 27, "the total amount of compensation under this Act" was amended to read "temporary compensation as prescribed in article 84";

(ii) A new article 27. II was added to the Act, reading:

"*Art. 27. II. (1)*. If an employer wishes to discharge an employee, the latter must be given at least 30 days' notice in advance as well as an amount equalling 30 days' wages. This shall not apply, however, in cases where the Minister of Health and Social Welfare recognizes that such dismissal is due to the closing down of the business because of natural calamity or other inevitable circumstances or where the dismissal was brought about through the employee's own fault.

(2). When the dismissal of an employee is allegedly brought about through his own fault, the Labour Committee shall determine whether this was the case and dismissal shall be subject to its approval."

[1] Information furnished by the Government of the Republic of Korea.

(iii) Article 28 was amended so as to read:

"*Art. 28.* The employer shall make arrangements to pay not less than 30 day's average wages for each consecutive year of employment as a retirement allowance for his employees, provided that this shall not apply in cases where a worker was employed for less than a year."

(iv) The following proviso was added to the first paragraph of article 60: "provided that leave with pay shall be granted for not less than 30 days after childbirth."

(v) The following proviso was added to the first paragraph of article 63: "Such educational facilities may be dispensed with, however, in cases where scholarships are awarded to the employee, with the approval of the Minister of Health and Social Welfare."

2. A new article 3. III was added to the Provisional Special Act concerning the Punishment of Specified Offences (Act No. 640, promulgated on 1 July 1961) by the Act amending the Provisional Special Act concerning the Punishment of Specified Offences (Act No. 816, promulgated on 8 December 1961). The new article 3. III reads: "Any person who has invented a falsehood designed to malign the Government and who spreads such falsehood among others shall be punished by a maximum of ten years' penal servitude."

REPUBLIC OF VIET-NAM

NOTE

The Secretariat of State for Foreign Affairs of the Republic of Viet-Nam has informed the United Nations Secretariat that no constitutional amendments were adopted in Viet-Nam during 1961, or judicial decisions delivered, which would be suitable for inclusion in the *Yearbook on Human Rights.*

ROMANIA

LEGISLATION CONCERNING HUMAN RIGHTS ADOPTED IN THE ROMANIAN PEOPLE'S REPUBLIC IN 1961[1]

I. THE ECONOMIC PROTECTION OF HUMAN RIGHTS
(Articles 22-28 of the
Universal Declaration of Human Rights)

1. *The state budget of the Romanian People's Republic for 1961*, adopted under Act No. 1/1960 (published in the *Official Bulletin of the Grand National Assembly*, No. 27, 27 December 1960), reflects — just like the budgets for previous years — the efforts made to develop the national economy and social and cultural activities, with a view to satisfying to an increasing extent the material and cultural needs of the country's population as a whole.

Under "revenue", the budget provides for a sum of 65,651.3 million lei. Only 3,946.9 million lei of total revenue is derived from dues and taxes paid by the people.

In absolute figures, expenditures under the budget for financing the national economy amount to 39,864.1 million lei; expenditures on social and cultural activities (education, science and culture, health, recreation and sports, state social security, social insurance, family allowances and State children's allowances) amount to 15,198.8 million lei, as against 1,750.4 million lei for maintaining the administrative machinery of the State, the State prosecutor's offices and the judicial authorities. Expenditures for the defence of the State amount to 3,503 million lei.

Thanks to the consistent application of the budget, the volume of investment in the national economy increased in 1961 by 21 per cent in relation to 1960. Investment during the first two years of the six-year plan (1960-1965) totalled 51,000 million lei, or 55 per cent more than during the years 1958-1959.

The most important aspects of the economic development of the Romanian People's Republic and of the rise in the living standard of the people as a whole are revealed by the following excerpts from the report of the Central Statistical Board on the fulfilment of the State plan of the Romanian People's Republic for 1961.[2]

"V. *Turnover of Goods*

"In 1961 the volume of goods sold in socialist trade, calculated at current prices, totalled over 47,000 million lei, the plan being fulfilled to 100.3 per cent.

"The over-all value of goods sold increased by 6,000 million lei — i.e., by 14.7 per cent (in comparable prices) in relation to the previous year. Sales of food products (including food served at public catering establishments) increased by 14.3 per cent and other goods by 15.1 per cent, both rates being higher than the average annual rate foreseen in the six-year plan.

"Considerable progress was achieved with regard to the quality and range of goods. In this way, increased consumer demand was largely met.

"With a view to serving the people, new up-to-date stores have been opened and rapid-handling methods have been widely applied.

"VI. *Achievements in improving the Living Conditions of the Workers*

"In 1961 the national income rose by approximately 10 per cent compared to 1960 and by 22 per cent compared to 1959.

"The number of wage and salary earners employed in the national economy amounted to 3,486,000, approximately 240,000 more than in 1960.

"Pursuant to the Decision of the Central Committee of the Romanian Workers' Party and of the Council of Ministers, taken in July 1961, the pay of workers and of other categories of staff in various branches was raised. Further improvements have been made in the salary scales in other branches, and the minimum rate for the economy as a whole amounts to 520 lei.

"In 1961 real wages were 4 per cent higher than in 1960 and 16 per cent higher than in 1959.

"As a result of the rise in people's incomes, the balance of deposits in the savings bank rose by 39 per cent compared to 1960 and the number of depositors by 27 per cent.

"State budget funds in the amount of 15,600 million lei — 13.2 per cent more than in 1960 — were spent on social and cultural activities as follows:

	Million lei	*Per cent more than in 1960*
Education	4,200	21
Cultural activities	1,200	14
Health and social insurance	4,400	11
Social security	3,800	8
State children's allowances	1,900	10

"In the first two years of the six-year plan, 71,000 dwelling units built with state funds — 41,000 of

[1] Note furnished by the Government of the Romanian People's Republic.

[2] Published in the newspaper *Scinteia*, No. 5428, of 3 February 1962.

them in 1961 — were made available for occupation by the working people.

"Physical facilities for education and culture were expanded. The number of classrooms in general schools rose by 3,700. Lecture halls and laboratories with a floor area of 15,000 square metres, student residential blocks for more than 11,500 occupants and canteens for approximately 6,100 students have been added to the facilities available at higher educational establishments. The number of cinema halls in the cities rose by ten and that of film projection units in rural areas by 650.

"The 1961-1962 enrolment in educational establishments at all levels totalled 3,080,000, or 9.8 per cent more than in the preceding academic year.

"Action was taken to generalize seven-year schooling; 99 per cent of those who completed the fourth grade passed to the fifth grade.

"The number of students enrolled for higher education was 81,400 or 13 per cent more than in 1960-61.

"Cinema attendance rose by 14 million or 9.3 per cent, and attendance at theatrical and musical performances by almost 600,000 or 5.8 per cent.

"The number of radio licences rose by 9.4 per cent and of television licences by 60 per cent.

"Health services continued to improve. The number of hospital beds rose by more than 3,000 to 137,000. The number of medical-and-health districts increased by 340 and that of maternity districts by 115. New district and city clinics were built. In 1961 there was one doctor for approximately every 710 inhabitants (as against one doctor for every 737 inhabitants in 1960).

"The number of watering places and health resorts and of those visiting them increased. Work on the construction of new seaside resorts continued and their visitor capacity was increased by more than 5,000. In 1961, 560,000 persons, i.e. 22.6 per cent more than in 1960, spent their holidays or underwent treatment at spas and health resorts. A total of 134,000 children, or 8 per cent more than in the previous year, spent their holidays in colonies and camps.

"On 1 January 1962 the population of the country amounted to 18,633,000."

The economic, social and cultural achievements of the working people in the cities and the rural areas in 1961 have laid the groundwork for more effective fulfilment of the 1962 development plan for industry, agriculture, transport, construction and other branches of the economy and national culture. This progress will also promote future increases in the workers' living standards.

2. *Act No. 3 concerning the establishment of economic councils attached to the regional people's councils* (published in the *Official Bulletin of the Grand National Assembly*, No. 9, 25 March 1961)

With a view to steadily improving the economic life of each region, economic councils have been established and attached to the executive committees of the regional people's councils.[1] These councils prepare studies of the future development of the region's economy, with specific reference to improvements in the search for and proper utilization of each region's natural resources.

The economic councils also supervise the fulfilment of the regional production plan and make proposals for improvements in economic activities. The work of the economic councils is designed to promote the production of the goods needed by the national economy and the people.

3. *Decision No. 473 of the Central Committee of the Romanian Workers' Party and of the Council of Ministers of the Romanian People's Republic concerning increases in the pay of workers, teachers, medical and health workers, other specialist staff and of administrative personnel, and reductions in the retail prices of certain consumer goods and in certain rates* (published in the *Collection of Decisions and Regulations of the Council of Ministers*, No. 22, 7 August 1961)

The main provisions of this decision are as follows:

(*a*) The pay rates of workers are raised on an average by 10 per cent. The minimum monthly rate of pay for the national economy as a whole is set at 520 lei.

(*b*) The salaries of the teaching staff in elementary and pre-school education are raised by an average of 10 per cent, and those of the teaching staff in general, vocational, technical and higher education are raised by an average of 15 per cent.

(*c*) The salaries of graduate medical and health service personnel and of specialist staff working for the Press and publishing houses are raised by an average of 15 per cent, and those of the intermediate-level health service and administrative personnel and of specialist staff in the fields of art, culture, justice and in other sectors, are raised by an average of 10 per cent.

(*d*) The decision also provides for reductions in the retail prices of certain major consumer goods and of certain rates: e.g., the prices of certain electrical and household appliances are reduced by 15-40 per cent, those of certain linen fabrics and garments by an average of 16 per cent, those of certain wool-type

[1] From the administrative point of view, the territory of the Romanian People's Republic is divided into regions each of which is subdivided into districts. The executive committees of the people's councils are the local state administrative authorities.

fabrics from artificial fibres by 15-20 per cent, and those of certain types of footwear by an average of 13 per cent. Rates for electricity for lighting and other household uses are reduced by an average of 27 per cent.

The application of the measures provided for in this decision represents an increase in people's incomes of almost 5,000 million lei a year.

4. *Decision No. 1894/1960 of the Council of Ministers concerning state action for the introduction of standards in the Romanian People's Republic* (published in the *Collection of Decisions and Regulations of the Council of Ministers*, No. 1, 9 January 1961)

In accordance with this decision, industrial and agricultural products which are important in themselves or which play a major role in the national economy, as well as major consumer goods, must meet a number of minimum quality requirements which are specified in a standard for each product.

The technical provisions laid down in the specifications are compulsory for the producing organizations.

The specifications are established under the technical and scientific supervision of the Technical and Scientific Council for Standardization, a specialized body consisting of representatives of Ministries and State agencies having economic functions and of representatives of the Academy of the Romanian People's Republic.

The purpose of the regulations embodied in this Decision is to raise and maintain the quality of industrial and agricultural products at a level corresponding to modern techniques, to increase the productivity of labour and to reduce costs so as to bring high-quality, low-cost products and goods within the reach of the people.

II. Education, Science and Culture

(Articles 26 and 27
of the Universal Declaration of Human Rights)

1. *Decree No. 289 concerning general compulsory and free eight-year education* (published in the *Official Bulletin of the Grand National Assembly*, No. 24, 7 October 1961)

The main provisions of the decree stipulate that, upon completion of the introduction of compulsory seven-year education throughout the country, general, compulsory and free education in the Romanian People's Republic will have a duration of eight years beginning in the 1961-1962 academic year.

There will be a gradual transition to general and compulsory eight-year schooling, beginning with grades I to V.

The eight-year school constitutes the first level in the general education course which has a duration of twelve years.

2. *Decision No. 546 of the Council of Ministers of the Romanian People's Republic concerning the universal application of the principle of free education in the Romanian People's Republic* (published in the *Collection of Decisions and Regulations of the Council of Ministers*, No. 24, 6 September 1961)

With a view to expanding the opportunities available to young persons of school age for study and effective and enthusiastic participation in the construction of socialism in the Romanian People's Republic, the Council of Ministers decided:

(*a*) To abolish all school and examination fees, commencing in the 1961-1962 academic year, with the result that education at all levels has become free in the Romanian People's Republic;

(*b*) To waive the payment of school fees for previous years unpaid by the date of publication of the decision.

This decision applies to general, technical, vocational and agricultural education, to teacher-training and to the higher education establishments.

3. *Decision No. 649 of the Council of Ministers concerning the organization and operation of post-graduate courses for the training of engineer-economists* (published in the *Collection of Decisions and Regulations of the Council of Ministers*, No. 28, 23 October 1961)

Post-graduate training for engineer-economists has been organized to provide further training in economics for engineers who have worked in the production industries and have shown an aptitude for production management and organization.

The engineer-economists may attend day, evening or correspondence courses. Admission is by competition.

The candidates are put forward by the industrial or agricultural enterprises where they work, by research and planning institutes, by ministries, by central authorities or by the executive committees of regional people's councils.

The duration of the day course is eighteen months, with six months for the preparation of a thesis. The duration of the evening and correspondence courses is two years, with six months for the preparation of a thesis.

The persons attending day courses are paid during the period of their studies (including the period for the preparation of the thesis) the same basic salary as they receive from the enterprise or institution where they work, plus the average bonus received during the last year of work in production.

Those taking evening or correspondence courses are allowed, in addition to their statutory leave,

paid study leave at a rate of thirty to ninety days a year. Leave pay is equivalent to the average salary for the previous three months.

For persons taking correspondence courses, the enterprise must defray the expense of travelling between the place of work and the institute, to attend periodic training courses and sit for the examinations.

The assignment to production enterprises of the holders of post-graduate engineer-economist diplomas is made by the State Planning Committee and by the Ministry of Education.

4. *Decree No. 170 concerning the State Prize of the Romanian People's Republic* (published in the *Official Bulletin of the Grand National Assembly*, No. 18, 17 July 1961)

The main provisions of this Decree are:

(*a*) The institution of a state prize of the Romanian People's Republic and of the title of Laureate of the State Prize of the Romanian People's Republic, constituting a moral and a material reward for Romanian nationals who, individually or collectively, produce valuable work which makes a major contribution to the development of science, literature or the arts (article 1);

(*b*) The State Prize is granted every two years by the Council of Ministers upon the recommendation of the State Prize Committee. The amount of the prize is 20,000-50,000 lei (articles 2 and 5).

III. Social Security and the Protection of Labour

(Articles 22-25 of the Universal Declaration of Human Rights)

1. *Decision No. 390 of the Council of Ministers and of the Central Trade Union Council of the Romanian People's Republic concerning the contributions payable towards treatment in watering places and vacations and the rates chargeable by watering places and health resorts* (published in the *Collection of Decisions and Regulations of the Council of Ministers*, No. 17, 4 July 1961)

The following measures have been adopted to enable workers to spend their annual leave with their families at watering places and health resorts:

(*a*) Wage-earners and pensioners sent to watering places and health resorts by the Central Trade Union Council will pay a contribution varying with their monthly rate of pay or pension and with the average cost of treatment at a resort. Pensioners whose monthly pension is below 350 lei are entitled to free treatment.

(*b*) The contribution payable by the parents of children sent to camps and colonies organized by the Ministry of Education is calculated on the basis of the child's age and the parents' earnings.

(*c*) The rates payable by workers who arrange their own stays at watering places or health resorts through the "Carpati" National Tourist Office are graded according to the resort and the workers' monthly rate of pay.

In accordance with this decision, a wage-earner whose monthly rate of pay is 1,000 lei and who has been sent by the Central Trade Union Council to a watering place for a twenty-one-day period of treatment will contribute approximately 166-191 lei towards the cost of treatment and of board and lodging at the resort.

The same wage-earner will have to pay a contribution of 55 lei for a child aged 7 to 14 who is sent to a camp for a period of twenty-one days.

A wage-earner receiving 1,000 lei a month who arranges his own stay at a watering place will have to pay between 17 and 27 lei per day for treatment, board and lodging.

2. *Decision No. 741 of the Council of Ministers concerning conditions for workers exposed to nuclear radiation* (published in the *Collection of Decisions and Regulations of the Council of Ministers*, No. 32, 25 November 1961)

The main provisions of these regulations are as follows:

A Commission for the Management and Supervision of Nuclear Installations will be established at the Institute of Atomic Physics. It will be responsible for advising on plans relating to the construction and layout of such installations and for recommending their approval, where appropriate, to the Nuclear Energy Committee. The Commission will also supervise the manner in which sources of nuclear radiation are used and will check working conditions in this field in co-operation with the State Technical Inspectorate for the Protection of Workers, the Institute for the Protection of Workers of the Central Trade Union Council, the Institute of Health and other agencies concerned with the protection of workers.

Personnel working at nuclear installations must be provided with decontamination equipment for themselves and for the equipment and instruments for experimental areas, etc.

The duration of the working day of personnel employed at nuclear installations is reduced to not more than 6-7 hours. Such personnel are also granted from twelve to twenty-four additional days of annual leave.

The Institute of Atomic Physics will organize special courses for the training of personnel with higher qualifications. The expenses attendant upon the departure from production of the persons enrolled for the courses and the latter's travelling expenses will be borne by the state.

Technicians working in nuclear installations must receive training at their place of work.

IV. International Agreements

1. *Agreement between the Romanian People's Republic and the Union of Soviet Socialist Republics concerning co-operation in the field of social security* (ratified by decree No. 16 published in the *Official Bulletin of the Grand National Assembly*, No. 17, 1 July 1961)

2. *Agreement between the Government of the Romanian People's Republic and the Government of the Hungarian People's Republic concerning co-operation in the field of social security* (approved by Decision No. 732 of the Council of Ministers, published in the *Collection of Decisions and Regulations of the Council of Ministers*, No. 31, 22 November 1961)

The main provisions of the two above-mentioned agreements are as follows:

(*a*) The two agreements apply to all forms of social security, pensions and social assistance benefits (in cash or in kind) granted to the nationals of the two contracting parties in respect of old age, sickness, pregnancy, maternity, disability, death of a bread-winner or in other contingencies covered by the laws of the two parties.

(*b*) In all matters pertaining to social security and labour relations the nationals of one contracting party who are domiciled in the territory of the other party are entitled to the same benefits as the nationals of the latter party.

(*c*) Social assistance benefits are granted by the authorities of the party in whose territory the applicant is domiciled and in accordance with the laws of that party.

(*d*) In the grant of pensions and other assistance and, in particular, in the calculation of the period of service required for entitlement to a pension, the years of employment completed in the territory of the two contracting parties are taken into account.

(*e*) Nationals of one contracting party who are temporarily in the teritory of the other contracting party are entitled to medical assistance and care on the same basis as the nationals of the latter party.

(*f*) Each contracting party bears all the costs connected with provision of the social security benefits which it grants and which are not adjusted between the two parties.

(*g*) Nationals of one contracting party sent on diplomatic mission, etc. to the territory of the other contracting party are entitled to social security benefits in accordance with the laws of the sending state. Pensions for merit are paid by the contracting party by which they are awarded. (The two agreements relate to Article 22 of the Universal Declaration of Human Rights).

3. *Agreement between the Government of the Romanian People's Republic and the Revolutionary Government of the Republic of Cuba concerning cultural co-operation* (ratified by Decree No. 28, published in the *Official Bulletin of the Grand National Assembly*, No. 6, 6 February 1961)

The main provisions of this agreement call for:

(*a*) Co-operation between scientific research institutions, technical, educational and cultural associations and organizations, radio and television stations, press agencies and film organizations of the two parties; the exchange of information and material relating to the development of education, science and culture; the organization of conferences and of reciprocal visits by persons active in the fields of education, science and culture; the exchange of scientific, technical, literary and artistic works and publications and of films; and the organization of concerts, theatrical performances, artistic and technical exhibitions and sporting events;

(*b*) the reciprocal granting of facilities to enable scientific workers of one Party to carry out research and study at institutes, archives, libraries and museums of the other party;

(*c*) the reciprocal provision of scholarships and material assistance for study, specialist training and scientific research to students, technicians, scientists and artists of the two parties;

(*d*) the organization at the national universities or as part of the activities of other cultural organizations of either contracting party of special courses for the study of the language, culture and literature of the other party.

4. *Agreement between the Government of the Romanian People's Republic and the Government of the Hungarian People's Republic concerning cultural and scientific co-operation* (approved by decision No. 740 of the Council of Ministers, published in the *Collection of Decisions and Regulations of the Council of Ministers*, No. 31, 22 November 1961)

The provisions of this agreement are similar to those of the agreement referred to under 3 above. (The agreements referred to under 3 and 4 above relate to the fourth preambular paragraph and to articles 19, 26 and 27 of the Universal Declaration of Human Rights.)

5. *Agreement between the Government of the Romanian People's Republic and of the Government of the German Democratic Republic concerning technical and scientific co-operation* (ratified by decree No. 109 published in the *Official Bulletin of the Grand National Assembly*, No. 17, 1 June 1961)

The main provisions of this Agreement are as follows:

(*a*) The agreement of 22 September 1950 is renewed;

(*b*) Each party will help the other to benefit, free of charge, from the most outstanding achievements of science and technology;

(*c*) With a view to the application of the agreement, the Romanian-German Commission for Technical and Scientific Co-operation, established under the agreement dated 22 September 1950 is to be continued (the agreement relates to the fourth preambular paragraph and to article 19 of the Universal Declaration of Human Rights).

6. *Treaty between the Romanian People's Republic and the People' Republic of Albania concerning legal assistance in civil, family and criminal cases* (ratified by decree No. 463/1960, published in the *Official Bulletin of the Grand National Assembly*, No. 4, 18 January 1961)

7. *Treaty between the Romanian People's Republic and the Federal People's Republic of Yugoslavia concerning legal assistance* (ratified by decree No. 24, published in the *Official Bulletin of the Grand National Assembly*, No. 6, 6 February 1961)

The treaties listed under 6 and 7 contain provisions relating to articles 1, 2 and 6 to 10 of the Universal Declaration of Human Rights, the most important ones being as follows:

(*a*) Under these treaties, the nationals of either contracting party and the bodies corporate designated in accordance with the laws of that party enjoy in the territory of the other contracting party, in respect of their personal and property rights, the same legal protection as nationals of the latter contracting party.

(*b*) Nationals of either contracting party have free and unimpeded access to the legal (courts and the procurator's and state notaries' offices) and other authorities of the other contracting party having jurisdiction in civil, family and criminal cases; they may protect their interests, present petitions and institute proceedings before these authorities under the same conditions as nationals of the latter contracting party.

(*c*) The treaties follow the principle of private international law that the legal capacity of a person is determined according to the law of the contracting party of which he is a national and the principle of *locus regit actum.*

(*d*) The personal and property relations of spouses are governed under the treaties by the law of the contracting party of which they are nationals.

(*e*) The treaties include special provisions relating to the protection of the interests of minors who are temporarily in the territory of one contracting party and whose parents are in the territory of the other contracting party; to exercise their right of succession to an estate situated in the territory of one contracting party by persons domiciled in the territory of the other contracting party; and to the enforcement of civil judgements rendered by the judicial authorities in the territory of one contracting party against persons domiciled in the territory of the other contracting party.

(*f*) Under the two treaties, legal assistance in criminal cases refers more especially to extradition, in relation to which the parties have, *inter alia*, upheld the principle that a country does not extradite its own nationals.

(*g*) The two treaties have been concluded for initial terms of five years. Unless denounced by one of the contracting parties within the prescribed time-limit, the treaties will be extended automatically for further five-year terms (treaty with the People's Republic of Albania) or indefinitely (treaty with the Federal People's Republic of Yugoslavia).

(*h*) *Consular Convention between the Romanian People's Republic and the People's Republic of Albania* (ratified by Decree No. 462/1960, published in the *Official Bulletin of the Grand National Assembly*, No. 4, 18 January 1961).

The main provisions of this convention designed to guarantee certain rights defined in the Universal Declaration of Human Rights (Articles 6 to 11) are as follows:

(*a*) Consuls are entitled, within their consular district, to protect the rights of the nationals of the sending State and to represent them in the courts and before other authorities in the said district if, owing to absence or for other reasons, these nationals are unable to protect their own rights and interests within the appropriate time-limits (articles 7 and 15 of the Convention).

(*b*) Consuls may draw up legal instruments concerning legal transactions between nationals of the sending State or even between the latter and nationals of the receiving State provided that such legal instruments relate to interests situated in the territory of the sending State or provided that they are to be executed in the territory of the latter State. The competence of consuls does not include the right to draw up or attest legal instruments concerning immovable property situated in the territory of the receiving State. Legal instruments drawn up by a consul have in the receiving State the same standing in law and the same validity when adduced in evidence as instruments drawn up by the competent authorities of the receiving State (articles 18 and 19 of the Convention).

(*c*) The Convention has been concluded for a term of five years and can be extended automatically for further five-year terms unless denounced in writing by either contracting party not later than six months before the expiry of the term.

9. *By decree No. 441/1960*, published in the *Official Bulletin of the Grand National Assembly*, No. 12, 26 April 1961, the Romanian People's Republic acceded to

the convention concerning customs facilities for touring, to the Customs Convention concerning the temporary importation of private road vehicles and to the Additional Protocol to the Convention concerning customs facilities for touring, relating to the importation of tourist publicity documents and material, done at New York on 4 June 1954.

10. *By decree No. 442/1960*, published in the *Official Bulletin of the Grand National Assembly*, No. 16, 29 June 1961, the Romanian People's Republic acceded to the Convention on Road Traffic and to the Protocol on Road Signs and Signals, done at Geneva on 19 September 1949.

(The Conventions listed under 9 and 10 above were acceded to in the spirit of the fourth preambular paragraph of the Universal Declaration of Human Rights.)

V. Judicial Practice

(Article 11
of the Universal Declaration of Human Rights)

1. By decision No. 868, of 20 July 1961, the Criminal Division of the Supreme Court of the Romanian People's Republic granted the appeal by the Procurator of the Romanian People's Republic, acting in the exercise of his supervisory functions, from criminal judgement No. 1080/1960 of the People's Court of the district of Didra and from criminal judgements Nos. 93 and 245/1961 of the Criminal Division of the Bucharest regional court, whereby the judgement against the defendant on a charge of arson was made final.

The aforesaid judgements were quashed and the case was returned to the court of first instance on the ground that they violated the principle that a verdict can be based on circumstantial evidence only where such evidence indicates with absolute certainty that the defendant is guilty of the offence of which he is indicted. In giving the grounds for its decision to quash the judgement, the Supreme Court had stated that circumstantial evidence should be ample, mutually complementary and logically capable of leading to one conclusion only.

2. By decision No. 957 of 11 August 1961 the Criminal Division of the Supreme Court of the Romanian People's Republic granted the appeal by the Procurator-General of the Romanian People's Republic, acting in the exercise of his supervisory functions, from criminal judgement No. 303 of 9 July 1958 of the People's Court of the city of Baia Mare, subsequently made final, and quashed the judgement, the case being returned for retrial, because the defendant in question had been simultaneously tried and sentenced for offences which were not enumerated in the indictment. In explaining the reasons for the decisions to quash the judgement, the Supreme Court stated that the lower court should have confined itself to trying the case presented in the indictment and could not try and sentence the defendant for offences other than those specified therein, unless the Procurator brought additional charges against him.

SAN MARINO

NOTE ON SOCIAL LEGISLATION[1]

1. The most significant legislation enacted in San Marino in 1961 in the field of human rights concerns the protection of workers and the regulations governing apprenticeship as a means of securing better vocational training of workers.

The new labour legislation approved by the Grand and General Council at its meeting on 17 February 1961,[2] in addition to establishing detailed rules on certain aspects of labour relations, approves fundamental freedoms such as the right to form and to join trade unions (art. 1) and to strike (art. 27), enunciates important social principles such as recognition of the right of men and women to equal pay for equal work (art. 15) and the efficacy *erga omnes* of collective labour contracts (art. 9), recognizes the importance of the functions of trade unions in a democratic society and gives legal status to regularly established and recognized trade unions (art. 4).

Workers will be more effectively protected under the new provisions concerning hours of work (art. 16), weekly and public holidays (art. 18), annual leave (art. 19), maternity bonuses (art. 20), marriage leave (art. 22) and old age allowances (art. 34) and schedule D).

Supplementing the rules laid down in the Act on the establishment of a system of social security (Act No. 42 of 22 December 1955) for the protection of mothers, the Act of 17 February 1961 recognizes the right of female workers to take 150 days' leave of absence from work where necessary in cases of pregnancy and confinement (art. 23). After this period, such workers are entitled to two non-consecutive hours of paid leave daily for a period of two months (art. 24).

2. Pursuant to art. 28 of the Labour Act, the Grand and General Council of the republic adopted on 11 September 1961 the Protection of Apprenticeship Act,[3] which establishes the obligation of the state to encourage the vocational training of young persons by the payment at state expense of a monthly apprenticeship allowance of 6,000 lire (art. 24).

After defining for the first time in the laws of San Marino the apprenticeship relationship, the Act goes on to establish rules for the engaging of apprentices, the duration of apprenticeship, hours of work, remuneration and the obligations of the apprentice and of the employer.

[1] Note furnished by the Government of San Marino.

[2] Act No. 7 of 1961 (*Bollettino Ufficiale*, 1961, No. 2, of 16 March 1961).

[3] Act No. 27 of 1961 (*Bollettino Ufficiale*, 1961, No. 5 of 20 October 1961).

SAUDI ARABIA

ROYAL DECREE No. 88, OF 22 RAMADAN 1380 (9 MARCH 1961), ON THE RESPONSIBILITY OF MINISTERS[1]

Art. 5. Without prejudice to the provisions of other decrees, the following offences shall be punishable, under this decree, by imprisonment terms ranging from three to ten years:

(*a*) Acts or deeds meant to influence, whether by way of raising or lowering, the prices of goods, immovable properties, currency or securities with a view to reaping personal advantages for the offender or others;

(*b*) Acceptance of any benefit whatsoever for the offender or others, in return for taking or withholding an official action;

(*c*) Trading in influence even by way of misrepresentation to reap a benefit or advantage for the offender or others from any organization, firm, corporation or government agency;

(*d*) Deliberate violation of ordinances, regulations and instructions, resulting in the forfeiture of financial rights pertaining to the state or legally established rights of individuals;

(*e*) Revelation of decisions or deliberations of the Council of Ministers relating to the state's internal or external security, to financial and economic affairs, and to the trial of ministers;

(*f*) Personal intervention in the affairs of the judiciary or of government departments and agencies. . . .

[1] Published in *Umm al-Qura*, No. 1862, of 24 March 1961.

SENEGAL

NOTE

1. Relations between employers and workers are governed by Act No. 61-34, of 15 June 1961, establishing a labour code (*Journal Officiel de la République du Sénégal*, No. 3462, special issue, 3 July 1961). In this Act, a worker is defined as any person, irrespective of sex or nationality, who has undertaken to place his gainful activity, in return for remuneration, under the direction and control of another person (including a public or private corporation).

Art. 3 of the Code reads as follows:

"Forced or compulsory labour shall be prohibited. The term 'forced or compulsory labour' means any labour or service demanded of an individual under threat of any penalty, being labour or service which the said individual has not freely offered to perform."

Every worker or employee is free to join a trade union within his own trade or profession. Trade unions have as their sole object the study and defence of economic, industrial, commercial, agricultural and handicraft interests; they may combine into any form of federation that they choose. An employer is prohibited from applying pressure of any kind in favour or to the detriment of any trade union and from taking membership in a trade union into consideration in making decisions concerning recruitment, the conduct and distribution of work, training, advancement, remuneration and social benefits, disciplinary measures or dismissal.

Contracts of employment may be terminated by either party; the termination of a contract of unspecified duration is subject to written notice given by the party taking the initiative in breaking the contract; a contract of employment for a probationary period may be terminated without notice at any time at the wish of either party. A contract of employment of fixed duration may not be terminated before it elapses except in a case of serious misconduct or *force majeure*. In equal conditions as regards work, skill and output, the same wage must be paid to all workers, irrespective of their origin, sex, age and status. Notwithstanding any agreement to the contrary, wages must be paid in a currency that is legal tender in Senegal.

Title V of the Labour Code deals with conditions of work. Chapter I of that title provides that the statutory hours of work shall not exceed forty in the week. Hours worked over and above the statutory work week entail entitlement to increased wages. Weekly rest is compulsory; it consists of at least twenty-four consecutive hours each week and falls as a rule on Sunday.

Chapter III provides that a pregnant woman may terminate her employment without giving notice and without being obliged to pay compensation for breach of contract. On the occasion of her confinement, a woman may suspend her employment for fourteen consecutive weeks, including eight weeks after delivery, without such suspension being considered a ground for terminating her contract of employment. For a period of fifteen months after the birth of the child, the mother is entitled to nursing breaks. No child may be employed in an undertaking as an apprentice or otherwise before the age of fourteen years, save where exceptions are authorized by an order made by the Minister of Labour and Social Security after consultation with the National Advisory Board for Labour and Social Security.

Paid leave is dealt with in chapter V of title V. A worker is entitled to one and a half days' paid leave at the employer's expense for each month of actual service; workers under eighteen years of age are entitled to a minimum of two working days for each month of actual service. Mothers with families are entitled to one additional day a year for each child under fourteen years of age whose birth has been registered.

Title VI of the Labour Code deals with health and safety. Health and safety conditions at the place of work are governed by orders made by the Minister of Labour and Social Security after consultation with the Technical Advisory Committee for Health and Safety.

Title VIII contains provisions regarding the settlement of labour disputes. Individual disputes are heard by labour courts established by decree; conciliation and arbitration procedures are applicable in respect of collective disputes. Lock-outs and strikes are lawful only if the Minister of Labour and Social Security has informed the parties that he does not intend to submit the collective dispute to arbitration, or if he has not so notified them within the eight days following the dispatch of the conciliation report.

Titles IX and X contain penalties and transitional provisions; they supersede some of the legislation previously enacted in the field covered by the Code.

2. Act No. 61-36 of 15 June 1961 (*Journal Officiel de la République du Sénégal*, 106th year, No. 3458, special issue, 22 June 1961) deals with the general pensions scheme.

ACT No. 61-10 DETERMINING SENEGALESE NATIONALITY dated 7 March 1961[1]

TITLE I
SENGALESE NATIONALITY AS THE NATIONALITY OF ORIGIN

Art. 1. Any person born in Senegal of an ascendant in the first degree who was himself born in Senegal shall be a Senegalese national.

A person who is habitually resident in the territory of the Republic of Senegal and has always been recognized as possessing Senegalese status shall be deemed to fulfil these two conditions.

In order to claim the possession of status within the meaning of the foregoing paragraph a person must: (1) have continuously and publicly conducted himself as a Senegalese; (2) have continuously and publicly been treated as such by the Senegalese population and authorities.

Art. 2. The provisions of the foregoing article shall not apply to children born in Senegal of diplomatic or consular agents of foreign nationality.

Art. 3. A new-born child of unknown parentage found in Senegal shall be a Senegalese national.

Nevertheless, he shall cease to be a Senegalese national if during his minority his filiation is proved with respect to an alien and under the national law of such alien he possesses the nationality of the latter.

Art. 4. In determining what constitutes Senegalese territory the changes resulting from acts of the Senegalese public authorities and from international treaties shall at all times be taken into account.

Art. 5. The following persons shall be Senegalese nationals:

1. A legitimate child of a Senegalese father;
2. A legitimate child of a Senegalese mother and of a father who has no nationality or whose nationality is unknown;
3. A natural child where the parent with respect to whom filiation is proved to exist in the first place is a Senegalese national;
4. A natural child where the parent with respect to whom filiation is proved to exist in the second place is a Senegalese national and the other parent has no nationality or his nationality is unknown.

Art. 6. Filiation shall affect the attribution of nationality only if proved in the manner prescribed by the laws and customs in force in Senegal.

For the purposes of this Act majority is attained on the expiry of twenty-one years of age, whatever the civil status of the person concerned.

[1] Published in the *Journal Officiel de la République du Sénégal*, 106th year, No. 3439, special issue of 15 March 1961.

TITLE II
ACQUISITION OF SENEGALESE NATIONALITY

Section I
BY MARRIAGE

Art. 7. An alien woman who marries a Senegalese national shall acquire Senegalese nationality upon the celebration of the marriage, provided that the Government may by decree, within a period of one year, bar such acquisition. A marriage celebrated by a customary ceremony shall not lead to acquisition of nationality unless it is registered.

Nevertheless, an alien woman who under her national law may retain her nationality shall have the right, before the celebration of the marriage, to decline Senegalese nationality.

If the marriage is celebrated in Senegal, that right shall be exercised in the presence of the magistrate [juge de paix] within whose jurisdiction the marriage is to be celebrated.

If the marriage is celebrated abroad, the said right shall be exercised in the presence of the Senegalese consular authorities in the country concerned.

The above-mentioned authorities shall notify the Keeper of the Seals, Minister of Justice, immediately.

If the Government bars acquisition of Senegalese nationality, the woman concerned shall be deemed never to have acquired Senegalese nationality.

Section II
ACQUISITION OF SENEGALESE NATIONALITY BY REASON OF FILIATION

Art. 8. The following persons may opt for Senegalese nationality from the age of eighteen until they attain their majority:

1. A legitimate child of a Senegalese mother and alien father;
2. A natural child where the parent with respect to whom filiation is proved to exist in the second place is a Senegalese national and the other parent is an alien.

The option provided for in this article shall be exercised by the signing of a declaration in the presence of the magistrate within whose jurisdiction the declarant resides.

If the declarant is abroad, the declaration shall be signed in the presence of the consular agents of Senegal.

The declaration shall be registered with the Ministry of Justice at the instance of the magistrate or the consular agents concerned.

Art. 9. A natural child legitimated during his minority shall acquire Senegalese nationality if his father is a Senegalese national.

A child who has been legitimated by adoption shall acquire Senegalese nationality if his father is a Senegalese national.

Art. 10. The following persons shall acquire Senegalese nationality by right on the same grounds as their parents, provided that their filiation is proved in conformity with the law or with custom:

1. A legitimate or legitimated minor child whose father or widowed mother acquires Senegalese nationality;
2. A natural minor child where the parent with respect to whom filiation was first proved to exist or the surviving parent, as the case may be, acquires Senegalese nationality.

These provisions shall not apply to a married minor.

Section III

Acquisition of Senegalese Nationality by Decision of a Public Authority

Art. 11. Senegalese nationality shall be granted by decree after inquiry on the application of the person concerned.

The decree shall be made in the year following such application. If it is not, the application shall be deemed to have been rejected. There shall be no appeal from the formal or implicit rejection of an application for naturalization.

Art. 12. A person may not be naturalized unless he has had his habitual residence in Senegal for at least ten years when the application is submitted.

This term shall be reduced to five years where the person concerned is married to a Senegalese woman or has rendered outstanding services to Senegal.

Habitual residence shall be understood to mean permanent settlement in the territory of the republic without intent to settle subsequently in another State.

Outstanding services shall be understood to include the following: the exercise of distinguished artistic, scientific or literary talent; the introduction of useful industries or inventions; the establishment in Senegal of industrial or agricultural enterprises.

Art. 13. A person may not be naturalized unless he is of good conduct and moral character or, having been sentenced to deprivation of liberty for an offence against the ordinary law, he has regained his civic rights.

Convictions abroad need not be considered; in such cases the naturalization decree shall be required to be approved beforehand by the Supreme Court.

A person may not be naturalized unless: (1) he is found to be of sound mind; (2) his physical health is found to be such that he is not likely to be a charge on or a danger to the public.

The provisions of this article shall not apply to an alien who has sustained a disability or contracted an illness in the service or in the interests of Senegal.

In such case, naturalization may be granted only with the approval of the Supreme Court following a report by the Keeper of the Seals.

Art. 14. An alien in respect of whom an expulsion order has been made shall not be eligible for naturalization unless the order has been revoked.

Art. 15. A minor may not apply for naturalization until he has reached the age of eighteen years. He may do so without authorization.

Art. 16. A person acquiring Senegalese nationality shall from the date of such acquisition enjoy all the rights attaching to that nationality, subject to the following disabilities:

1. During the period of ten years following the naturalization decree he may not be appointed to an elective function or office which may be discharged only by a Senegalese national.

2. During the period of five years following the naturalization decree he may not be appointed to a Senegalese public office, or be called to the bar or hold ministerial office.

Provided that the Government may by decree relieve an alien who has rendered outstanding services to Senegal within the meaning of article 12 of the foregoing disabilities.

Art. 17. A registration fee payable to the Treasury shall be charged at the time of each naturalization.

Title III

LOSS AND DEPRIVATION OF SENEGALESE NATIONALITY

Art. 18. A Senegalese national of full age who voluntarily acquires a foreign nationality shall lose Senegalese nationality.

Provided that until the expiry of a period of fifteen years from the date of registration either on the active list or, where exemption from active service has been granted, on the national service register, loss of Senegalese nationality shall be subject to authorization by the Government.

Such authorization shall be granted by decree.

The following persons need not apply for authorization:

1. Persons exempted from military service;
2. Persons finally discharged;
3. Any male person, even if he has evaded his military service obligations, who has reached the age at which he is completely relieved thereof by the Army Recruitment Act.

Art. 19. A Senegalese national, even if a minor, who possesses a foreign nationality, may on application be authorized to relinquish Senegalese nationality. Such authorization shall be granted by decree.

Art. 20. A Senegalese woman who marries an alien shall lose Senegalese nationality only if she makes an express declaration to that effect before the celebration of the marriage.

The declaration shall be valid only if she may acquire her husband's nationality.

In that case, the procedure laid down in article 8 of this Act shall apply.

Art. 21. During the period of ten years following the acquisition of Senegalese nationality a person may be deprived thereof if:

1. He is convicted of an act constituting a crime or offence [délit] against the internal or external security of the State;

2. He is convicted of an act constituting a crime and sentenced therefor to a term of more than five years' imprisonment;

3. He has done, to the advantage of a foreign State, acts incompatible with the nationality and detrimental to the interests of Senegal.

Deprivation of nationality shall be pronounced by decree and may not be extended to minor children unless it is also extended to the wife.

. . .

TITLE VI

TRANSITIONAL MEASURES

Art. 28. The following persons may opt for Senegalese nationality if, although not fulfilling the conditions laid down in article 1 of this Act, they establish their permanent domicile in the territory of the Republic of Senegal:

1. Members of the Government of Senegal;
2. Deputies to the National Assembly, members of the regional assemblies and municipal councillors.

The establishment of permanent domicile shall be certified by a declaration signed in the presence of the magistrate of the place of residence.

Such option shall be exercised within a period of one month from the entry into force of this Act by declaration made in the presence of the magistrate within whose jurisdiction the declarant has his residence, or, if there is no such magistrate, in the presence of the presiding judge of the court of Dakar.

Such declaration shall be transmitted by the magistrate or the presiding judge of the court of Dakar to the Minister of Justice, who shall register it.

Art. 29. The following persons may opt for Senegalese nationality:

1. Any person born in one of the States which have emerged from the former groups of territories of French West Africa and French Equatorial Africa, in Togo, Cameroun or Madagascar who, on the date of the entry into force of this Act, is habitually resident in Senegal;
2. Any person who has been married to a Senegalese national for five years.

The same option shall be open to persons born in the territories bordering on Senegal.

The term "territories bordering on Senegal" shall be understood to mean:

1. States or territories having a common frontier with Senegal;

2. States or territories which are not separated from Senegal by any other State or territory and which are situated less than 400 miles from Senegal.

Art. 30. The options provided for in the foregoing article shall be exercised within a period of three months from the entry into force of this Act.

They shall be exercised by means of a declaration made in the presence of the magistrate within whose jurisdiction the declarant has his residence.

Such declaration, in order to be valid, shall be registered with the Ministry of Justice.

Within a period of one year from the exercise of such option, the Government, after acquainting itself if necessary with all the relevant information, may by decree bar the acquisition of Senegalese nationality.

Such decision, which shall be communicated to the person concerned not later than one month after the period of one year prescribed in the foregoing paragraph, shall not be subject to appeal except on the ground of failure to observe the time limits.

Art. 31. A person who acquires Senegalese nationality either through the automatic operation of this Act or through the options for which it provides shall be deemed to have possessed Senegalese nationality at birth.

This provision shall not affect the validity of instruments executed by the person concerned or his assigns or rights acquired by them on the basis of earlier legislation.

Art. 32. For the purposes of articles 5, 6, 9 and 10 of this Act, an ascendant in the first degree who died before the promulgation of the Act but satisfied when alive the requirements of article 1 shall be deemed to have been a Senegalese national.

Art. 33. An alien woman who has married a Senegalese national and wishes to retain her own nationality where permitted to do so under her national law shall have the right to make a declaration to that effect during a period of one year from the entry into force of this Act.

Such declaration shall be made and received in the manner prescribed in article 8.

Art. 34. A Senegalese woman who has married an alien under whose national law she is authorized to take his nationality may, if she wishes to acquire that nationality, renounce Senegalese nationality in the manner and within the time limit prescribed in the foregoing article.

SIERRA LEONE

CONSTITUTION OF SIERRA LEONE[1]

Chapter I

CITIZENSHIP

1. (1) Every person who, having been born in the former Colony or Protectorate of Sierra Leone, was on the twenty-sixth day of April 1961, a citizen of the United Kingdom and colonies or a British protected person shall become a citizen of Sierra Leone on the twenty-seventh day of April 1961:

Provided that a person shall not become a citizen of Sierra Leone by virtue of this subsection if neither of his parents nor any of his grandparents was born in the former Colony or Protectorate of Sierra Leone.

(2) Every person who, having been born outside the former Colony and Protectorate of Sierra Leone, was on the twenty-sixth day of April 1961, a citizen of the United Kingdom and colonies or a British protected person shall, if his father becomes or would but for his death have become a citizen of Sierra Leone in accordance with the provisions of subsection (1) of this section, become a citizen of Sierra Leone on the twenty-seventh day of April 1961.[2]

2. (1) Any person who, but for the proviso to subsection (1) of section 1 of this constitution, would be a citizen of Sierra Leone by virtue of that subsection shall be entitled, upon making application before the twenty-seventh day of April 1963 in such manner as may be prescribed, to be registered as a citizen of Sierra Leone:

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not make an application under this subsection himself but an application may be made on his behalf by his parent or guardian.

(2) Any woman who on the twenty-sixth day of April 1961, was a citizen of the United Kingdom and colonies or a British protected person and who is or has been married to a person —

(*a*) Who becomes a citizen of Sierra Leone by virtue of section 1 of this constitution; or

(*b*) Who, having died before the twenty-seventh day of April 1961 would, but for his death, have become a citizen of Sierra Leone by virtue of that section,

shall be entitled, upon making application in such manner as may be prescribed, to be registered as a citizen of Sierra Leone.

(3) Any woman who is or has been married to a person who becomes a citizen of Sierra Leone by registration under subsection (1) of this section and is at the date of such registration a citizen of the United Kingdom and colonies or a British protected person shall be entitled, upon making application within such time and in such manner as may be prescribed, to be registered as a citizen of Sierra Leone.

(4) Any woman who on the twenty-sixth day of April 1961 was a citizen of the United Kingdom and colonies or a British protected person and who has been married to a person who becomes, or would but for his death have become, entitled to be registered as a citizen of Sierra Leone under subsection (1) of this section, but whose marriage has been terminated by death or dissolution of marriage, shall be entitled, upon making application before the twenty-seventh day of April 1963 in such manner as may be prescribed, to be registered as a citizen of Sierra Leone.

(5) The provisions of subsections (2), (3) and (4) of this section shall be without prejudice to the provisions of section 1 of this constitution.

(6) Notwithstanding anything contained in this section, a person who has attained the age of twenty-one years or who is a woman who is or has been married shall not, if he is a citizen of some country other than Sierra Leone, be entitled to be registered as a citizen of Sierra Leone under the provisions of

[1] The Constitution appears as the second schedule to the Sierra Leone (Constitution) Order in Council, 1961, *Statutory Instruments* 1961, No. 741, made on 14 April 1961 and entering into force immediately before 27 April 1961, the day when Sierra Leone attained independence.

[2] Section 2 of the Constitution (Amendment) (No. 2) Act, 1962 (Act No. 12 of 1962) amended section 1 as of 27 April 1962:

(*a*) by the insertion immediately after the words "Every person" in the first line of subsection (1) thereof of the words "of negro African descent"; and

(*b*) by the addition at the end thereof of the following new subsections —.

"(3) For the purposes of this Constitution the expression 'person of negro African descent' means a person whose father and his father's father are or were negroes of African origin.

"(4) Any person, either of whose parents is a negro of African descent and would, but for the provisions of subsection (3), have been a Sierra Leone citizen, may, on making application in such manner as may be prescribed, be registered as a citizen of Sierra Leone, but such person shall not be qualified to become a member of the House of Representatives or of any District Council or other local authority unless he shall have resided continuously in Sierra Leone for twenty-five years after such registration or shall have served in the Civil or regular Armed Services of Sierra Leone for a continuous period of twenty-five years".

this section unless he renounces his citizenship of that other country, takes the oath of allegiance and makes and registers such declaration of his intentions concerning residence or employment as may be prescribed:

Provided that where a person cannot renounce his citizenship of the other country under the law of that country he may instead make such declaration concerning that citizenship as may be prescribed.[1]

3. (1) Any person who on the twenty-sixth day of April 1961 was a citizen of the United Kingdom and colonies —

(*a*) Having become such a citizen under the British Nationality Act, 1948, by virtue of his having been naturalized in the former Colony or Protectorate of Sierra Leone as a British subject before that Act came into force; or

(*b*) Having become such a citizen by virtue of his having been naturalized or registered in the former Colony or Protectorate of Sierra Leone under that Act,

shall be entitled, upon making application before the twenty-seventh day of April 1963 in such manner as may be prescribed, to be registered as a citizen of Sierra Leone:

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not make an application under this subsection himself but an application may be made on his behalf by his parent or guardian.

(2) Notwithstanding anything contained in subsection (1) of this section, a person who has attained the age of twenty-one years or who is a woman who is or has been married shall not, if he is a citizen of some country other than Sierra Leone, be entitled to be registered as a citizen of Sierra Leone under the provisions of that subsection unless he renounces his citizenship of that other country, takes the oath of allegiance and makes and registers such declaration of his intentions concerning residence or employment as may be prescribed:

Provided that where a person cannot renounce his citizenship of the other country under the law of that country he may instead make such declaration concerning that citizenship as may be prescribed.[2]

4. Every person born in Sierra Leone after the twenty-sixth day of April 1961, shall become a citizen of Sierra Leone at the date of his birth:

Provided that a person shall not become a citizen of Sierra Leone by virtue of this section if at the time of his birth —

(*a*) Neither of his parents was a citizen of Sierra Leone and his father possessed such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Sierra Leone; or

(*b*) His father was an enemy alien and the birth occurred in a place then under occupation by the enemy.[3]

5. A person born outside Sierra Leone after the twenty-sixth day of April 1961 shall become a citizen of Sierra Leone at the date of his birth if at that date his father is a citizen of Sierra Leone otherwise than by virtue of this section or subsection (2) of section 1 of this constitution.

6. (1) Any person who, upon his attainment of the age of twenty-one years, was a citizen of Sierra Leone and also a citizen of some country other than Sierra Leone shall cease to be a citizen of Sierra Leone upon his attainment of the age of twenty-two years (or, in the case of a person of unsound mind, at such later date as may be prescribed) unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who is a citizen of Sierra Leone by virtue of subsection (2) of section 1 of this constitution, has made and registered such declaration of his intentions concerning residence or employment as may be prescribed:

Provided that where a person cannot renounce his citizenship of the other country under the law of that country he may instead make such declaration concerning that citizenship as may be prescribed.

(2) A person who —

(*a*) Has attained the age of twenty-one years before the twenty-seventh day of April 1961; and

(*b*) Becomes a citizen of Sierra Leone on that day by virtue of the provisions of section 1 of this constitution; and

(*c*) Is immediately after that date also a citizen of some country other than Sierra Leone,

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[1] Section 2 of the Constitution (Amendment) Act, 1962 (Act No. 11 of 1962) substituted the following for sub-section (2) of section 2 of the Constitution, as of 27 April 1961:

"(2) Any woman who on the twenty-sixth day of April 1961 was a citizen of the United Kingdom and colonies or a British protected person and who is or had been married to a person —

"(*a*) Who becomes a citizen of Sierra Leone by virtue of section 1 of this Constitution; or

"(*b*) Who, having died before the twenty-seventh day of April 1961, would, but for his death, have become a citizen of Sierra Leone by virtue of that section,

shall be entitled, upon making application in such manner as may be prescribed, to be registered as a citizen of Sierra Leone:

"Provided that, if she is the citizen of some other country, she first renounces her citizenship of that other country and takes the oath of allegiance:

"Provided however that where she cannot renounce her citizenship of the other country under the law of that country she may instead make such declaration concerning that citizenship as may be prescribed."

[2] Section 3 of the Constitution (Amendment) Act, 1962 (Act No. 11 of 1962) repealed section 3 of the Constitution as of 27 April 1961.

[3] Section 3 of the Constitution (Amendment) (No. 2) Act, 1962 (Act No. 12 of 1962) substituted the following for section 4 of the Constitution, as of 27 April 1962:

"4. Every person of negro African descent born in Sierra Leone after the twenty-sixth day of April 1961, shall be a citizen of Sierra Leone at the date of his birth if at that date his father is or was a citizen of Sierra Leone".

shall cease to be a citizen of Sierra Leone on the twenty-sixth day of April 1962 (or, in the case of a person of unsound mind, at such later date as may be prescribed) unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who is a citizen of Sierra Leone by virtue of subsection (2) of section 1 of this constitution, made and registered such declaration of his intentions concerning residence or employment as may be prescribed:

Provided that where a person cannot renounce his citizenship of the other country under the law of that country he may instead make such declaration concerning that citizenship as may be prescribed.

. . .

9. Parliament may make provision —

(*a*) For the acquisition of citizenship of Sierra Leone by persons who do not become citizens of Sierra Leone by virtue of the provisions of this chapter;

(*b*) For depriving of his citizenship of Sierra Leone any person who is a citizen of Sierra Leone otherwise than by virtue of subsection (1) of section 1 or section 4 of this constitution; or

(*c*) For the renunciation by any person of his citizenship of Sierra Leone.

10. (1) In this chapter —

"Alien" means a person who is not a Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland;

"British protected person" means a person who is a British protected person for the purposes of the British Nationality Act, 1948:

"Prescribed" means prescribed by or under any Act of Parliament.

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

(3) Any reference in this chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before the twenty-seventh day of April, 1961, and the birth occurred after the twenty-sixth day of April, 1961, the national status that the father would have had if he had died on the twenty-seventh day of April 1961 shall be deemed to be his national status at the time of his death.[1]

[1] Section 4 of the Constitution (Amendment) Act, 1962 (Act No. 11 of 1962) added the following definition to section 10, as of 27 April 1961:

"'Father' includes a natural father but not an adoptive father".

Chapter II

Protection of Fundamental Rights and Freedoms of the Individual

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

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

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

(*c*) Respect for his private and family life,

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

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

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case —

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

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

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

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

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

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

(*a*) In consequence of his unfitness to plead to a criminal charge; or

(*b*) In execution of the sentence or order of a court whether in Sierra Leone or elsewhere, in respect of a criminal offence of which he has been convicted; or

(*c*) In execution of the order of the Supreme Court or of the Court of Appeal or such other court as may be prescribed by Parliament on the grounds of his contempt of any such court or of another court or tribunal; or

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

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

(*f*) Upon reasonable suspicion of his having committed or of being about to commit a criminal offence; or

(*g*) In the case of a person who has not attained the age of twenty-one years, for the purpose of his education or welfare; or

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

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

(*j*) For the purpose of preventing the unlawful entry of that person into Sierra Leone, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Sierra Leone or the taking of proceedings relating thereto; or

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

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

(3) Any person who is arrested or detained in such a case as is mentioned in paragraph (*e*) or (*f*) of subsection (1) of this section and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said paragraph (*f*) is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

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

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

(6) If any person who is lawfully detained by virtue only of such a law as is referred to in subsection (5) of this section so requests at any time during the period of that detention not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice of Sierra Leone from among the persons entitled to practise in Sierra Leone as advocates or solicitors.

(7) On any review by a tribunal in pursuance of subsection (6) of this section of the case of any detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by whom it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

14. (1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Sierra Leone, the right to reside in any part of Sierra Leone, the right to enter Sierra Leone and immunity from expulsion from Sierra Leone.

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

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

(*a*) Which is reasonably required in the interests of defence, public safety, public order, public morality, public health or the conservation of the mineral resources of Sierra Leone and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(*b*) For the imposition of restrictions on the movement or residence within Sierra Leone of any person who is not a citizen thereof or the exclusion or expulsion from Sierra Leone of any such person; or

(*c*) For the imposition of restrictions on the acquisition or use by any person of land or other property in Sierra Leone; or

(*d*) For the imposition of restrictions upon the movement or residence within Sierra Leone of public officers or members of a defence force; or

(*e*) For the removal of a person from Sierra Leone to be tried outside Sierra Leone for a criminal offence or to undergo imprisonment outside Sierra Leone in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(4) If any person whose freedom of movement has been restricted by virtue only of such a provision as is referred to in paragraph (*a*) of subsection (3) of this section so requests at any time during the period of that restriction not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice of Sierra Leone from among the persons entitled to practise in Sierra Leone as advocates or solicitors.

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

15. (1) No person shall be held in slavery or servitude or required to perform forced labour.

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

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

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

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

(*d*) Any labour required during a period of public emergency or in the event of any other emergency or calamity which threatens the life or well-being of the community; or

(*e*) Any labour which forms part of normal communal or other civic obligations.

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

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction in any part of Sierra Leone of any description of punishment which was lawful in that part immediately before the commencement of this constitution.

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

(*a*) The taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development and utilization of any property in such a manner as to promote the public benefit; and

(*b*) The necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(*c*) Provision is made by law applicable to that taking of possession or acquisition —

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

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

(2) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property —

(*a*) In satisfaction of any tax, rate or due;

(*b*) By way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence;

(*c*) As an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(*d*) By way of the vesting or administration of trust property, enemy property, or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or unincorporate in the course of being wound up;

(*e*) In the execution of judgements or orders of courts;

(*f*) By reason of its being in a dangerous state or injurious to the health of human beings, animals or plants;

(*g*) In consequence of any law with respect to the limitation of actions;

(*h*) For so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon—

(i) Of work of soil conservation or the conservation of other natural resources; or

(ii) Of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed, to carry out.

(3) Nothing in this section shall be construed as affecting the making or operation of any law for the

compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate which is established directly by any law and in which no moneys have been invested other than moneys provided by Parliament or by the Legislature of the former Colony and Protectorate of Sierra Leone.

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

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

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

(*b*) To enable any body corporate established directly by any law or any department of the Government of Sierra Leone or any local government authority to enter on the premises of any person in order to carry out work connected with any property or installation which is lawfully on such premises and which belongs to that body corporate or that government or that authority, as the case may be; or

(*c*) For the purpose of protecting the rights or freedoms of other persons,

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

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

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

(3) All proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public:

Provided that the court or other authority may, to such extent as it may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory civil proceedings, or to such extent as it may be empowered or required by law so to do in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of twenty-one years or the protection of the private lives of persons concerned in the proceedings, exclude from its proceedings persons other than the parties thereto and their legal representatives.

(4) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question imposes upon any person charged as aforesaid the burden of proving particular facts.

(5) Every person who is charged with a criminal offence —

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

(*b*) Shall be given adequate time and facilities for the preparation of his defence:

(*c*) Shall be permitted to defend himself in person or by a legal representative of his own choice;

(*d*) Shall be afforded facilities 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 witnesses called by the prosecution; and

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

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question prohibits legal representation in native courts.

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

(7) No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it 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 any other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence:

Provided that nothing in any law shall be held to be inconsistent with or in contravention of this subsection by reason only that it authorizes any court to try a member of a defence force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under service law; but any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under service law.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of any provision of this section other than subsection (7) thereof to the extent that the law in question authorizes the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency.

(10) In paragraphs (*c*) and (*d*) of subsection (5) of this section, "legal representative" means an advocate entitled to practise as such in Sierra Leone or, except in relation to proceedings before a court in which a solicitor has no right of audience, a solicitor who is so entitled.

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

(2) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) No religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination.

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

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

(*a*) In the interests of defence, public safety, public order, public morality or public health; or

(*b*) For the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion,

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

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

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

(*a*) Which is reasonably required —

(i) In the interests of defence, public safety, public order, public morality or public health; or

(ii) For the purpose of protecting the reputations, rights and freedoms of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or

(*b*) Which imposes restrictions upon public officers or upon members of a defence force,

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

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

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

(*a*) Which is reasonably required —

(i) In the interests of defence, public safety, public order, public morality or public health; or

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

(*b*) Which imposes restrictions upon public officers or upon members of a defence force,

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

23. (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

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

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision —

(*a*) For the appropriation of revenues or other funds of Sierra Leone or for the imposition of taxation (including the levying of fees for the grant of licences); or

(*b*) With respect to persons who are not citizens of Sierra Leone; or

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

(*d*) For the application in the case of members of a particular race or tribe of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or

(*e*) For authorizing the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency; or

(*f*) Whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.[1]

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to qualifications for service as a public officer or as a member of a defence force or for the service of a local government authority or a body corporate established directly by any law.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 14, 18, 20, 21 and 22 of this constitution, being such a restriction as is authorized by paragraph (*a*) of subsection (3) of section 14, subsection (2) of section 18, subsection (5) of section 20, subsection (2) of section 21 or subsection (2) of section 22, as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this constitution or any other law.

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

(2) The Supreme Court shall have original jurisdiction,—

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

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

and may make such orders, issue such writs and give such directions as it may consider appropriate

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[1] The Constitution (Amendment) (No. 3) Act, 1962 (Act No. 23 of 1962) amended the Constitution, as from 27 April 1961, by substituting the following for the full stop at the end of section 23, sub-section (4):

"; or

"(*g*) for the limitation of citizenship of Sierra Leone to persons of negro African descent, as defined in subsection (3) of section 1 of this Constitution, and for the restrictions placed upon certain other persons by subsection (4) of the said section".

for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 12 to 23 (inclusive) to the protection of which the person concerned is entitled:

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

(3) If in any proceedings in any court other than the Supreme Court or the court of appeal any question arises as to the contravention of any of the provisions of the said sections 12 to 23 (inclusive), the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court unless in his opinion the raising of the question is merely frivolous or vexatious.

(4) Any person aggrieved by any determination of the Supreme Court under this section may appeal therefrom to the court of appeal.

(5) No appeal shall lie from any determination under this section that any application or the raising of any question is merely frivolous or vexatious.

(6) Parliament may make provision, or may authorize the making of provision, with respect to the practice and procedure of any court for the purposes of this section and may confer upon that court such powers, or may authorize the conferment thereon of such powers, in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(7) During the period of two years beginning with the commencement of this constitution, nothing contained in any law made before that commencement shall be held to be inconsistent with any of the said sections 12 to 23 (inclusive); and nothing done during that period under the authority of any such law shall be held to be done in contravention of any of those sections.[1]

25. . . .

(4) In this chapter, "period of public emergency" means any period during which —

(*a*) Sierra Leone is at war; or

(*b*) There is in force a resolution of the House of Representatives supported by the votes of not less than two-thirds of all the members of the House declaring that a state of public emergency exists.

(5) A resolution passed by the House of Representatives for the purposes of subsection (4) of this section shall remain in force for twelve months or such shorter period as may be specified therein:

Provided that any such resolution may be extended from time to time for a further period not exceeding twelve months by resolution passed in like manner and may be revoked at any time by resolution supported by the votes of a majority of all the members of the House of Representatives.

[1] This period expires on 26 April 1963.

. . .

Chapter IV

PARLIAMENT

Part I

Composition of Parliament

29. There shall be a Parliament of Sierra Leone which shall consist of Her Majesty and a House of Representatives.

. . .

31. Subject to the provisions of section 32 of this constitution, any person who —

(*a*) Is a citizen of Sierra Leone; and

(*b*) Has attained the age of twenty-five years; and

(*c*) Is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the House of Representatives,

shall be qualified for election as such a member of the House of Representatives as is referred to in paragraph (*b*) of subsection (1) of section 30 of this constitution, and any such person who, under any law, is for the time being a paramount chief shall be qualified for election as such a member of the House of Representatives as is referred to in paragraph (*a*) of that subsection, and no other person shall be qualified to be so elected.[1]

32. (1) No person shall be qualified for election as a member of the House of Representatives —

(*a*) If he is a citizen of a country other than Sierra Leone having become such a citizen voluntarily or is under a declaration of allegiance to such a country; or

(*b*) Save as otherwise provided by Parliament, if he is a public officer, a member of the armed forces

[1] Section 5 of the Constitution (Amendment) Act, 1962 (Act No. 11 of 1962) substituted the following for section 31 of the Constitution, as of 27 April 1961:

"31. Subject to the provisions of sections 1, 4 and 32 of this constitution, any person who —

"(*a*) Is a citizen of Sierra Leone; and

"(*b*) Has attained the age of twenty-five years; and

"(*c*) Is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the House of Representatives,

shall be qualified for election as such a member of the House of Representatives as is referred to in paragraph (*b*) of sub-section (1) of section 30 of this constitution, and any such person, who, under any law, is for the time being a paramount chief shall be qualified for election as such a member of the House of Representatives as is referred to in paragraph (*a*) of that sub-section and no other person shall be qualified to be so elected:

"Provided that no person who was a member of the House of Representatives on the 27th day of April 1961, shall be disqualified for election by virtue of the provisions of sections 1 and 4 of this constitution."

of the Crown or the holder of any other office of emolument under the Crown; or

(*c*) If he holds the office of speaker; or

(*d*) If he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Sierra Leone; or

(*e*) If, being a person possessed of professional qualifications, he is disqualified (otherwise than at his own request) from practising his profession in Sierra Leone by the order of any competent authority made in respect of him personally within the immediately preceding five years but after the commencement of this constitution; or

(*f*) If under any law in force in Sierra Leone he is adjudged to be a lunatic or otherwise declared to be of unsound mind; or

(*g*) If he is under a sentence of death imposed on him by any court or a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by a court or substituted by competent authority for some other sentence imposed on him by a court; or

(*h*) If, in the case of the election of such a member as is referred to in paragraph (*b*) of subsection (1) of section 30 of this constitution, he is not qualified under any law to be registered as an elector for elections to the House of the members referred to in that paragraph; or

(*i*) If, in the case of the election of such a member as is referred to in paragraph (*b*) of subsection (1) of section 30 of this constitution, he is for the time being a paramount chief under any law.

(2) Parliament may provide that a person shall not be qualified for election to the House of Representatives for such period (not exceeding five years) as may be prescribed by Parliament if he is convicted by any court of such offences connected with the election of members of the House of Representatives as may be so prescribed.

(3) Parliament may provide that a person who is the holder of any office the functions of which involve responsibility for, or in connection with, the conduct of any election to the House of Representatives or the compilation of any register of voters for the purposes of such an election shall not be qualified for election to the House.

(4) Parliament may provide that a person disqualified under paragraph (*g*) of subsection (1) of this section by reason of his being under a sentence of imprisonment exceeding twelve months for any such offence (being an offence that appears to Parliament to involve dishonesty) as may be prescribed by Parliament or by reason of his being under sentence of imprisonment that includes such a sentence for any such offence shall not be qualified for election as a member of the House of Representatives for such period from the date on which he ceases to be disqualified under that paragraph (not exceeding five years) as may be so prescribed.

. . .

Part 2
LEGISLATION AND PROCEDURE IN HOUSE OF REPRESENTATIVES

. . .

43. (1) Parliament may alter any of the provisions of this constitution or (in so far as it forms part of the law of Sierra Leone) any of the provisions of the Sierra Leone Independence Act, 1961:

Provided that in so far as it alters (*a*) this section; (*b*) sections 11 to 25 (inclusive), section 29 . . . a bill for an Act of Parliament under this section shall not be submitted to the Governor-General for his assent unless the bill has been passed by the House of Representatives in two successive sessions, there having been a dissolution of Parliament between the first and second of those sessions.

. . .

(3) A bill for an Act of Parliament under this section shall not be passed by the House of Representatives in any session unless at the final vote thereon in that session it is supported by the votes of not less than two-thirds of all the members of the House.

(4) The provisions of this constitution or (in so far as it forms part of the law of Sierra Leone) the Sierra Leone Independence Act, 1961, shall not be altered except in accordance with the provisions of this section.

. . .

Chapter VIII
The Public Service

. . .

100. (1) The law applicable to any benefits to which this section applies shall, in relation to any person who has been granted, or who is eligible for the grant of, such benefits, be that in force on the relevant date or any later law that is not less favourable to that person.

(2) In this section "the relevant date" means —

(*a*) In relation to any benefits granted before the twenty-seventh day of April 1961 the date on which those benefits were granted;

(*b*) In relation to any benefits granted or to be granted on or after the twenty-seventh day of April 1961 to or in respect of any person who was a public officer before that date, the twenty-sixth day of April 1961; and

(*c*) In relation to any benefits granted or to be granted to or in respect of any person who becomes a public officer on or after the twenty-seventh day of April 1961, the date on which he becomes a public officer.

. . .

THE FRANCHISE AND ELECTORAL REGISTRATION ACT, 1961[1]

PART I
PRELIMINARY

. . .

2. In this Act, unless the context otherwise requires —

"Alien" means a person who is neither a Sierra Leone citizen, nor a British subject nor a British protected person;

. . .

PART II
THE FRANCHISE

6. (1) Subject to the provision of section 8, every person, whether male or female who has attained the age of twenty-one years and is ordinarily resident in the ward on the date specified for the publication of notices inviting claims under section 13, shall be entitled to be registered as an elector in a ward of a constituency and, when so registered, to vote in such ward at the election of a member to represent such constituency in the House of Representatives or of a member to represent such ward in a local authority.

. . .

[1] Published in *Supplement to the Sierra Leone Gazette Extraordinary*, vol. XCII, No. 69, dated 16 October 1961

7. (1) Subject to the provisions of section every member of a Tribal Authority in any district shall be entitled to vote at the election of a member (who shall be a paramount chief) to represent the district in the House of Representatives.

(2) The fact that a member of a tribal authority is entitled to vote or votes under the provision o this section shall not disentitle him to be registered as an elector or to vote in accordance with the provisions of section 6, nor shall the fact that a person is entitled to vote or votes under section 6 disentitle him from voting in accordance with the provisions of this section.

8. No person shall be registered as an elector or, having been registered as such, shall be entitled to vote at any election who —

(*a*) Is an alien; or

(*b*) Is a lunatic so found under the laws for the time being in force in Sierra Leone; or

(*c*) Is disqualified from being registered as an elector, or voting under any laws for the time being in force in Sierra Leone relating to offences connected with elections; or

(*d*) Is serving a sentence of imprisonment.

. . .

SOMALIA

NOTE

According to one of the transitory provisions of the Constitution of 1960, extracts from which appeared in the *Yearbook on Human Rights for 1960*, the Constitution was to enter into force provisionally on 1 July 1960 and was to be voted on in a referendum within one year from that date. The Constitution was adopted in a referendum held on 20 June 1961.

SOUTH AFRICA

NOTE[1]

1. Extracts from the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961, assented to on 24 April 1961) appear below.

2. Section 4 of the General Law Amendment Act, 1961 (Act No. 39 of 1961, assented to on 18 May 1961) inserted section 108 *bis* in the Criminal Procedure Act of 1955. According to this amendment, "the Attorney-General may, if he considers it necessary in the interest of the safety of the public or the maintenance of public order", direct that a person arrested on a charge should not be released on bail or otherwise for twelve days after his arrest. This provision was to lapse on the first day of June 1962 but it could be extended from time to time by a resolution of the Senate and the House of Assembly for a period not exceeding twelve months at a time.

By section 5 of the same Act, murder and arson have been added to the offences listed in section 111 of the Criminal Procedure Act for which the minister may order a trial without a jury.

[1] The legislation dealt with in this note appears in *Statutes of the Union of South Africa*, 1961.

THE REPUBLIC OF SOUTH AFRICA CONSTITUTION ACT, 1961

ACT NO. 32 OF 1961, ASSENTED TO ON 24 APRIL 1961[1]

Part I

THE REPUBLIC

Sec. 1. The Union of South Africa, consisting of the provinces of the Cape of Good Hope, Natal, the Transvaal and the Orange Free State as they existed immediately prior to the commencement of this Act, shall as from the thirty-first day of May, 1961, be a republic under the name of the Republic of South Africa.

. . .

Part III

THE STATE PRESIDENT

. . .

Sec. 8. (1) The State President shall be elected by an electoral college consisting of the members of the Senate and the House of Assembly, at a meeting to be called in accordance with the provisions of this section and presided over by the Chief Justice of South Africa or a judge of appeal designated by him.

. . .

(4) No person may be elected or serve as State President unless he is qualified to be nominated or elected and to take his seat as a member of the Senate.

. . .

Sec. 13. Any person who commits any act which is calculated to violate the dignity or injure the reputation of the State President or an acting State President, shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or imprisonment for a period not exceeding five years.

. . .

[1] The text of the Act appears in *Statutes of the Union of South Africa*, 1961.

Part V

PARLIAMENT

. . .

Senate

. . .

Sec. 34. No person shall be qualified to be a senator under this Act unless he:

(*a*) Is at least thirty years of age;

(*b*) Is qualified to be registered as a voter for the election of members of the House of Assembly in one of the provinces;

(*c*) Has resided for five years within the limits of the republic;

(*d*) Is a white person and is a South African citizen in terms of the provisions of the South African Citizenship Act, 1949 (Act No. 44 of 1949).

. . .

House of Assembly

. . .

Sec. 46. No person shall be qualified to be a member of the House of Assembly under this Act unless he:

(*a*) Is qualified to be registered as a voter for the election of members of the House of Assembly in one of the provinces;

(*b*) Has resided for five years within the limits of the republic;

(*c*) Is a white person and is a South African citizen in terms of the provisions of the South African Citizenship Act, 1949 (Act No. 44 of 1949).

. . .

Both Senate and House of Assembly

. . .

Sec. 55. No person shall be capable of being elected or nominated or of sitting as a member of the Senate or the House of Assembly, if he:

(*a*) Has at any time been convicted of any offence for which he has been sentenced to imprisonment without the option of a fine for a period of not less than twelve months, unless he has received a grant of amnesty or a free pardon, or unless such imprisonment has expired at least five years before the date of his election or nomination; or

(*b*) is an unrehabilitated insolvent; or

(*c*) Is of unsound mind, and has been so declared by a competent court; or

(*d*) Holds any office of profit under the republic: Provided that the following persons shall not be deemed to hold an office of profit under the Republic for the purposes of this paragraph — namely:

(i) A minister of the republic, or any person holding office as deputy to any Minister;

(ii) A person in receipt of a pension from the republic;

(iii) An officer or member of the South African Defence Force on retired or half-pay, or an officer or member of the South African Defence Force whose services are not wholly employed by the republic;

(iv) Any person who has been appointed or has become a justice of the peace under section two of the Justices of the Peace and Oaths Act, 1914 (Act No. 16 of 1914);

(v) Any person who, while the republic is at war, is an officer or member of the South African Defence Force or any other force or service established by or under the Defence Act, 1957 (Act No. 44 of 1957);

(vi) A member of any council, committee, board or similar body established by or under any law who receives no payment in respect of his services on such council, committee, board or body in excess of an allowance at a rate not exceeding eleven rand for each day on which he renders such services, together with the reimbursement of any travelling expenses incurred by him in the course of such services.

. . .

Part IX

GENERAL

Sec. 107. Subject to the provisions of this Act, all laws which were in force in any part of the Union of South Africa, or in any territory in respect of which Parliament is competent to legislate, immediately prior to the commencement of this Act, shall continue in force until repealed or amended by the competent authority.

Sec. 108. (1) English and Afrikaans shall be the official languages of the Republic, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights and privileges.

(2) All records, journals and proceedings of Parliament shall be kept in both the official languages, and all Bills, Acts and notices of general public importance or interest issued by the government of the republic shall be in both the official languages.

. . .

Sec. 121. This Act shall be called the Republic of South Africa Constitution Act, 1961, and shall, save in so far as may be otherwise required for the purpose of giving effect to any provision thereof, come into operation on the thirty-first day of May 1961.

SPAIN

NOTE[1]

All the rights proclaimed in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10 December 1948 are recognized, regulated and adequately safeguarded under the present Spanish legal system, the fundamental precepts and tenets of which, as mentioned in previous reports, coincide with those set out in the preamble to the Universal Declaration.

In order to avoid unnecessary repetition, we are taking as our point of departure the date of 21 August 1961, when this Ministry despatched its last report on this subject. Since that time, further provisions relating to human rights have been added to the Spanish legal system. Of these, the following deserve special mention.

A. Rights to Freedom, Equality and Security of Person

These rights, traditionally embodied in Spanish legislation, were solemnly proclaimed by the new State in the Charter of the Spanish People of 17 July 1945 and in the Act of 17 May 1958, both of which are fundamental laws of the State. The exercise of these rights is effectively guaranteed through the right of petition, as defined in the Act of 22 December 1960; the right of petition was dealt with in the report of 21 August 1961 which we have already mentioned. Special regulations, which do not affect the right of petition in any essential way, were laid down for its exercise by members of the armed forces and of military institutions in the decree of 18 January 1962. It was necessary to make these regulations because of the special position of any such petitioners, but there has been no serious interference with the exercise of the right, for article 6 of the decree specifically provides that a petitioner shall not suffer as a result of such exercise.

In the sphere of the right to equality, the basic text is the Act of 21 July 1960. Although it has already been the subject of special study in previous reports, we may recall that this Act earmarked the whole of the State revenue from certain sources for ensuring in practice, equal access to education, vocational training and research for all Spaniards.

In connexion with the rights under review, we must mention the legal provisions ensuring equality before the law. We are referring to the decree of 16 November 1961 and the order of the Presidency of the Government dated 16 January 1962. Under these two texts, the system of the judiciary and the laws common to all the other provinces of Spain were extended to the equatorial region (provinces of Fernando Po and Rio Muni). It is worth emphasizing the provision contained in article 25, paragraph 3, of the decree of 16 November 1961, demonstrating the Spanish legislators' desire to see that the right to equality is really applied, something which cannot be done unless all circumstances, whether subjective or objective, peculiar to each specific case are taken into account. This article, which is based on the assumption that the same law applies throughout the country, reads as follows:

"Nevertheless, when applying the penal law, the courts may, at their discretion, reduce the penalty prescribed by the Code by one or two degrees, to take into account the educational and cultural level of the accused and the value attached in his social environment to the property or rights affected by the offence."

The equality of rights and freedoms for the two sexes, as set forth in article 2 of the Universal Declaration of Human Rights, is also recognized and guaranteed by Spanish law. Apart from the provisions on this score which are contained in the Fundamental laws of the State, in accordance with Spanish tradition (the Charter of the Spanish People, articles 11 and 24), the Act of 22 July 1961 granted women the same rights as men with regard to every kind of political and professional activities and employment. This Act was applied specifically to the labour field by the decree of 1 February 1962, article 1 of which provides that women may sign work contracts of all kinds, enter into collective contracts, and act as labour representatives or be represented in the enterprises in which they work, without prejudice to the provisions protecting women workers and regulating the legal capacity of married women. In accordance with the principle of protecting the home, a basic principle of the Spanish legislation now in force, the decree provides that, although her change of civil status does not terminate her employment, a working woman who marries may choose between the following: continuing her work in the undertaking, cancelling her work contract and receiving the benefits to which she is entitled, or remaining on leave without pay for a period of not less than one year or more than five years. In

[1] Note furnished by the Government of Spain, and dealing with events from 21 August 1961 to 23 August 1962. Certain other events of 1961 concerning Spain are dealt with in the *Yearbook on Human Rights for 1960*.

addition, women are to be paid the same wages as men for work of equal value. Differences in pay due to differences in the value or quality of the work done by women must be duly defined in the legal provision authorizing them. To sum up, all regulations relating to employment must ensure equality between the sexes and eliminate any discrimination against women, except in the cases where the regulations protecting women apply (article 6).

The right of everyone to leave his own country, proclaimed in article 13 of the Universal Declaration of Human Rights, is specifically defined and protected by the emigration legislation; the text of the basic Act on this subject of 22 December 1960 was implemented by a recent decree, dated 3 May 1962. This Act recognizes the right of every Spaniard to emigrate, subject only to the limitations established by law or necessary for the protection of the emigrant or the higher interests of the nation. Persons may emigrate individually — with or without their families — or in groups; on a permanent or temporary basis; to a neighbouring area, elsewhere in the continent or overseas. It is the duty of the State to extend its protection to emigrants while always respecting the freedom and dignity of the individual. The emigrant is protected from the preparatory stage until his arrival abroad, as are any members of his family who may remain in Spain; in addition, it is incumbent on the State to promote family unity by reuniting families through the different means provided by law. In brief, Spanish law not only proclaims the right to emigrate, it regulates the exercise of that right, endowing the emigrant with a legal "status" which ensures his protection in economic, spiritual, social, family and other matters. The State agency which exercises this protective function is the Spanish Emigration Institute, which is financed by the National Labour Welfare Fund and the Unemployment Insurance Fund.

With regard to the right to security of person, which is proclaimed and amply safeguarded by Spanish law, during the period under review, the order of the Ministry of Commerce of 9 October 1961 is worthy of note; it set up a Council for the Safety of Life at Sea in the Department of the Merchant Navy of the above Ministry. This Council acts as an advisory body on all matters relating to the International Convention for the Safety of Life at Sea adopted at the London Conference of 1960.

B. Rights concerning the Family

These rights, which are proclaimed in article 16 of the Universal Declaration of Human Rights, have been and still are a special concern of the Spanish legislators. This is clear from the declarations regarding the recognition and safeguarding of these rights embodied in the fundamental laws of the new State, but we shall not cite them here, as they were given special consideration in earlier reports of this kind.

During the period under review, no important legislation relating to these rights has been enacted, but various provisions have been promulgated to apply or develop the general principles of the rights concerning the family which are contained in the above-mentioned laws.

Tax relief continues to be granted to large families, as may be seen from such measures as the order of 17 June 1961, which provides that the members of such families shall receive their school record books free of charge, and the Tax Reform Act of 23 December 1961, article 2 of which grants the heads of large families in the first and second categories complete exemption from income tax on incomes not exceeding respectively 60,000 and 200,000 pesetas a year, or 250,000 pesetas a year for large families in the second category (families with more than seven children according to article 1 of the Act of 13 December 1943) when the personal income of the two spouses is computed together. The system of tax relief for large families was extended to the province of the Sahara by the order of the Presidency of the Government of 30 May 1961.

The protection of the family is reflected in certain recently promulgated legal provisions, the purpose of which is to maintain family unity by reuniting families when, owing to special circumstances such as emigration, the family unit is threatened.

Title 5 (article 63 *et seq.*) of the decree of 3 May 1962 implementing the text of the present Emigration Act, referred to in the previous paragraph, places on the State the obligation of maintaining the unity of the emigrant's family by reuniting its members. For this purpose, the Spanish Government must ensure that the following provisions are included in any international agreement that it signs:

(*a*) Arrangements whereby the emigrant is accompanied by his family;

(*b*) Maintenance of the ties between the emigrant and his family while the latter remains in Spain;

(*c*) The establishment of a system for the transfer of funds to enable the emigrant to support his family in Spain;

(*d*) The continuation of the social security benefits to which the members of the emigrant's family are entitled or are acquiring entitlement;

(*e*) The establishment of equivalents for the studies pursued by the emigrant and his family, either in Spain or abroad;

(*f*) The reunion of the emigrant with his family; and

(*g*) The establishment of a rapid procedure to deal with cases in which an emigrant has abandoned his family.

Most of the funds for such state protection are provided by the National Labour Welfare Fund, established by the Act of 21 July 1960. This Act contains an investment plan (instructions given effect by the order of the Ministry of Labour of 8 January

1962, articles 42 *et seq.*), providing for and regulating the financial assistance to be extended to the reunited families of emigrant workers. The scale of the benefits which are paid by the Emigration Institute is laid down in the order of the Ministry of Finance of 18 June 1962.

In line with this specific State protection of the family, schedule II of the agreement between France and Spain of 25 January 1961 contains a set of rules for reuniting the families of Spanish workers employed permanently in France; and special regulations for the payment of family allowances to Spanish workers in France are to be found in the exchange of notes between the Ministers of France and Spain dated 14 December 1961.

Lastly, the order of the Ministry of Labour of 28 June 1962 is an interesting instance of the concern and constant care for the family shown by the Spanish legislators. It instructs the National Social Welfare Institute — the agency which administers the family assistance scheme — to make a survey of the workers' family situation as of June of the present year; the survey will be submitted for prior approval to the above-mentioned ministry, and its sole purpose is to increase as much as possible state protection of the family, particularly of the poorest families.

C. The Right to Work

The particular importance attached by the Spanish State to the right to work is reflected in a series of provisions which have been enacted since the report of 21 August 1961. These provisions apply and develop the fundamental principles laid down in texts which are the supreme law of the land, such as the Labour Charter, the Charter of the Spanish People and the Fundamental Law of the State of 17 May 1958.

With regard to the protection of this right, we must mention, in the first place, the Act of 21 July 1960 and the decree of 22 December of the same year, respectively establishing and laying down regulations for the National Labour Welfare Fund. The Government approved the investment plan formulated by the administrators of the Fund and laid down regulations for it in the orders of the Ministry of Labour of 21 August 1961 and 8 January 1962. This investment plan, which is very broad, covers unemployment insurance, the vocational training of workers, state protection of emigrants, assistance to internal migrants, the reuniting of families, the promotion of the co-operative movement, loans to workers to enable them to join co-operatives, and the scale of benefits for family allowances. The budget of the investment plan totals 950 million pesetas.

The system of trade union collective agreements established by the Act of 24 April 1958, for which regulations were issued on 22 July of the same year, has been steadily extended during the period covered by the present report. This has been to the workers' benefit, for such agreements improve all aspects of working conditions, as intended by the above-mentioned legal provisions and as specifically stated in the decree of 5 July 1962, which provided for the settlement of labour disputes (National Labour Regulations) under collective agreements and internal regulations adopted by undertakings.

The most recent developments in this scheme are the following: the trade union collective agreement of the cotton textile industry of 29 January 1962; the trade union collective agreement of the *Compañía arrendetaria del Monopolio del Petróleo, S.A.* [Company holding the petroleum monopoly] of 31 March 1962; the trade union collective agreement of the Calvo Sotelo National Enterprise of 6 April 1962; the inter-provincial trade union collective agreement of the Association of Solid Fuel Distributors of Barcelona, Madrid, Valencia and Saragossa of 16 April 1962; the inter-provincial trade union collective agreement of the knitted fabrics industry of 5 May 1962; and the inter-provincial trade union collective agreements of the chemical and pharmaceutical industry and the rubber industry, dated respectively 12 May and 18 June 1962.

In connexion with the right to work, proclaimed in article 23 of the declaration we have repeatedly mentioned, the following legal provisions also deserve special mention.

The decree of 15 February 1962, supplementing the decree of 21 September 1960, regulates workers' wages; it defines wages and the payments which form part of them, such as, besides the compulsory minimum remuneration, in cash or kind, prescribed by the Ministry of Labour or by collective agreements or individual contracts, the bonuses paid for extra effort, for better quality and for more arduous work, and the long-service bonuses and the amounts payable for public holidays, periods of leave, etc.

The Act of 21 July 1962, amending article 6 of the Act respecting Contracts of Employment of 27 January 1944, broadens the legal definition of an employee. Under this article, the following are deemed to be employees, subject to the labour regulations laid down by the above-mentioned Act respecting Contracts of Employment and therefore covered by the special protection enjoyed by employees under the law: apprentices, whether or not they receive a wage or pay a premium to the employer, provided that their individual contract establishes no other relation, in accordance with the special regulations governing contracts of apprenticeship, so-called homeworkers who perform work in their own homes or in another place freely selected by themselves, without supervision by the person on whose account they work and from whom they receive remuneration for the work performed or by the representative of such person, wage-earning employees and workers, whether skilled or not in any trade or manual work or art, and persons who

perform ordinary unskilled work, persons in charge of undertakings, foremen and heads of workshops, salaried employees engaged in commercial undertakings, banks, offices, book-keeping and administrative work, so-called intellectual workers, and in general all persons who are employed in a subordinate capacity and who are paid a remuneration for their work or for its results by the persons who direct or order it. The following also are deemed to be employees, although they are not subject to specific working hours or supervision: persons who purchase and sell goods on behalf of one or more other persons and on their instructions, provided that such operations require the approval of those persons for their fulfilment, and that they themselves are not personally responsible for the ultimate success or any other phase of the operation.

The Act of 21 July 1962, continuing the trend initiated with the creation of the Committees of representatives of undertakings and in application of the principles proclaimed in the Labour Charter, provides for employee participation in the administration of commercial undertakings. Very wisely, this legal text does not attempt to introduce into the working world of Spain a real system of co-administration which has not yet been achieved even in economically more advanced and developed countries and which, in present circumstances in Spain, might even have unfavourable consequences, particularly for those whom the new Act is intended most directly to favour. As is stated in its preamble, the Act merely grants the representatives of the employees restricted participation in the management of the undertakings which are constituted in the form of companies and in which the investors are represented by right; in return, the investors' representatives are given an opportunity of co-operating with those of the staff on the committee of representatives, thus completing the cycle of relationships between the two components of the undertaking. In this way, it is hoped to establish a system the progressive development of which, by improving human relations in the world of work, will bring about conditions providing safeguards for the dignity of the employee while furnishing the necessary incentives to expand and improve production with a view to increasing the spiritual well-being and raising the level of living of the Spanish people.

The Act provides that undertakings which are legally constituted in the form of companies managed by a board of directors or similar body partly or wholly appointed by the shareholders and which are obliged to set up committees of representatives shall include representatives of the employees of the undertaking in the board of directors. These shall be in the proportion of one to six investors' representatives, or to a smaller number, but not less than three. If there are less than three investors' representatives, no staff representative is required. Committees and other bodies set up by the board of directors or similar organ shall have at least one member representing the employees if they have been permanently authorized to deal with other matters than current business and their decisions may directly affect the interests of the staff. In the exercise of their functions, the representatives of employees shall have the same rights and duties as the investors' representatives (article 1).

The staff representatives to the board — who must have the qualifications required by law to serve as members of committees of representatives and whose duties in one capacity must not conflict with their duties in the other — are initially chosen by the committee of representatives itself, which elects a trio of representatives by individual and secret ballot for each staff representative's seat to be filled. The trio or trios of names elected by the committee are submitted to the board of directors, which chooses one of the three proposed for each vacant seat by a majority vote. If the board of directors rejects all three names, the committee of representatives shall elect three others, which shall not include any of those that have been rejected. The staff representative must be elected from this second trio of names. Each board member representing the employees must be selected from a different professional category unless there are more than four such members, in which case the categories may be repeated. A staff representative elected to the board who is not a fully fledged member of the committee of representatives becomes one automatically (articles 2 and 3). The term of office of the staff representatives on the board expires automatically when the committee of representatives which proposed them is replaced. They may also cease to hold office for the following reasons: those laid down in commercial law for the other members of the board, in so far as they are applicable; those laid down in the regulations for committees of representatives; and, lastly, by a decision of the Ministry of Labour, adopted on the proposal of the board of directors, approved by three-quarters of the members, for breach of trust in making the reports which are mentioned below.

The Ministry of Labour shall give a prior hearing to the trade union organization (articles 4 and 5).

The staff representatives serving on the board of directors must report on their activities to the committee of representatives. They shall not include in their reports any confidential technical or economic data regarding the operation of the undertaking without prior authorization from the board of directors, which may refuse the authorization only if so decided by a two-thirds majority. In any event, when making his report, the staff representative shall constantly bear in mind the best interest of the undertaking and the principles of solidarity with the employees he represents and of harmony and peace between all those concerned in production. To this end, the following shall be deemed confidential: data which, if revealed, would seriously prejudice the ability of

the undertaking to compete with others, or would damage its reputation or in any other way shake public confidence in its stability and efficiency or in the quality of its products, and in general, any data which cannot be revealed without violating business and professional secrecy (article 6).

As mentioned above, the staff representatives have the same powers as the investors' representatives. For that reason, they have the same rights to *per diem* allowances and payments for attending meetings or travelling, and they continue to be entitled to their wages and other emoluments for the time spent in attending meetings of the board of directors. On the other hand, they must place their share of the profits under a profit-sharing scheme and any other emoluments not already mentioned to which they are entitled as members of the board at the disposal of the committee of representatives, which shall use them for social welfare for the benefit of the staff of the undertaking, as decided by the committee (article 8).

In accordance with the principle of reciprocal representation of capital and labour on the bodies of the undertaking, article 9 of the Act provides that the board of directors shall designate some of its members representing the investors to serve on the committee of representatives; they shall have the right to attend its debates on the same terms and with the same powers and duties as the other members, except that they may not take part in the voting to elect staff representatives proposed for the board of directors. The number of investors' representatives in the committee may not exceed one-sixth of the total membership.

There has been no relaxation of the State's efforts in the sphere of social security and assistance during the period under review. The measures to protect this aspect of the right to work are financed mainly by the National Social Welfare Fund and the National Labour Welfare Fund established by the Act of 21 July 1960, which we have already mentioned. We have commented on the latter Fund and the extent and scope of its investment plan, which was implemented and regulated by the orders of the Ministry of Labour of 21 August 1961 and 8 January 1962. The investment plan of the National Social Welfare Fund was given effect by the order of 7 September 1961.

Of the recent legislation in the field of social security and assistance, the following measures are of special interest.

The order of the Ministry of Labour of 14 November 1961 lays down regulations for the application of the Act of 22 July 1961 establishing a national unemployment insurance scheme. This scheme, as pointed out in a previous report, does not, as might wrongly be supposed, reflect a policy resulting from a shortage of employment opportunities in Spain. On the contrary, it is based on a policy of creating wealth and employment. It is for the benefit of persons who are able and willing to work but who lose their jobs in the service of some other person, and hence their wages. It does not therefore cover persons who cease to work of their own accord or who are dismissed by their own fault. The protection afforded by the scheme consists in the payment of compensation, within certain limits, for any loss of income caused by unemployment and in the provision of assistance, where appropriate, in finding other work.

The above-mentioned order of 14 November 1961 provides that persons working for some other person who are members of the unified social insurance scheme shall be automatically covered by the unemployment insurance scheme. The contribution, calculated on the same basis of wage levels as that of the contributions to the unified scheme, is 1.5 per cent, of which the undertakings contribute 1.2 per cent and the employee the remaining 0.3 per cent (decree of 6 September 1961). The unemployment insurance scheme covers both permanent and casual workers who have been registered at the appropriate placement office or on the appropriate placement register for at least six months. The benefits are as follows: 75 per cent of the average wage taken as a basis for the social insurance contributions; 75 per cent of the family allowances; and 75 per cent of the bonuses payable on 18 July and at Christmas, proportionately to the period during which the employee has been receiving benefits since the payment of the last bonus. All these benefits are paid in addition to compensation for dismissal and regardless of any additional allowances to State-assisted workers attending vocational guidance, accelerated vocational training or retraining courses, and of any benefits to which workers who are legally defined as unemployed and who are included in assisted migration schemes may be entitled under such schemes. The beneficiaries of the unemployment insurance scheme who are totally or partially unemployed continue to be members of the unified social security scheme and of workers' mutual aid societies during their period of unemployment. If a worker is totally unemployed, his contribution is paid by the unemployment insurance scheme; if he is only partially unemployed, the undertakings must pay their contribution on that part of his wages which he earns while employed by them.

The order also specifies the reasons for which insurance benefits may be discontinued; the procedure to be followed by undertakings or employers wishing to obtain from the provincial labour authority the authorization for the total or partial discontinuance of employment, an authorization on which the recognition of the legally unemployed status of permanent employees depends; the procedure for such recognition in the case of casual workers; the establishment of the right to benefits of both permanent and casual workers, which is the function of the National Social Welfare Institute; and lastly, the appeals

procedure which safeguards and protects the employees and the employers or undertakings directly participating in the unemployment insurance scheme.

In the field of social insurance, we may mention the increasing importance of pension funds and workers' mutual aid societies, as shown by the expansion of activities of those which already exist and by the establishment of new ones.

The order of the Ministry of Labour of 3 May 1962 comes under the former of these two headings. It included the domestic workers known as "asistentas", in the national pension fund for domestic workers. The asistentas are domestic workers employed in Spanish territory, who may be paid by the hour, the day, the month or in some similar way, with or without meals, by the master of a household or head of a family, but whose work does not bring financial gain to the employer and who are exclusively employed on domestic tasks, regardless of their civil status (article 1). This order lays down regulations for initial and regular membership in the pension fund. The requirements for initial membership are as follows: the asistenta must *(a)* have at least two years' service in that capacity; *(b)* prove that her state of health and physical conditions are such that she is able to carry out her duties; *(c)* be under fifty-five years of age; and, *(d)* apply for membership between the date of publication of the order in the *Boletín Oficial* and 31 July 1962. In addition, any asistenta who was between fifty-five and sixty-five years of age and was employed at the beginning of that period may also become a member of the pension fund provided that she fulfils not only the above requirements but also the following: she must (1) have had at least ten years' service as an asistenta or domestic worker within the last fifteen years; (2) show that her state of health and physical condition are adequate for carrying out her duties, and (3) apply for membership before 1 September 1962.

There is no terminal date for applications for regular membership, but the person concerned must also be under fifty-five years of age, must meet the minimum requirement of two years' service as a domestic worker, and be in a state of health which permits her to carry out her duties.

An asistenta must pay the present total monthly contribution to the pension fund for domestic workers — including the share normally paid by the master of the household in addition to her own — or any contributions which may be specified in the future, and, when called for, fines for payment in arrears; she is entitled to the benefits provided in the present legislation relating to the pension fund and to any other benefits which may be established for other domestic workers in the future.

There are two new mutual aid societies, that of the independent transport and communications workers (order of the Ministry of Labour of 31 March 1962), and that of the Spanish workers in Gibraltar (order of the same Ministry of 27 June 1962). In accordance with the broad approach which characterizes the Spanish social welfare system, the statutes of both these societies lay down appropriate regulations for the following: the scope of the societies; membership and subscriptions; the periods of hardship required for the different benefits to which the members of those societies are entitled (an exception is made in the case of death benefits and the new retirement and disability benefits, for which no period of hardship is required); the benefits paid by the mutual aid societies, both mandatory and optional, the former including retirement, disability, widows' and orphans' pensions, dependents' pensions and benefits and death, marriage and birth benefits, while optional benefits include special allowances, loans to workers, production and housing loans and training grants; and, lastly, the administration of the mutual aid societies, which consists of a general assembly and a governing body. The Independent Transport and Communications Workers' Mutual Aid Society also has standing committees.

In the sphere under consideration, the order of the Ministry of Labour of 11 April 1962 is of special interest. It established the General Assembly of Workers' Mutual Aid Societies, a representative and advisory body responsible for carrying out research and studies and submitting advice and proposals on the following questions: investment schemes for workers' mutual aid societies; the administration of the equalization and reinsurance fund in accordance with article 2 of the order of 8 December 1960 at the request of the Presidency of the Government; computation of the financial position of the societies as a result of their operations, and compilation of statistics of benefits paid and of population growth; increases in benefits; the amalgamation and reorganization of mutual aid societies and workers groups; undertakings' welfare funds and funds for scholarships to workers' universities, and any other matters connected with these universities lying within the field of the mutual aid societies; the appointment of the members of the governing body of the equalization and reinsurance fund (article 8, paragraph 2, of the order of 8 December 1960), and, in general, advising, reporting and making proposals on any matters submitted to it by the Presidency of the Government. The General Assembly of Workers' Mutual Aid Societies may hold plenary meetings or operate through standing committees, the Director-General for Social Welfare always acting as chairman.

The State's constant concern to ensure the practical application of labour legislation is reflected in the Act of 21 July 1962, which reorganized the Labour Inspectorate, the specific functions of which include: general advisory work, supervision and reporting to the competent authority on compliance with labour standards, trade union agreements and the internal regulations of undertakings, with power to propose corrective measures or penalties; inspection, inter-

vention, technical reporting and supervision to ensure application of the legal provisions relating to social security and welfare; control of the operation of institutions and undertakings to ensure compliance with migration and unemployment legislation; and technical assistance to entrepreneurs, workers, and social security agencies and organizations, co-operation with the Trade Union Organization, mediation in collective labour disputes and the drafting of opinions, reports, statistics, projects or studies, as requested. The Inspectorate is responsible also for drafting the annual report on its activities, drafting the relevant documents for submission to international organizations under the agreements and conventions on labour matters ratified by Spain, co-operating with the competent technical services of other government departments on tasks of mutual interest and with a view to the most effective implementation of the country's economic and social development plans, and maintaining the national register of undertakings, and the register of agencies, institutions and organizations subject to inspection for the purposes specified in the legislation of the Ministry of Labour.

The Labour Inspectorate is run by a National Technical Board which is part of the Ministry of Labour. The regulations for membership are such that the competence of all members of this board is fully guaranteed. In carrying out their duties, Labour Inspectors act as public officials and are completely independent. They are absolutely forbidden to have any direct or indirect interest in the undertakings of the province in which they serve, and their function as inspectors is absolutely incompatible with any profession or employment which might interfere with the discharge of their duties or have any bearing on them.

To conclude this analysis of the Act of 21 July 1962, it may be of interest to point out that article 9 of the Act specifically states that proceedings to denounce failure to comply with social legislation shall be held in public — a highly significant statement.

The Spanish Government's concern with social security is reflected in the international sphere in the recent agreements of 12 April of this year, which supplement the General Convention between Spain and France signed in Paris on 27 June 1957. These agreements guarantee on the basis of reciprocity that the social assistance and security measures they mention shall be extended to workers of either contracting country working in the other.

Lastly, mention must be made of the decree of 7 June 1962 approving the rules of the Labour Council. This council — established by the decree of 3 May 1960 — is the higher advisory body of the Ministry of Labour; its general purpose is to assist in the planning and regulation of employment and social security in Spain. The Minister of Labour is its president, the Under-Secretary of Labour its vice-president. It is composed of *ex officio* members, elected members and freely appointed members. The proceedings of the Labour Council are conducted in plenary sessions, in committees and in working groups, and through the committee secretariats.

D. Right to Education

New provisions relating to this right, which is proclaimed in article 26 of the Universal Declaration of Human Rights of 10 December 1948, are always being added to Spanish law. The right is recognized in the Fundamental Laws of the State, and the general principles relating to it which are enunciated therein are constantly being applied and developed.

A basic text in this field is the Act of 21 July 1960 which, in addition to other national funds, established the Fund for the Promotion of the Principle of Equality of Opportunity, specifically intended to promote the practical application of that principle, for all Spaniards, in education, in vocational training, and in research; grants are made to those in the greatest need of financial assistance through fellowships and training, specialization and intensive vocational training courses; provision is also made for purchase of books, unsecured loans, the extension of students social security and any other means to achieve the same purposes, including financial assistance to primary schools.

The order of 12 April 1962 gave effect to the investment plan of the above-mentioned national Fund for the current year. It has a budget of 175 million pesetas, which includes: (*a*) in the case of primary schools, assistance for school canteens, clothing, summer camps and dining rooms, and transportation; (*b*) in the case of secondary schools, vocational schools and universities, scholarships of different amounts and other aid, such as grants for registration fees, the purchase of schoolbooks, use of canteens or dining rooms, transportation to the educational establishments and room and board, and also loans and awards. The investment plan also provides for fellowships for graduates and research workers, assistance for research teams engaged in work of national interest, stipends and travel grants, loans and special assistance to enable university professors, teachers and graduate students to take advanced courses and examinations. The types, classification and amounts of the scholarships and education grants for the academic year 1962-1963 have been determined by the office of the commissioner in student welfare in a resolution dated 26 April 1962.

During the period under review, the Government has constantly striven to extend education, either by establishing new schools or by broadening the study programmes of existing schools.

The following legal provisions dealing with new schools may be mentioned:

The decree of 6 September 1961, establishing secondary schools at Ubeda (Jaen) and Jaca (Huesca).

The orders of 23 November 1961 establishing a girls' school as a branch of the secondary school at Oviedo, and a boys' school as a branch of the Ramiro de Maetza School in Madrid.

The decree of 30 November 1961, which established a girls' secondary school at Gijon.

The order of 17 January 1962, which established a secondary education board centre at Ronda (Málaga).

The decree of 6 February 1962, which established branch No. 2 (for boys) of the Menandez Pelaya secondary school at Barcelona.

The decree of 8 February 1962, which established a girls' secondary school at Badajoz.

The decree of 1 March 1962, which established a similar school at Vigo.

The decree of 15 March 1962, which established a secondary school at Luarca (Oviedo).

The decree of 29 March 1962, which established one more secondary school at Barcelona.

The decree of 29 March 1962, which established within the University of La Laguna at Las Palmas, in the Canary Islands, an international university comprising three departments: Spanish language and culture, the humanities, and natural sciences.

The decrees of 12 and 15 April 1962, which established secondary schools at Jaen, Córdoba and Cadiz.

The decree of 5 July 1962, which established a secondary school at Llanes (Oviedo).

With reference to the broadening of the secondary school study programmes, we must mention a series of orders of the Ministry of Education (of 23 September 1961, 2 January and 30 June 1962), which established and made regulations for a broad programme of evening courses throughout Spain, to be operated by the secondary schools, thanks to which employed persons who cannot attend school during normal school hours can obtain an education.

The same trend towards the broadening of the study programme is observable in workers' vocational education, vocational schools being a matter of constant concern on the part of the Government because of the importance it attaches to the education and training of workers. For instance, by the orders of 30 September 1961 and 28 February 1962 respectively, the specialized curricula of the industrial schools of San Fernando (Cadiz), Lerida and Aibar were expanded. The curricula of the workers' universities of Tarragona, Seville, Córdoba, Zamora and Gijon were also expanded to include new specialized subjects, under the orders of 28 July 1961, 10 and 23 February, 17 March, 10 April and 4 June 1962.

Where workers' education is concerned, the order of 16 September 1961 approved the regulations for the training school for teachers in workers' educational institutions; this school, which was established by the decree of 14 March 1952, is the technical teacher training school responsible for the preparation and advanced training of such teachers and for planning the curricula of workers' educational centres. The regulations provide that the training school in question shall include, in principle, the following technical services: library and documentation, information and publications, audio-visual methods, and statistics.

In the field of workers' education, mention must also be made of the resulution of the Directorate-General for Social Welfare of 5 March 1962, approving the scholarship scheme for the workers' universities. This scheme lays down regulations for the endowment, notification and granting of such scholarships. The regulations also cover the scholarship holders' period of attendance at the university, manner of proceeding to advanced study, and reasons for losing a scholarship, one of which is having obtained low marks.

The students' social security and welfare scheme has been the subject of various legal provisions, all designed to extend and make it more independent. The following, *inter alia*, deserve special mention:

The decree of 6 September 1961 of the Ministry of Education, which establishes an interest-free study loan scheme for students under the authority of the office of the commissioner in student welfare of that Ministry.

The decree of 6 September 1961, which extends the students' insurance scheme to the students of the National Naval and Engineering Schools, and the order of 9 December 1961, which provides that on 1 October 1961 the compulsory students' insurance system in those schools shall be initiated.

The resolution of the Directorate-General of Primary Education of 15 September 1961, on the establishment and promotion of school dining-rooms; these dining-rooms are regarded as educational, as they not only encourage consideration for others and good table manners, but also teach proper food habits.

The order of 30 October 1961, relating to the possible prolongation of the family adversity benefit to students in the professional grade of business schools who are already receiving the benefit and who wish to continue their studies at the faculties of political and economic sciences and business administration.

The orders of the Ministry of Education of 1 March 1962 increasing the benefits granted by the students' mutual-aid society for certain types of sickness.

The decree of 5 July 1962 extending, as from 1 October 1962, the students' insurance scheme to the students of the pre-university course, the higher schools of fine arts and to the higher classes of music conservatories. This decree provides also that insured persons who may have been receiving the family adversity benefit while following the pre-university course may continue to receive it in order to enable them to follow university, higher technical and intermediate technical courses without interruption, provided that they have made satisfactory progress in their pre-university studies (article 4).

Among the provisions relating to education passed after August 1961, reference must be made to the decree of 18 September 1961 and the order of 8 November of the same year, which reorganized the Spanish university students' association. This is an association of the students of the institutions of higher learning, through which they participate collectively in the life of the Spanish universities, defend and develop their professional interests, are represented in the Government agencies whose decisions affect them, and become part of the fabric of Spanish society. The above-mentioned provisions relate to the internal organization of the association, the rights and duties of its members, and its financing, administration and direction.

Lastly, in connexion with the human right under consideration, the Agreement of 5 April 1962 between the Holy See and Spain is of the highest importance. Under this agreement, the Spanish State recognizes the Church universities established on church land under Canon 1,376 of the *Codex Iuris Canonici*, and therefore recognizes the degrees conferred by the higher technical faculties and schools of such universities teaching lay subjects. The text of the agreement prescribes in detail the requirements and conditions which must be met in the application of its principles. For the future, it provides that before the Church establishes a new university, or a higher technical faculty or school within an existing university at which lay subjects are to be taught in a province where there are already state institutions of the same kind, the Holy See shall come to an agreement with the Spanish Government. Ratifications of this agreement were exchanged at Vatican City on 29 May 1962.

SWEDEN

NOTE[1]

I. LEGISLATION

On 26 May 1961, an Act was promulgated on the establishment of an Insurance Court, to be the court of highest instance to try appeals in respect of decisions made by the National Insurance Office or the Labour Accidents Insurance Court in matters concerning social insurance — i.e., sickness and industrial injury insurance and old-age and supplementary pensions. The purpose for the establishment of such a court was to create an independent court of the highest instance, which would be in a position to make authoritative decisions in the increasingly important and complicated questions arising from the application of law in the above-mentioned fields. No limitations exist to the right to appeal to this court. It consists of a chairman and at least four legally trained and at least four lay "insurance justices". The lay justices, who will serve on the court only on a part-time basis, are to have special experience of working conditions or other knowledge of particular value to the court. The court is in quorum when three legally trained and two lay members are present. Each member has one vote.

[1] Note furnished by the Government of Sweden.

II. INTERNATIONAL AGREEMENTS

1. On 22 February 1961, the instrument of accession to the Berne Convention for the Protection of Literary and Artistic Works, as revised at Brussels on 26 June 1948, was deposited at Berne.

2. On 1 April 1961, the instrument of ratification of the Universal Copyright Convention of 6 September 1952 was deposited with UNESCO.

3. On 12 April 1961, the instrument of ratification of the Convention (No. 115) concerning the Protection of Workers Against Ionising Radiations, Geneva 1960, was deposited with the ILO.

4. On 11 May 1961, an Exchange of notes took place between Sweden and Ceylon concerning technical co-operation in the field of family planning.

5. On 4 October 1961, an agreement between Sweden and Pakistan was signed at Karachi concerning technical co-operation in the field of family planning.

SWITZERLAND

NOTE[1]

I. CONFEDERATION

A. Federal Legislation

Social Security

Regulations to give effect to the Act respecting disability insurance were adopted, in conformity with article 86, second paragraph, of the Act of 19 June 1959, by a federal order dated 17 January 1961. The regulations are concerned with the organization of rehabilitation measures of a medical and occupational character and with pensions for insured persons for whom rehabilitation is either impossible or possible only to a limited extent. A federal ordinance of 5 January 1961, made under the federal Act of 19 June 1959 respecting disability insurance, contains a list of congenital disabilities. The Federal Act respecting old-age and survivors' insurance of 20 December 1946 was amended by a federal Act dated 23 March 1961, and the regulations giving effect to the former Act were amended by a federal order dated 4 July 1961.

Public Health

Among the measures concerned with safeguarding life and health, mention should be made of a federal ordinance of 20 January 1961 on technical measures for the prevention of accidents and occupational diseases when working in compressed air.

B. International Agreements

By a Federal Order dated 15 June 1961, the Federal Assembly approved the Convention (No. 111) concerning discrimination in respect of employment and occupation, which was adopted by the International Labour Conference on 25 June 1958.

II. CANTONS

Political Rights

In the Canton of Geneva, various articles of the Cantonal Constitution, including article 59 on the Communal Referendum, were amended by an Act dated 28 May 1961. In the Canton of Vaud, a decree of the Grand Council of 10 May 1961, amending articles 27, 34, 90 *bis*, 100 and 101 of the Cantonal Constitution, was approved by the electors in popular vote held on 10 and 11 June 1961. Among the matters affected by the amendments are the right of legislative initiative, the communal referendum and requests for revision of the Cantonal Constitution.

Health, Social Security and Education

In the Canton of Neuchâtel, an Act on anti-diphtheria vaccination was adopted on 28 February 1961, and an Act introducing additional old-age and survivors' benefits for persons without adequate means was adopted on 27 June 1961. Legislative measures in the Canton of Vaud included an order dated 1 September 1961 on hygiene in public and private schools, an Act dated 4 December 1961 on the application of the federal Act respecting disability insurance, and regulations made on 11 April 1961 to give effect to the Act of 25 May 1960 on primary education in public schools and continuation courses in domestic science.

Judicial Procedure

Vaud

An Act dated 16 May 1961 on the responsibility of the Canton, the communes and their agents this Act regulates compensation for injury or damage caused illicitly or in violation of official duty by cantonal or communal civil servants in the exercise of their functions. An Act dated 23 May 1961 amending the Act of 5 February 1941 on the execution of sentences: this Act provides *inter alia* that "for good reason, and in particular for the purpose of facilitating the rehabilitation of the offender, the Department of Justice and Police may grant a limited leave of absence to a convicted or interned prisoner whose conduct is good, if such a measure appears to be consistent with public order . . ." Regulations dated 18 July 1961 providing for supervisory boards of prisons and penitentiaries; and an order dated 18 December 1961 establishing a personal record of convictions, a cantonal record of certain offences and a register of traffic violations.

Aargau

An ordinance dated 7 April 1961 on the personal record of convictions and the recording of sentences.

[1] This note is based upon texts received through the courtesy of the Permanent Observer of Switzerland to the United Nations.

SYRIA

NOTE

In a referendum held on 1-2 December 1961, a provisional constitution was adopted, of which article 2 provided for the election by the people of a constituent and parliamentary assembly, by secret and direct ballot.

TANGANYIKA

CONSTITUTION OF TANGANYIKA[1]

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace;

And whereas the said rights include the right of the individual, whatever his race, tribe, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to life, liberty, security of the person, the enjoyment of property, the protection of the law, freedom of conscience, freedom of expression, freedom of assembly and association, and respect for his private and family life;

And whereas the said rights are best maintained and protected in a democratic society where the government is responsible to a freely-elected Parliament representative of the people and where the courts of law are independent and impartial:

This constitution makes provision for the government of Tanganyika as such a democratic society.

CHAPTER I
CITIZENSHIP

1. (1) Every person who, having been born in Tanganyika, is on the eighth day of December, 1961, a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of Tanganyika on the ninth day of December, 1961:

Provided that a person shall not become a citizen of Tanganyika by virtue of this subsection if neither of his parents was born in Tanganyika.

(2) Every person who, having been born outside Tanganyika, is on the eighth day of December, 1961, a citizen of the United Kingdom and colonies or a British protected person shall, if his father becomes, or would but for his death have become, a citizen of Tanganyika in accordance with the provisions of subsection (1) of this section, become a citizen of Tanganyika on the ninth day of December, 1961.

2. (1) Any person who, but for the proviso to subsection (1) of section 1 of this Constitution, would be a citizen of Tanganyika by virtue of that subsection, shall be entitled, upon making application before the specified date in such manner as may be prescribed by Parliament, to be registered as a citizen of Tanganyika:

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by his parent or guardian.

(2) Any woman who, on the eighth day of December, 1961, is or has been married to a person —

(*a*) Who becomes a citizen of Tanganyika by virtue of section 1 of this Constitution; or

(*b*) Who, having died before the ninth day of December 1961, would, but for his death, have become a citizen of Tanganyika by virtue of that section,

shall be entitled, upon making application in such manner as may be prescribed by Parliament, to be registered as a citizen of Tanganyika.

(3) Any woman who, on the eighth day of December, 1961, is married to a person who subsequently becomes a citizen of Tanganyika by registration under subsection (1) of this section shall be entitled, upon making application before the specified date in such manner as may be prescribed by Parliament, to be registered as a citizen of Tanganyika.

(4) Any woman who, on the eighth day of December, 1961, has been married to a person who becomes, or would, but for his death, have become, entitled to be registered as a citizen of Tanganyika under subsection (1) of this section, but whose marriage has been terminated by death or dissolution shall be entitled, upon making application before the specified date in such manner as may be prescribed by Parliament, to be registered as a citizen of Tanganyika.

(5) Any person who, on the eighth day of December, 1961, is a citizen of the United Kingdom and colonies, having become such a citizen by virtue of having been naturalised or registered in Tanganyika under the British Nationality Act, 1948, shall be entitled, upon making application before the specified date in such manner as may be prescribed by Parliament, to be registered as a citizen of Tanganyika:

[1] The Constitution appears as the Second Schedule to the Tanganyika (Constitution) Order in Council, 1961, made on 27 November 1961, *Statutory Instruments* 1961, No. 2274, published in *Supplement to the Tanganyika Gazette*, vol. XLII, No. 59, dated 1 December 1961, and entering into force immediately before 9 December 1961, the day when Tanganyika attained independence. The Constitution was repealed in 1962.

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under this subsection but an application may be made on his behalf by his parent or guardian.

(6) In this section "the specified date" means —

(*a*) In relation to a person to whom subsection (1) of this section refers, the ninth day of December, 1963;

(*b*) In relation to a woman to whom subsection (3) of this section refers, the expiration of such period after her husband is registered as a citizen of Tanganyika as may be prescribed by or under an Act of Parliament;

(*c*) In relation to a woman to whom subsection (4) of this section refers, the ninth day of December, 1963; and

(*d*) In relation to a person to whom subsction (5) of this section refers, the ninth day of December 1963,

or such later date as may in any particular case be prescribed by or under an Act of Parliament.

3. Every person born in Tanganyika after the eighth day of December, 1961, shall become a citizen of Tanganyika at the date of his birth:

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

(*a*) Neither of his parents is a citizen of Tanganyika and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Tanganyika; or

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

4. A person born outside Tanganyika after the eighth day of December, 1961, shall become a citizen of Tanganyika at the date of his birth if at that date his father is a citizen of Tanganyika otherwise than by virtue of this section or subsection (2) of section 1 of this Constitution.

5. Any woman who, after the eighth day of December, 1961, marries a citizen of Tanganyika shall be entitled, upon making application in such manner as may be prescribed by Parliament, to be registered as a citizen of Tanganyika.

6. (1) Any person who, upon the attainment of the age of twenty-one years, was a citizen of Tanganyika and also a citizen of some country other than Tanganyika shall, subject to the provisions of subsection (7) of this section, cease to be a citizen of Tanganyika upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who is a citizen of Tanganyika by virtue of subsection (2) of section 1 or section 4 of this Constitution, made and registered such declaration of his intentions concerning residence as may be prescribed by Parliament.

(2) Any person who —

(*a*) Has attained the age of twenty-one years before the ninth day of December, 1961; and

(*b*) Becomes a citizen of Tanganyika on that day by virtue of the provisions of section 1 of this Constitution; and

(*c*) Is immediately after that day also a citizen of some country other than Tanganyika

shall, subject to the provisions of subsection (7) of this section, cease to be a citizen of Tanganyika upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who is a citizen of Tanganyika by virtue of subsection (2) of section 1 of this Constitution, made and registered such declaration of his intentions concerning residence as may be prescribed by Parliament.

(3) A citizen of Tanganyika shall cease to be such a citizen if —

(*a*) Having attained the age of twenty-one years, he acquires the citizenship of some country other than Tanganyika by voluntary act (other than marriage); or

(*b*) Having attained the age of twenty-one years, he otherwise acquires the citizenship of some country other than Tanganyika and has not, by the specified date, renounced his citizenship of that other country, taken the oath of allegiance and made and registered such declaration of his intentions concerning residence as may be prescribed by Parliament.

(4) Notwithstanding any other provision of this Chapter, a person who has attained the age of twenty-one years or who is a woman who is or has been married shall not, if he is a citizen of some country other than Tanganyika, be entitled to be registered as a citizen of Tanganyika unless he renounces his citizenship, of that other country, takes the oath of allegiance and makes and registers such declaration of his intentions concerning residence as may be prescribed by Parliament.

(5) For the purposes of this section, where, under the law of a country other than Tanganyika, a person cannot renounce his citizenship of that other country, he need not make such renunciation but he may instead be required to make such declaration concerning that citizenship as may be prescribed by Parliament.

(6) In this section "the specified date" means —

(*a*) In relation to a person to whom subsection (1) of this section refers, the date on which he attains the age of twenty-two years or the ninth day of December, 1963, whichever is the later;

(*b*) In relation to a person to whom subsection (2) of this section refers, the ninth day of December 1963; and

(*c*) In relation to a person to whom paragraph (*b*)

of subsection (3) of this section refers, the expiration of one year after the date on which he acquired the citizenship of the country other than Tanganyika, or, in the case of a person of unsound mind, such later date as may be prescribed by or under an Act of Parliament.

(7) Provision may be made by or under an Act of Parliament for extending beyond the specified date the period in which any person may make a renunciation of citizenship, take an oath or make or register a declaration for the purposes of this section, and if such provision is made that person shall not cease to be a citizen of Tanganyika upon the specified date but shall cease to be such a citizen upon the expiration of the extended period if he has not then made the renunciation, taken the oath or made or registered the declaration, as the case may be.

. . .

9. (1) Parliament may make provision for the acquisition of citizenship of Tanganyika by persons who are not eligible or are no longer eligible to become citizens of Tanganyika under the provisions of this Chapter.

(2) Parliament may make provision for depriving of his citizenship of Tanganyika any person who is a citizen of Tanganyika otherwise than by virtue of subsection (1) of section 1 or section 3 of this Constitution.

(3) Parliament may make provision for the renunciation by any person of his citizenship of Tanganyika.

10. (1) In this chapter —

"Alien" means a person who is not a Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland;

"British protected person" means a person who is a British protected person for the purposes of the British Nationality Act, 1948.

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

(3) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death: and where that death occurred before the ninth day of December, 1961, and the birth occurred after the eighth day of December, 1961, the national status that the father would have had if he had died on the ninth day of December, 1961, shall be deemed to be his national status at the time of his death.

. . .

Chapter III
PARLIAMENT

Part 1

Composition of Parliament

. . .

18. Subject to the provisions of section 19 of this Constitution, any person who —

(*a*) Is a citizen of Tanganyika;

(*b*) Has attained the age of twenty-one years; and

(*c*) Is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the National Assembly,

shall be qualified for election as a member of the National Assembly, and no other person shall be so qualified.

19. (1) No person shall be qualified for election as a member of the National Assembly —

(*a*) If he is under a declaration of allegiance to some country other than Tanganyika;

(*b*) If, under any law in force in Tanganyika, he is adjudged or otherwise declared to be of unsound mind;

(*c*) If he is under sentence of death imposed on him by any court in Tanganyika or a sentence of imprisonment (by whatever name called) exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

(*d*) If he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Tanganyika;

(*e*) If he is not qualified to be registered as a voter for the purposes of elections to the National Assembly;

(*f*) Subject to such exceptions and limitations as may be prescribed by Parliament, if he has any such interest in any such government contract as may be so prescribed; or

(*g*) Subject to such exceptions and limitations as may be prescribed by Parliament, if —

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

(ii) He belongs to any of the armed forces of the Crown specified by Parliament or to any class of person so specified that is comprised in any such force; or

(iii) He belongs to any police force specified by Parliament or to any class of person so specified that is comprised in any such force.

(2) Parliament may provide that a person who is the holder of or who acts in any office the functions of which involve responsibility for, or in connection with, the conduct of any election to the National Assembly or the compilation of any register of voters

for the purposes of such an election shall not be qualified for election to the National Assembly.

(3) Parliament may provide that a person shall not be qualified for election to the National Assembly for such period (not exceeding five years) as may be prescribed by Parliament if he is convicted by any court of such offences connected with the election of members of the National Assembly as may be so prescribed.

(4) Parliament may, in order to permit any person who has been adjudged or declared to be of unsound mind, sentenced to death or imprisonment, adjudged or declared bankrupt or convicted of an offence prescribed under subsection (3) of this section to appeal against the decision in accordance with any law, provide that, subject to such conditions as may be prescribed by Parliament, the decision shall not have effect for the purposes of subsection (1) or subsection (3) of this section until such time as may be so prescribed.

. . .

20. (1) Every citizen of Tanganyika who has attained the age of twenty-one years shall, unless he is disqualified by any Act of Parliament from registration as a voter for the purposes of elections to the National Assembly, be entitled to be registered as such a voter under a law in that behalf, and no other person may be so registered.

(2) Every person who is registered as aforesaid in any constituency shall, unless he is disqualified by any Act of Parliament from voting in any election in that constituency to the National Assembly, be entitled so to vote, in accordance with the provisions of any law in that behalf, and no other person may so vote.

. . .

CHAPTER VII
THE PUBLIC SERVICE

. . .

83. (1) The law applicable to any benefits to which this section applies shall, in relation to any person who has been granted or is eligible for the grant of such benefits, be that in force at the relevant date or any later law that is not less favourable to that person.

(2) In this section "the relevant date" means —

(*a*) In relation to benefits granted before the ninth day of December, 1961, the date on which those benefits were granted;

(*b*) In relation to benefits granted or which may be granted on or after the ninth day of December, 1961, to or in respect of a person who was a public officer before that date, the eighth day of December, 1961; and

(*c*) In relation to any benefits granted or which may be granted to or in respect of any person who becomes a public officer on or after the ninth day of December, 1961, the date on which he becomes a public officer.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) Any benefits to which this section applies (not being benefits that are charged upon some other public fund) shall be a charge on the Consolidated Fund.

(5) The benefits to which this section applies are any benefits payable under any law providing for the grant of any pensions, compensation, gratuities or other like allowances to persons in respect of their service as public officers or to the widows, children, dependants or personal representatives of such persons in respect of such service.

(6) References to the law applicable to any benefits to which this section applies include (without prejudice to their generality) references to any law regulating, for the purpose of determining whether any person is eligible for the grant of such benefits on his retirement from the public service, the circumstances in which he is required or permitted to retire.

. . .

THAILAND

HUMAN RIGHTS IN 1961[1]

I. CONSTITUTIONAL PROVISIONS

The interim Constitution of 1959 is still in force and no constitutional amendment has yet been made.

II. LEGISLATION

1. *Act on the Control of the Practice of the Art of Healing (No. 6) B.E. 2504 (1961).* — Under this Act, a person who obtains a medical degree or certificate must intern in a hospital or any other medical institution for a period of not less than one year before qualifying for registration as a first class medical practitioner.

2. *Harmful Habit-forming Drugs Act (No. 4), B.E. 2504 (1961).* — This Act imposes a heavier punishment for offences against the laws on harmful habit-forming drugs, particularly those involving heroin which became, after the closing of opium dens in 1958, the most dangerous drug of its kind. However, a drug addict who voluntarily enters a clinic or rehabilitation centre for treatment shall be exempt from punishment.

3. *House and Land Rent Control Act, B.E. 2504 (1961).* — This Act replaces the former laws on the control of rent in time of crisis, which were passed with the aim of mitigating hardship resulting from scarcity of housing during and after World War II. This new Act, under which the lessee's benefits under the former laws are reasonably protected, was passed in accordance with the national development policy.

4. *Clinic Act B.E. 2504 (1961).* — This Act repeals the Clinic Control Act B.E. 2484 (1941). It provides a better procedure for the control of clinics for the sake of public welfare.

5. *Ancient Monuments, Antiques, Works of Art and National Museums Act, B.E. 2504 (1961).* — This Act's main purpose is to ensure that national memorials are properly maintained and administered and suitably utilized for social purposes. It also imposes a more severe punishment than that imposed under former laws for offences involving the smuggling of antiques and works of art out of the country.

6. *Atomic Energy for Peace Act, B.E. 2504 (1961).* — Since the use of atomic energy for peace becomes more and more important to the country's development, this new Act provides that such use shall be scientifically promoted and controlled in the interests of public safety.

[1] Note furnished by the Government of Thailand.

TOGO

CONSTITUTION OF THE TOGOLESE REPUBLIC of 14 April 1961[1]

PREAMBLE

The Togolese people, firmly believing in the principles which inspired the Universal Declaration of Human Rights, solemnly proclaim their resolve to remain true to the ideals of liberty, equality and justice which constantly guided and sustained them in their struggle for national independence;

Anxious to preserve and consolidate their unity, they affirm their resolution to institute a stable political system based on the separation of powers and capable of ensuring, in peace and harmony, the economic development of the country and the social and cultural advancement of its citizens.

. . .

PART I
GENERAL PROVISIONS
THE STATE, SOVEREIGNTY AND PUBLIC LIBERTIES

. . .

Art. 2. The Togolese Republic is indivisible, democratic and social. It shall ensure the equality of all citizens before the law. It shall respect all creeds.

It is founded on the principle: "Government of the people, by the people, and for the people".

. . .

Art. 3. National sovereignty belongs to the people, who shall exercise it through their representatives elected by universal, equal, direct and secret suffrage or through a referendum.

. . .

Art. 4. All Togolese nationals 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 under the conditions determined by law.

Political parties and groups shall assist in the exercise of the franchise. They may be formed and engage in their activities freely subject to the provisions of statute and regulation. They shall respect the principles of national sovereignty and democracy.

Art. 5. The Republic shall guarantee, and the State shall be bound to protect the freedom and dignity of the human personality.

Art. 6. The rights of the citizen are inherent in the fundamental principle of liberty and are indefeasible and inviolable.

All citizens owe duties which arise essentially from national solidarity and respect for the law and from which none may be exempted.

Art. 7. Any act of racial discrimination and any racial or regional propaganda, particularly if likely to impair the national unity, shall be punishable by law.

Art. 8. Freedom of opinion, expression, publication, the press, assembly and association, and freedom to form trade unions, are guaranteed subject to the provisions of statute and regulation.

Assemblies or groups whose aims or activities would be unlawful or contrary to law and order are prohibited.

Art. 9. Every citizen has the right to move freely throughout the territory of the Republic and choose his place of residence. This right may not be limited except by statute.

Art. 10. Every person has the right to seek employment. No person shall suffer prejudice in his work by reason of his origin, his opinions or his beliefs.

Art. 11. The right of ownership is guaranteed by the Constitution. It may be infringed only in a case of public need determined in the manner prescribed by law, and subject to payment of fair compensation in advance.

Art 12. Defence of the country and the territorial integrity of the Republic is a duty of every citizen.

Art. 13. Payment of taxes and contribution to public expenses are duties of every citizen.

PART II
THE LEGISLATIVE POWER

Section I
PARLIAMENT

Art. 14. Parliament shall be composed of a single assembly, the National Assembly.

The legislative power is delegated by the people and shall be vested in the National Assembly, whose members shall bear the title of deputies.

Art. 15. Deputies shall be elected by universal, direct and secret suffrage for a term of five years.

[1] Text published in the *Journal Officiel*, No. 157, special, 17 April 1961, and communicated by the Government of the Togolese Republic.

Section II
STATUTES

Art. 23. Statutes shall be passed by the National Assembly in the manner prescribed by the Constitution.

. . .

Art. 24. Matters not suitable to be governed by statute shall be governed by regulation.

Legislative instruments governing such matters which have become law before the entry into force of the Constitution may be amended by decrees of the Council of Ministers made after consultation with the Supreme Court, whose composition, organization and functions shall be prescribed by statute.[1]

PART III
THE EXECUTIVE POWER

. . .

Art. 33. The President of the Republic shall be elected for a term of seven years by direct and secret universal suffrage. He may be re-elected.

. . .

[1] The Supreme Court was established by Act No. 61-26 of 26 August 1961, article 5 of which prescribes the composition of the Court "when deciding a constitutional issue in accordance with the provisions of article 24 of the Constitution".

Art. 34. Any Togolese not less than forty years of age and in possession of all his civil and political rights may stand for election to the presidency of the Republic.

. . .

PART IV
THE JUDICIARY POWER

. . .

Art. 51. The judicial authority shall be independent. In the performance of their functions, judges shall be subject solely to the authority of the law.

Art. 52. The President of the Republic shall safeguard the independence of the judges.

He shall be assisted by the supreme council of the judiciary, whose composition, organization and functions shall be prescribed by statute.

Judges may not be removed from office.

The judicial authority is the guardian of personal liberty and shall enforce respect therefore in the manner prescribed by statute.

. . .

PART IX
TRANSITORY PROVISIONS

Art. 60. All provisions of law applicable to Togo on the date of the entry into force of the Constitution and not contrary to any provision of this Act shall remain in force.

ACT No. 61-27 AUTHORIZING THE GOVERNMENT TO TAKE MEASURES TO BANISH, INTERN OR EXPEL PERSONS ENDANGERING PUBLIC ORDER AND THE SECURITY OF THE STATE OF 16 AUGUST 1961[1]

Art. 1. During a period which may not exceed three years from the date of promulgation of this Act, any person whose activities are found to be dangerous for public order and the security of the State may, by a decree issued by the Council of Ministers and independently of any proceedings which may be instituted against him, be banished from his place of residence or interned administratively or, if he is of foreign nationality, expelled from the territory of the republic.

The duration of the period of banishment, enforced residence or internment shall be fixed by decree.

Any decision taken under the foregoing provisions shall be enforceable immediately.

Art. 2. A Commission of Inquiry is hereby established at Lomé with the task of inquiring into the activities ascribed to persons against whom measures have been taken under the provisions of article 1 of this Act.

[1] Text furnished by the Government of the Republic of Togo.

The Commission of Inquiry shall consist of the following: a judge appointed by the President of the Appeals Court on the recommendation of the Procurator-General, as President; an official of the National Security Department [Sûreté nationale]; a notable appointed by the Minister of the Interior.

Cases shall be referred to the Commission by the Minister of Justice who shall transmit to it the order made in the Council of Ministers and shall furnish it with the documents necessary for the performance of its duties. The Commission shall submit a report to the Minister of Justice on the results of the inquiry, together with a statement of its reasons.

. . .

Art. 4. Any person who evades the execution of a measure of banishment, enforced residence or internment decided upon pursuant to this Act shall be punished by a fine of 20,000 to 100,000 francs and by imprisonment for a term of one to three years.

. . .

LAW No. 61-18, OF 25 JULY 1961, REGARDING TOGOLESE NATIONALITY[1]

TITLE I
TOGOLESE NATIONALITY

Chapter I

ATTRIBUTION OF TOGOLESE NATIONALITY BY RIGHT OF BIRTH IN TOGO

Art. 1. A child born in Togo of a father who was himself born in Togo shall be deemed to be a Togolese national.

Art. 2. A child born in Togo of a mother who was herself born in Togo shall be deemed to be a Togolese national, subject to the option, if his father is of foreign nationality, of renouncing Togolese nationality during the six months before he comes of age.

Art. 3. Togolese nationality shall be attributed furthermore as a matter of right, by virtue of the sole fact of birth in Togolese territory, to any person unable to claim any other nationality of origin.

Art. 4. The provisions contained in articles 1 and 2 shall not apply to children born in Togo of diplomatic agents or career consuls of foreign nationality.

Chapter II

ATTRIBUTION OF TOGOLESE NATIONALITY BY RIGHT OF FILIATION

Art. 5. The following persons shall be Togolese nationals: (1) a child of a Togolese father; (2) a child of a Togolese mother and of a father who has no nationality or whose nationality is unknown.

Art. 6. A child of a Togolese mother and of a father who is a foreign national shall be deemed to be a Togolese national provided always that he may renounce Togolese nationality during the six months preceding his attainment of majority if he was not born in Togo.

The option of renouncing Togolese nationality may be exercised without any authorization.

Art. 7. Filiation shall have no effect on the attribution of Togolese nationality unless it is established under the conditions determined by Togolese legislation or customs.

The age of majority within the meaning of this Act is fixed at twenty-one years.

[1] Text communicated by the Government of the Togolese Republic.

TITLE II
ACQUISITION OF TOGOLESE NATIONALITY

Chapter I

METHODS OF ACQUIRING TOGOLESE NATIONALITY

Section I. — *Acquisition of Togolese Nationality by Marriage*

Art. 8. Subject to the provisions of articles 9 and 10 below, a foreign woman who marries a Togolese national shall acquire Togolese nationality at the time of the marriage.

Art. 9. If the national law of a woman permits her to retain her nationality of origin upon marriage she shall have the option of declaring, before the celebration of the marriage and in the manner specified by article 31 *et seq.* of this Act, that she declines Togolese nationality.

She may exercise this option without authorization, even if she is a minor.

Art. 10. The Government may oppose the acquisition of Togolese nationality within one year after the date on which the marriage was celebrated in the case of a marriage contracted under this Act, or after the publication of this Act if the marriage was contracted earlier.

If the marriage is celebrated in another country, the time limit specified in the preceding paragraph shall be reckoned from the date on which the particulars of the marriage certificate are entered in the civil registry of the Togolese diplomatic or consular agents.

In case of objection by the Government, the woman concerned shall be deemed never to have acquired Togolese nationality.

Art. 11. The marriage shall not affect the attribution of Togolese nationality unless it is celebrated according to one of the forms recognized either by Togolese legislation or customs or by the legislation of the country in which the marriage was celebrated. If the marriage is celebrated in accordance with one of the Togolese customs, it must be recorded in writing in order to have effect within the meaning of this article.

Section II. — *Acquisition of Togolese Nationality by Right of Birth and Residence in Togo*

Art. 12. Every individual born in Togo of foreign parents shall acquire Togolese nationality when he comes of age if he is resident in Togo on that date and has habitually resided in Togo since the age of sixteen years.

During the six months before he comes of age, a minor has the option of declaring under the conditions specified in article 31 *et seq.* that he declines Togolese nationality. He may exercise this option without any authorization.

The Government may oppose the acquisition of Togolese nationality within the same time limit.

Art. 13. A foreigner who satisfies the conditions specified in article 12 for the acquisition of Togolese nationality shall not be entitled to decline Togolese nationality unless he proves that he is, by filiation, the national of a foreign country.

He shall lose the option of declining Togolese nationality if he voluntarily enlists in the Togolese armed forces or if, without objecting on the ground of foreign nationality, he takes part in recruiting operations for those forces.

Art. 14. The provisions of the present section shall not apply to children born in Togo of diplomatic agents or career consuls of foreign nationality.

Section III. — *Acquisition of Togolese Nationality by Declaration of Nationality*

Art. 15. A child under the age of eighteen years, born in Togo of foreign parents, may, with the authorization of whichever of his parents exercises parental authority over him, claim Togolese nationality by a declaration, under the conditions specified in article 31 of this Act, if at the time of his declaration he has resided in Togo for at least five years.

Art. 16. Within a time limit of six months following either the date on which the declaration was signed or the judicial decision which, in the case specified in article 33, recognizes the validity of the declaration, the Government may, by decree, oppose the acquisition of Togolese nationality.

Section IV. — *Acquisition of Togolese Nationality by Naturalization*

Art. 17. Togolese naturalization shall be granted by decree after due investigation.

Art. 18. No person shall obtain Togolese nationality by naturalization:

If he has not attained the age of twenty-one years;

If he cannot prove that he has habitually resided in Togo during the five years preceding the submission of his application;

If his main interests are not centred in Togo at the time when the naturalization decree is signed;

If he is not a person of good moral character or if he has been sentenced to more than one year's imprisonment for an offence under the ordinary law which has not been annulled as a result of reinstatement or amnesty;

If he is not known to be sound in body and mind.

Art. 19. Notwithstanding the provisions of the preceding article, no condition of residence shall be required of a foreigner:

If he was born in Togo or is married to a Togolese;

If he has rendered exceptional services to Togo or if his naturalization is of exceptional interest to Togo.

. . .

Chapter II

EFFECTS OF THE ACQUISITION OF TOGOLESE NATIONALITY

Art. 22. A person who has acquired Togolese nationality shall, as from the date of acquiring that nationality, enjoy all the rights attaching thereto.

No naturalized foreigner, however, shall be entitled, within five years after the date of the naturalization decree, to hold any elective post or office the exercise of which requires Togolese nationality.

Nevertheless, in the case of a naturalized foreigner who has rendered exceptional services to Togo or whose naturalization is of exceptional interest to Togo, this restriction may be waived by a decree issued by the Council of Ministers, following a report by the Minister of Justice.

TITLE III

LOSS, FORFEITURE AND WITHDRAWAL OF TOGOLESE NATIONALITY

Art. 23. The following persons shall lose Togolese nationality:

1. A Togolese national of full age who voluntarily acquires a foreign nationality, which he may do subject only to the authorization of the Togolese Government, granted by decree;

2. A Togolese national who exercises the option of renouncing Togolese nationality, in accordance with the provisions of the present law.

Art. 24. A Togolese national, even if he is a minor, shall lose Togolese nationality if, being also a national of a foreign country, he is authorized by the Togolese Government, at his own request, to waive Togolese nationality.

Such authorization shall be granted by decree.

A minor shall not make such a request unless he has been authorized to do so by whichever of his parents exercises parental authority over him, or, in the absence of that, by his guardian upon consent of the family guardianship council.

Art. 25. A Togolese who loses Togolese nationality shall be released from his allegiance to Togo:

1. In the case specified in article 23, paragraph 1, if he acquires foreign nationality;

2. In the case of renunciation of Togolese nationality, on the date when he signs a declaration to that effect;

3. In the case specified in article 24, on the date of the decree authorizing him to lose Togolese nationality.

Art. 26. A Togolese woman who marries a foreigner shall retain Togolese nationality unless she expressly declares, before the celebration of the marriage and under the conditions specified in articles 31 *et seq.* of this Act, that she renounces the said nationality.

The declaration may be made without authorization, even if the woman is a minor.

Such a declaration, however, shall be valid only if the woman acquires or is able to acquire the nationality of her husband under his national law.

In such a case the woman is released from her allegiance to Togo on the date of the celebration of the marriage.

Art. 27. A Togolese shall lose Togolese nationality if, being employed in the public service of a foreign State or in a foreign army, he continues such employment despite an injunction from the Togolese Government calling on him to resign his post.

Six months after notification of the said injunction, the person concerned shall, by decree, be declared to have lost Togolese nationality if he has not resigned his employment during that time, unless it is established that he has been absolutely unable to do so. In the latter case the six-month period shall be reckoned from the day when the cause of the inability is removed.

The person concerned shall be released from his allegiance to Togo on the date of the decree.

Chapter II

FORFEITURE OF TOGOLESE NATIONALITY

Art. 28. A person who has acquired Togolese nationality shall forfeit Togolese nationality by decree:

1. If he is convicted of an act designated as a crime or an offence against the internal or external security of the State;

2. If he has committed acts for the benefit of a foreign State, which are incompatible with Togolese nationality and prejudicial to the interests of Togo;

3. If he has been convicted in Togo or in another country of an act which is designated as a crime by Togolese law and has been sentenced to more than five years' imprisonment.

Nationality shall not be forfeited unless the acts of which the person concerned is accused were committed within ten years after the date of acquisition of Togolese nationality.

Forfeiture of nationality shall be decreed only within ten years from the time the acts in question were committed.

Chapter III

WITHDRAWAL OF TOGOLESE NATIONALITY

Art. 29. If it becomes apparent, after the decree of naturalization, that the person concerned did not satisfy the conditions required by the law for purposes of naturalization, the decree may be revoked within one year after the date of publication.

Art. 30. If the person concerned has knowingly made a false declaration, submitted a document containing a false or erroneous assertion or used fraudulent devices for the purpose of obtaining naturalization, the decree of naturalization shall be revoked by decree after consultation with the Council of Ministers. The person concerned, having been duly notified, shall have the option of submitting documents and memoranda.

The decree withdrawing naturalization shall be issued within one year after the discovery of the fraud.

The decree of withdrawal shall become effective on the date when it is signed but shall not affect past acts performed by the persons concerned or the rights acquired by third parties, before the publication of the decree, on the basis of the Togolese nationality of the applicant.

Chapter VI

TRANSITIONAL PROVISIONS

Art. 70. Persons who are of full age on the date of publication of this Act and who can furnish evidence of their Togolese nationality on that date shall be deemed to be Togolese nationals.

As evidence of Togolese nationality, within the meaning of the preceding paragraph, the person concerned shall show that:

(*a*) He has constantly and publicly comported himself as a Togolese;

(*b*) He has constantly and publicly been treated as such by the Togolese population and authorities.

Art. 71. The following may choose Togolese nationality:

1. Persons whose country of origin is a country bordering on Togo and who on the date of publication of the present Act have had their habitual residence in Togo for at least five years;

2. Persons who, belonging to the Togolese community, had acquired French nationality because of circumstances resulting from the trusteeship system, provided, however, that they satisfy the conditions specified in the present law for the attribution or the acquisition of Togolese nationality.

Within one year after the date of declaration of the option the Government may oppose the acquisition of Togolese nationality.

Art. 72. The provisions of title I, relating to the attribution of Togolese nationality by right of nationality of origin, shall apply even to persons born before the date of publication of this Act; such retroactivity shall not prejudice the validity of acts performed by the persons concerned or the rights acquired by third parties.

In cases where the option of renouncing Togolese nationality is recognized, the time limit for exercising

such option shall be reckoned from the date of publication of the present law for those persons who were of full age on that date.

Art. 73. A woman of foreign nationality married to a Togolese national before the date of publication of this Act shall be allowed a period of one year from the said date of publication to exercise the option of declining Togolese nationality specified in article 8.

Art. 74. A Togolese woman married to a foreigner before the date of publication of this Act shall be allowed a period of one year from the said publication date to exercise the option under the provisions of article 26.

. . .

NOTE[1]

There will be found below a list of the legislative provisions giving direct effect to certain rights embodied in the Universal Declaration of Human Rights:

Freedom of association: Act of 1 July 1901, article 2 of which recognizes the right to freedom of association: "Associations of persons may be formed freely, without authorization or declaration . . ." (*Journal Officiel* 1946, p. 328).

Freedom of religion: Articles 260, 261, 263 and 264 of the Penal Code (in the original form applicable to Togo) which protect the free exercise of religion.

Freedom of assembly: Act of 30 June 1881, article 1 of which provides: "Public meetings shall be free. They may take place without prior authorization . . ."

Freedom of the Press: Act of 29 July 1881 on the freedom of the press (made applicable by decree of 29 December 1922). (*Journal Officiel* 1923, p. 48).

Freedom of trade: Act of 2-17 March 1791, article 7: ". . . Any person shall be free to engage in any trade or to exercise any profession, art or craft he chooses . . ." (Not promulgated, but accepted as a general legal principle).

Freedom of work: Act of 15 December 1952 establishing a labour code, article 2 (*Journal Officiel* 1952, p. 885).

Freedom of trade unions: Act of 15 December 1952, article 4 (*Journal Officiel* 1952, p. 885).

Right of asylum: Geneva Convention of 28 July 1951 made applicable to Togo.

[1] Information communicated by the Government of the Togolese Republic.

TUNISIA

NOTE[1]

Act No. 60-30, of 14 December 1960 (24 Jumada II 1380) (*Journal officiel de la République tunisienne* No. 57, 16 December 1960) provided for the establishment of "a social security organization . . . to protect workers and their families against the risks inherent in human life, when such contingencies are liable to have a detrimental effect on the moral and material conditions of their existence". A family benefit scheme and a social insurance scheme are set up by the Act on behalf of employed persons. The administrative body for these schemes is a public establishment with legal personality and financial autonomy entitled the "National Social Security Fund"; its head office is at Tunis.

Apart from its principal task of administration, the National Fund is empowered to lend assistance in the management of the Industrial Accidents Fund; to promote health and welfare work; to subsidize the social assistance activities of public agencies or of bodies operating in the public interest; and to administer, under special agreements, retirement or mutual benefit schemes. The National Fund, which operates under the supervision and control of the Office of the Secretary of State for Public Health and Social Affairs, meets the expenses arising out of the payment of benefits under each of the social security schemes through the contributions of employers and workers. The rate of contribution is as follows: to be paid by the employer, 15 per cent of the wages, remuneration or other earnings of the workers employed by him; to be paid by the worker, 5 per cent of the wages, renumeration or other earnings received by him.

The family benefits for which provision is made under the Act comprise the following: family allowances, allowances for leave on the birth of a child and leave allowances for young workers. Social insurance comprises the following: (1) allowances in cash in the event of sickness, maternity or death, payable by the National Fund; (2) medical care, in the case of consultations or hospitalization, in the health and hospital establishments coming within the jurisdiction of the Office of the Secretary of State for Public Health and Social Affairs (article 68).

Penalties applicable both to employers and to insured persons are provided for in the case of failure to observe the provisions of the Act.

Social security benefits were broadened under Act No. 60-33, of 14 December 1960 (24 Jumada II 1380) (*Journal officiel de la République tunisienne* No. 57, 16 December 1960), establishing an invalidity, old-age and survivors' pensions scheme and an old-age and survivors' allowances scheme for employees in the non-agricultural sector. The National Social Security Fund is responsible for administering these schemes.

Act No. 60-31, of 14 December 1960 (24 Jumada II 1380) (*Journal officiel de la Republique tunisienne* No. 57, 16 December 1960), providing for the organization of industrial relations in undertakings, prescribed that a works committee should be set up in every undertaking, irrespective of its nature, customarily employing fifty employees or more, either directly or through a subcontractor.

[1] Information furnished by the Tunisian Government.

TURKEY

NOTE[1]

Following the reform of 27 May 1960, a Constituent Assembly was established under law No. 157 and convened on 6 January 1961. A main committee of the Constituent Assembly was charged with the preparation of a new constitution. This committee based itself on the first draft prepared by a group of professors and took into consideration the constitutions of other countries and their implementation together with the requirements of the Turkish society.

The text of the new constitution was approved by the Constituent Assembly on the first anniversary of the 27 May 1960 movement on 27 May 1961, and was published in the *Official Gazette* on 31 May (No. 10816).

The Constitution was to be submitted to a referendum. This referendum was carried out in accordance with law No. 283 passed by the Constituent Assembly on 28 March 1961, which stipulated that the constitution must be submitted to popular vote and specified the manner in which this would be carried out.

It was established that on 9 July 1961, the day of the referendum, the total number of eligible voters in Turkey was 12,735,009, and a total number of 10,322,169 voters cast their ballots. Of these, 10,282,561 ballots were valid, and 39,608 were invalid. The number of those voting for the Constitution totalled 6,348,191, and those against it 3,934,370.

The constitution was thus approved by over 61 per cent of the valid votes cast. Following its approval, the new constitution was promulgated on 20 July 1961 in *Official Gazette*, No. 10859).

Electoral laws regulating the elections to the Senate and to the National Assembly were passed respectively on 24 and 25 May 1961 (laws Nos. 304 and 306, *Official Gazette*, No. 10815.

The House of Representatives (the Lower House of the Constituent Assembly) was dissolved on 4 September 1961. General elections took place on 15 October 1961. The martial law which had been proclaimed in Ankara and Istanbul after the student demonstrations of 28 April 1960 and had been maintained in force by the provisional Government was lifted on 1 December 1961.

The new constitution of the Turkish Republic consists of a preamble, six parts, and a total of 168 articles, of which 157 are basic and 11 provisional:

Part One (arts. 1-9) enumerates "General principles";

Part Two (arts. 10-62) consists of four sections on "fundamental rights and duties";

Part Three (arts. 63-152), which is the longest, deals with "the basic organization of the republic" under three sections on legislative power, executive power and the judiciary;

"Miscellaneous provisions" are contained in Part Four, composed of arts. 153-154.

The eleven "temporary provisions" are in Part Five; and the remaining three of the basic provisions (arts. 155-157) entitled "Final Provisions" are in Part Six.

The new constitution differs from the previous one, especially in the following respects:

1. The new constitution introduces a series of checks and balances to guard against the danger of personal rule;

2. The new constitution attaches a great importance to the judiciary and establishes judicial controls over all activities of the State. Enactments of the legislative branch are made subject to checks and supervision of the newly established Constitutional Court.

3. The constitution gives constitutional protection to a number of social security rights, thus filling a gap in the constitution of 1924 which had made provisions only for the political freedoms. Section three of Part Two of the constitution is devoted to social and economic rights and duties.

4. In the matter of the regulation of the human rights and freedoms which define the limits of political power, the constitution takes it upon itself to define their scope rather than to delegate this task to the absolute will of the Legislature. Thus, the constitution specifies not only the conditions and the valid reasons under which the Legislature may have to limit them, but also the degree beyond which they may not be restricted.[2]

The principal provisions of the new constitution follow:

[1] Note prepared by Dr. Ilhan Lütem, Legal Adviser, Permanent Mission of Turkey to the United Nations, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] cf. the article by Dr. Ismet Giritli, entitled "Some Aspects of the new Turkish Constitution", published in the *Middle East Journal*, vol. 16, winter 1962, No. 1.

CONSTITUTION OF THE TURKISH REPUBLIC

PREAMBLE

. . .

Guided by the desire to establish a democratic rule of law based on juridical and social foundations, which will ensure and guarantee human rights and liberties, national solidarity, social justice, and the welfare and prosperity of the individual and society;

Now therefore, the Turkish nation hereby enacts and proclaims this constitution drafted by the Constituent Assembly of the Turkish Republic, and entrusts it to the vigilance of her sons and daughters who are devoted to the concepts of freedom, justice and integrity, with the conviction that its basic guarantee lies in the hearts and minds of her citizens.

PART ONE
GENERAL PRINCIPLES

I. *Form of the State*

Art. 1. The Turkish State is a Republic.

II. *Characteristics of the Republic*

Art. 2. The Turkish Republic is a nationalistic, democratic, secular and social state governed by the rule of law, based on human rights and the fundamental tenets set forth in the preamble.

. . .

VII. *Judicial Power*

Art. 7. Judicial power shall be exercised by independent courts on behalf of the Turkish nation.

VIII. *Supremacy and Binding Force of the Constitution*

Art. 8. Laws shall not be in conflict with the constitution.

The provisions of the Constitution shall be the fundamental legal principles binding the legislative, executive and judicial organs, administrative authorities and individuals.

IX. *Irrevocability of the Form of the State*

Art. 9. The provision of the Constitution establishing the form of the state as a republic shall not be amended nor shall any motion therefor be made.

PART TWO
FUNDAMENTAL RIGHTS AND DUTIES

Section One
GENERAL PROVISIONS

I. *The Nature of the Fundamental Rights and Their Protection*

Art. 10. Every individual is entitled, in virtue of his existence as a human being, to fundamental rights and freedoms, which cannot be usurped, transferred or relinquished.

The State shall remove all political, economic and social obstacles that restrict the fundamental rights and freedoms of the individual in such a way as to be irreconcilable with the principles embodied in the rule of law, individual well-being and social justice. The State prepares the conditions required for the development of the individual's material and spiritual existence.

II. *The Essence of the Basic Rights*

Art. 11. The fundamental rights and freedoms shall be restricted by law only in conformity with the letter and spirit of the Constitution.

The law shall not infringe upon the essence of any right or liberty, even when it is applied for the purpose of upholding public interest, morals and order, social justice and national security.

III. *Equality*

Art. 12. All individuals are equal before the law irrespective of language, race, sex, political opinion, philosophical views, or religion or religious sect.

No privileges shall be granted to any individual, family, group or class.

IV. *The Status of Aliens*

Art. 13. The rights and liberties of aliens referred to in this section shall be defined according to the provisions of international law.

Section Two
THE RIGHTS AND DUTIES OF THE INDIVIDUAL

I. *Personal Immunities*

Art. 14. Every individual shall enjoy the right to seek to improve himself materially and spiritually, and have the benefit of personal freedom.

The immunities and freedoms enjoyed by the individual shall not be restricted except in cases explicitly prescribed by law, and in conformance with judgements duly passed by a court.

No individual shall be subjected to ill-treatment or torture.

No punishment incompatible with human dignity shall be imposed.

II. *Protection of individual privacy*

(*a*) *The privacy of the individual's life*: *Art. 15.* The privacy of the individual's life shall not be violated. The exceptions required as a result of legal proceedings shall be reserved.

Unless there exists a judgement duly passed by a court in cases explicitly provided by law, and unless there exists an order of an agency authorized by law in cases required by public order, neither the person nor the private papers and belongings of an individual shall be searched.

(*b*) *Immunity of domicile*: *Art. 16.* The privacy of the individual's home shall not be violated.

Unless there exists a court judgement duly passed in cases explicitly provided by law, and unless there exists an order of an agency authorized by law in cases where delays are deemed dangerous to national security and public order, no domicile shall be entered or searched, or the furniture and property therein confiscated.

(*c*) *Freedom of communication*: *Art. 17.* Every individual is entitled to the right of free communication.

The privacy of communication is essential and shall not be infringed unless there exists a court judgement duly passed in cases required by law.

III. *Freedom of Travel and Residence*

Art. 18. Every individual shall be entitled to travel freely; this freedom can be restricted only by law for the purposes of maintaining national security or for preventing epidemics.

Every individual shall be entitled to reside wherever he chooses. The freedom can be limited only by laws when necessary to maintain national security, to prevent epidemics, to protect public property, and to achieve social and economic and agricultural development.

Turkish citizens shall be free to leave and re-enter Turkey. The freedom to leave Turkey shall be regulated by law.

IV. *The Rights and Freedoms of Thought and Belief*

(*a*) *Freedom of thought and faith*: *Art. 19.* Every individual is entitled to follow freely the dictates of his conscience, to choose his own religious faith and to have his own opinions.

Forms of worship, and religious ceremonies and rites are free provided they are not in opposition to public order or morals or to the laws enacted to uphold them.

No person shall be compelled to worship, or participate in religious ceremonies and rites, or to reveal his religious faith and belief. No person shall be reproached for his religious faith and belief.

Religious education and teaching shall be subject to the individual's own will and volition, and, in the case of minors, to their legally appointed guardians.

No person shall be allowed to exploit and abuse religion or religious feelings or things considered sacred by religion in any manner whatsoever for the purpose of political or personal benefit, or for gaining power, or for even partially basing the fundamental social, economic, political and legal order of the State on religious dogmas. Those who violate this prohibition, or those who induce others to do so shall be punishable under the pertinent laws. In the case of associations and political parties the former shall be permanently closed down by order of authorized courts and the latter by order of the Constitutional Court.

(*b*) *Freedom of thought*: *Art. 20.* Every individual is entitled to have his own opinions and to think freely. He is free to express his thoughts and opinions singly or collectively, through word of mouth, in writings, through pictures or through other media.

No individual shall be coerced to disclose his thoughts and opinions.

V. *Freedom of Science and the Arts*

Art. 21. Every individual is entitled to acquire and impart science and arts, to practice, profess and to disseminate knowledge concerning them, and to carry out all kinds of research in these fields.

Education and teaching shall be free under the supervision and control of the State.

The provisions governing private schools shall be regulated by laws in conformity with the level desired to be attained in state schools.

No educational institutions shall be set up which are incompatible with the principles of learning and education.

VI. *Provisions governing the press and publications*

(*a*) *Freedom of the press*: *Art. 22.* The press is free, and shall not be subjected to censorship. The State shall adopt the measures to assure the freedom of the press, and the obtainment of information.

Freedom of the press and the obtainment of information may be restricted by law only in order to safeguard national security or public morality, to prevent attacks on the dignity, honour and rights of individuals; to prevent instigations to commit crimes; and to assure proper implementation of judicial functions.

Barring a court order passed in cases specified by law, in order that the judicial functions may be carried out properly, no ban shall be imposed on publication of any item of information.

The confiscation of newspapers and periodicals published in Turkey may be carried out only in conformity with a court judgement, or in the event that offences are committed for which the pertinent law explicitly specifies that these measures shall be applied.

The newspapers and periodicals published in Turkey may be closed down only by court judgement, in the event of conviction for offences provided in article 57.

(*b*) *The right to publish newspapers and periodicals*: *Art 23.* Publication of newspapers and periodicals shall not be subject to obtaining permission prior to publication nor to the depositing of a guarantee fund.

The publication and distribution of newspapers and periodicals, their financial resources, and the conditions pertaining to journalism shall be regulated by law. Such law shall lay down no political, economic,

financial or technical restrictions liable to curb or coerce the free dissemination of news, ideas and opinions.

Newspapers and periodicals shall avail themselves of the media and facilities provided by the State and other public corporate bodies or associations affiliated with them and these facilities shall be equally available to all.

(c) *The right to publish books and pamphlets*: *Art. 24.* No permits shall be necessary for the publication of books and pamphlets, nor shall they be subject to censorship.

Books and pamphlets published in Turkey shall not be confiscated except in cases provided under paragraph 5 of article 22.

(d) *The protection of printing equipment*: *Art. 25.* Printing shops, including their presses and other furniture and fixtures, shall not be seized, confiscated, or prevented from operation, even though the underlying charge may be that they are necessary to a criminal act.

(e) *The right to make use of means of communication other than the press*: *Art. 26.* Individuals and political parties are entitled to avail themselves of the communication and publication facilities including the press which are owned by public corporate bodies. The conditions and procedures for such obligation shall be regulated in conformity with democratic principles and standards of equity. No law shall be enacted which restricts freedom of information, or which aims to control the formation of ideas and opinions and the shaping of public opinion.

(f) *The right to controvert and rebut*: *Art. 27.* The right to controvert and to rebut is recognized only in cases where the dignity and honour of individuals have been affected, or where they have been made the butt of unfounded statements in print.

If the counter statement containing the individual's rebuttal is not published voluntarily, a court of justice shall decide for or against its publication.

VII. *The Right and Freedom to Congregate*

(a) *The right to congregate and march in demonstration*: *Art. 28.* All individuals are entitled to congregate or march in demonstration without prior permission, as long as they are unarmed and have no intent to assault.

This right can be restricted only by law for purposes of maintaining public order.

(b) *The right to form associations*: *Art. 29.* Every individual is entitled to form associations without prior permission. This right can be restricted only by law for the purposes of maintaining public order or morality.

VIII. *Provisions governing the protection of rights*

(a) *Personal security*: *Art. 30.* Individuals against whom there exists a strong case for indictment can be detained by court judgement for purposes of preventing escape or alteration of evidence, or in other similar cases which necessitate detainment and in other instances specified by law. The prolongation of detainment is subject to the same conditions.

Taking into custody is resorted to only in *flagrante delicto* or in cases where delay is likely to thwart justice. The conditions for such detainment shall be specified by law.

Individuals taken or held in custody shall be notified immediately in writing of the reasons for their detention as well as of the charges against them.

The person taken or held in custody shall be arraigned within 24 hours excluding the time taken to send him to the court nearest to the place of arrest, and, after the lapse of this time, such person cannot be deprived of his freedom without a court judgement. When a person is taken or held in custody, or is so arraigned, his next of kin shall be immediately notified therof.

All damages suffered by persons subjected to treatment other than that specified herein shall be indemnified by the State according to law.

(b) *The freedom to seek one's rights*: *Art. 31.* Every individual is entitled to litigate and defend his case as plaintiff or defendant before judicial authorities by availing himself of all legitimate methods and procedures.

No court of justice shall abstain from conducting the trial of a case within its jurisdiction.

(c) *Ordinary channels of justice*: *Art. 32.* No person shall be made to appear before an agency other than the relevant court.

No agencies vested with extraordinary powers to pass judgement can be created which may entail the appearance of a person before an agency other than the court normally empowered to try him.

(d) *Punishments may be meted out only by reference to law and they concern only the individual involved; prohibition of duress*: *Art. 33.* No person shall be punishable for an act which is not considered an offence under the law in force at the time the act was committed.

Punishments and penal measures shall be established only by law.

No person shall be punishable with a heavier penalty than that provided in the law for that offence at the time the offence was committed.

No person shall be coerced to make statements or to give testimony liable to incriminate himself or his legally defined next of kin. Criminal responsibility is personal.

No penalty involving general confiscation shall be imposed.

(e) *The right to prove the truth of an allegation*: *Art. 34.* In cases of libel instituted by those in public service on the grounds that libellious statements were made concerning the plaintiff's discharge of

his services or functions, the defendant is entitled to prove the truth of his allegations. In cases falling outside of the above, the granting of the request to prove the truth of the libellous statement is dependent upon whether or not the determination of the allegation is in public interest, or upon whether the plaintiff requests such a hearing designed to establish the truth or falsity of the statement.

Section Three
SOCIAL AND ECONOMIC RIGHTS AND DUTIES

I. *Protection of the Family*

Art. 35. The family is the fundamental unit of Turkish society.

The State and other public corporate bodies shall adopt the requisite measures and establish the organizations needed for the protection of the family, the mother, and the child.

II. *Property Rights*

Art. 36. Every individual is entitled to the rights of ownership and inheritance.

(*a*) *General rule concerning property*: These rights may be restricted only by law in the interest of the public.

The exercise of property rights shall in no way conflict with public welfare.

(*b*) *Land ownership*: *Art. 37.* The State shall adopt the measures needed to achieve the efficient utilization of land and to provide land for those farmers who either have no land, or own insufficient land. For this purpose the law may define the size of tracts of land according to different agricultural regions and types of soil. The State shall assist farmers in the acquisition of agricultural implements.

(*c*) *Expropriation*: *Art. 38.* The State and other corporate bodies, where public interest deems it necessary, are authorized, subject to the principles and procedures as set forth in the pertinent law, to expropriate the whole or a part of any immovable property under private ownership, or to impose an administrative servitude thereon provided that the true equivalent value is immediately paid in cash.

The form of payment of the true equivalent values of land expropriated for the purpose of enabling farmers to own land, for nationalization of forests, for afforestation and for accomplishing the establishment of settlement projects, shall be provided by law. Where the law deems it necessary that payment be made by instalments, the period of payment shall not exceed ten years. In this event, the instalment shall be paid in equal amounts and shall be subject to interest rates prescribed by law.

The value of that part of expropriated land which is tilled by the farmer himself, the amount of land to be indicated by law which is essential within equitable principles, to provide him with a living, and the value of the land expropriated from the small farmer shall be paid in cash under all circumstances.

(*d*) *Nationalization*: *Art. 39.* Where it is deemed necessary in the public interest, private enterprises which bear the characteristics of a public service may be nationalized provided that the true equivalent value thereof is paid as indicated by law. Where the law deems it necessary that payment be made by instalments, the period of payment shall not exceed ten years, and the instalments shall be paid in equal amounts; these instalments shall be subject to interest rates prescribed by law.

III. *Freedom of Work and Contracts*

Art. 40. Every individual is entitled to carry on business activities, and to enter into contracts in the field of his choice. The establishment of private enterprises is free.

The law may restrict these freedoms only in public interest.

The State shall adopt those measures necessary to ensure the functioning of private enterprises in an atmosphere of security and stability consistent with the requirements of the national economy and the objectives of society.

IV. *The Regulation of Economic and Social Life*

Art. 41. Economic and social life shall be regulated in a manner consistent with justice, and the principle of full employment, with the objective of assuring for everyone a standard of living befitting human dignity.

It is the duty of the State to encourage economic, social and cultural development by democratic processes and for this purpose to enhance national savings, to give priority to those investments which promote public welfare, and to draw up development projects.

V. *Provisions governing Employment*

(*a*) *The right and duty to engage in an occupation, trade or business*: *Art. 42.* It is the right and duty of every individual to be engaged in some occupation, trade or business.

The State shall protect workers and promote employment by adopting social, economic and financial measures of such a nature that workers will be provided with a decent human existence so that stable employment may be developed. The State shall also adopt measures to prevent unemployment. Imposing unwarranted burdens on individuals without compensation is prohibited.

The forms and conditions of physical and intellectual work in the nature of civic duty in cases where the needs of the country so require shall be regulated by law in accordance with democratic procedures.

(*b*) *Conditions of employment*: *Art. 43.* No individual may be employed at a job that does not suit his age, capacity and sex.

Children, young people and women shall be accorded special protection in terms of conditions of employment.

(*c*) *The right to rest*: *Art. 44.* Every worker has the right to rest.

The right to paid week-ends, religious and national holidays, and paid annual leave shall be regulated by law.

(*d*) *Provision of equity in wages*: *Art. 45.* The State shall adopt the necessary measures so that workers may earn decent wages commensurate with the work they perform, and sufficient to enable them to maintain a standard of living befitting human dignity.

(*e*) *The right to establish trade unions*: *Art. 46.* Employees and employers are entitled to establish trade unions and federations of trade unions without having to obtain prior permission, to enrol in them as members, and to resign from such membership freely.

For those engaged in public services other than physical labour similar rights shall be regulated by law.

The by-laws, the management, and the operation of trade unions and federations thereof shall not conflict with democratic principles.

(*f*) *The right to bargain collectively and to strike*: *Art. 47.* In their relations with their employers, workers are entitled to bargain collectively and to strike with a view to protecting or improving their economic and social status.

The exercise of the right to strike, and the exceptions thereto, and the rights of employers shall be regulated by law.

VI. *Social Security*

Art. 48. Every individual is entitled to social security. The State is charged with the duty of establishing or assisting in the establishment of social insurance and social welfare organizations.

VII. *The Right to Medical Care*

Art. 49. It is the responsibility of the State to ensure that everyone leads a healthy life both physically and mentally, and receives medical attention.

The State shall take measures to provide the poor and low-income families with dwellings that meet sanitary requirements.

VIII. *Education*

Art. 50. One of the foremost duties of the State is to provide for the educational needs of the people.

Primary education is compulsory for all citizens, male and female, and shall be provided free of charge in state schools.

To assure that capable and deserving students in need of financial support may attain the highest level of learning consistent with their abilities, the State shall assist them through scholarship and other means.

The State shall take the necessary measures conducive to making useful citizens of those who need special training on account of their physical and mental incapacity.

The State shall provide for the preservation of works and monuments of historical and cultural value.

IX. *Promotion of Co-operative Activities*

Art. 51. The State shall take measures conducive to the promotion of co-operative activities.

X. *Protection of Agriculture and Farmers*

Art. 52. The State shall take the necessary measures to provide the people with adequate nourishment, to assure an increase in agricultural production to the benefit of the society, to prevent erosion and to enhance the value of agricultural products and the toil of those engaged in agriculture.

XI. *The Scope of the Economic and Social Duties of the State*

Art. 53. The State shall carry out its duties to attain the social and economic goals provided in this section only in so far as economic development and its financial resources permit.

Section Four

POLITICAL RIGHTS AND DUTIES

I. *Citizenship*

Art. 54. Every individual who is bound to the Turkish State by ties of citizenship is a Turk.

The child of a Turkish father or a Turkish mother is a Turk. The citizenship status of a child of a Turkish mother and a foreign father shall be regulated by law.

Citizenship is acquired under the conditions provided by law, and is lost only under conditions provided by law.

No Turk shall be deprived of his citizenship unless he commits an act irreconcilable with loyalty to the homeland.

The right to litigate in cases of decisions and procedures involving deprivation of citizenship shall not be obstructed.

II. *The Right to elect and be elected*

Art. 55. All citizens are entitled to elect and be elected, pursuant to the conditions provided in the law.

Elections shall be free and secret, and shall be conducted on the basis of equality, direct suffrage, open counting and classification.

III. *Provisions governing Political Parties*

(*a*) *The right to found political parties and their place in political life*: *Art. 56.* Citizens are entitled to

establish political parties and to join or withdraw from them pursuant to the pertinent rules and procedures.

Political parties may be founded without prior permission and shall operate freely.

Whether in power or in opposition political parties are indispensable entities of democratic political life.

(*b*) *Principles to which political parties are expected to conform*: *Art. 57.* The statutes, programmes and activities of political parties shall conform to the principles of a democratic and secular republic, based on human rights and liberties, and to the fundamental principle of the State's territorial and national integrity. Parties failing to conform to these provisions shall be permanently dissolved.

Political parties shall account for their sources of income and expenditures to the Constitutional Court.

The internal affairs and activities of political parties, the manner in which they shall be accountable to the Constitutional Court and the manner in which this Court shall audit their finances shall be regulated by law in accordance with democratic principles.

Actions in law involving the dissolution of political parties shall be heard at the Constitutional Court, and the verdict to dissolve them shall be rendered only by this Court.

IV. *The Right to enter Public Service*

(*a*) *Entry into public service*: *Art. 58.* Every Turk is entitled to enter public service.

In hiring personnel no discrimination shall be made other than job qualifications.

(*b*) *Declaration of financial net worth*: *Art. 59.* The law shall prescribe the conditions of declaration of financial net worth for persons entering public service. Those assuming duties in the legislative and executive organs shall not be exempt from this obligation.

V. *The Right and Duty to take part in the Defence of the Homeland*

Art. 60. Taking part in the defence of the homeland is the right and duty of every Turk. This duty and the obligation to serve in the armed forces shall be regulated by law.

VI. *Tax Obligation*

Art. 61. To meet public expenditures every individual is under obligation to pay taxes in proportion to his financial capacity.

Taxes, dues, charges and similar financial obligations shall be imposed only by law.

VII. *The Right to Petition*

Art. 62. Citizens are entitled to petition the competent authorities and the Grand National Assembly in writing, singly or collectively, concerning requests and complaints involving themselves or the public.

The action taken as a result of petitioning involving the applicants in person shall be communicated to them in writing.

PART THREE

THE BASIC ORGANIZATION OF THE REPUBLIC

Section One

LEGISLATIVE POWER

A. The Grand National Assembly.

I. *Organization of the Grand National Assembly*

Art. 63. The Grand National Assembly of Turkey is composed of the National Assembly and the Senate of the Republic.

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II. *The duties and powers of the Grand National Assembly*

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(*b*) *Ratification of international treaties*: *Art. 65.* The ratification of treaties negotiated with foreign states and international organizations in behalf of the Turkish Republic is dependent upon approval of the Turkish Grand National Assembly and such ratification can be finalized only through the enactment of a law by the Turkish Grand National Assembly.

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International treaties duly put into effect carry the force of law. No recourse to the Constitutional Court can be made as provided in articles 149 and 151 with regard to these treaties.

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III. *The National Assembly*

(*a*) *Organization*: *Art. 67.* The National Assembly is composed of 450 deputies elected by direct general ballot.

(*b*) *Election qualifications for deputy*: *Art. 68.* Every Turk who has completed his thirtieth year is eligible to be elected a deputy.

Persons who are illiterate, those under interdiction, those who have not done or those who are not considered to have done their active military service despite the fact that they are liable for and not exempted from such service, those who are barred from public service, those who have been convicted by final judgement to a term of penal servitude and who have been sentenced to five years' imprisonment, except in cases of conviction for negligence, those who have been sentenced by final judgement for any offence such as defalcation, misappropriation, embezzlement, bribery, theft, fraud, forgery, breach of confidence, and those who have been convicted of such disgraceful offences as fraudulent bankruptcy are not eligible for election as deputies, even though they may have been pardoned.

Placing one's candidacy shall not be made dependent upon resignation from the public service.

To ensure that elections are conducted safely, provision shall be made in the law as to which public servants may place their candidacy and under what conditions.

Judges, army officers, military employees and non-commissioned officers are not entitled to place their candidacy or to be elected unless they resign from office.

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IV. *The Senate of the Republic*

(*a*) *Organization*: *Art. 70.* The Senate of the republic is composed of 150 members elected by general ballot, and 15 members appointed by the President of the republic.

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(*b*) *The right to elect members to the Senate*: *Art. 71.* All Turks who are eligible to vote in the election of the National Assembly shall be eligible to vote under the same conditions in the election of the Senate.

(*c*) *Qualifications for Senate membership*: *Art. 72.* Every Turk who has completed his fortieth year, and received a higher education, and who is eligible to be elected a deputy, may be elected to the Senate of the republic.

Members appointed by the President shall be selected from among people distinguished for their services in various fields and shall have completed their fortieth year. At least ten of such members shall be appointed from among persons who are not members of any political party.

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B. *Provisions applicable to Both Legislative Bodies*

I. *Provisions governing Membership in the Grand National Assembly*

(*a*) *Representation of the nation*: *Art. 76.* Members of the Grand National Assembly represent neither their constituencies nor their constituents, but the nation as a whole.

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(*c*) *Activities incompatible with membership*: *Art. 78.* No person may become a member of both legislative bodies.

Members of the Turkish Grand National Assembly may not be employed by any governmental department or other public corporate bodies nor enterprises and corporations in which the State or other corporate bodies participate directly or indirectly, nor may they hold positions in the administrative boards and in other public welfare societies of which the private sources of income and special facilities are provided by law, and neither may they directly or indirectly undertake any of their activities.

Members of the Turkish Grand National Assembly may not be charged with any official or private responsibility which entails proposals, recommendations, appointments, or approval by the Executive branch. A member may accept a temporary assignment not exceeding six months on a specific subject only with the approval of the particular legislative body to which he belongs.

Other occupations and functions incompatible with membership in the Turkish Grand National Assembly are set forth by law.

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II. *Provisions governing the Functions of the Turkish Grand National Assembly*

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(*e*) *Debates are public and published*: *Art. 87.* . . . The publication by every means of public proceedings in legislative bodies shall in no way be prevented.

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Section Two

EXECUTIVE POWER

A. *The President of the Republic*

I. *Election and Freedom from Bias*

Art. 95. The President of the Turkish Republic shall be elected for a term of seven years from among those members of the Turkish Grand National Assembly who have completed their fortieth year and received higher education; election shall be by secret ballot, and by a two-thirds majority of the plenary session. If this majority is not obtained in the first two ballots, an absolute majority shall suffice.

The President is not eligible for re-election.

The President elect shall dissociate himself from his party, and his status as a regular member of the Grand National Assembly shall be terminated.

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C. *Administration*

I. *Fundamentals of Administration*

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(*c*) *Judicial review*: *Art. 114.* No act or procedure of the administration shall be immune from the review of law-enforcing courts.

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III. *Provisions governing Civil Service*

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(*c*) *Provisions prohibiting government officials from joining political parties*: *Art. 119.* Government officials and staff members employed in an administrative or supervisory capacity in public economic enterprises, and those who are employed in the central offices of public welfare institutions, whose private facilities and sources of income are provided by law, may not join political parties. Government officials and those employed in public economic enterprises may make in the performance of their official duties no discrimination whatsoever among citizens on account of their political views.

Those whose violation of the above principles is

established by court judgement shall be permanently dismissed from public service.

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VI. *Emergency Administration*

(*a*) *Cases of emergency*: *Art. 123.* Procedures governing the imposition of financial obligations, seizure of property and the impressment of labour on citizens in cases of emergency shall be regulated by law, including the proclamation, enforcement, and termination of such obligations.

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Section Three

THE JUDICIARY

A. *General Provisions*

I. *Independence of Courts*

Art. 132. Judges shall be independent in the discharge of their duties. They shall pass judgement in accordance with the Constitution, law, justice and their personal convictions.

No organ, office, agency or individual may give orders or instructions to courts or judges in connection with the discharge of their judicial duty, send them circulars, or make recommendations or suggestions.

No questions may be raised, debates held, or statements issued in legislative bodies in connection with the discharge of judicial power concerning a case on trial. Legislative and executive organs and the administration are under obligation to comply with ruling of the courts. Such organs and the administration shall in no manner whatsoever alter court rulings or delay their execution.

II. *Tenure of Judges*

Art. 133. Judges may not be dismissed. Unless they so desire, they may not be retired before the age limit provided in the Constitution; they may not be deprived of their salaries even for reason of the abolishment of a court or of a staff position therein.

The exceptions prescribed by law concerning those convicted for a crime entailing dismissal from office, those whose incapacity to discharge duty for reasons of ill-health is definitely established and those pronounced unsuitable to remain in the profession are reserved.

III. *Provisions concerning Judgeship*

Art. 134. The qualifications of judges; their appointment, rights and duties, salaries and allowances; their promotion; the temporary or permanent change of their duties or places of duty; the initiation of disciplinary proceedings, and the subsequent disciplinary actions taken against them, for offences arising from the discharge of their functions; decisions to question and try them for offences connected with the discharge of their functions; conviction for crimes necessitating dismissal from the profession in instances of incompetence, and other personnel matters are regulated by law in accordance with the principle of the independence of the courts.

Judges shall remain in office until they complete their sixty-fifth year. The age limit for military judges is prescribed by law.

Judges may undertake no private or public duties other than those prescribed by law.

IV. *Court proceedings open to All, and Verdict Justification*

Art. 135. Court proceedings shall be open to all. The conduct of all or of a part of the proceedings in secret may be decided upon only in cases definitely required by public morality or public security.

Special provision shall be made for the trial of minors.

All court verdicts shall be put down in writing and shall be accompanied by the justification of the verdict.

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D. *The Constitutional Court*

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II. *Function and Powers*

Art. 147. The Constitutional Court shall review the constitutionality of laws and the by-laws of the Turkish Grand National Assembly.

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IV. *Annulment Suits*

(*a*) *Right of litigation*: *Art. 149.* The President of the Republic; the political parties which have obtained at least ten per cent of the total valid ballots cast in the last elections, or the political parties represented in the Turkish Grand National Assembly, or their parliamentary groups; one-sixth of all the members of one legislative body; and, in cases concerning their duties and welfare, the Supreme Council of Judges, the Court of Cassation, the Council of State, the Military Court of Cassation and the universities may initiate annulment suits based on the unconstitutionality of laws, or of the by-laws of the Turkish Grand National Assembly or of specific articles or provisions thereof.

(*b*) *The term of litigation*: *Art. 150.* The right to introduce an annulment action directly to the Constitutional Court is extinguished after ninety days beginning with the promulgation of the contested law or by-laws in the Official Gazette.

(*c*) *The contention of unconstitutionality by other courts*: *Art. 151.* A court which considers unconstitutional the provisions of a relevant law or is convinced of the seriousness of the claim of unconstitutionality put forth by one of the parties may postpone a case under consideration until the Constitutional Court decides on the matter.

If the court doubts the seriousness of the claim of unconstitutionality, such a claim shall be decided upon by the next higher court along with the main contention.

The Constitutional Court shall decide on the matter within three months beginning from the receipt of the contention.

If no decision is reached within this period, the court shall settle the claim of unconstitutionality according to its own conviction, and shall thus decide on the case under consideration. However, if the decision of the Constitutional Court arrives before the judgement concerning the main case is finalized, the courts shall comply therewith.

V. *The Rulings of the Constitutional Court*

Art. 152. The rulings of the Constitutional Court are final. The laws and by-laws or their provisions which have been invalidated by the Constitutional Court for unconstitutionality shall become void from the date of the decision. The Constitutional Court may, in pertinent cases, set the date of implementation of the annulment decision. Such a date may not exceed six months beginning from the date of decision.

The annulment decision is not retroactive.

The Constitutional Court may rule that its decisions based on the claims of unconstitutionality coming from other courts are restricted in scope, or binding only on the parties involved.

The decisions of the Constitutional Court shall be published immediately in the Official Gazette, and shall be binding on the legislative, executive and judicial organs of the State, as well as on the administration and natural and corporate persons.

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Part Six
FINAL PROVISIONS

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II. *Preamble and Sub-titles of Articles*

Art. 156. The preamble, which sets forth the basic views and principles on which this Constitution rests, is an integral part of the text of the Constitution.

The sub-titles of the articles refer only to the subjects of these articles, and their order and relationship. These sub-titles are not a part of the text of the Constitution.

. . .

ACT CONCERNING BASIC ELECTORAL PROVISIONS AND ELECTORAL ROLLS
Act No. 298 of 26 April 1961[1]

TITLE 1
PRINCIPLES

Applicability of the Act

Art. 1. This Act shall apply to the regulations relating to elections to the National Assembly, the Council of the Republic, Provincial General Councils, Municipal Councils, the councils of Elders and Committees of Elders, and to the elections of *muhtars* [headmen] to be held in accordance with the legislation relevant thereto.

. . .

Persons entitled to be Voters

Art. 6. All Turks who have attained the age of twenty-one years shall have the right to vote.

Suspension of Voting Rights

Art. 7. The right to vote may not be exercised by: (1) privates, corporals and sergeants on active service (this provision shall also apply to those on leave, for whatever reason), (2) military students.

Incapacity to Vote

Art. 8. The following shall be incapable of voting: 1. Persons under a legal disability, 2. persons who are ineligible for public service.

. . .

TITLE 3
PROCEEDINGS PRIOR TO THE POLL

Section 2. — *Election Propaganda*

Freedom from Restrictions

Art. 49. Election propaganda shall be unrestricted subject to the provisions of this Act.

Propaganda in the Open Air

Art. 50. Propaganda addresses may not during the electoral campaign be delivered before gatherings in the public highway, places of worship, buildings or installations in which public business is conducted, or in any other public place other than those specified by the district electoral boards.

The district electoral boards shall, in determining the places in which propaganda addressed may be delivered before gatherings, ensure that no interference is thereby caused to traffic or the holding of markets and that, whenever possible, electricity will be available at the place so selected.

A district electoral board, upon receipt of applications from political parties for permission to make propaganda addresses at public meetings, shall draw lots to determine the place, date, order and time for each meeting and shall notify the interested parties accordingly. One day in the week shall be set aside in the above manner for independent candidates.

No propaganda address may be delivered at a public meeting in the open between sunset and sunrise.

Propaganda at Indoor Meetings

Art. 51. Indoor meetings may be held in the name of a political party or independent candidate participating in the elections.

A party or person wishing to hold an indoor meeting shall set up a committee of three persons and shall notify the nearest police authorities or officer. In villages, the notification may be made to the village headman or his deputy.

This committee shall be responsible for the orderly conduct of the meeting and the prevention of unlawful acts and of speeches or behaviour which offend against public morals or constitute incitement to the commission of an offence.

The committee shall endeavour to deal with any situation of the kind envisaged in the preceding paragraph, should it arise, and shall, if necessary, call the police.

The committee may invite persons attending the meeting to speak or refuse them the floor.

Statements made at such meetings may be broadcast by loudspeakers, subject to the provisions of article 56 below.

Police officers and officials, village headmen and members of Councils of Elders may not interfere with indoor meetings in any way, except at the request of the committee conducting the meeting or where ordered to do so by the competent electoral board.

Indoor meetings may not be held in places of worship, schools, barracks, headquarters, camps or other similar military premises or installations, military clubs or other places in which public business is conducted.

Propaganda over the Radio

Art. 52. Political parties participating in an election may, subject to the relevant legislative provisions, make propaganda broadcasts over the radio between the fifteenth day and 9 p.m. on the fourth day preceding polling day.

The duration of such talks may not exceed twenty minutes for the first and ten minutes for subsequent talks a day.

[1] Published in *T. C. Resmi Gazeta* [Official Gazette of the Turkish Republic], No. 10796, of 2 May 1961.

A political party shall in the first talk explain its election manifesto.

A talk shall be broadcast simultaneously over all the radio stations in Turkey. Advance notice of the times of political broadcasts and of the names of the parties on whose behalf they are to be made shall be given every day by Turkish radio stations in their news bulletins.

Submission of Applications

Art. 53. The national headquarters of the political parties participating in the elections shall notify the Supreme Electoral Board in writing not later than the evening of the twenty-first day before polling day of their desire to make propaganda broadcasts.

Allocation of Broadcasting Times

Art. 54. The Supreme Electoral Board, in the presence of one representative of each of the parties applying for permission to make radio broadcasts and of representatives of the General Directorate of the Press, Broadcasting and Tourism, shall determine the times and order of the broadcasts by drawing lots. The lots shall be drawn not later than twenty days before polling day. The starting times of the broadcasts shall be determined by the Supreme Electoral Board which shall take into consideration the number of the parties and the most convenient listening conditions. The broadcasts shall not last beyond 9 p.m. at the latest.

Recording of Radio Broadcasts

Art. 55. Broadcasts made on behalf of political parties shall be recorded at the time of their delivery, in the presence of a board member designated by the Supreme Electoral Board. The name of the party on whose behalf the broadcast is made and that of the person making it shall be recorded by the board member on duty and by at least two officials designated for that purpose by the Radio Administration.

The tapes and other records of the talks shall be preserved by the Supreme Electoral Board.

If a talk becomes the subject of legal proceedings, a transcript shall be made available upon application to the competent authorities.

A person who, in broadcasting a talk, commits an act which is classified by law as an offence shall be liable to a penalty which shall not be less than half as heavy again nor more than twice as heavy as that normally prescribed by the law.

Propaganda by Loudspeaker

Art. 56. The use of loudspeakers for propaganda shall be unrestricted, provided it causes no public nuisance or inconvenience and subject to the provisions of the last paragraph of article 50.

The district electoral board, acting either on its own initiative or upon application by a political party, shall be competent to determine the place, time, duration and other conditions relating to propaganda by loudspeaker; in so doing it shall be guided by the characteristics peculiar to the place.

Political parties may, if they so desire, make use of municipal loudspeakers, where such are available, against payment and in equal measure, in accordance with a programme to be determined by the district electoral board.

Posters and Handbills

Art. 57. Political parties and independent candidates participating in the election shall be free to affix posters and distribute handbills and printed matter of all kinds. The dissemination, sticking, hanging and sale of bills, manifestos, circular letters, open letters and all printed matter of a propaganda character shall be forbidden during the three days immediately preceding polling day.

Ballot forms may be distributed at all times.

Prohibitions relating to the Dissemination of Propaganda Material

Art. 58. Posters, handbills and other printed matter whatsoever, used for purposes of propaganda, may not carry the Turkish flag, religious texts, inscriptions in Arabic characters and pictures of any kind.

Party emblems recognized as such by the parties shall not be regarded as pictures.

Exemption

Art. 59. Printed matter such as posters and handbills used for purposes of propaganda shall be exempt from all dues and taxes from the beginning of the election and until the termination of the propaganda campaign.

Places for the Exhibition of Posters

Art. 60. Propaganda posters may be exhibited at places to be determined by district electoral boards in towns and townships and by village committees of Elders in the villages.

Each political party and independent candidate shall be allocated equal space, which shall be separated from that allocated to other parties or candidates by thick lines of paint or laths.

The allocation of places for the exhibition of posters to the political parties and independent candidates participating in the election in a given constituency, who have submitted applications for such space, shall be determined by lot in the presence of any of their representatives who may attend, by district electoral boards in towns and townships and by village headmen and Committees of Elders in the villages.

The allocation by lot must be made not later than the evening of the twentieth day before polling day.

A political party who does not make use of the poster space allocated shall be liable for the expenses incurred by the municipality or village in allocating the said space.

Posters may not be exhibited at Other Places

Art. 61. Posters shall not be hung, affixed or exhibited in any place other than those indicated in article 60 above.

Posters hung, affixed or exhibited in contravention of the above provision may be removed by decision of the district electoral board.

Distribution of Printed Matter

Art. 62. Handbills and similar printed matter may be distributed only by persons who are entitled to vote in the election.

Handbills may not be distributed by officials and persons in the employ of the State, of administrations which are partly financed by the State, special provincial administrations, municipalities and related offices and establishments, State economic agencies, the establishments and partnerships founded by them, and of other public corporations.

Acts prohibited during an Election Campaign

Art. 63. The institutions and persons enumerated in article 62 above, welfare organizations and the officials and persons in their employ shall maintain an impartial attitude during elections.

The institutions and persons enumerated in the preceding paragraph may not, during elections, perform any of the acts which they are prohibited from performing pursuant to the provisions of Act No. 5830, and shall not:

(*a*) Furnish any aid or assistance whatever to political parties or candidates;

(*b*) Place their staff and services or any of their means, materials or capacities at the disposal of any party or candidate, or employ or utilize them for, or engage in any political activities.

The institutions and persons enumerated in the first paragraph above and the organizations governed by the Banks Act shall not participate in the dissemination of any material for or against any political party or material designed to influence the way in which the citizens would vote.

The above provision shall also apply to any books, pamphlets, posters and other similar material of the nature indicated in the preceding paragraph which have been printed and disseminated earlier.

Prohibitions relating to Ceremonies

Art. 64. Ceremonies (including inauguration ceremonies and the laying of foundation stones), speeches and statements, and the dissemination thereof in whatever way, relating to works and services originating from any of the offices, agencies or institutions enumerated in article 62 above or from an agency governed by the Banks Act, may not be held during the period between the day on which an election campaign begins and that on which the election results are announced.

. . .

Prohibition for Officials to participate in Journeys

Art. 66. No official may accompany the Prime Minister, a Minister, a member of the Turkish Grand National Assembly or a candidate on a journey in the provinces during the period between the day on which an election campaign begins and that on which the election results are announced.

. . .

Ban on the Publication of Information

Art. 80. The dissemination on election day by radio stations and all other information organs of news, conjectures and forecasts relating to the elections and the results thereof shall be prohibited until 6 p.m.

Between 6 p.m. and 9 p.m. radio stations may broadcast such news and communiques concerning the elections as may be issued by the Supreme Election Council.

After 9 p.m. the publication of information shall be unrestricted.

. . .

Title 8

REGULATIONS RELATING TO THE INSTITUTION OF PROCEEDINGS

. . .

Right of reply during Elections

Art. 176. If, during the election period, a publication disseminates an open or implied statement which is damaging to the honour or reputation or prejudicial to the interests of an individual or corporation, or which ascribes thereto actions, opinions or statements which are contrary to the truth in the matter, such an individual or corporation shall be entitled under article 19 of Act No. 5680, as amended by Act No. 143, to demand the publication of a reply or a correction.

Individuals and corporations may also transmit the reply or correction to the local civil court judge. The text may, upon payment of the charge, be transmitted by telegram.

After the seventh day preceding polling day, a ruling by a civil court judge shall, however, be deemed sufficient.

The provisions of the Press Act shall apply to the persons who fail to follow the provisions of the foregoing paragraphs.

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UKRAINIAN SOVIET SOCIALIST REPUBLIC[1]

EXTRACTS FROM THE REPORT OF THE CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE UKRAINIAN SSR ON THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE UKRAINIAN SSR IN 1961

The workers of the Ukrainian SSR celebrated the year 1961 with further progress in industry, agriculture, transport, communications and building, with a further increase in the people's well-being and with a further rise in its cultural level of living.

Provisional estimates showed a rise of 7 per cent in the national income, in comparable values, as compared with 1960.

This increase provided additional resources for the further expansion of socialist production and for the improvement of the people's well-being through a direct increase in wages and through a growth of the funds available for social purposes.

In 1961 a total of 4,700 million roubles from these funds was expended upon public education, medical services, social maintenance and sundry payments and benefits.

The average annual employment figure for manual and non-manual workers in the Ukrainian economy in 1961 was more than 11.3 million, an increase of almost 700,000 over 1960.

Average wages for manual and non-manual workers increased by 4 per cent during the year, with a reduction in the length of the working day. There was also some increase in collective farmers' personal incomes from the communal economy of the collective farms.

During the last few years, the wages of manual and non-manual workers in industry, building, communications, transport, geological prospecting and a number of other branches of the economy have been adjusted, in accordance with decisions of the Party and the Government; so, too, have the wages paid on State farms and in other State agricultural enterprises. This has meant wage increases for the manual and non-manual workers, particularly those in the lower-paid categories.

By the beginning of 1962, about 7 million manual and non-manual workers were employed at the new rates.

In conformity with decisions taken at the fifth session of the Supreme Soviet of the USSR, further progress was made in the gradual exemption of manual and non-manual workers from taxes. From 1 October 1961, workers earning less than 60 roubles per month became completely exempt from tax and the rate of taxation was reduced by an average of 40 per cent for workers earning from 61 to 70 roubles per month. This meant a total increase of 72 million roubles in the annual take-home pay of all manual and non-manual workers in the Ukrainian SSR.

Further progress was made also in public education, science and cultural life.

The total number of people receiving education in one form or another was more than 11 million.

Educational reform continued. By the end of the year, the republic had about 11,500 eight-year schools.

Pupils at schools providing general education numbered 7.8 million, or 600,000 more than in the previous year. School-leaving certificates were granted to 252,000 persons, of whom 84,000 had been receiving secondary education at schools for young urban and rural workers without interruption of their employment. By the beginning of the academic year there were more than 6,000 workers' polytechnic secondary general schools, attended by about 350,000 senior pupils.

More boarding-schools and day-extension schools and classes were opened, and pupils attending them at the beginning of the present academic year numbered about 340,000.

More than 915,000 students are attending higher and intermediate specialized schools; of this total, 461,000 are receiving higher education. Over 151,000 young specialists graduated last year from higher educational institutions and from technical colleges; of that number, 63,000, including 24,000 engineers, had received higher education.

Correspondence-course and evening-class facilities have been extended. More than 1,300,000 persons attended higher and intermediate specialized schools and schools providing general education for urban and rural youth, without interruption of their employment; of these, about 480,000 were attending higher educational establishments and technical colleges.

Scientific institutes continued to develop and improve. The number of scientific workers increased by almost 4,000 and is now over 50,000.

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[1] Texts furnished by the Government of the Ukrainian Soviet Socialist Republic.

There has been an improvement in cultural and educational facilities for the public. During the year, the Republic's film studios turned out seventeen full-length films, including fifteen feature films. There were more than 22,000 film projectors — an increase of almost 3,000 compared with the previous year. The annual figure for cinema attendances was 750 million, and for theatre and concert attendances almost 33 million.

The output of books, journals, newspapers and other periodicals also increased.

There was intensive construction work in the field of both housing and public amenities. During the past year, housing covering a total area of 13.1 million square metres — equivalent to more than 370,000 apartments — was brought into use. It was financed both by the State and by the urban population, State financing accounting for 7.8 million square metres of the total.

In addition, more than 135,000 dwellings were built in rural areas in the course of the year by collective farmers and the local intelligentsia.

Many educational and public health buildings were completed, as well as buildings for cultural purposes, science and the arts.

Under allocations for the 1961 state plan, the provision of places in schools providing general education was increased, by extra building, by 23 per cent as compared with 1960. In this was included a large number of boarding-schools. In addition, a great many kindergartens, hospitals and polyclinics, sanatoria and rest-homes, cinemas and other cultural and educational establishments were built.

The network of hospitals, maternity homes, dispensaries or health centres, women's and children's clinics, preventive medicine clinics and other public health establishments was, in 1961, further expanded.

On 1 January 1962, according to preliminary data, the population of the Ukrainian Soviet Socialist Republic was more than 43.5 million.

The country's economic development during 1961 indicates a steady expansion of the socialist economy and a continued improvement in the welfare of the Ukrainian people.

(From the newspaper *Pravda Ukrainy*, No. 27, 1 February 1962)

EXTRACTS FROM THE ACT OF THE SUPREME SOVIET OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC, DATED 28 DECEMBER 1960, ON THE STATE BUDGET OF THE UKRAINIAN SSR FOR 1961

Art. 1. The State budget of the Ukrainian SSR for 1961 as amended according to the report of the Budget Commission (total revenue 7,527,632,000 roubles, total expenditure 7,521,790,000 roubles, excess of revenue over expenditure 5,842,000 roubles, in new prices) is hereby adopted.

. . .

Art. 3. A total sum of 3,710,787,500 roubles shall be appropriated, under the State budget of the Ukrainian SSR for 1961, for the financing of the national economy: the further development of heavy industry, the construction industry, light industry. the food industry, agriculture, transport, housing and communal services, and other branches of the national economy.

Art. 4. A total sum of 3,378,406,000 roubles[1] shall be appropriated, under the state budget of the Ukrainian SSR for 1961, for social and cultural purposes: general education schools, technical colleges, higher educational institutions, scientific research establishments, professional and technical training institutes, libraries, clubs, theatres, the press and other educational and cultural facilities; hospitals, day-nurseries, sanatoria and other health and physical culture establishments; pensions and allowances.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 1, 5 January 1961, Act No. 6, pp. 5-6)

[1] Expenditure for social and cultural purposes in 1961 accounts for 44.9 per cent of total expenditure under the budget, as compared with 43.1 per cent in 1960. In real values the increase amounts to 350,005,300 roubles, new prices.

ACTS OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC TO PROMULGATE THE CRIMINAL CODE AND THE CODE OF CRIMINAL PROCEDURE OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC

On the recommendation of its Commission for Legislative Proposals, the Supreme Soviet of the Ukrainian SSR adopted, on 28 December 1960, Acts to promulgate the Criminal Code[1] and the Code of Criminal Procedure[2] of the Ukrainian SSR, both Acts to enter into force on 1 April 1961.

[1] The Criminal Code of the Ukrainian SSR was published in the *Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 2, 12 January 1961, pp. 19-84.

[2] The Code of Criminal Procedure of the Ukrainian SSR was published in the *Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 2, 12 January 1961, pp. 85-206.

SOME FEATURES OF THE NEW CRIMINAL AND CRIMINAL PROCEDURE LEGISLATION IN THE UKRAINIAN SSR

The new Criminal Code of the Ukrainian SSR, adopted by the Supreme Soviet of the Ukrainian SSR on 28 December 1960, takes into account the profound social and economic changes which have occurred in the country since the adoption of the 1927 Penal Code.

The new Code is based on the principles of criminal legislation in the USSR and union republics, which lay down the principles and general provisions of Soviet criminal legislation, and is designed to strengthen the socialist rule of law, to enhance the role of the public in the fight against crime, to provide greater protection for the persons and rights of citizens, and to further the resolute struggle against anti-social parasitic elements. Those provisions of the 1927 Penal Code which have proved their practical worth have been retained in the new legislation, sometimes with amendments and additions.

Two clear tendencies can be seen in the new Criminal Code: the sphere of criminal responsibility has been narrowed and punishment for minor offences which do not constitute a serious threat to society have been reduced; at the same time, the sphere of social action against law-breakers has been enlarged and greater emphasis is placed on the educative role of punishment; people who commit serious offences, and in particular dangerous recidivists, are held liable to severe punishment. The new Code excludes criminal responsibility for many acts covered by the 1927 Code, on the assumption that the offender will be subject to social, administrative and disciplinary sanctions or held responsible in civil law. This applies, for example, to infringements of the military registration regulations, the disclosure of information not containing State secrets, the infliction of minor bodily injury through carelessness, the appropriation of citizens' personal property, and a number of other offences. Criminal responsibility attaches to the commission of certain acts only if they are repeated after social or administrative sanctions have been applied (pursuing a prohibited occupation, if the actions involved are performed on a minor scale; brewing alcoholic liquors not for sale; minor speculation; illegal hunting and fishing; offences against passport regulations; and so forth).

The new legislation tends to endorse the recently developed practice of acquiting first offenders of criminal responsibility in respect of minor offences and leaving the question of their responsibility to the comrades' courts; as also the practice whereby social organizations and workers' bodies provide a guarantee in respect of persons committing offences which present no great threat to society (article 51).

The basis of the new Criminal Code is the fundamental proposition of the Principles that only a person guilty of committing a crime or offence shall be held criminally responsible and punished. No one may be held criminally responsible and punished for acts not specified under criminal law.

The criminal legislation is genuinely humanitarian in spirit. With regard to punishment, article 22 of the Criminal Code of the Ukrainian SSR lays down that "it is not the purpose of punishment to inflict physical suffering or to lower human dignity". In the same article it is stated that punishment is not merely retribution for an offence committed but has the further aim of correction and re-education.

The following are among the more important provisions which show the humanitarianism of Soviet criminal law: the death penalty is recognized as an exceptional form of punishment only, to be kept on the statute book only on a temporary basis, and to be applied to a limited number of crimes, and its use is restricted by a series of supplementary conditions; as a general rule, only persons who have attained the age of sixteen can be held criminally responsible; minority and pregnancy in the criminal are regarded as extenuating circumstances; punishment may be deferred, the prisoner may be released or conditionally released before completing the full term of punishment, and deprivation of liberty may be commuted to a lighter punishment; there are institutes for people who are under conditional sentence or in respect of whom a guarantee has been provided; punishment may be remitted if the offender has ceased to be a social danger by the time the case is heard; etc.

Further evidence of the humanitarian nature of Soviet law is the fact that the maximum period for which a person may be deprived of liberty has been reduced to ten years. Only for particularly serious crimes and particularly dangerous recidivism can deprivation of liberty be extended to fifteen years.

The supreme requirement of genuine socialist humanism is the strictest protection of socialist social relations and the rights and lawful interests of Soviet citizens, against all criminal encroachment. Ukrainian criminal legislation provides for the use not only of persuasion but also, if necessary, of compulsion, and prescribes strict and rigorous penal sanctions for crimes and offences which by their nature are grave.

In such cases, humanitarianism must be shown primarily towards the community or individual injured by such crime or offence.

Particular attention is paid to the question of determining the just punishment for a crime. The Criminal Code prescribes that punishment, even within the limits stipulated by the relevant articles, cannot be deemed just if it fails, in its extent, to take account of the seriousness of the crime or the personality of the criminal. Again, punishment is deemed

incommensurable if the court has not taken into account the particular circumstances connected with the personality of the accused and calling for a reduction or an increase in the punishment. Corrective labour without loss of freedom plays an important part in the system of punishment, and is applied to convicted persons who can be corrected, without deprivation of liberty, through influence exerted by the community in which they are regularly employed.

The courts are required, in imposing punishment, to take into account the nature of the offence and the degree of social danger it represents, the personal character of the offender, and the circumstances mitigating or aggravating responsibility, in particular such extenuating circumstances as honest repentance, voluntary compensation for the injury inflicted, restitution for the damage caused, and so forth.

The Criminal Code of the Ukrainian SSR provides new solutions for questions of criminal law.

The minimum age for criminal responsibility has been raised. It is now fourteen years for particularly dangerous offences only; otherwise, only persons who have reached the age of sixteen can be held criminally responsible for any offence envisaged under criminal law.

Two new provisions of the Code are of interest. One gives the courts the right to impose compulsory therapy, in addition to punishment, on persons who have committed a crime as a result of alcoholism or drug addiction; the other gives the courts the right to take into ward, on the petition of a public organization, offenders causing financial hardship to their families by the abuse of alcoholic liquors (article 14).

In article 15 of the Code, the Ukrainian legislature has further developed the provisions of the principles of criminal legislation in the USSR and union republics in regard to self-defence. The Code prescribes that actions committed by the victim of an offence, directly after the act of encroachment, for the purpose of detaining the offender for delivery to the appropriate authorities shall be deemed justifiable and regarded as equivalent to actions taken in self-defence.

The suppression of crime depends largely on its prompt detection. The Code accordingly provides that the co-operation of a lawbreaker in the disclosure of his offence attenuates his responsibility.

Another development of the all-union principles consists in the incorporation, in the new Ukrainian Criminal Code, of provisions for the participation of working people in the fight against crime. The courts and the investigating authorities can transfer to the comrades' court cases against minor offenders and can also hand over for guarantee, to public organizations or workers' collectives so petitioning, persons guilty of a first offence of minor social importance. Persons who have committed a deliberate offence for the second time, cannot, however, be the subjects of such guarantees.

The new Criminal Code differs from the 1927 Code in reducing the probationary periods for conditional sentences from ten years to a minimum of one year and a maximum of three years. The law also authorizes the court to hand over to an organization or a workers' collective, for re-education, any person who has been sentenced to conditional punishment, if they submit a petition to that effect.

The Code increases the criminal responsibility of recidivists and other persistent offenders who have committed serious offences. Under the new criminal legislation, particularly dangerous recidivists may be kept in prison for the whole or a part of the term stipulated by the court; conditional release before the full term has been served does not apply to them, and the proportion of the sentence which has not been served may not be commuted to a lighter sentence. Several articles in the special section of the Code provide that the commission of an offence by a particularly dangerous recidivist, or its repetition, constitutes an aggravating element.

In the special section of the Code, important modifications have been made. The main innovations are that the rules are set out in clearer sequence, aggravating elements in crime are redefined, and so forth. The intention throughout is to help the fight against crime. The rules directed against those who engage in acts damaging socialist property, the basis of the Soviet State, have been devised with special care. Unlike the decree of 4 June 1947, the Code treats misappropriation not as a crime composed of specific elements, but as a general conception covering various forms of misappropriation, differing only in virtue of the method by which the criminal act is committed.

One of the most important purposes of Soviet criminal legislation is to protect from criminal violation, in every possible way, the life, health, liberty and dignity of citizens. The new Ukrainian Criminal Code contains a detailed, well-thought-out classification of such crimes and offences, based on the elements composing them. The most striking differences between the 1927 Code and the new one are the clearer, more precise definitions of many combinations of elements constituting or aggravating these crimes and offences; the far greater differentiation of degrees of criminal liability for them, depending on their gravity; the increased punishments for a number of offences against the person; and the establishment of criminal responsibility for certain acts which were formerly not subject to criminal prosecution.

The new Code provides still better protection for the Soviet citizen's person. It treats offences against the person as serious criminal acts and prescribes heavier punishments for them — heavier maximum sentences to deprivation of liberty for such offences as wilful murder, aggravated wilful bodily injury, slander and so forth.

The republic's criminal legislation has been substantially modified and supplemented in chapter 5 of the new Code, entitled "Offences against the personal property of citizens". Greater criminal liability now attaches to wrongful appropriation causing serious damage to the victim, or compounded among a group of people, or repeated.

The legislators, in view of the importance of protecting citizens' constitutional rights, have included in the Code a new chapter on "Offences against the political and labour rights of citizens". The new rules are embodied in articles providing that official persons are criminally liable for illegally dismissing a worker for failing, from personal motives, to implement a court order reinstating a worker in his job, and for committing other serious infringements of the labour laws.

The socialist State and Soviet society attach great importance to the proper functioning of justice. The legislators have therefore classified the elements composing offences against justice in a separate chapter. Severe liability attaches to the deliberate institution of criminal proceedings against an innocent person, to the pressing of witnesses, victims or experts to abstain from giving evidence or to give false evidence, and so forth.

The new penal and criminal-procedure legislation of the Ukrainian SSR lays great emphasis on the prevention of crime. The solution is to draw the public into this work. The function of public organizations and workers' collectives in this respect is to re-educate people who have been conditionally sentenced, hear cases of minor offences in the comrades' courts and provide guarantees for persons who have committed offences not constituting a great social danger.

A further contribution to the prevention of crime is that the new rules of criminal procedure oblige the workers' courts to investigate the reasons and circumstances making for the commission of an offence.

The Ukrainian SSR's new Code of Criminal Procedure, like its new Criminal Code, embodies all features of the 1927 Code which have been justified by experience and vindicated by precedent but omits clauses no longer in harmony with the aims of socialist justice.

The new Code of Criminal Procedure consistently stresses, as a fundamental requirement in every criminal case, the principle of establishing the truth. This is one of the most important aims of Soviet penal procedure.

All the provisions of the new Code of Criminal Procedure are directed to the purpose of establishing the full facts of each criminal case, so as to leave the guilty no possibility of evading responsibility in law and at the same time protect the innocent from unjust conviction.

The new Code of Criminal Procedure provides enhanced protection for the rights of citizens who have been the victims of crime. Anyone who has suffered physical, material or moral damage as the result of a crime is given extensive rights for the protection of his legal interests. The procedural rights of the accused have been expanded, and procedural guarantees against unwarranted prosecution and conviction have been strengthened.

The same new Code enables counsel for the defence to play a more important part and to enjoy greater opportunities for the active defence of the accused.

The right of appeal against sentence is guaranteed. The accused has the right to appeal not only against a verdict of "guilty", but also against a verdict of "not guilty" if he does not agree with the grounds of the acquittal.

In accordance with the principles of criminal procedure, the new Code stipulates that no one can be held guilty and punished except by a court verdict, handed down after a court examination conducted on the principles that the process must be public, oral and direct and that all persons involved in the case, whether as accused or as prosecuting or defending counsel, or as victims, civil plaintiffs, civil respondents or their representatives, shall enjoy equal procedural rights.

To an even greater extent than the 1927 Code, the new Code requires that the verdict of the court shall be just and legal and that justice shall be seen to be done.

New regulations for engaging the public more fully in the fight against crime have been introduced. Provision is made for public prosecutors and public counsel for the defence to take part in the court hearing of criminal cases as active participants, with full rights, representing public organizations and workers' collectives. The circumstances in which cases of minor offences can be transferred to the comrades' courts and the procedure therefore have been prescribed, as well as those for permitting public organizations to stand guarantee for persons who have committed crimes not constituting a serious public danger, with a view to correction and re-education in lieu of punishment.

Other no less important questions of criminal procedure have been settled in the new Code.

The new criminal and criminal procedure legislation of the Ukrainian SSR will be for the State an effective weapon in the combating of crime.

PROCEDURE FOR BRINGING INTO FORCE THE CRIMINAL AND CRIMINAL PROCEDURE CODES OF THE UKRAINIAN SSR

In accordance with an Act of the Supreme Soviet of the Ukrainian SSR, dated 28 December 1960, to adopt the Criminal and Criminal Procedure Codes of the Ukrainian SSR, the Presidium of the Supreme Soviet of the Ukrainian SSR issued on 29 March 1961 the following decree:

"1. Any person sentenced, under the penal legislation in force in the Ukrainian SSR up to 1 April 1961, for acts for which he would not be held criminally liable under the Criminal Code of the Ukrainian SSR of 28 December 1960 shall be released from punishment (principal or supplementary).

"2. All criminal cases before the courts or the preliminary or other investigation authorities involving persons who have committed acts for which they would not be held criminally liable under the Ukrainian Criminal Code of 28 December 1960 shall be discontinued.

"3. Punitive measures against persons who have been sentenced, under the criminal laws in force up to 1 April 1961, for crimes committed on Ukrainian territory and who have not served their sentence shall be brought into conformity with the Ukrainian SSR Criminal Code of 28 December 1960 if the punishment prescribed by the court is more severe than that prescribed by that Code for the offence involved.

"4. The effect of article 3 of the present decree in regard to the mitigation of sentences shall not extend to persons sentenced for crimes constituting a particular danger to the State and envisaged in chapter I, section 1, of the special section of the Ukrainian SSR Criminal Code relating to banditry, wilful murder with aggravating circumstances, misappropriation of State or public property on a large scale, and robbery, or to particularly dangerous recidivists, if the sentences against such persons entered into legal force before 1 April 1961 — i.e., before the Criminal Code of the Ukrainian SSR of 28 December 1960 became effective.

"5. Persons sentenced to exile or deportation as a supplementary punishment and who have not served their term of exile or deportation shall be released from that sentence if no such supplementary punishment is prescribed for their offence under the Ukrainian SSR Criminal Code of 28 December 1960.

"6. Persons sentenced to deprivation of pension rights as a supplementary punishment shall be released from that punishment, in so far as it is not prescribed under article 23 of the Ukrainian SSR Criminal Code of 28 December 1960.

"7. Any part of a court sentence prescribing confiscation of property and the imposition of a fine shall not be executed if the confiscated property was not seized and sold or the fine not exacted before the Ukrainian SSR Criminal Code of 28 December 1960 entered into force and if confiscation of property and the imposition of a fine are not prescribed by that Code for the offence involved.

"8. The probationary period for conditionally sentenced persons shall be reduced to the upper limit laid down in article 45 of the Ukrainian SSR Criminal Code of 28 December 1960 if the probationary period imposed by the court exceeds that limit.

"Conditionally sentenced persons shall be released from all supplementary punishments with the exception of fines.

"9. Application of the rules established under article 48 of the Criminal Code of the Ukrainian SSR in regard to the time-limit for instituting criminal proceedings shall be extended to offences committed before the Code entered into force; application of the rules established by article 49 of the Code in regard to the time-limits for executing sentences shall be extended to cases in which the sentence entered into legal effect before the Ukrainian SSR Criminal Code of 28 December 1960 entered into force.

"10. Application of the rules for quashing and remitting convictions, laid down under article 55 of the Ukrainian SSR Criminal Code of 28 December 1960, shall be extended to persons who were sentenced and punished before the Code entered into force.

"11. Persons released from punishment under article 1 of the present decree, and persons who have already served their sentence or have been released before serving the full sentence, shall be deemed not to have been convicted if they were convicted for acts for which they would not be held criminally liable under the Ukrainian SSR Criminal Code of 28 December 1960.

"12. The present Decree shall enter into force simultaneously with the Criminal Code of the Ukrainian SSR of 28 December 1960 — i.e., on 1 April 1961."

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 15, 7 April 1961. Decree No. 192, pp. 450-452)

INTRODUCTION OF AMENDMENTS TO THE REGULATIONS FOR ELECTIONS TO THE SUPREME SOVIET OF THE UKRAINIAN SSR AND TO THE REGULATIONS FOR ELECTIONS TO THE LOCAL SOVIETS OF WORKERS' DEPUTIES

In connexion with the adoption of the new Code of the Ukrainian SSR and its entry into force on 1 April 1961, the Presidium of the Supreme Soviet of the Ukrainian SSR, by decree of 14 June 1961, amended articles 100 and 101 of the regulations for elections to the Supreme Soviet of the Ukrainian SSR and articles 120 and 121 of the regulations for elections to the local Soviets of Workers' Deputies, adopted in 1950, as follows:

"*Art. 100.* Any person who by force, deception, threat or bribery obstructs a citizen of the Ukrainian SSR in the free exercise of his right to elect or be elected to the Supreme Soviet of the Ukrainian SSR shall be punishable under article 127 of the Criminal Code of the Ukrainian SSR.[1]

"*Art. 101.* Any official or member of an electoral commission who falsifies electoral documents or wilfully miscounts votes shall be punishable under article 128 of the Criminal Code of the Ukrainian SSR.[2]

"Violation of the secrecy of the ballot by the aforesaid persons shall be punishable under article 129 of the Criminal Code of the Ukrainian SSR.[3]

Articles 120 and 121 of the regulations governing elections to the local Soviets of Workers' Deputies are similarly worded.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 26, 23 June 1961. Decree No. 303, pp. 563-564)

[1] "*Art. 127.* Prevention by force, deception, threat or bribery of the exercise by citizens of their right to vote shall be punishable by deprivation of liberty for a period not exceeding one year or by corrective labour for the same period."

[2] "*Art. 128.* Forgery of ballot papers and wilful miscounting of votes by a member of the electoral commission or any other official shall be punishable by deprivation of liberty for a period not exceeding two years or by corrective labour for a period not exceeding one year."

[3] "*Art. 129.* Violation of the secrecy of the ballot by a member of the electoral commission or any other official shall be punishable by corrective labour for a period not exceeding one year."

ADDENDA TO THE CODE OF FAMILY, GUARDIANSHIP, MARRIAGE AND CIVIL STATUS ACTS

The existing Code of Acts on the family, guardianship, marriage and civil status provides that parents who fail to fulfil their obligations towards their children may be deprived of parental rights by court order, but are not thereby absolved from future payment for the maintenance and education of their children.[1]

The Presidium of the Supreme Soviet of the Ukrainian SSR, by decree of 14 December 1961, made an addition to article 28 of the above-mentioned Code, so that it read as follows:

"*Art. 28.* Any person deprived of parental rights shall be entitled to appeal to the court for restoration of those rights, in an event of a favourable report on the matter by the guardianship authorities. If, after assessing the behaviour of the parent, the court is satisfied that the circumstances which gave grounds for depriving him or her of parental rights have altered, it may, in the interests of the child, restore such parental rights.

"Proceedings for the restoration of parental rights shall be heard by the court in the presence of a representative of the local guardianship authority. The failure of a representative of the guardianship authority to appear shall not prevent a hearing of the case."

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 53, 29 December 1961. Decree No. 610, p. 1102)

[1] Article 25 of the Code of Family, Guardianship, Marriage and Civil Status Acts. Goslitizdat. Kiev, 1949, p. 9.

RATIFICATION OF INTERNATIONAL LABOUR ORGANISATION CONVENTIONS

The Presidium of the Supreme Soviet of the Ukrainian SSR, by decree of 30 June 1961, ratified the following Conventions of the International Labour Organisation, adopted by the Council of Ministers of the Ukrainian SSR:

1. Convention concerning the Employment of Women on Underground Work in Mines of all Kinds (No. 45);
2. Convention concerning the Protection of Wages (No. 95);

3. Convention concerning Discrimination in respect of Employment and Occupation (No. 111);
4. Convention concerning the Minimum Age for Admission to Employment as Fisherman (No. 112).

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 29, 14 July 1961. Decree No. 359, p. 633)

UNION OF SOVIET SOCIALIST REPUBLICS[1]

ACHIEVEMENTS OF THE USSR IN 1961 IN RAISING THE PEOPLE'S MATERIAL AND CULTURAL LEVEL OF LIVING

EXTRACTS FROM THE REPORT OF THE CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE USSR ON THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE USSR IN 1961

According to provisional figures, the national income of the USSR in 1961 was more than 153,000 million roubles, which, in terms of comparable prices, represents an increase of 7 per cent over the 1960 figure.

The growth of the national income made increased savings available in the national economy and resulted in a higher level of living for the Soviet people, both through a rise in direct wages and salaries and through an increase in the funds allocated for public consumption.

As in previous years, there was no unemployment in the country.

The average wages and salaries of manual and non-manual workers increased 4 per cent by comparison with the preceding year despite a shorter working day. There was also some increase in the income of collective farm workers derived from the operation of the collective farms.

In accordance with decisions of the Party and the Government, adjustments have been made in recent years in the pay of manual and non-manual workers in industry, construction, transport, communications, mineral prospecting and a number of other branches of the national economy. Adjustments are now being made in wages in State farms and other State agricultural undertakings. The wages and salaries of manual and non-manual workers were raised during the operation, particularly for those in the lowest pay brackets. At the beginning of 1962 the new pay scales applied to more than 40 million manual and non-manual workers.

In accordance with decisions adopted by the Supreme Soviet of the USSR at its fifth session, the progressive exemption of manual and non-manual workers from taxation continued. As from 1 October 1961, taxation of pay up to 60 roubles was discontinued entirely and the tax on pay from 61 to 70 roubles per month was reduced by an average of 40 per cent. As a result, the take-home pay of manual and non-manual workers was increased by 400 million roubles (over the period of one year).

The volume of state and co-operative retail trade amounted to 80,200 million roubles. Retail trade showed an increase of 2,500 million roubles, or, in comparable prices, 4 per cent over the preceding year.

Turnover in public catering increased 6 per cent over 1960, in comparable prices.

Consumer co-operatives sold foodstuffs purchased from collective farms or received from collective farms for commission sale, to the amount of 847 million roubles, in local market prices. The volume of these sales showed an increase, in comparable prices, of 8 per cent over 1960.

Sales of various goods at State and co-operative shops developed as follows:

	1961 sales expressed as a percentage of 1960 sales
Meat, sausages and other meat products	96
Fish, herring and other fish products	105
Animal oil	101
Vegetable oil	109
Milk and milk products	110
Cheese	111
Eggs	115
Sugar	110
Confectionery	104
Tea	104
Vegetables	107
Citrus fruit	108
Fresh fruit	117
Textiles	94
Clothing and underwear	106
Knitted goods	103
Hosiery	106
Leather footwear	110
Chinaware, earthenware and glassware	103
Soap	106
Furniture	113
Sewing machines	99
Refrigerators	130
Washing machines	130
Vacuum cleaners	111
Clocks and watches	89
Motor-cycles and motor-scooters	108
Bicycles and motor-bicycles	101
Radio sets and radio-gramophones	101
Television sets	116
Passenger automobiles	89

[1] Texts furnished by the Government of the Union of Soviet Socialist Republics.

In the past year the situation with regard to currency was further improved and the purchasing power of the rouble increased; contributing factors were the successful conversion from the old currency to the new in conjunction with enlarging the monetary unit, the increase in the gold content of the rouble and the adoption of a new foreign exchange rate.

Further progress was made in the expansion of cultural facilities.

The number of students undergoing training of all types totalled about 56 million.

Work continued during the past year on the reorganization of the system of public education. By the end of the year some 40,000 elementary and seven-year schools had been reorganized as eight-year schools.

The number of students attending general education schools was 39 million, or almost 3 million more than in the previous academic year. Some 1 million students graduated from secondary schools, of whom 375,000 had received a secondary education without interruption of employment, at schools for young industrial and agricultural workers. At the beginning of the academic year the country had more than 20,000 secondary general and polytechnic workers' schools, offering vocational training to some 1.5 million students in the senior classes. More than 173,000 young men and women graduated from secondary schools providing vocational training, having learned a trade as well as obtaining a school-leaving certificate.

Boarding schools and schools and classes with an extended school day increased in number. At the beginning of this academic year they had an enrolment of about 1.5 million students.

The number of persons studying at higher and specialized secondary educational establishments was 5 million, of whom 2.6 million were in higher educational establishments. More than 750,000 young specialists graduated during the past year from higher and specialized secondary educational establishments. Of these, over 320,000 were specialists with a higher education, including some 120,000 engineers.

Corresponence and evening courses have been further expanded. The number of persons studying without interruption of employment at higher and specialized secondary educational establishments, and secondary general schools for young industrial and agricultural workers totalled 5.9 million, of whom 2.6 million were in higher and specialized secondary educational establishments. Of the students enrolled in day courses at higher educational establishments, 167,000, or 60 per cent, had completed a period of practical work of not less than two years.

The network of research institutions was further expanded and improved. The number of research workers reached 400,000 by the end of the year.

The network of cultural and educational institutions serving the population was improved. One hundred and thirty-five full-length films, including 111 feature and 24 news-documentary and popular science films were made during the year. There were 113,000 cinemas, an increase of 10,000 over the previous year. The number of cinema attendances was more than 3,800 million, while admissions to theatre performances, concerts and circus shows numbered about 250 million.

Book publication during the past year reached 1,200 million copies; the circulation of newspapers, magazines and other periodicals increased.

There was large-scale construction of housing and of buildings for cultural, social and educational purposes. Over 80 million square metres or about 2.2 million apartments of housing with modern facilities were brought into occupancy in towns and workers' settlement, including housing financed by the State and that financed by the people. Of that amount, 57 million square metres of housing, or 5 per cent more than in 1960, was financed by the State. More than 23 million square metres of housing was built by townspeople with the help of State housing loans.

In addition, collective farmers and the intelligentsia built more than 500,000 dwellings in rural areas with the help of State loans and of the collective farms.

State capital investment in the construction of educational, cultural, scientific, artistic and medical institutions increased. Under appropriations in the State plan, construction of general education schools rose by over 13 per cent as against 1960. A considerable number of boarding schools, establishments for children of pre-school age, hospitals and polyclinics, sanatoria, rest homes, cinemas and other cultural and health facilities were built.

Medical services for the population were further improved. The system of hospitals, maternity homes, dispensaries, clinics for women and children, preventive health institutions and other medical facilities was expanded. The number of hospital beds increased by almost 111,000 compared with 1960, the number of places in sanatoria, rest homes and boarding houses increased by almost 20,000 and the number of places in crèches and kindergarten increased by more than 580,000. The number of physicians rose by over 20,000 during the year.

The improvement in the living conditions of the working people and the improved medical care of the population have resulted in the maintenance of a high level of fertility and a steady downward trend in the mortality rate, and particularly in the child mortality rate.

The USSR is still the country with the lowest mortality rate in the world.

(Published in *Izvestia, Sovietov Deputatov Trudyashchikhsya SSSR*, of 23 January 1962)

PRINCIPLES OF THE CIVIL LAW OF THE USSR AND THE UNION REPUBLICS

Adopted by the Supreme Soviet of the USSR on 8 December 1961[1]

EXTRACTS

Art. 1. — Purposes of Soviet Civil Law

Soviet civil law governs relationships based on property and personal relationships not based on but connected with property, in order to lay the material and technical foundation of communism and to satisfy progressively the material and spiritual needs of Soviet citizens. Where a statute so provides, the civil law also governs other personal relationships not based on property . . .

Art. 2. — Relationships governed by Soviet Civil Law

Soviet civil law governs the relationships to which article 1 of these principles applies . . . between citizens and State, co-operative and public organizations; among citizens. . . .

Exercise of Civil Rights and Fulfilment of Duties

Civil rights shall be protected by law unless their exercise conflicts with their purpose in a socialist society during the formation period of communism.

In exercising their rights and fulfilling their duties, citizens and organizations are bound to observe the law and respect the rules of communal life in a socialist society and the moral principles of a society building communism.

Art. 6. — Protection of Civil Rights

Civil Rights shall be protected in accordance with the established procedure by courts of law and tribunals of arbitration by the following means:

Declaration of the right; restoration of the original position existing before the infraction of the right; injunction against the acts infringing the right; an order for specific performance of an obligation; termination or variation of a legal relationship; an order for damages against a person infringing the right; in cases prescribed by law or contract, exaction of a penalty or fine; and other means provided by law.

In the cases and by the procedure established by the law of the USSR and the union republic, comrades' courts, trade unions and other communal organizations also shall protect civil rights.

Where the law expressly so provides, civil rights shall be protected by administrative procedure.

Art. 7. — Protection of Honour and Reputation

A citizen or organization may move the court to compel withdrawal of a statement damaging to honour or reputation, unless the person who has published the statement proves it true.

A defamatory statement that has been published in print shall, if untrue, also be denied in print. Otherwise the method of denial shall be determined by the court.

A person who fails to comply with an order of a court may be compelled by the court to pay a fine to the State. Payment of the fine shall not exempt the defaulter from performance of the act ordered by the court. .

Art. 8. — Legal Capacity and Contractual Capacity of Citizens

All citizens of the USSR shall enjoy equal capacity to possess civil rights and obligations [civil capacity]. The civil capacity of a citizen shall begin at birth and end at death.

A citizen shall gain full capacity to acquire civil rights and contract civil obligations by his own act [civil competence] when he comes of age; that is to say when he reaches the age of eighteen. The limits of the civil competence of minors, and the cases in which, and the procedure by which the civil competence of adults may be limited, shall be determined by the law of the USSR and the union republics.

No person's civil capacity or competence may be limited otherwise than in the cases and according to the procedure provided by law. An agreement purporting to limit civil capacity or competence shall be null and void.

Art. 9. — Incidents of Civil Capacity

Subject to the law, citizens may own personal property, use dwelling-houses and other property, inherit and bequeath property, choose their occupation and place of residence, enjoy author's rights with respect to works of science, literature or art, hold patent rights over discoveries, inventions and efficiency schemes, and enjoy other rights based on property and personal rights not based on property.

Art. 19. — Rights of an Owner

An owner may possess, use and dispose of his property within the limits set by law.

Art. 28. — Protection of the Right of Ownership

An owner is entitled to claim the return of his property from unlawful possession.

Where property has been acquired for consideration from a person who was not entitled to alienate it by a person who neither knew or ought to have

[1] Published in *Vedomosti Verkhovnovo Soveta Soyuza Sovetskikh Sotsialisticheskikh Respublik* [Bulletin of the Supreme Soviet of the USSR], 1961, No. 50, item 525.

known that that person was not so entitled (by a holder in good faith), the owner may claim the property from the holder only if it was lost by the owner or by a person into whose possession he delivered it, or was stolen from either, or otherwise left the possession of either against his will.

Where property has been acquired without consideration from a person who was not entitled to alienate it, the owner may in all cases claim its return.

Neither money nor an instrument payable to bearer may be reclaimed from a holder in good faith.

An owner may claim to restrain any infraction of his right of ownership, even if the infraction does not deprive him of possession.

Art. 33. — Obligations and their Fulfilment

By virtue of an obligation a person (the debtor) is obliged to perform a specified act for the benefit of another person (the creditor); for example, to deliver up property, to do work, or to pay money; or to refrain from a specified act; and the creditor is entitled to claim from the debtor fulfilment of his obligation. . . . Save as provided by law, one party may not refuse to fulfil an obligation, nor vary the terms of a contract.

Art. 35. — Security for Fulfilment of Obligations

Fulfilment of an obligation may be secured in accordance with law or with an agreement by penalty or fine, surety, or guarantee. In addition, fulfilment of obligations between citizens or of obligations to which citizens are parties may be secured by deposits, and of obligations between socialist organizations by guarantees.

Art. 36. — Liability for Default on Obligation

A debtor who fails to fulfil an obligation properly or at all shall be obliged to compensate the creditor for any loss caused thereby. Losses may include expense incurred by the creditor, loss or damage of his property, and loss of sums which the creditor would have received if the debtor had fulfilled the obligation.

Where failure to fulfil an obligation properly or at all entails a penalty or fine, damages shall be payable for any part of the loss not covered thereby.

Payment of a penalty or fine prescribed for delay or other improper fulfilment of an obligation, or payment of damages for loss caused by improper fulfilment, shall not exempt the debtor from specific performance of the obligation.

Art. 37. — Fault as a Necessary Condition of Liability for Failure to Fulfil an Obligation

A person who has failed to fulfil an obligation properly or at all shall be liable in his property (article 36 of these principles) only if he is at fault (wilfully or by negligence), save as provided by law or by agreement. The burden of proving absence of fault shall lie on the debtor.

If the failure to fulfil the obligation properly or at all was due to the fault of both parties, the court or arbitration tribunal shall reduce the liability of the debtor accordingly.

Art. 88. — General Rules governing Liability for Injury

Full compensation for damage caused to the person or property of a citizen . . . shall be paid by the person causing the damage.

A person causing damage shall be released from liability to pay compensation if he proves that the damage was not due to his fault.

An organization shall be obliged to pay compensation for injury caused by the fault of its employees in the fulfilment of their obligations of work or service.

Compensation shall be paid for injury caused by lawful acts only in the cases prescribed by law.

Art. 89. — Liability of State Institutions for Damage caused by Acts of Their Employees

The liability of state institutions for damage caused to citizens through wrongful official acts committed by their employees in the course of their administrative duties shall be governed by the ordinary rules (article 88 of these principles), unless a special statute provides otherwise . . .

Where injury is caused by improper acts committed in the course of their duties by employees of authorities conducting inquiry or preliminary investigation or of the office of the procurator or of the court, the employing State authority shall be liable in property in the cases and within the limits especially prescribed by law.

Art. 90. — Liability for Injury caused by a Source of Exceptional Danger

Organizations and citizens whose work entails exceptional danger for others (e.g., transport organizations, industrial undertakings, constructors, car owners, and the like) shall be liable to pay compensation for injury caused by the source of exceptional danger unless they prove that the injury resulted from a force outside their control or from a wilful act of the injured person.

Art. 97. — Copyright in Works published in the USSR and abroad

Copyright in a work first published in the USSR, or not published but situated in the USSR in any objective form, shall be vested in the author and his heirs irrespective of their nationality. Copyright shall also be vested in citizens of the USSR whose works are first published or are situated in any objective form in the territory of a foreign State, and in their heirs.

Copyright in works first published or situated in any objective form in the territory of a foreign State

shall be vested in other persons only in virtue and within the limits of relevant international agreements concluded by the USSR.

Art. 98. — Rights of an Author

An author shall be entitled to the publication, reproduction and circulation of his work by all lawful means under his own name, under an adopted name (pseudonym), or with no indication of the author's name (anonymously); to inviolability of his work; to remuneration for use of his work by other persons, except in the cases prescribed by law. The rates for the remuneration of authors shall be fixed by the law of the USSR and the union republics.

Art. 105. — Duration of Copyright

Copyright shall be vested in the author for life, but the law of a union republic may restrict the duration of copyright in certain types of works to shorter periods.

Copyright shall pass by inheritance in accordance with the procedure and within the limits fixed by the law, of the USSR and of the union republics. Where its duration is restricted to a term, it shall pass to the heirs for the portion of the term unexpired on the death of the author. . . .

Art. 107. — Rights of the Maker of a Discovery

The maker of a discovery may claim a certificate of credit for the discovery and for his priority, to be issued in the cases and according to the procedure prescribed by the Statute on Discoveries, Inventions and Efficiency Schemes, confirmed by the Council of Ministers of the USSR.

The maker of a discovery shall be entitled to a fee to be paid to him upon issue of the certificate, and to the privileges prescribed by the Statute on Discoveries, Inventions and Efficiency Schemes.

Art. 108. — Inheritance of the Rights of the Maker of a Discovery

The right to obtain the certificate of a deceased person who has made a discovery and to receive the fee for the discovery shall pass by inheritance in accordance with the statutory procedure.

Art. 109. — Disputes concerning the Authorship of a Discovery

Disputes about the authorship (or co-authorship) of a discovery shall be settled by the court.

Art. 110. — Certificates of Invention and Patents

The author of an invention may choose to apply only for recognition of his authorship, or for such recognition together with exclusive rights to his invention. In the former case a certificate of invention is issued, in the latter case a patent. Certificates of invention and patents shall be issued upon the conditions and according to the procedure laid down in the Statute on discoveries, inventions and efficiency schemes.

Patenting abroad of inventions made within the USSR and of inventions made abroad by Soviet citizens, and any transfer of Soviet inventions abroad, shall be permitted only according to the procedure laid down by the Council of Ministers of the USSR.

Art. 112. — Rights of Patentees

A patent shall be issued for a period of fifteen years, reckoned from the date of the application. The rights of the applicant shall be protected from the same date. No person may use the invention without the consent of the person to whom the patent belongs (the patentee). The patentee may give permission (licence) for the use of his invention, or may cede the patent outright.

Any organization which has used the invention within the USSR independently of the inventor, or has made all the necessary preparations to do so, before the application for a patent, shall retain the right to continue using the invention free of charge. Disputes on this issue shall be settled by the court.

. . .

Art. 118. — Inheritance at Law

The heirs at law of a deceased person shall be, taking first in equal shares, his children (including adopted children), spouse, and parents (including adoptive parents). A child of the deceased born after his death shall also be an heir in priority.

Grandchildren and great-grandchildren of the deceased shall be heirs at law if their parent who would have been an heir is not alive when the estate devolves, and shall take in equal parts the share which their deceased parent would have taken as an heir at law.

The law of the union republics may establish the subsequent order of heirs at law. Heirs in a later class may be called to the succession at law only if there are no heirs in an earlier class, or if such heirs have renounced the inheritance.

Persons incapable of work who have been dependent on the deceased for not less than one year at the time of his death shall be heirs at law and shall, if there are other heirs, take equally with heirs of the class called to the succession.

Ordinary household articles and furniture shall go to any heirs at law who have lived with the deceased, regardless of their class and share. The conditions governing inheritance of such property shall be fixed by the law of the union republics.

Art. 119. — Testamentary Inheritance

Any citizen may leave all or part of his property (not excluding ordinary household articles and furniture) by will to one or more persons, who

need not be heirs at law, or to the State, or to specific State, co-operative or community organizations.

Children of the deceased (including adopted children) who are under age or incapable of work, and the spouse, parents (including adopted parents), and dependants of the deceased, if incapable of work, shall inherit irrespective of the terms of the will not less than two-thirds of the share which each would have taken as an heir at law (the compulsory share). In fixing the amount of the compulsory share regard shall be had to the value of the part of the estate consisting of ordinary household articles and furniture. . . .

Art. 122. — Civil Capacity of Aliens

Aliens shall enjoy in the USSR equal civil capacity with Soviet citizens. Specific exceptions may be established by the law of the USSR.

The Council of Ministers of the USSR may impose reciprocal restrictions on nationals of States in which there are special restrictions on the civil capacity of Soviet citizens.

Art. 123. — Civil Capacity of Stateless Persons

Stateless persons resident in the USSR shall enjoy equal civil capacity with Soviet citizens. Specific exceptions may be established by the law of the USSR.

Art. 127. — Law Applicable to Succession

Matters of succession shall be governed by the law of the country in which the deceased had his last permanent residence. . . .

Art. 129. — International Treaties and Agreements

If the rules laid down by an international treaty or agreement to which the USSR is party are different from those of Soviet civil law, the rules of the international treaty or agreement shall apply. . . .

PRINCIPLES OF CIVIL PROCEDURE IN THE USSR AND THE UNION REPUBLICS

Adopted by the Supreme Soviet of the USSR on 8 December 1961[1]

EXTRACTS

Art. 2. — Purposes of Civil Procedure

The purpose of Soviet civil procedure is to ensure that civil cases are heard and decided correctly and promptly in order to . . . protect the political, work, housing and other personal and property rights and the legally safeguarded interests of citizens. . . .

Civil procedure must help to strengthen the rule of socialist law, to prevent violations of the law and to foster a spirit of strict compliance with Soviet law and respect for the principles of community life in a socialist society.

Art. 5. — Right to apply to the Courts for Judicial Protection

Any person concerned has the right to apply to the courts in accordance with the statutory procedure for the protection of a right or a legally safeguarded interest which has been violated or disputed.

Any renunciation of the right to apply to the courts shall be null and void.

Art. 7. — Administration of Justice by the Courts Alone and on the Principle of the Equality of Citizens before the Law and before the Courts

In civil cases justice shall be administered only by the courts and on the principle of the equality before the law and before the courts of all citizens, irrespective of their social, property or occupational status, nationality, racial origin or religion.

Art. 8. — The Participation of People's Assessors and the Hearing of All Cases by a Full Court

In all courts, civil cases shall be heard by judges and people's assessors, elected in accordance with the statutory procedure.

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

In judicial proceedings, the people's assessors shall enjoy the same rights as the presiding judge in deciding all matters which arise in the hearing of the case and delivery of judgement.

Appeals shall be heard by courts consisting of three members and reviews at the demand of the supervisory authorities shall be made by courts consisting of not less than three members.

Art. 9. — Independence of Judges, who shall be subject only to the Law

In the administration of justice in civil cases, judges and people's assessors shall be independent and subject only to the law. Judges and people's assessors shall decide civil cases on the basis of the law, in accordance with the socialist concept of justice, and under conditions which preclude the exercise of any extraneous influence upon them.

[1] Published in *Vedomosti Verkhovnovo Soveta Soyuza Sovetskikh Sotsialisticheskikh Respublik*, 1961, No. 50, item 526.

Art. 10. — Language in which Judicial Proceedings are conducted

Judicial proceedings shall be conducted in the language of the union republic, autonomous republic or autonomous region, or, in cases for which provision is made in the constitutions of union or autonomous republics, in the language of the national area or in that spoken by a majority of the local inhabitants.

Persons not knowing the language in which judicial proceedings are conducted shall be guaranteed the right to make statements, give explanations and evidence, address the court and make submissions in their own language, and also to make use of the services of an interpreter according to the statutory procedure.

Persons taking part in the case shall, in accordance with the statutory procedure, be provided with copies of the documents submitted in the proceedings, translated into their native language or into another language which they understand.

Art. 11. — Hearing of Cases in Public

In all courts, cases shall be heard in public, except where a public hearing might prejudice the security of state secrets.

A court may also decide to sit *in camera*, if its reason for so doing, which shall be stated, is to avoid public discussion of intimate details of the lives of persons concerned.

In all cases, the judgement of the court shall be pronounced in public.

Art. 24. — The Parties to Proceedings, their Rights and Duties

Citizens and State institutions . . . may be parties to civil proceedings as plaintiffs or defendants.

The parties shall enjoy equal rights in all matters of procedure. The parties may study all documents relevant to the case, make challenges, submit evidence, take part in the examination of the evidence, make submissions, give oral and written explanations to the court, put forward their arguments and views, object to submissions, arguments and views put forward by the other party, appeal against judgements and findings of the court, demand compulsory execution of a court decision, be present at any action taken by an officer of the court in execution of such a decision, and perform such other procedural acts as are provided for by law . . .

Art. 35. — Conduct of Proceedings at First Hand, Orally and Without Interruption

When hearing cases, courts of first instance shall examine the evidence at first hand: they shall hear the explanations of the persons concerned, the testimony of witnesses and expert evidence, study written evidence and examine material evidence. . . .

The proceedings shall be conducted orally and before the same judges throughout. If one of the judges is replaced during the hearing of a case, the hearing shall start again from the beginning.

The proceedings in each case shall be continuous except for the time allowed for rest. Until the hearing of a case has been completed or adjourned, the court shall not be entitled to hear other cases.

Art. 37. — Judgement of the Court

Judgements of the court shall be based on the law and accompanied by a statement of the grounds.

The court shall base its judgement only on evidence examined during the proceedings. The judgement shall in all cases state the following: the facts of the case as established by the court; the evidence on which the court bases its conclusions and the grounds on which it rejects other evidence; the legislation under which the court acts; the decision of the court regarding acceptance or rejection of the plaintiff's suit in whole or in part; and the date and procedure for appealing against the judgement.

Art. 39. — The Rights of Aliens as regards Civil Cases

Aliens shall have the right to bring action in the courts of the USSR and shall enjoy equal rights with Soviet citizens in civil cases . . .

Art. 60. — Rights of Stateless Persons as regards Civil Cases

Stateless persons living in the USSR, shall have the right to bring action in the courts and shall enjoy equal rights with Soviet citizens in civil cases.

Art. 63. — Execution in the USSR of Judgements of Foreign Courts and Awards of Foreign Arbitral Tribunals

The procedure for the execution in the USSR of judgements given by foreign courts and awards made by foreign arbitral tribunals is governed by the relevant agreements between the USSR and foreign States and by the international conventions to which the USSR is a party. An application may be made for compulsory execution in the USSR of a judgement given by a foreign court or an award made by a foreign arbitral tribunal within three years from the time when the judgement or award acquires legal force.

Art. 64. — International Treaties and Agreements

When the rules laid down by an international treaty or agreement to which the USSR is a party differ from those contained in these principles, the rules of the international treaty or agreement shall apply.

DECREE OF THE SUPREME SOVIET OF THE USSR ON FURTHER LIMITATION OF ADMINISTRATIVE FINES

of 21 June 1961[1]

In view of the progressive development of Soviet democracy, by which the public at large is called to take part in maintaining Soviet law and order, and the firmer rule of law characteristic of an advanced stage in the building of a communist society, the administrative imposition of fines can now be further restricted.

Now that the scope of administrative compulsion is steadily narrowing, the fine is a penalty to be imposed, whether on private individuals or on officials, only if social and disciplinary measures prove insufficient.

Stricter State discipline, in State institutions, enterprises and organizations, and the greater personal responsibility now required of officials, have removed the need to inflict fines on such bodies, particularly as the result is often that the true culprit goes unpunished.

It is recognized that the administrative infliction of fines can be further restricted only by reducing the number of official bodies authorized to determine fines, the number of authorities and officials with power to impose them, the list of offences punishable by fine, and the amounts of the fines for particular offences; and by more strictly observing the rule of law and the collegiate principle in the work of authorities imposing fines.

With the extension of union republic rights in building the State, each Republic must be left to make its own law on administrative fines, the USSR merely defining basic principles and determining fines for breach of regulations which the USSR has jurisdiction to confirm.

The Presidium of the Supreme Soviet of the USSR *decrees* that:

1. Fines by way of administrative penalty shall be determined by the supreme State and administrative authorities of the Union of Soviet Socialist Republics and of the union and autonomous republics within their jurisdiction, and shall be imposed only in the cases expressly stated in rules made by the supreme State and administrative authorities.

2. Fines to be imposed by way of administrative penalty for breach of regulations which the USSR has sole jurisdiction to confirm (that is to say rail, marine and air safety regulations and regulations governing the use of rail, marine and air transport; regulations governing registration for military service; frontier, customs and contraband regulations) and for breach of the regulations enumerated in article 3 of this decree made jointly by the USSR and the union republics, shall be determined by Acts of the USSR, decrees of the Presidium of its Supreme Soviet, and orders of its council of ministers.

Fines to be imposed by way of administrative penalty for breach of other regulations which the USSR has jurisdiction to confirm may be determined by Acts of the USSR and by decree of the Presidium of its Supreme Soviet.

3. Fines to be imposed by way of administrative penalty for breach of industrial safety regulations, regulations for the protection of labour in industry, building, transport and agriculture, regulations governing the registration of craftsmen and artisans working outside a co-operative; or for pursuing a prohibited occupation; or for breach of sanitary regulations for the prevention of epidemics, public health and hygiene regulations, regulations for the protection of air, soil, mineral resources, forests, water reserves and fish reserves, fire regulations, road and river safety regulations, regulations governing the use of these modes of transport, or regulations governing internal communications may be laid down, subject to the law of the USSR, by Act of a union republic or decree of its supreme soviet, or order of its council of ministers. Administrative fines for breach of other regulations which can be made jointly by the USSR and the union republics shall be laid down, subject to the law of the USSR by Act of a union republic or decree of the presidium of its supreme soviet.

4. On matters within the exclusive jurisdiction of the union republics the list of offences for which fines may be imposed by way of administrative penalty shall be established by legislation of the union republics.

5. It is deemed expedient that the range of matters on which local State authorities may make orders prescribing administrative fines for offences shall be limited by the legislation of the union republics; that such orders may be made only by Councils of Workers' Deputies of territories, provinces, autonomous provinces, regions, districts and cities, and by the executive committees of those councils only on matters relating to natural disasters, epidemics and epizootics.

6. The imposition of administrative fines on institutions, enterprises and organizations is abolished.

Officials whose duties require them to take prompt action to enforce statutory regulations shall be liable to fines subject to the law from time to time in force. Fines imposed on officials shall not be charged to institutions, enterprises or organizations.

7. A person committing an administrative offence shall be liable to a fine.

[1] Published in *Vedomosti Verkhovnovo Soveta Soyuza Sovetskikh Sotsialisticheskikh Respublik*, 1961, No. 35 (1070), p. 368.

The amount of the fine shall depend on the gravity of the offence and on the personal standing and means of the offender.

8. No person who was under sixteen years of age at the time the administrative offence was committed shall be liable to a fine.

9. Members of the armed forces and general and supervisory staff members of the Ministry of Internal Affairs shall be liable, subject to the disciplinary regulations for offences entailing administrative fine.

10. An administrative fine imposed on a private person may not exceed 10 roubles and on an official 50 roubles.

In case of special need to increase the penalty for specified types of offences, the maximum fine may be increased to 50 roubles for private persons and 100 roubles for officials by an Act of the USSR or of a union republic, or by a decree of the Presidium of the Supreme Soviet of the USSR or of a union republic.

11. Administrative fines shall be imposed by administrative commissions attached to the executive committees of district and urban councils of workers' deputies or, in the cases specified in article 13 of this Decree, by the competent State authorities and officials.

Power to impose administrative fines for particular types of offences may in exceptional cases be granted to Executive Committees of rural and settlement councils of workers' deputies by Act of a union republic or by decree of the presidium of its supreme soviet.

12. Administrative commissions attached to the executive committees of district and urban councils of workers' deputies shall be constituted by such councils and shall consist of members thereof and representatives of public organizations. They shall rely in their work on active public support.

The composition and procedure of the said administrative commissions shall be governed by legislation of the union republics.

13. Power to impose administrative fines without reference to administrative commissions shall be retained by —

The militia, for offences against public order and for breach of traffic safety regulations or the regulations governing the use of transport;

Rail, marine, river and air transport authorities, for breach of the regulations governing the use of these means of transport, of the regulations governing order or safety, or of the maintenance, safety, fire or health regulations;

Factory inspectors of the Council of Trade Unions, for breach of the safety and labour regulations;

Customs authorities, for breach of customs regulations or for smuggling;

Frontier authorities, for breach of the frontier regulations;

The Ministry of Defence authorities, for breach of the regulations governing registration for military service;

State health authorities, for breach of the public health and hygiene regulations or the sanitary regulations for the prevention of epidemics;

State fire authorities, for breach of the fire safety regulations;

The authorities responsible for water, fish and forest reserves, for breach of the regulations governing respectively the conservation and use of water reserves, fishing rights and forest-fire regulations.

The USSR or a union republic may provide by law that certain classes of cases concerning offences to which this article applies may be referred for inquiry to the administrative commissions attached to executive committees of district or urban councils of workers' deputies.

Authorities and officials to whom this article applies may report offenders to administrative commissions for the imposition of fines.

14. A record showing the identity of the offender, the nature, place and date of the offence, and the names of the witnesses shall be drawn up for all administrative offences other than those for which the law prescribes a summary fine.

The procedure in cases concerning administrative offences shall be determined by the law of union republics.

15. No administrative fine shall be imposed later than one month after the commission of the offence.

If an order of an administrative commission, any other organ, or an official, imposing a fine has not been executed within three months, it shall not be executed thereafter.

16. An authority or official empowered to impose administrative fines on private citizens, may, instead of imposing a fine, caution the offender or report him to the comrades' court or social organization at his place of work or residence for imposition of social sanctions.

An authority or official imposing an administrative penalty shall ordinarily report the same to the community at the offender's place of work or residence.

17. A fine imposed on a private person or official which has not been paid within fifteen days of its imposition shall be deducted from the offender's wages, without right of appeal, by order of the administrative commission or other body or official imposing it.

A fine imposed on a person not in employment shall be levied on his property by a judicial executive officer of the court in virtue of the order of the administrative commission or state authority or official by which the fine is imposed.

18. Private persons or officials may appeal against an order imposing an administrative fine to the district

or urban people's court in the area where they reside, within ten days of the date of the order.

If an appeal is filed before the court within the stated period, payment of the fine shall be suspended, and in such case the start of the period of three months laid down by article 15 of this decree shall be suspended.

19. The procedure for hearing appeals against wrongful imposition of a fine, and the list of property not subject to distraint for the recovery of a fine, shall be established by legislation of the Union Republics.

20. A fine may not be commuted to corrective labour in default of payment.

21. Necessary amendments to the law of a union republic relating to the imposition of administrative fines shall be introduced in the presidium of that republic's supreme soviet.

22. On the publication of this decree, the following shall cease to have effect:

(*a*) The Decree of the Central Executive Committee and the Council of People's Commissars of the USSR, dated 4 January 1928, "on the limitation of administrative fines" (SZ SSSR,* 1928, 5, page 42), as amended and supplemented by SZ SSSR, 1928, 60, page 536; and 1931, 8, page 89;

(*b*) Paragraph 39 of the Decree of the Central Executive Committee of the USSR, dated 19 April 1928, "on the confirmation of decrees made between the first and third sessions of the Central Executive Committee of the USSR, fourth meeting, and submitted for confirmation under article 18 of the Constitution of the USSR to the third session of the Central Executive Committee of the USSR, fourth meeting (SZ SSSR, 1928, 24, page 213);

(*c*) The part of the order on tax and non-tax payments, confirmed by decree of the Central Executive Committee and the Council of People's Commissars of the USSR dated 17 September 1932 (SZ SSSR, 1932, 69, page 410 B), concerning administrative fines imposed on private individuals;

(*d*) The part of the decree of the Central Executive Committee and the Council of People's Commissars of the USSR, dated 11 April 1937, "on the abolition of administrative and the establishment of judicial distraint on property to recover arrears of state and local taxes, compulsory contributory insurance, compulsory deliveries and fines from collective farms, domestic craft artels, and private citizens" (SZ SSSR, 1937, 30, page 120) concerning administrative fines.

23. This decree shall enter into force on 1 January 1962, and shall have retrospective effect in regard to unrecovered fines imposed on private persons and officials and on institutions, enterprises and organizations.

* Statute Book of the USSR.

DECREE OF THE COUNCIL OF MINISTERS OF THE USSR CONCERNING PENSIONS FOR FORMER MEMBERS OF PRODUCERS' CO-OPERATIVES

of 1 March 1961[1]

In connexion with the abolition of producers' co-operatives, the Council of Ministers of the USSR hereby decrees as follows:

1. Pensions due to former members of producers' co-operatives and their families shall be paid by the social insurance authorities in accordance with the provisions relating to manual and non-manual workers and their families contained in the regulations governing the award and payment of state pensions, confirmed by decree No. 1044 of the Council of Ministers of the USSR, of 4 August 1956. Work performed by a person as a member of a producers' co-operative shall be counted as part of his total continuous employment period as work performed by a manual or non-manual worker, and his earnings from the co-operative shall be treated as wages or salary.

The foregoing provisions for the payment of pensions to former members of producers' co-operatives and their families shall have effect from 1 October 1960.

2. Pensions awarded to former members of producers' co-operatives and their families by the co-operative insurance authorities shall be paid at the previous rates.

Reassessment of pensions awarded to former members of producers' co-operatives and their families by the co-operative insurance authorities in cases to which the regulations governing the award and payment of state pensions apply shall be governed by the provisions of those regulations applying to manual and non-manual workers and their families.

[1] Published in *Sbornik Zakonodatelnyx Aktov o Trude* [Symposium of Labour Legislation], Gosyurizdat, 1961, p. 652.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR ON PROCEDURE IN CLAIMS FOR PAYMENT BY UNDERTAKINGS, INSTITUTIONS AND ORGANIZATIONS OF COMPENSATION FOR DAMAGE SUFFERED BY WAGE-EARNING OR SALARIED EMPLOYEES THROUGH INJURY OR OTHER CAUSE OF ILL-HEALTH CONNECTED WITH THEIR WORK

of 2 October 1961[1]

The Presidium of the Supreme Soviet of the USSR decrees the following:

1. Where, through the fault of an undertaking, institution or organization, a wage-earning or salaried employee suffers an injury or other cause of ill-health connected with his work, compensation for the damage shall be paid to him in accordance with a decision of the management of the undertaking, institution or organization.

Where the employee disagrees with the decision of the management, the claim shall be heard by the factory, works or local trade union committee.

Where the employee or the management disagrees with the finding of the factory, works or local trade union committee, or where there is no trade union committee, in the undertaking, institution or organization, the claim for compensation for the damage shall be heard by the people's court.

The management shall apply to the people's court within ten days from the date on which the finding of the factory, works or local trade union committee is received.

A finding of a trade union committee with which the management fails to comply may be enforced by execution in accordance with the procedure for execution of judgements of a court.

[1] Published in *Vedomosti Verkhovnovo Soveta Soyuza Sovetskikh Sotsialisticheskikh Respublik*, 1961, No. 41 (1076), p. 420.

2. Where a wage-earning or salaried employee dies as a result of an injury or other cause of ill-health connected with his work and due to the fault of the management of the undertaking, institution or organization, compensation shall be paid in accordance with the procedure laid down in paragraph 1 of this decree to the persons incapable of work who were dependent on him (or who were at the time of his death entitled to be maintained by him).

3. The following new sub-paragraph shall be added at the end of paragraph 10 of the Regulations prescribing the rights of factory, works and local trade union committees, confirmed by the Decree of the Presidium of the Supreme Soviet of the USSR, of 15 July 1958:

"A factory, works or local committee shall also hear complaints against decisions of the management concerning payment of compensation by the undertaking, institution or organization for damage suffered by wage-earning and salaried employees through injury or other cause of ill-health connected with their work."

4. The rules for payment of compensation by undertakings, institutions and organizations for damage suffered by wage-earning and salaried employees through injury or other cause of ill-health connected with their work shall be confirmed by the procedure laid down by the Council of Ministers of the USSR.

5. This decree shall enter into force on 1 January 1962.

REGULATIONS CONCERNING THE ENTERPRISE FUND FOR IMPROVING THE CULTURAL LIFE AND LIVING CONDITIONS OF THE WORKERS AND INCREASING PRODUCTION EFFICIENCY

Confirmed by order of the Council of Ministers of the USSR on 4 February 1961[1]

EXTRACTS

2. Payments shall be made into the enterprise fund only if the state plan officially assigned to the enterprise is fulfilled or overfulfilled. . . .

3. Enterprise funds shall be financed from the profits of the enterprise, or, where the plan does not require the enterprise to make a profit, from savings obtained by lowering production costs.

. . .

5. Payments into the enterprise fund from planned profits or from savings obtained by lowering production costs shall be made at the following rates:

(*a*) 6 per cent in enterprises of the ferrous and

[1] Published in *Legislation on Capital Formation in the USSR*, vol. I, Gosyurizdat, 1961, pp. 685-688.

non-ferrous metal industries, the fuel and chemical industries and the chemico-pharmaceutical industry, industrial cement works, and enterprises for the extraction and initial processing of asbestos and mica;

(*b*) 4 per cent in enterprises of the engineering and metal-working industries, the timber, paper and wood-working industries, the building materials industry (except cement works), the non-metallic ores industry (except enterprises for the extraction and initial processing of asbestos and mica) and the glass and china industries; enterprises producing electric and thermal power, abrasives, mica and graphite goods, and medical instruments; and industrial enterprises of the State Administration for the Issue of Banknotes of the Ministry of Finance of the USSR;

(*c*) 2 per cent in enterprises of the textile industry;

(*d*) 1 per cent in enterprises of other branches of industry and enterprises under local administration.

An enterprise producing for more than one branch of industry shall be assigned to the branch of industry shall be assigned to the branch of industry for which it produces the greatest part of its total output.

6. In an enterprise of the engineering and metal-working industries which has satisfied the requirements of article 2 of these regulations, payments into the enterprise fund from planned profits made on goods produced by new techniques prescribed in the annual plans of the enterprise relating to new techniques (or from the aggregate savings obtained by lowering the production costs of those goods) during the first year of mass production shall be made at the rate of 10 per cent.

7. Where an enterprise overfulfills the plan in respect of profits or of savings obtained by lowering production costs, the following supplementary payments into the enterprise fund shall be made from those profits, or from those aggregate savings obtained by lowering production costs, by which the plan is overfulfilled: 60 per cent if the enterprises listed in sub-paragraph 5 (*a*), 50 per cent if in sub-paragraph 5 (*b*), 40 per cent if in sub-paragraph 5 (*c*), and 30 per cent if in sub-paragraph 5 (*d*) of these regulations.

Payments into the enterprise fund from profits, or from savings obtained by lowering production costs, by which the plan is overfulfilled may not exceed the amount of such profits or savings received.

8. The aggregate annual payments into the enterprise fund from profits, or from savings obtained by lowering production costs, by which the plan is fulfilled or overfulfilled shall not exceed 5.5 per cent of the annual total of the earnings of the industrial production personnel of the enterprise, reckoned on the actual output of commercial goods.

In enterprises of the engineering and metal-working industries, the limits on payments into the enterprise fund are raised as follows: to 6 per cent of the total annual earnings of the industrial production personnel of the enterprise, where the ratio of products of new techniques to the total volume of output is between 10 and 15 per cent; to 6.5 per cent, where that ratio is between 15 and 25 per cent; and to 7 per cent, where that ratio is over 25 per cent.

. . .

11. The resources of the enterprise fund are spent as follows:

. . .

(*b*) On the construction of housing and buildings for cultural purposes and on repairs to the housing stock of the enterprise, not less than 40 per cent.

These funds may be spent on the construction, jointly with other enterprises or organizations, of dwellings, clubs, rest homes, sanatoria, pioneer camps, kindergartens and creches, sports installations and other buildings for cultural purposes;

(*c*) On bonuses to individuals, improvement of the cultural life and living conditions of the workers, travel to rest homes and sanatoria, and single grants for assistance to workers, up to 40 per cent.

12. Estimates for the use of moneys of the enterprise fund shall be confirmed, and individual bonuses and single grants for assistance to workers shall be awarded, by the director of the enterprise together with the factory or works trade union committee.

The director of the enterprise together with the factory or works trade union committee may assign moneys to workshops for the issue by the shop administration, together with the shop trade union organization, of bonuses to factory hands and other workers who have distinguished themselves in the fulfilment of the plan and of their socialist obligations.

The amount of moneys of the enterprise fund applied to individual bonuses and single grants for assistance to factory hands, engineering technicians or employees shall be in the ratio borne by their total earnings to the total earnings of all the workers of the enterprise.

Moneys of the enterprise fund may not be redistributed among enterprises or withdrawn for any purpose whatsoever.

UNITED ARAB REPUBLIC[1]

DECREE OF THE PRESIDENT OF THE UNITED ARAB REPUBLIC ON ACT No. 117, 1961, CONCERNING THE NATIONALIZATION OF CERTAIN COMPANIES AND ENTERPRISES[2]

Art. 1. All banks and insurance companies in the two regions of the Republic, and the companies and enterprises listed in the schedule annexed to this Act, are hereby nationalized and title to their property is transferred to the State.

Art. 2. The shares of the companies and the capital of the enterprises hereinbefore mentioned shall be converted into fifteen-year 4 per cent registered state bonds, which may be dealt in on the Stock Exchange. The State may after ten years redeem all or part of the said bonds at par; in case of partial redemption, the bonds shall be drawn by lot at a public session, to be notified in the *Official Gazette* not less than two months before the date appointed therefor.

Art. 3. The price of each bond shall be determined by the last closing price of the shares on the Cairo Stock Exchange before the promulgation of this Act.

If the shares are not dealt in on the Stock Exchange or have not been dealt in for a period exceeding six months, their price shall be determined by boards of three members the composition and functions whereof shall be defined by order made by the executive Minister of the Economy, provided that the chairman of each board shall be a Counsel of the Court of Appeal. Each board shall make known its decisions within two months of the issue of the order constituting it, and its decisions shall be final and not subject to any form of review.

The said boards shall also appraise enterprises not constituted as share companies.

Art. 4. The companies and banks to which article 1 hereof applies shall retain the legal form they had on the promulgation of this Act, and the companies, banks and enterprises aforesaid shall continue to conduct their business; nevertheless, the State shall not be liable for their previous obligations beyond the extent of their assets and rights acquired by it at the date of nationalization; and the President of the Republic may by order merge any company, bank or enterprise with any other company, bank or enterprise.

Art. 5. The President of the Republic shall determine by decree the administrative authority which shall supervise each of the companies and enterprises aforesaid.

Art. 6. The competent administrative authority may discharge the managing director or the chairman and some or all members of the governing board of any company or bank to which the provisions of this Act apply and appoint a temporary board or managing director or director vested with the powers of the board pending the constitution of a new board; or discharge the manager of an enterprise and appoint another manager; or defer for a period not exceeding three months settlement of the debts and obligations of any company or enterprise to which the provisions of this Act apply.

Art. 7. If shares which pass to the State in accordance with article 2 have been deposited with a bank or other institution as security, the bonds issued in their place pursuant to that article shall be a lawful substitute for them.

Art. 8. The Executive Minister of the Economy in each region of the Republic shall make the necessary orders for giving effect to this Act.

Art. 9. This decree and Act shall be published in the *Official Gazette*, and shall have effect in both regions of the Republic from the date of such publication.

I. Southern Region

Société Egyptienne Financière, Commerciale et d'assurance "Sefca".
Alexandria Timber Trade Company.
Société Egyptienne des Bois et Matériaux.
Bassili Pacha Timber Company.
Société Arabe pour le Commerce du Bois.
Delta Trading Company.
Société Bassili (Fils d'Antoine).
Société Commerciale et Industrielle pour les Bois et les Matériaux de Construction.
Société Misr pour le Commerce Extérieur.
Helwan Portland Cement Company.
Société de Ciment Portland,Tourah.
Abu-Zaabal and Zafr-el-Zayat Fertilizer and Chemical Company.
Société Egyptienne de Tuyeaux, Poteaux et Produits en Ciment armé (Siegwart).
Alexandria Portland Cement Company.
Fabrique Nationale de Tuyeaux et Poteaux en Ciment.
Société Financière et Industrielle.

[1] Texts furnished by M. Adel El Tahry, Substitut au Conseil d'Etat, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Published in *Official Gazette*, No. 162, of 20 July 1961.

Egyptian Copper Works.
Delta Steel Mills.
Fonderie Ta'nache.
National Metal Industries.
Cairo Metal Products.
Tramways d'Alexandrie. Fonderies Moharrem Bey.
Société el Nil pour l'Acier (subsidiary of Tramways du Caire).
Platrières de Ballah.
Société des Salines de la Méditerranée.
Société des Salines de Rosette.[1]
Société des Autobus du Saïd.
Société des Autobus de Gharbia (under sequestration).
Société des Autobus de Béhéra et d'Alexandrie.
Société des Autobus du Canal Sud (under sequestration).
Société des Autobus de Menoufiegh.
Société des Autobus de Fouadieh.
Société des Autobus Al-Chark.
Société des Autobus de Minieh et de Béhéra.
Société des Autobus de Dakahlieh.
Société Minieh et Béhéra pour le Transport des Marchandises.

[1] As amended in *Official Gazette* No. 167, of 26 July 1961.

Société du Nord pour le Transport.
Alexandria Water Company Ltd.
Société Egyptienne d'Electricité (Choubrah-Kheima).
Delta Land and Investment Company Ltd. (Meadi).
Electro Cable Company.
Société des Dragues Egyptiennes.
Société Anonyme du Béhéra.
Société des Hotels de Haute-Egypte.
Société Misr des Grands Hotels.
Shepheards and Egyptian Hotels Company (under sequestration).
Société Wadi Kom Ombo.
Société Egyptienne Commerciale de la Bourse de Minet El Bassal
United Egyptian Maritime Company.
Société Générale pour la Navigation Maritime.

II. Northern Region

Société Commerciale et Industrielle Unie "Al Khomassia".
Société des Laboratoires (Al Chahba) de Filature et Tissage.
Société Arabe pour l'Industrie du Bois.

DECREE OF THE PRESIDENT OF THE UNITED ARAB REPUBLIC ON ACT No. 118, 1961, ORDERING STATE PARTICIPATION IN CERTAIN COMPANIES AND ENTERPRISES[1]

Art. 1. Each of the companies and enterprises listed in the schedule annexed to this Act shall assume the form of an Arab share company, in which one of the public organizations which the President of the Republic shall determine by decree shall participate to the extent of not less than 50 per cent of its capital.

Art. 2. The companies and enterprises hereinbefore mentioned shall adapt their legal status to conform to the provisions of this Act within six months of the date of its promulgation. If necessary, each shareholder's or partner's share of the capital may be reduced by one-half.

Art. 3. The amount of the share capital shall be determined by the last closing price of the shares on the Cairo Stock Exchange before the promulgation of this Act.

If the shares are not dealt in on the Stock Exchange or have not been dealt in for a period exceeding six months, their price shall be determined by boards of three members the composition and functions of which shall be defined by order made by the executive Minister of the Economy, provided that the chairman of each board shall be a Counsel of the Court of Appeal. Each board shall make known its decsions within two months of the issue of the order constituting it, and its decisions shall be final and not subject to any form of review.

The said boards shall also appraise enterprises not constituted as share companies.

[1] Published in *Official Gazette*, No. 162, of 20 July 1961.

Art. 4. The State shall furnish the value of the capital participation of the public organizations in the companies and enterprises hereinbefore mentioned in the form of fifteen-year 4 per cent registered State bonds, which may be dealt in on the Stock Exchange. The State may after ten years redeem all or part of the said bonds at par; in case of partial redemption, the bonds shall be drawn by lot at a public session, to be notified in the *Official Gazette* not less than two months before the appointed date therefor.

Art. 5. The President of the Republic shall determine by decree the administrative authority which shall supervise each of the companies and enterprises aforesaid.

Art. 6. The competent administrative authority may discharge the managing director or the chairman or some or all members of the governing board of any company or enterprise to which the provisions of this Act apply and appoint a temporary board or managing director or director vested with the powers of the board pending the constitution of a new board; or discharge the manager of an enterprise and appoint another manager; or defer for a period not exceeding three months settlement of the debts and obligations of any company or enterprise to which the provisions of this Act apply.

Art. 7. If shares title to which passes to the State in accordance with article 4 have been deposited with a bank or other institution as security, the bonds issued in their place pursuant to that article shall be a lawful substitute for them.

Art. 8. Any person who contravenes the provisions of this Act shall be punished with imprisonment or with a fine of 500 to 2,000 pounds (5,000 to 20,000 liras) or with both these penalties.

Art. 9. This decree and Act shall be published in the *Official Gazette*, and shall have effect in both regions of the Republic from the date of such publication.

I. Southern Region

Pieux Vibro (Egypt) S.A.E.
Société Atlas pour les Entreprises Générales.
Société Anonyme de Construction de Routes.
Société Anonyme d'Entreprises Générales (formerly El Abd Pacha).
United Enterprises.
Société des Entreprises Egyptiennes (Moukhtar Ibrahim).
Société le Nil pour les Travaux.
General Engineering Company.
Société Egyptienne de Constructions Modernes "Al Chams".
Société d'Entreprises Générales Osman Ahmed Osman.
Société Speco.
Société Fahmi Kamel et Aly Hassan.
Société Ahmed Ahmed Bakir.
Les Fils de Mohamed Abdel Fattah.
Société Hassan Allam.
Société Rachad Taka.
Société Aly Deif d'Entreprises.
Société d'Entreprises Moustapha Hamed.
Société Commerciale "Al Nahda".
Behrend Commercial Company.
North East African Trading Company.
Mediterranean Company for General Trade.
Société Franco-Egyptienne d'Importation.
Société Egyptienne d'Importation et d'Exportation.
Société Soudanaise d'Importation et d'Exportation.
Société Commerciale du Moyen Orient.
Société des Echanges Commerciaux.
Société Commerciale "Unitas".
Société Sabet Frères.
Société du Crédit Commercial.
Société pour le Commerce International.
Société Al Alamia pour le Commerce et l'Industrie.
Société le Nil pour le Commerce Exterieur.
Société Zouzou pour l'Industrie et le Commerce.
Arab Engineering Agencies.
Société David Rofé.
Société du Comptoir Commercial d'Alexandrie.
Société Berge Tanelian.
Egyptian Ginners and Exporters.
Usines Réunies d'Egrenage.
Société d'Egrenage Al Gharbia.
Kafr El Zayat Cotton Company.
National Ginning Company.
Société Misr pour l'Egrenage du Coton.
Egyptian Cotton Ginners.
Upper Egypt Ginning Company.
Société des Verreries Yassine.
Société de l'Industrie Meunière d'Alexandrie.
Société Egyptienne des Minoteries et Silos.
Société Kaha pour les Conserves Alimentaires (2).
Lagoudakis and Company.
Société Egyptienne pour le Commerce.
Société Rotaprint.
Société Moharram-Press.
Société des Produits Al Alamia.
Société pour l'Extraction et le Commerce des Phosphates.
Société Nationale Meunière.
Société Egyptienne pour les Produits Electriques.
Société des Usines Alexandre Sarpakis.
Société des Laboratoires Nassar.
Société des Laboratoires Alpha.
Société Coutarelli Frères.
Wetec Limited.
Société des Cigarettes Egyptiennes Toccos.
Société Egyptienne pour le Tabac et les Cigarettes Boustany.
Egyptian Independent Oil Company.
Anglo-Egyptian Oilfields.
Société Alexandrine de Filature et Tissage de la Rayonne et de la Soie Naturelle Luigi Polvara.
Société des Usines Chourbagui.
Castro and Company.
Société Costi Z. Iokimoglou.
Société Egyptienne des Couvertures Faltas et Cie.
Grands Magasins Hannaux.
Sheffield Company (Al Haraki, Tahan and Company, successors).
Abdel Kader Al Haraki and Company (formerly Gattegno).
Philips Orient.
Nile Engineering Company.
Angelil Trading Company.
Société Egyptienne des Refrigérateurs.
Glacerie Ghamra (Ahmed Hamza et Cie.).
Société des Articles Sanitaires et de la Tuyauterie en Fonte Armenian.

II. Northern Region

Société des Laboratoires Sami Salem El Dahr pour la Filature et le Tissage (Aleppo).
Société El Haj Ahmed Tatari et Fils.
Société Carghaban et Broghassian.
Société Arabe Unie pour l'Industrie.
Société du Coton et des Huileries d'Alep.
Société Meunière Al-Kadam.
Société Meunière Al Kahrae.
Société des Minoteries Modernes Al Chahbae.
Société des Minoteries Al-Hilal.
Société des Minoteries Souk-el-Nahassin.
Société des Minoteries El Hedari.
Société Arabe pour le Commerce, l'Egrenage et l'Exportation du Coton (Alep).

DECREE OF THE PRESIDENT OF THE UNITED ARAB REPUBLIC ON ACT No. 119, 1961, ENACTING CERTAIN PROVISIONS PERTAINING TO CERTAIN EXISTING COMPANIES[1]

Art. 1. On the date of publication of this Act, no individual or body corporate may own shares of the companies listed in the schedule annexed hereto the market value of which exceeds 10,000 pounds (100,000 liras). Title to shares in excess of this amount shall pass to the State. The surplus transferred shall be made up of shares of each category on the basis of the ratio of the value of the surplus to the total value of the shares and in such a way as to constitute a whole number of shares.

The provisions of this article shall not apply to shares owned by public organizations or institutions.

Art. 2. The value of the shares, title to which passes to the State in accordance with the foregoing article, shall be determined by the last closing price of the shares on the Cairo Stock Exchange before the promulgation of this Act.

If the shares are not dealt in on the Stock Exchange or have not been dealt in for a period exceeding six months, their price shall be determined by boards of three members the composition and functions of which shall be defined by order made by the Minister of the Economy, provided that the chairman of each board shall be a Counsel of the Court of Appeal. Each board shall make known its decisions within two months of the issue of the order constituting it, and its decisions shall be final and not subject to any form of review.

Art. 3. The State shall furnish the value of the shares title to which has been transferred to it in the form of fifteen-year 4 per cent registered State bonds, which may be dealt in on the Stock Exchange. The State may after ten years redeem all or part of the said bonds at par; in case of partial redemption, the bonds shall be drawn by lot at a public session, to be notified in the *Official Gazette* not less than two months before the date appointed therefor.

Art. 4. The President of the Republic shall determine by decree the administrative authority which shall supervise each of the companies aforesaid.

Art. 5. The competent administrative authority may discharge the managing director or the chairman or some or all members of the governing board of any company and appoint a temporary board or managing director or director vested with the powers of the board pending the constitution of a new board. The decisions of the temporary board or managing director or representative of the board on matters deemed to fall within the competence of the governing board shall be subject to approval by the competent administrative authority.

The said authority may also defer for a period not exceeding three months settlement of the debts and obligations of the companies and enterprises to which the provisions of this Act apply.

Art. 6. If shares, title to which passes to the State in accordance with article 1, have been deposited with a bank or other institution as security, the bonds issued in their place pursuant to article 3 shall be a lawful substitute for them.

Art. 7. Any person who impedes the application of article 1 of this Act shall be punished with imprisonment and shares title to which should pass to the State shall be confiscated.

Art. 8. The Executive Minister of the Economy in each region of the Republic shall make the necessary orders for giving effect to this Act.

Art. 9. This decree and Act shall be published in the *Official Gazette*, and shall have effect in both regions of the Republic from the date of such publication.

I. Southern Region

Société Misr pour la Rayonne.
Filature Nationale d'Egypte.
Société d'Alexandrie de Filature et de Tissage.
Société Egyptienne de Tissus et d'Impression.
Etablissements Industriels de Soie et de Coton Esco.
Selected Textile Industries Association.
United Spinning and Weaving.
Société Egyptienne Nouzha de Filature et de Tissage.
Misr Beida Dyers.
Société Arabe de Filature et de Tissage.
Société Siouf de Tissage et d'Apprêt.
Société Industrielle Spahi de Filés et de Textiles.
Modern Fine Spinning and Weaving Company.
Société de Filature et Tissage de la Laine Poletex.
Société Mahmoudia de Filés et de Tissus Fins.
Société Misr de Tissage et de la Soie.
Société Al Chark de Filature et de la Soie.
Bacos Dyers.
Manufacture Nationale de Couvertures et de Lainages.
Modern Integral Spinning and Weaving Company.
Société Tawil de Filature et de Tissage.
Nile Fine Spinning Company.
Orient Linen.
Société Egyptienne de Filature de la Laine.
Société Misr de Filature et de Tissage de Mehalla El Kobra.
Nile Textile Company.
Société Watco.
Société Al Ahram de Filature et de Tissage El Haraki.
Société des Usines de Tissage Al Ahram El Haraki.
Société Samakia de Filés et de Textiles.
Société Egyptienne pour la Teinture des Tissus (Teinturerie Française).
Safarian Sphinx.
Tanta Flax and Oil.
Société des Usines du Filateur Egyptien.
Société de la Teinturerie de Ghamra.
Société Kabo.
Société des Tissus Arabes Matexa.
Société Egyptienne de l'Industrie Sisal, Averino.
Société Al Nasr de Filature et de Tissage, Portex.

[1] Published in *Official Gazette*, No. 162, of 20 July 1961.

Akil Fine Spinning.
Société Egyptienne pour l'Industrie Textile.
Société Misr de Filature et de Tissage Fin du Coton.
Castro and Company.
Société Moga de Filès et de Tricots.
Société Nationale de Tissus Memphis.
Imperial Trading Company.
Société Egyptienne Commerciale Financiére.
Société Egyptienne Financière pour le Commerce et l'Industrie.
Tractor and Engineering Company.
Delta Engineering Company.
Transport and Engineering Company.
Société Egyptienne Industrielle et Commerciale Sico.
Société Chimique, Industrielle et Commerciale.
Engineering and Trading Enterprises.
Egyptian Cotton Yarn and Trading Company.
Société d'Avances Commerciales.
Société de Cigarettes Nestor Gianaclis.
Salonika Cigarette Company.
Egyptian Rice Mills.
Egyptian Rice and Flour Mills.
Rosetta and Alexandria Rice Mills.
Béhéra Rice and Oil Company.
Karmouz Oil Company.
National Starch.
Société de Refrigération Rapide et d'Exportation.
Société Egyptienne des Sucreries et Raffineries.
Société Egyptienne pour la Fabrication et l'Emmagasinage de la Glace.
Société des Produits de l'Amidon.
Société des Huileries Végétales et du Savon.
Société des Huileries et du Savon Nayef Emad.
Société des Savons et des Produits Alimentaires Kahla.
Eastern Company.
Wills and Company (Port Said).
Société Anonyme Egyptienne de Chaussures Bata.
Société de Caoutchouc Nationale Narubin.
Société Egyptienne pour l'Industrie du Caoutchouc et les Chaussures Averino.
National Plastics Company.
Société Egyptienne de Plastique et d'Articles Electriques.
Société Nationale du Papier.
Société Egyptienne pour l'Industrie du Papier d'Emballage Kraft.
Société de Verreries et Porcelaines d'Alexandrie.
Salt and Soda Company.
Société du Papier du Moyen-Orient (Cimo).
Verrerie Al-Chams.
Société Générale pour l'Industrie du Papier (Rakta).
Société de Transformation du Papier (Converta).
Société Boliden Orient pour les Batteries.
Société des Peintures et Industries Chimiques.
Société des Produits Internationaux.
Société Misr pour l'Industrie Chimique.
Société Egyptienne pour les Engrais et les Industries Chimiques.
Société Générale pour la Production de la Porcelaine.
Société de l'Ammoniaque et de Produits Chimiques.
Société des Industries Chimiques (Cima).
Société Egyptienne pour les Matériaux de Construction (Sabi).
Société Egyptienne du Papier Emeri.
Société Al-Nasr pour la Fabrication des Crayons.
Société Misr pour le Materiel de la Filature et du Tissage.
Société Egyptienne des Produits Métallurgiques.
Société Egyptienne des Métaux "Idéal".
Société Egyptienne de Métallurgie et des Installations Mécaniques.
Société de Fournitures des Matériaux de Construction.
Société des Emballages d'Alexandrie.
Société Egyptienne des Emballages Economiques.
Société des Travaux et des Entreprises Mécaniques de Port-Saïd.
Société Egyptienne de Produits et de Stockage.
Société Générale de la Richesse Minerale.
Société Egyptienne pour l'Extraction et le Commerce des Phosphates.
Société Egyptienne pour la Production de la Sable Noir.
Société Egyptienne des Métaux et du Manganèse.
Société des Industries Métallurgiques.
Société des Entrepôts Egyptians.
Egyptian Bonded Warehouses.
Société de Constructions Al-Montazah.
Société Misr pour le Béton.
Société des Briques Creuses.
Société Egyptienne Nouvelle.
Société Anonyme des Terrains d'Aboukir.
Société Anonyme des Terrains de Construction (Jardins Al-Ahram).
Société Al-Gaafaria pour l'Industrie et l'Agriculture.
Société Egyptienne des Recherches et des Travaux.
Société Immobilière Arabe.
Société Sidi Salem.
General Engineering and Refrigerating Company (Gerco).
Société Misr des Carrières.
Société Koldair.
Société Centrelec.
Société Egyptienne pour le Raffinage et le Commerce du Pétrole.
Société pour le Développement des Industries Chimiques.
Société Misr pour les Produits Pharmaceutiques.
Société "Ama" pour les Industries Chimiques et les Médicaments.
Société Al-Ahram pour les Produits Pharmaceutiques et Chimiques.
Société "Cipharm".
Société des Laboratoires d'Héliopolis.
Société des Laboratoires Doche.
Société Cicurel.
Société Sednaoui.
Société pour la Vente des Produits Egyptiens.
Société Benzion.
Société des Habillements Sednaoui.
Société Chemla.
Société Oreco.
Société Avierino.

II. Northern Region

Société Nationale de Filature et de Tissage.
Société Syrienne de Filature et de Tissage.
Société de Tissus et de Filés.
Société Anonyme Technique de Teinturerie.
Société Syrienne des Huiles Végétales.
Société Syrienne des Sucreries et Raffineries.
Société de l'Industrie du Sucre et des Produits Agricoles.
Société de Verrerie et de Céramique.
Société Nationale pour la Fabrication du Ciment et des Matériaux de Construction (Damascus).
Société Chahba du Ciment et du Matériel de Construction (Aleppo).
Société Syrienne du Ciment et du Matériel de Construction (Homs).
Société Nationale du Ciment (Aleppo).

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

NOTE[1]

A. *Article 3 of the Universal Declaration of Human Rights*

In Northern Ireland the Civil Authorities (Special Powers) Acts (Northern Ireland), 1943-52, and regulations made under them, enable special measures to be taken for the preservation of the peace and the maintenance of order, subject to the condition that the ordinary course of law, the avocations of life and the enjoyment of property are interfered with as little as possible. During the campaign of violence initiated in December 1956 it became necessary, in exercise of these special powers, to arrest without warrant persons known to be engaged in subversive activity, to detain them for questioning and in certain cases to intern them. As, however, the campaign of violence was discontinued in February 1962, these special powers are in abeyance and no person is at present held in pursuance of them.

B. *Articles 7, 8 and 10*

Statutory Instruments 1961 No. 554 (C. 4) — the Legal Aid and Advice Act, 1949 (Commencement No. 10) Order, 1961, dated the 23rd of March, 1961, and 1961 No. 566 — the Legal Aid (General) (Amendment) Regulations, 1961, have extended the grant of legal aid to cover certain proceedings in magistrates courts.

Paragraph 1 of the first of these reads as follows:

"1. The provisions of part I of the said Act shall come into force on the 8th day of May, 1961, for the purpose of making legal aid available in connection with the following proceedings in any court of Summary Jurisdiction and in any Court of Quarter Sessions, namely —

"(*a*) Proceedings for or relating to an Affiliation Order within the meaning of the Affiliation Proceedings Act, 1957, or an Order under the Matrimonial Proceedings (Magistrates Courts) Act, 1960;

"(*b*) Proceedings under the Guardianship of Infants Acts, 1886 and 1925;

"(*c*) Proceedings under the Small Tenements Act, 1838."

C. *Article 22*

1. The most important development in 1961 was the introduction on April 3rd of an earnings related graduated retirement pension to supplement the existing flat rate pension, as provided by the National Insurance Act, 1959, to which reference was made in the *Yearbooks* for 1959 and 1960.

The graduated part of the National Insurance Scheme covers employed persons aged over 18 whose weekly earnings are between £9 and £15, who come within the "pay as you earn" income tax arrangements, and who have not been "contracted out" as members of an occupational pension seheme providing personal pension rights equivalent to the maximum under the national insurance graduated scheme. Employed persons and their employers each contribute 4¼ per cent of that part of the employed person's weekly earnings which lies between £9 and £15. The graduated contributions paid by each employee, accumulate into units of £7 10*s*. (£9 for a woman — mainly because she can qualify for a pension five years earlier than a man), each unit providing a graduated addition of 6*d*. weekly to the flat rate retirement pension. Any graduated contributions paid during deferred retirement between the minimum pension age of 65 (60 for a woman) and age 70 (65 for a woman) count for graduated pension in the ordinary way.

Graduated contributions paid by a man do not increase the rate of retirement pension payable to his wife on his insurance, but there is provision for a widow, who has reached age 60 and retired from regular work, to receive a graduated pension of half the graduated retirement pension her husband was receiving when he died or, if he had not qualified by the time he died, half the amount his contributions had then earned. This graduated pension is payable in addition to any graduated pension the widow has earned by any graduated contributions she has herself paid.

The graduated pension scheme does not apply to self-employed and non-employed persons.

A series of regulations relating to the graduated scheme (listed below) were made during the year. They laid down rules and procedure concerning "contracted out" employees, widows, members of the Forces and seamen, the collection of graduated contributions and the payment of small lump sums of graduated pension:

The National Insurance (Non-Participation — Continuity of Employment) Regulations, 1961;

[1] Note furnished by the Government of the United Kingdom of Great Britain and Northern Ireland.

The National Insurance (Non-Participation — Benefits and Schemes) Amendment Regulations, 1961;

The National Insurance (Graduated Retirement Benefit and Consequential Provisions) Regulations, 1961;

The National Insurance (Collection of Graduated Contributions) Amendment Regulations, 1961;

The National Insurance (Non-Participation — Assurance of Equivalent Pension Benefits) Amendment Regulations, 1961;

The National Insurance (Non-Participation — Certificate) Amendment Regulations, 1961;

The National Insurance (Members of the Forces) Amendment Regulations, 1961.

2. Increases in flat-rate benefits and changes in flat-rate contributions also became operative on 3 April 1961, as provided by the National Insurance Act, 1960.

3. An amendment of the Prescribed Diseases Regulations, effective from 28 April 1961, brought the disease "ocular ochronosis" within the scope of the schedule of prescribed diseases by extending insurance under the National Insurance (Industrial Injuries) Act, 1946, to dystrophy of the cornea of the eye in the case of persons insurably employed in certain occupations involving exposure to quinone or hydroquinone.

4. The National Insurance (Contributions) Amendment Regulations, 1961, provided that, from 15 May, a widow in receipt of an industrial injuries or war widow's pension who had been excepted from liability to pay national insurance contributions because her pension was equal to or greater than the standard rate of national insurance widow's benefit, should not lose her right to be excepted from liability to pay contributions by reason only of an increase in the standard rate of widow's benefit.

5. The Family Allowances and National Insurance Act, 1961, brought into operation on 20 December of that year a number of changes. Amongst other provisions, the Act —

(1) Extended the pensions increments system so that a wife who is under age 60 for any future period during her husband's deferred retirement, will, if she becomes a widow, have her retirement pension on his insurance increased by one half of his increments;

(2) Widened the scope of the Industrial Injuries Acts to cover accidents occurring in the course of a person's employment, previously excluded because they resulted from common risks as, for instance, assault, "skylarking", attack by an animal or being struck by lightning;

(3) Extended the circumstances in which lost prospects of promotion can be taken into account in determining title to special hardship allowance under the Industrial Injuries Act;

(4) Provided that an industrial injuries widow who has forfeited her pension because of cohabitation shall have it restored on cessation of the cohabitation, as in the case of national insurance widow's benefit; also, that an informal adoption shall be recognized in the same way as a legal adoption for the purpose of a parent's claim for industrial death pension;

(5) Doubled the earnings limit below which the payment of industrial injuries unemployability supplement is unaffected;

(6) Extended the family allowances provisions to cover children between the ages of 15 and 16 who, because of mental or bodily infirmity, are incapacitated for regular employment and are likely to remain so incapacitated for a prolonged period;

(7) Provided that child's special allowance (a benefit payable to a woman whose marriage has been dissolved or annulled and who has not remarried, if her former husband dies and she has a child to whose support he was contributing before he died) is no longer restricted to a child living with the mother or maintained by her at the time of the former husband's death, but can be paid for a child living with or maintained by the mother who, before the father's death, was living with or maintained by him. A further change concerned the rate of the allowance, which is no longer limited to the amount which the former husband had contributed to the child's support if less than the standard rate;

6. Reciprocal agreements on social security concluded with the Federal Republic of Germany and with Turkey were brought into force during the year. The main object of these agreements is to ensure the maintenance of social insurance rights and enable contributions in one country to be taken into account in the other for the purpose of claiming benefits.

The agreement with Turkey, which came into operation on 1 June 1961, covers the benefits provided under the schemes of National Insurance (other than unemployment benefit) and Industrial Injuries Insurance in the United Kingdom and the corresponding benefits in Turkey.

Two agreements were made with the Federal Republic of Germany. The main agreement, which came into force on 1 August 1961, covers the benefits provided under the schemes of National Insurance (other than unemployment benefit), Industrial Injuries Insurance and Family Allowances in the United Kingdom and the corresponding schemes in the Federal Republic. (There is a protocol which enables certain groups of citizens of the United Kingdom and Colonies to insure themselves voluntarily at reduced rates of contribution under German sickness insurance). The other agreement on Unemployment Insurance, effective from 1 September 1961, covers unemployment benefit provided under the National Insurance Scheme and the Unemployment Insurance Scheme in the Federal Republic.

The National Insurance (Turkey) Order, 1961.

The Family Allowances, National Insurance and Industrial Injuries (Germany) Order, 1961.

The National Insurance (Germany) Order, 1961.

Similar extensions in the field of social security in Northern Ireland have been made by parallel legislation in Northern Ireland.

D. *Article 23 of the Universal Declaration*

The Factories Act, 1959 (Commencement No. 5) Order, 1961 (S.I. 1961, No. 701)

This order was made on 10 April 1961, and came into operation on 1 July 1961. It brought into force section 25 of the Factories Act, 1959, thereby bringing within the scope of the Factories Acts railway running sheds where running repairs are carried out.

The Construction (General Provisions) Regulations, 1961 (S.I. 1961, No. 1580)

The Construction (Lifting Operations) Regulations, 1961 (S.I. 1961, No. 1581)

These regulations were made on 15 August 1961, and came into operation on 1 March 1962. They impose requirements designed to promote the safe conduct of building operations and works of engineering constructions. In the case of building operations, they replace similar requirements in the Building (Safety, Health and Welfare) Regulations, 1948. In the case of works of engineering construction, they impose these requirements for the first time.

The Construction (Lifting Operations) Regulations relate to the construction, use and examination of lifting appliances. The Construction (General Provisions) Regulations require the appointment of safety supervisors in firms employing more than 20 persons, and include safety provisions relating to excavations, shafts and tunnels; cofferdams and caissons; the handling and use of explosives; work in dangerous or unhealthy atmospheres; work on or adjacent to water; the operation of vehicles; and demolition work.

The Ionising Radiations (Sealed Sources) Regulations, 1961 (S.I. 1961, No. 1470)

The regulations were made on 31 July 1961, and came into operation on 15 August 1961. They impose requirements on the occupiers of factories, and other places to which the Factories Act applies, for safeguarding the health and safety of employees who may be exposed to ionising radiations from sealed radioactive sources, or from machines such as X-ray apparatus. They require the placing of restrictions on the exposure of workers to such radiations, adequate shielding of the sources, and the instruction of workers likely to be exposed to radiation about the hazards involved and the precautions to be taken. Maximum permissible doses of radiations are laid down, also requirements for the medical supervision of certain workers and the wearing by them of film badges to measure personal doses received.

The Ionising Radiations (Sealed Sources) (Leakage Test) Order, 1961 (S.I. 1961, No. 1711)

This order was made on 7 September 1961 and came into operation on 1 February 1962. It prescribes the method of testing a sealed source of ionising radiations for leakage, and the extent of leakage allowed before repairs must be effected.

The Blast Furnaces and Saw Mills Ambulance (Amendment) Regulations, 1961 (S.I. 1961, No. 2434)

The Chemical Works Ambulance (Amendment) Order, 1961 (S.I. 1961, No. 2435)

These regulations were made on 19 December 1961, and came into operation on 19 January 1962. They provide that, in certain specified premises, a responsible person shall always be readily available during working hours to summon an ambulance or other means of transport in case of accident or illness. The Regulations modify certain earlier requirements, and apply to all factories of the kinds mentioned irrespective of the numbers employed.

E. *Article 25 of the Universal Declaration*

The Consumer Protection Act, 1961

The Consumer Protection Act, 1961, empowers the Secretary of State to make regulations prescribing such safety requirements for any class of goods as he considers necessary to prevent or reduce risk of death or personal injury, including disease or disability. These safety requirements may relate to the specified goods as a whole or to any component part and may be in respect of the composition or contents, design, constructions, finish or packing of the goods, the affixing of a cautionary warning or the issue of operating instructions.

It is an offence under the Act to sell or hold for the purpose of selling any goods which do not comply with the relevant safety regulations. The Act also provides that any failure to comply with the requirements of any regulations made under the Act will be a breach of statutory duty for the purpose of civil proceedings by a person who suffers injury or loss in consequence of the failure to comply.

UNITED STATES OF AMERICA

HUMAN RIGHTS IN THE UNITED STATES IN 1961

A Summary of Pertinent Actions taken by Federal, State, and other Governmental Authorities[1]

Introductory Note

Basic guarantees of human rights are contained in the Constitution of the United States and in constitutions of the various states, including a guarantee that all persons be accorded the equal protection of the law. The first ten amendments, collectively known as the Bill of Rights, provide basic guarantees of individual rights. The exercise of governmental power is limited by and must conform to these constitutional provisions. Legislation on economic, social, and cultural matters is in large part the responsibility of state and local governments which, with federal government co-operation, financially and otherwise, endeavour to provide the basis for equal opportunity for all, to maintain the means for steady economic development and full productive employment, and to promote those social and cultural activities fundamental to the development of human personality and to the general welfare.

It has been the role of both federal and state courts to be vigilant in the protection of individual rights by preventing, invalidating or redressing action which violates constitutional guarantees.

This survey is confined to those official developments of the year 1961 which appear to have relatively far-reaching implications. A more nearly complete picture of achievement would encompass the day-to-day activities of the various agencies of the government, and of the American people themselves, toward the goal of justice and opportunity for all.

Human Rights Day

In recognition of both the thirteenth anniversary of the proclamation of the Universal Declaration of Human Rights and the 170th anniversary of the adoption of the United States Bill of Rights, President Kennedy proclaimed 10 to 17 December 1961 as Human Rights Week. He called upon the people of the United States "to honor our heritage by study of these great documents and thereby gain new strength for the long struggle against the forces of terror that threaten the freedoms which give meaning to human existence — the right to speak without fear and to seek the truth regardless of frontiers; the right to worship in accord with conscience and to share the strength and glory of religion with our children; the right to determine our own institutions of government and to vote in secret for the candidate of our choice; the right to justice under law and to protection against arbitrary arrest; the right to labor and to join in efforts to improve conditions of work; the right to unite with our fellows, without distinction as to race, creed, or color, in tearing down the walls of prejudice, ignorance, and poverty wherever they may be, and to build ever firmer the foundations of liberty and equality for all."

Following the example set by the President, many state governors issued proclamations relating to the observance of Human Rights Week, and celebrations were undertaken by individual citizens, local organizations, trade unions, religious groups and educational institutions throughout the country.

Equal Protection of the Law

(Articles 2 and 7 of the Universal Declaration of Human Rights)

The elimination of racial discrimination continued to be a major objective of public and private efforts in 1961. Changes took place principally in the southern states, where racial segregation had been the rule under state law.

In the field of education, racial bars were removed in a number of additional localities which previously had segregated schools. As a result of federal court decisions and orders, the important cities of Atlanta, Georgia; Memphis, Tennessee; Dallas and Galveston, Texas, and a number of smaller communities began desegregation of their schools for the first time in 1961. At least one hundred other localities desegregated voluntarily and Negroes entered schools in such areas without incident.

In several court actions, the Federal Government participated as a friend of the court. Such a case involved St. Helena Parish, Louisiana, which threatened to close its schools under a State law designed to avoid court-ordered desegregation. The law was declared unconstitutional and the Federal Court prohibited the closing of the schools.[2] In a similar action, a United States district judge forbade the

[1] Note furnished by the Government of the United States of America.

[2] *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649. Affirmed, 287 F. 2d 376, cert. denied, 368 U.S. 830.

use of public funds (in the form of tuition grants to students and tax credits to school contributors) to finance private schools for whites in Prince Edward County, Virginia, while public schools are closed.[1]

The possibility of racial discrimination in the northern States was also considered by the federal courts during the past year, although no segregation laws exist in these states. In a case involving schools in New Rochelle, New York, the federal courts ordered the school authorities to eliminate the type of segregation resulting from contrived attendance areas designed to reflect racial residence patterns.[2]

With regard to private educational institutions, Pennsylvania passed a Fair Education Opportunities Act, bringing to six the number of states which have laws prohibiting discrimination as to race in private schools. Negroes were also appointed to the faculties of several teacher training colleges in that state.

In the field of public accommodations, various groups of citizens undertook to test local and State laws intended to maintain segregated bus stations, restaurants and other public facilities. Numbers of persons were arrested and convicted in lower courts for violation of these provisions. In December the Supreme Court reversed state court convictions of a group of Negro students who had attempted to obtain service at "white" lunch counters in Baton Rouge, Louisiana, and were arrested there on charges of breach of the peace.[3] The Attorney-General of the United States appeared as a friend of the court on behalf of the students. Other sit-in cases were pending at the close of the year.

When the "freedom rides", undertaken to test desegregation in southern bus terminals, resulted in violence early in the year in Montgomery, Alabama, and it became evident that local authorities were unable or unwilling to maintain order, more than 600 United States deputy marshals were sent to Montgomery, as the Federal Government has a clear responsibility to protect interstate travellers. As soon as it became apparent that local authorities had the situation under control, the federal marshals were withdrawn.

The Federal Government obtained grand jury indictments of nine men in Anniston, Alabama, on criminal charges arising from the burning of a "freedom ride" bus, and an injunction against interference with freedom riders in Alabama.[4]

In May the Attorney-General petitioned the Interstate Commerce Commission for regulations to require desegregated facilities in terminals used in interstate bus travel. Such regulations, which affect more than 100 bus terminals, were issued by the Commission and became effective on 1 November 1961. They were complied with in most communities of the nation. In some areas of the south, however, local segregation laws continued to be given precedence. Consequently, the Attorney-General filed a number of actions asking federal courts to order compliance with federal law. The courts declared state segregation laws unconstitutional, forbade their enforcement and ordered segregation signs to be removed in several localities in Alabama, Louisiana and Mississippi, which were violating the federal regulations.[5]

In the rail transportation field, as a result of informal conversations and correspondence between the Department of Justice and the representatives of the 18 principal railroads operating in the south, the railroads agreed to desegregate all their terminals in a dozen southern states. As a result of this action several hundred terminals were placed on a desegregated basis. Air terminal facilities in Montgomery, Alabama, were also desegregated, as the result of a federal court order;[6] in general, air terminals in the South, as elsewhere, were already operating free from segregation.

City parks were desegregated as the result of court action in Birmingham, Alabama,[7] and in Memphis, Tennessee.[8]

Although racial discrimination is virtually non-existent in the Virgin Islands, the Legislature of that territory adopted two Acts relating to Civil Rights, Acts Nos. 710 and 720. Act 710 declares that "racial discrimination, segregation, and other forms of bias and bigotry are not part of the way of life of the people of the Virgin Islands" and that "all natural persons within its jurisdiction shall be entitled to the full and equal accommodations, advantages, facilities, and privileges of any place of public accommodations, resort, or amusement, and to the equal opportunity and treatment in employment in any and all businesses and industrial establishments, and to membership in all labor organizations, and to equal privileges in the purchase, lease, or rental of real estate, and in the purchase of any commodity or service offered for sale . . ." The Act established means for its enforcement and penalties for violations.

Act No. 720 establishes means for insuring that licensees of business places comply with Act No. 710.

Forty of the forty-seven states holding legislative sessions in 1961 enacted laws affecting women's family and property rights. Many of these laws concerned the property rights of married persons and

[1] *Allen* v. *County School Board*, Civ. No. 1333, 6 *Race Relations Law Reporter* 749 (1961).

[2] *Taylor* v. *Board of Education of New Rochelle*, 249 F. 2nd 36, cert. denied, 368 U.S. 940.

[3] *Garner* v. *Louisiana*, 368 U.S. 157.

[4] *United States* v. *U.S. Klans, et al.*, 194 F. Supp. 897.

[5] *United States* v. *Fraiser*, 6 *Race Relations Law Reporter* 1167; *United States* v. *McComb*, 6 *Race Relations Law Reporter* 1169; *United States* v. *Pitches*, E.D. La., March 1962; *United States* v. *City of Birmingham*, N.D. Ala, January 5, 1962.

[6] *United States* v. *City of Montgomery*, 201 F. Supp. 590.

[7] *Shuttlesworth* v. *Gaylord*, 202 F. Supp. 59.

[8] *Watson* v. *City of Memphis*, 6 *Race Relations Law Reporter* 829.

provided for similar treatment for each spouse without regard to any previous advantage either might have had under the law. Divorce laws in Wisconsin and Connecticut were amended to apply this principle in division of property.

Inheritance provisions were equalized in California with regard to community property; formerly a surviving wife, but not the surviving husband, was required to pay the inheritance taxes on half of such property. Moreover, North Carolina extended to the surviving husband the right formerly held only by a surviving wife, of a year's allowance for support during the administration of the decedent's estate.

On 14 December 1961, a Commission on the Status of Women was established by the President (executive order No. 10980), to review progress in women's rights, to recommend methods of overcoming any remaining discriminations against women in employment and in property rights, to enable women further to develop their skills, and to encourage the fuller participation of women in the nation's domestic and international commitments.

Fair Trial and Hearing
(Articles 3, 5, 9, 10 and 11 of the Universal Declaration)

The Sixth Amendment to the Constitution of the United States guarantees that in all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury of the state and district where the crime was committed; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour and to have the assistance of counsel for his defence. The Fifth and Fourteenth Amendments guarantee that no person shall be deprived of life, liberty or property without due process of law.

A conviction for murder was vacated by the Supreme Court during the year on the ground that the detention of the accused incommunicado for four days without benefit of counsel and preliminary hearing and the admission in evidence of a confession obtained from him during that period deprived him of due process of law in violation of the Fourteenth Amendment.[1]

In *Hamilton* v. *Alabama*,[2] the Supreme Court held that, since Alabama law provides that in a criminal proceeding certain defences may be raised only at the time of arraignment, the absence of counsel for the accused at the time of his arraignment for a capital offence violated his rights under the due process clause of the Fourteenth Amendment.

With regard to the right to trial by an impartial jury, the Supreme Court held that the failure to grant a second change of venue, in order to provide an impartial jury in a trial for murder by a state, violated the due process clause of the Fourteenth Amendment.[3]

In *Hoyt* v. *Florida*,[4] the Supreme Court held that a Florida statute excusing women from jury service unless they volunteer for it, did not deprive a woman, who was convicted by an all-male jury of murdering her husband, of her rights under the Fourteenth Amendment.

Privacy
(Article 12 of the Universal Declaration)

The Fourth Amendment to the United States Constitution guarantees the right of the people to be secure against unreasonable searches and seizures and requires that warrants shall issue only upon "probable cause". In *Silverman* v. *United States*[5] the Supreme Court held that eavesdropping by police officers using an electronic listening device, which penetrated the wall of the house occupied by the defendants, violated their rights under the Fourth Amendment and the evidence so obtained was not admissible at their trial. The Supreme Court held in *Mapp* v. *Ohio*,[6] that the rule that evidence obtained by illegal search and seizure is inadmissable applies also to criminal trials in state courts.

The Supreme Court reversed[7] a lower court's dismissal of a Federal civil rights action against 13 Chicago, Illinois, policemen who had forcibly entered the home of a couple in the early hours of the morning and abused them. The court broadened its interpretations of the Civil Rights statutes to include acts of state officials who can show no authority under state law, state custom or state usage for what they have done.

In New York State it was decided that copies of birth certificates will no longer carry information about a person's race or colour.

Asylum and Nationality
(Articles 14 and 15 of the Universal Declaration)

On 14 July 1960 a joint resolution by the Senate and the House of Representatives was enacted into law, enabling the United States to participate in the resettlement of certain refugees. The Act authorized the Attorney-General to parole into the United States up to 25 per cent of the total number of refugees resettled in all other countries. By 31 December 1961 a total of 9,322 refugee-escapees had been approved for parole into the United States.

Refugees from Cuba in large numbers began to arrive in Florida by air and by sea after the Castro

[1] *Reck* v. *Pate*, 367 U.S. 433. See also *Culombe* v. *Connecticut*, 367 U.S. 568, and *McNeal* v. *Culver*, 365 U.S. 109.

[2] *Hamilton* v. *Alabama*, 368 U.S. 52.

[3] *Irvin* v. *Dowd*, 366 U.S. 717.

[4] *Hoyt* v. *Florida*, 368 U.S. 57.

[5] *Silverman* v. *United States*, 365 U.S. 505.

[6] *Mapp* v. *Ohio*, 367 U.S. 643.

[7] *Monroe* v. *Pape*, 365 U.S. 167 (1961).

regime came to power in January 1959. By the end of 1961 there were 76,600 Cuban refugees and 12,200 Cuban non-immigrants in the United States. Most of the refugees have settled in the States of Florida and New York.

Refugee orphans have been admitted to the United States under special temporary legislation since 1948. On 26 September 1961 a Federal law for the first time incorporated the provisions of special legislation relating to orphans into the general Immigration and Nationality Act and in doing so improved these provisions. Under the new law and previous legislation, 2,181 alien orphans were adopted by United States citizens abroad or were brought to the United States for adoption during 1961.

The Act of 26 September 1961 also made it possible for approximately 16,000 close relatives of U.S. citizens and resident aliens to be admitted without "immigrant visas".

One-fifth of all immigrants admitted in 1961 were relatives of citizens or resident aliens.

In accordance with the emphasis traditionally placed by the United States on the right to nationality and a national homeland, 130,087 persons were granted United States citizenship during 1961.

Freedom of Religion

(Article 18 of the Universal Declaration)

Article VI of the Constitution provides that no religious test shall be required as a qualification for any office or public trust under the United States. The First Amendment to the Constitution provides that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise of religion. The prohibition contained in the First Amendment is also applicable to the state governments by virtue of the due process clause of the Fourteenth Amendment.[1]

In *Torcaso* v. *Watkins*,[2] the Federal Supreme Court held that a provision of the Constitution of the State of Maryland requiring a declaration of belief in the existence of God as a qualification for holding state office could not be enforced because it unconstitutionally invaded the appointee's freedom of belief. In so holding, the court stated:

"We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion'. Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on belief in the existence of God as against those religions founded on different beliefs."

Sunday closing laws of Maryland, Massachusetts and Pennsylvania were upheld as not violating the First Amendment provision pertaining to freedom of religion.[3]

In the *McGowan* case, the Supreme Court held that the appellants had no standing with respect to the question of infringement of their own religious beliefs as they alleged only economic injury resulting from the state law prohibiting the sale of certain merchandise on Sunday. With regard to the First Amendment prohibition against the establishment of religion, the Court stated that in spite of the religious origin of the Sunday closing laws, their purpose in more recent times has been secular — i.e., to promote a day of rest to enable people to recover from the labours of the past week and to prepare for the work of the week to come. Thus, the establishment clause does not prohibit the regulation of conduct "whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions."[4]

The reasoning in the other three cases cited was similar.

Freedom of Speech, Press and Association

(Articles 18, 19, 20 and 29 of the Universal Declaration)

The First Amendment also provides that Congress shall make no law abridging the freedom of speech or of the press or of the right of the people to assemble peaceably. The Fourteenth Amendment protects these rights from infringement by the States.[5]

In *Times Film Corp.* v. *Chicago*,[6] the U.S. Supreme Court held that a Chicago ordinance requiring the submission of motion pictures for examination prior to public exhibition, was not void on its face as infringing free speech or freedom of the press. While reaffirming the principle that motion pictures are within the free speech and free press guarantee of the First and Fourteenth Amendments, the court noted that liberty of speech is not absolute and that not all prior restraints on speech are invalid. The sole issue in the case was whether the city of Chicago could require that films be submitted for examination. The particular standards by which a film might be permitted or rejected for public exhibition under the ordinance were not challenged and were not considered by the court.

A Missouri statute authorizing police officers to obtain search warrants in *ex parte* proceedings and seize publications which they considered to be obscene, without a court review until several weeks later, was held to violate the First Amendment.[7]

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[1] *Everson* v. *Board of Education*, 330 U.S. 1.

[2] *Torcaso* v. *Watkins*, 367 U.S. 488.

[3] *McGowan* v. *Maryland*, 366, U.S. 420; *Two Guys* v. *McGinley*, 366 U.S. 582; *Braunfeld* v. *Brown*, 366 U.S. 599 and *Gallagher* v. *Crown Kosher Market*, 366 U.S. 442.

[4] *McGowan* v. *Maryland*, 366 U.S. 442.

[5] *Gitlow* v. *People of New York*, 268 U.S. 652.

[6] 365 U.S. 43.

[7] *Marcus* v. *Search Warrant*, 367 U.S. 717.

In *Communist Party* v. *Control Board*,[1] the Supreme Court held that Section 7 of the Internal Security Act of 1950, requiring communist action organizations to register with the Attorney-General, does not, as applied in that case, constitute a restraint of freedom of expression and association in violation of the First Amendment. In *Scales* v. *United States*,[2] the court upheld a conviction under the membership clause of the Smith Act, which makes it a felony knowingly to be a member of any organization which advocates the overthrow of the Government of the United States by force or violence. The statute was challenged on several grounds, including the claim that it infringed the First Amendment. The court stated that the statute does not violate the First Amendment because it does not make criminal all associations with the proscribed organizations, but rather requires clear proof of a specific intent to accomplish the aims of the organization.[3]

Government by the Will of the People
(*Article 21 of the Universal Declaration*)

Article IV, section 4, of the United States Constitution guarantees a republican form of government. Although the individual states are authorized to establish the qualifications of voters, the states may not, under the Fifteenth and Nineteenth Amendments, deny voting rights on grounds of race or sex.

These constitutional provisions were implemented by the Civil Rights Acts of 1957 and 1960, which place upon the Attorney-General of the United States responsibility for instituting investigations and legal actions when citizens are denied the right to register or vote on account of race.

During 1961, fourteen new cases were filed challenging unfair registration and voting practices in southern States with regard to Negroes. Court decisions were handed down which resulted in substantial numbers of Negroes being registered to vote for the first time in such areas.[4]

In September, a Negro student leader working on a registration drive in Walthall County, Mississippi, was beaten by the registrar, a county official. Shortly thereafter the student was arrested by local officials and threatened with prosecution for disturbing the peace. The Department of Justice sought a federal court injunction against the prosecution and against other acts of intimidation. Immediate relief was denied by the district court, but the Department asked and obtained relief on appeal. In a significant decision the court ruled that the 1957 Civil Rights Act entitled the Federal Government to injunctive relief against state prosecutions brought for the purpose of intimidation.[5]

Economic, Social and Cultural Progress
(*Article 22 of the Universal Declaration*)

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—federal, state and local—co-operate with and aid such private initiative in furtherance of steady advancement and development in these fields.

In addition to the broad human rights which are guaranteed in many state constitutions and laws, other widely adopted measures, regulatory in nature, also contribute toward the "dignity and free development of personality" by setting minimum wage and hour, health, safety, and educational standards. Further government responsibility, local, state or federal, rests in the initiation and financing of programmes for education, research, welfare and other activities in the public interest.

The lawmaking bodies of all but three of the 50 states met in 1961,[6] and adopted legislation on a wide variety of matters in these fields, including in many cases expanded support of education. The Federal Congress also expanded and extended such programmes. Significant actions are reported below.

Just and Favourable Conditions of Work
(*Articles 23 and 24 of the Universal Declaration*)

Equal Employment Opportunity

Employment practices are regulated in considerable part by the states; and 21 states, including all the large industrial states and Puerto Rico, have passed what are known as "fair employment practice laws" which prohibit discrimination against anyone in either public or private employment on the basis of his race, religious belief or national origin. In 1961, Idaho, Illinois and Missouri were added to the list of states having such laws; Kansas made the provisions of a voluntary fair employment practice act mandatory, and Nevada and West Virginia adopted legislation which encourages voluntary compliance with fair employment practices. Legislation prohibiting discrimination in employment because of age was enacted in 1961, by California, Ohio and Washington, making a total of 14 states and Puerto Rico with such laws.

During the year, the Supreme Court of Michigan upheld the constitutionality of its Fair Employment

[1] *Communist Party* v. *Control Board*, 367 U.S. 1.

[2] *Scales* v. *United States*, 367 U.S. 203.

[3] See also *Noto* v. *United States*, 367 U.S. 290.

[4] *United States* v. *Alabama*, 192 F. Supp. 677; *United States* v. *Citizens Councils*, 196 F. Supp. 908.

[5] *United States* v. *Wood*, 295 F. 2d 772, cert. denied, 30 Law Week 3323.

[6] Eighteen state legislatures meet annually; 32 hold biennial regular sessions and of these, all but three (Kentucky, Mississippi and Virginia) meet in the odd-numbered years.

Practice Act.[1] The racial factor in job eligibility was dealt an additional blow by a federal district court which issued a permanent injunction[2] restraining offices of the Kansas State Employment Service from using application forms containing racial specification, from accepting racially discriminatory job requisitions, and from denying the use of its facilities to residents of Kansas on racial grounds.

The President established his Committee on Equal Opportunity[3] in March 1961, making the Vice-President of the United States its chairman. The new committee consolidates and gives fresh impetus to previous actions with respect to equal opportunities in government agencies and under contract between the Federal Government and private firms.

Maryland adopted a law along similar lines requiring non-discriminatory clauses in contracts for construction work for the state as well as prohibiting discrimination in hiring state employees.

Other actions have tended toward the geographic equalization of employment opportunities. State and local governments, for example, continued on the alert to attract new enterprises which bring additional wealth, a growing variety of jobs, and higher living standards to their areas. A number of localities have found that by strengthening their educational, recreational, and cultural facilities they increase the advantages they have to offer. The expanded economic activity resulting from area development of this nature also creates fresh resources for making further improvements possible.

Other localities where technological change had reduced employment opportunities were helped by the Area Redevelopment Act adopted by the Federal Congress which calls upon public employment services to review local manpower capabilities and establish training programmes where necessary to equip workers to fill jobs contemplated by redevelopment plans, paying the workers subsistence allowances while in training.

Wage and Hour Laws

Wisconsin, by amendment to its Fair Employment Act during 1961, became the twenty-first state to establish equal pay for equal work for women. Nine of 33 states with minimum wage laws enacted legislation establishing new or improved standards. Connecticut and Washington amended their statutory rates in line with higher standards in the Federal Fair Labor Standards Act which has been in effect since 1938. Maine and North Carolina extended coverage to include previously exempted small establishments. By wage board action new orders were issued or higher rates became effective in 8 states, the District of Columbia, and Puerto Rico. Many of these state laws are especially important to women, large numbers of whom are concentrated in the trade and service industries where such laws apply. Pennsylvania adopted a statutory minimum wage extending this coverage to men.

Labour Relations

North Dakota enacted a labour relations act in 1961 clarifying the workers right to organize and bargain collectively or to refrain from such activities. The act defines unfair labour practices for employers and employees. By the end of 1961, 13 states and Puerto Rico had adopted labour relations acts of general application. State labour laws, for the most part, supplement existing actions of the Federal Government which apply country-wide to workers engaged in the manufacture of goods or in services moving in interstate commerce. In California, public employees were guaranteed the right to form labour unions and public agencies were required to meet and confer with representatives of such unions upon request. Labour's inherent right to form associations, strike, and bargain collectively is implicit in the United States Constitution.

Compensation and Safety

Continuing the trend of previous years in the field of workmen's compensation, increases in cash and medical benefits for work-connected injuries and illnesses were made in a number of states. All states have long had laws in the field of workmen's compensation, and in 1961 several brought additional groups — notably migratory agricultural workers — under the protection of such laws. Further protection involving the safety of working conditions for this group was offered by Illinois, which required the inspection and licensing of migrant labour camps, and North Carolina, which enacted legislation regulating the transportation of migratory farm workers.

Safety measures, long a part of state laws in general, must be re-examined continually to meet new conditions. For example, control over the hazards of nuclear development and radiation was provided by legislation in Idaho, New Hampshire, Washington and Wisconsin; other states improved existing safety measures. Florida established a regulatory agency to license or register activities which might create radiation hazards. The United States Atomic Energy Commission, which has regulatory authority in this field, recognized the adequacy of the Florida programme, as it had earlier programmes in Arkansas, Idaho, Indiana and the State of Washington.

Living Conditions and Social Security

(Article 25 of the Universal Declaration)

Level of Living

The standard of living attained by families in the United States is determined largely by the

[1] *Hyland Park* v. *FEPC*, 30 *U.S. Law Week*, 2256, 30 Nov. 1961.

[2] *Payer* v. *Poirier*, CIV. No. W-2219, D. Kan., 27 Nov. 1961; 6 *Race Relations Law Reporter* 1098 (1961).

[3] Executive Order 10925 of 6 March 1961; *Federal Register* Vol. 26, Number 44: p. 1977 and ff.

earnings of the individuals within it, with the father usually carrying the major responsibility. Census figures and other data for the post-war period indicate a major shift of families upward along the entire income scale. Furthermore, on the average, in recent years, family income continued to rise more rapidly than prices.

One index of increased purchasing power is that the per capita amount spent for food, which has been found to remain relatively stable regardless of the size of the family income, now amounts to only about 24 per cent of expenditure, whereas ten years ago, 35 per cent of the average family income was absorbed in food purchases. Most families in the United States today are therefore able to use a larger proportion of their earnings for other items and services which contribute to their comfort and well-being. Telephones, another index of purchasing power, are now found in three out of every four American households.

Regional differences in family income are also being narrowed by wider distribution of industrial establishments and programmes designed to help marginal agricultural workers transfer to other types of work. The Area Redevelopment Act, described above, helps bring new industry to mining and other communities where employment opportunities have been reduced.

Among factors recognized as affecting family purchasing power are income and other taxes. The Federal Government levies taxes on individual income at rates which rise sharply as earnings increase, and most states levy similar taxes. There are, in addition to real estate, excise, sales and other taxes. The amount of income absorbed in taxes varies widely, but for families of median earnings, the amount they pay in taxes frequently absorbs a quarter or more of the total.

Housing

New housing units begun during 1961, including publicly and privately sponsored units but not those on farms, rose to a total of 1,337,000, marking an increase of four per cent over units begun during 1960. This was the thirteenth consecutive year in which over a million units were begun. Housing units available for occupancy in 1961 totalled 60.5 million. More than 62 per cent of American families now own their homes.

Although by the end of 1960, 81 per cent of the housing units available for occupancy contained private inside toilets, and baths with hot running water, there are substantial numbers of units that are substandard or deteriorating. The Federal Government, co-operating with state and local governments in attacking the problem of slum and deteriorating housing, was authorized in 1961 to contract to expend $4 billion, or double the amount of the previous $2 billion authorization, for its share of the cost of assisting in eliminating and rehabilitating slum and blighted areas. By the end of 1961, 944 projects in 520 communities had been approved for federal assistance, amounting to about $2.3 billion.

An important factor in progress toward more and better housing is the mortgage insurance provided by the Federal Government. This insurance, financed entirely by the premiums paid by borrowers, encourages private lenders to make loans for the purchase of homes on more favourable terms than would be otherwise available, as the lenders are guaranteed repayment in the event of default.

Certain groups with special housing needs have been singled out for Federal assistance. The programme was extended for the first time to help meet the pressing needs of the American Indian population living on reservations. Government authority to contribute to the construction, maintenance and operation of housing for families with low incomes was increased during 1961 to provide for construction of 100,000 additional units of low rent public housing. By the end of 1961, 498,367 units of this type had been completed, while 47,937 units were under construction. A mortgage insurance programme was provided to help low- and middle-income families buy their own homes. The insurance is available for loans of up to $11,000 or up to $15,000 in a high cost area. Down payments may be as low as $200, with up to 40 years allowed for repayment of the loan.

As increasing numbers of American citizens reach the age of 65, the problem of housing those who are living on low incomes increases in importance. During 1961 the authority of the Federal Government to make low interest rate loans for the housing of the elderly was increased from $50 million to $125 million. Fifty thousand low rent public housing units were earmarked for elderly families with low incomes. It is estimated that by the end of 1961, 97,000 public housing units were occupied by elderly persons.

The increasing number of students entering college has strained the existing supply of housing facilities available for their use. To meet this need, additional Federal funds were again authorized in 1961 for low interest rate college housing loans. When the construction of housing facilities financed by the federal loans approved by the end of 1961, totalling $1.5 billion, is completed, there will be available additional facilities for 376,861 students and faculty members.

Families and businesses whose homes or properties were taken over by governing bodies because of slum clearance, new highway construction or similar actions, were assisted by receiving payments provided by the Federal Government for part of their moving expenses and by being made eligible to purchase new homes with liberal loans insured by the Federal Government. Displaced families with low incomes were also given preference in admission to public housing.

At both the state and local levels, increased attention was given to the prohibition of discrimination in housing. California, Idaho, Indiana, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Ohio and Pennsylvania adopted amendments to their anti-discrimination laws to strengthen enforcement or to broaden their scope.*

Five states (California, Connecticut, Hawaii, Massachusetts and Pennsylvania) enacted legislation to provide state financial assistance to housing for low- or middle-income families and old people. A South Dakota statute authorized local governments to contribute to the support of corporations formed for the care and accommodation of old people.

Social Services and the Right to Security

Largely through public programmes, accompanied by private group or individual efforts, persons in the United States are protected against the problems that may arise when old-age, prolonged disability, unemployment, or death of the family wage earner means the loss, or sharp reduction of income. The basic public programme, covering almost everyone who earns his living, is a national system that provides monthly benefits to workers retired for age or disability and their dependents and to the survivors of deceased workers. Social insurance against other risks is provided through unemployment insurance and workmen's compensation, administered by each state. Supplementing the insurance programmes is public assistance — a programme of Federal grants to the states to help them provide financial assistance, medical care, and other services to needy people. The states also administer, with financial help from the Federal Government, vocational rehabilitation services and health and welfare services for mothers and children. Many arrangements outside government complement the social insurance and public welfare programmes, including private employee benefit plans and a wide variety of services provided through private funds by voluntary social agencies.

In June 1961, about 9 per cent of the people in the United States were aged 65 and over and about three-fourths of these had income from social insurance payments, toward which the wage earners and their employers had contributed. About 1 in 11 of the aged had no earnings or social insurance benefits but were receiving assistance payments, financed by state and local governments with federal aid.

Social Security Act amendments in 1961 broadened the provisions of the public assistance programmes for the needy who are aged, blind, or permanently disabled, and for children in needy families. The amendments provided for payments for children of out-of-work parents and children in foster-family homes. They also increased the federal share of medical care costs for persons receiving old-age assistance and made higher payments possible in three of the assistance programmes by permitting greater Federal financial participation in state expenditures.

Other amendments in 1961 made coverage possible under old-age, survivors, and disability insurance for more state and local government workers and some ministers of religion. Another amendment lowered the age at which men may receive retirement benefits to 62, the age previously established for women.

To help solve the economic and social problems posed by the influx of Cuban refugees into the Miami area during 1960 and 1961, an emergency programme was formulated at the national level, using public and private resources to provide health, employment and resettlement services, job retraining, foster care for unaccompanied children, and financial assistance for the needy. Federal aid in meeting the increased operating costs of the public schools in the area was also provided.

National concern with the problems of the elderly was reflected in an official White House Conference on Aging held in Washington, D.C., in January 1961. It was attended by more than 2,500 voting delegates, including representatives of all 50 states and of 300 national voluntary organizations. The Federal Department of Health, Education, and Welfare was responsible for preparation of the conference. Delegates explored health, income, and medical care problems of older citizens, their opportunities for housing, family life, free time and educational activities; took note of developments in gerontological research; and made recommendations. Within a month the U.S. Senate, indicating a continuing interest in the affairs of senior citizens, established a Special Committee on Aging to study solutions to the problems in this field.

Most of the states holding legislative sessions during 1961 strengthened some provisions of their welfare programmes in line with the 1960 and 1961 amendments to the Social Security Act. Many set up new programmes of medical assistance for the aged and broadened assistance programmes for the needy blind and other special groups. Indiana's new programmes for aid to the permanently and totally disabled brought to 51 the number of jurisdictions with such programmes (47 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands).

A large number of states made changes liberalizing benefits and coverage in their unemployment insurance laws; seven states now adjust the amount of benefit payments automatically to reflect current wage levels, and Hawaii enacted legislation to extend the period of benefit payments when large numbers are jobless. The Federal Congress also provided for temporary extension of unemployment insurance payments for workers who had exhausted their benefit

* By the end of the year there were 17 states and many cities with anti-discrimination housing laws. Nine of these states ban discrimination in all housing, whether governmentally-assisted or not; the others prohibit discrimination only in housing built with the assistance of federal, state or local governments.

rights under the regular programmes. Hawaii extended unemployment insurance to include domestic workers, and Idaho made its programmes for local government workers compulsory instead of optional. Nine additional states provided continuing benefits for unemployed workers while undergoing re-training. Puerto Rico's unemployment insurance programme was brought into the federal-state system, and an unemployment insurance system went into effect in the Virgin Islands.

Vocational Rehabilitation

Significant advances continued in 1961 in the rehabilitation of the disabled. The total number of persons rehabilitated into employment under the public rehabilitation programme rose to 92,000, a gain of 4,200 over the previous year.

A number of states took action to reach new groups of the disabled or to offer additional opportunities for their employment. Kansas, New Jersey and South Carolina enacted legislation to provide rehabilitation services not only to those who may be restored to employment but included those who could be helped only to reach varying degrees of self-sufficiency. This brings to 13 the number of states with such legislation.

Provisions for rehabilitation services for injured employees covered by workmen's compensation were adopted for the first time in Maine, Montana and Pennsylvania.

Three states, Georgia, Nebraska and Nevada, provided for remunerative employment for the blind. Georgia and Nebraska authorized the operation of vending stands by blind persons in state buildings. Nevada further created a fund for the construction of the stands and also established a prevention of blindness programme.

Further actions to encourage the employment of the handicapped were reflected in the establishment or liberalization of subsequent injury funds by three states: Colorado, Kansas and New Mexico. A special fund within the Workmen's Compensation system of these states may now be used to pay the disabled person who suffers additional injury the difference between the compensation he receives for the recent injury and that paid for earlier injuries. This insures that a handicapped worker who suffers subsequent injury while on a job will receive full compensation; at the same time it protects employers by limiting their liability.

Health and Medical Care

The prevention and control of communicable diseases and other health dangers, the enforcement of food and drug standards, as well as the provision of medical services to certain groups, are co-operative efforts of federal, state and local governments. Most people in the United States pay directly for their medical, surgical and hospital services, often through voluntary health insurance plans offered by employers or co-operative insurance companies. Altogether about 136,000,000 persons, four million more than in 1960, were covered by voluntary hospital care insurance in 1961. Large numbers were also insured for surgical and medical services. Legislative and financial support continued for expansion and improvement of community health services and facilities, particularly for the aged and chronically ill. This included the extension of a federal-state programme for training practical nurses. State legislation strengthened standards for convalescent and similar homes. In several states, dental services were made available to additional persons unable to pay the costs of such care, and funds to further mental health were increased.

The attack on environmental health problems was stepped up in 1961 — particularly the dangers of water and air pollution — through co-ordinated programmes on a regional and industry basis. Among the most extensive was an interstate compact among the states on the Delaware River basin in the northeastern section of the United States. A number of states adopted legislation dealing with air pollution, which was reported an increasing problem by large cities in California and elsewhere.

Child and Youth Welfare

The Children's Bureau, which was set up as an agency of the Federal Government in 1912, placed major emphasis in 1961 on the recommendations of the decennial White House Conference on Children and Youth held the previous year. Studies of juvenile delinquency continued in 1961, emphasized the complexity of the environmental factors involved and the need for further research and more trained personnel.

Following establishment by the President of a Committee on Juvenile Delinquency, the Federal Congress initiated a three-year programme. This was done under the Juvenile Delinquency and Youth Offences Control Act which authorizes Federal grants and technical assistance to state, local and other public or non-profit agencies for evaluation and demonstration projects to prevent juvenile delinquency and to train youth workers. Idaho, Oregon, and Washington enacted laws to provide summer jobs and outdoor training for boys. In return for work on conservation projects on public lands, the boys receive subsistence, medical care, recreational facilities, and a stipend.

A number of states took action to improve juvenile courts and the treatment of young offenders. One state combined the functions of its domestic relations and juvenile courts in a family court, which could provide legal services on a broad basis.

The needs of particular groups of children continued to receive special attention. Several states undertook work camps or experimental work schools for children in migrant families.

Daytime care programmes were expanded. More and better institutional care was made available for mentally retarded or emotionally disturbed children, and more children suffering crippling diseases were provided with diagnosis and treatment. Children from other countries coming to the United States for adoption were given increased protection through an amendment to the Immigration and Nationality Act of 1952 requiring the adoptive parents to have observed the child before or during the adoptive process.

EDUCATION
(Article 26 of the Universal Declaration)

Free public education, the responsibility of state and local governments, has for some years been available to children in the United States, with compulsory attendance usually up to and including age sixteen and in some states until eighteen years of age. In the autumn of 1961, the public elementary and secondary schools of the country had a record enrolment of more than 37.9 million pupils. At least six million others were attending private and church-supported schools. Efforts continued in 1961 to improve the quality and scope of educational opportunities. Revenues for public school purposes have increased 20.6 per cent in the past two years. Over and above rising costs and increased enrolments, a net gain of about five per cent per year has been made in revenues for improving school services. The Federal Government, which assists, but does not direct, local programmes, also revised and improved its services.

Interest in the improvement of the quality of education led to action by hundreds of local school boards as well as by state and Federal authorities. Many of these improvements were stimulated by the publication of articles and studies in popular and professional periodicals, as well as by statements of national leaders in education, business and science stressing the need to gear the country's schools to accelerated technical and scientific advances. With the help of teachers, many of whom had profited through revitalized training, pupils were able to achieve a more intensive mastery of fundamental principles and techniques. More classrooms were provided with educational television, films, tape recorders and other new teaching devices. On the average, state departments of education have, since 1955, more than doubled their staff of consultants to help local schools, with programmes of science, mathematics, modern foreign languages and guidance.

Progress also continued, with matching funds from the Federal Government, in meeting the needs of exceptional children — the unusually brilliant child, as well as children who are crippled, blind, deaf, mentally retarded or socially maladjusted.

Counselling services, improved and expanded in 1961, aided more children to achieve education in accordance with their full capacities. Opportunities for education beyond high school increased through establishment of additional vocational institutes and junior colleges. Students with marked ability were encouraged to continue into college and university with such financial assistance as they might need.

Attendance in colleges and universities continued to rise, with an opening enrolment of 3,891,000 in the autumn of 1961. More courses on the United Nations and other aspects of international relations are being offered and more students are taking such courses.

Another indication of the rising level of education in the United States is the growing number of college graduates who seek advanced degrees.

The year was also marked by important court decisions which compelled further progress in achieving racial integration in publicly supported schools (see pp. 378–9 above). Additionally, an Ohio state court[1] upheld the right of every child to a basic education as a matter of public policy, stating that this right may not be frustrated or thwarted by ruling that a student should be forced out of school upon marriage.

The position of the teaching profession was further strengthened. By the end of the year, 37 states had enacted tenure laws for the protection of teachers, and state courts had upheld their rights to receive proper notice substantiating cause for dismissal[2] and a hearing thereon.[3] Most states granted salary increases. "Fringe benefits" were also materially increased, including liberalized leave and retirement provisions, health services, in-service training and better working conditions.

CULTURE AND SCIENCE
(Article 27 of the Universal Declaration)

Cultural Opportunities

In the United States many cultural activities, such as the publication of books, newspapers and magazines, theatre, ballet and operatic performances, film production, television and radio broadcasting, are generally matters of private enterprise. Public art galleries and museums, usually with no admission charge and open Sundays and holidays to encourage maximum attendance, are found in cities in every section, as are also auditoriums and other performing centres, exhibition grounds and public parks. The extent of public support for many cultural activities is typified in the growth of symphony orchestras, of which there were 1,250 in the United States in 1961, many in smaller cities and communities.

Public libraries continued to expand during the year, extending their branches and bookmobile

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[1] *State* v. *Chamberlain*, 175 N.E. 2nd 539 (1961).

[2] Wilson v. *Board of Education*, 106 N.W. 2nd 136 (Mich. 1960); *Hutchinson* v. *Board of Education of Greenfield*, 177 N.E. 2nd 420 (711.1961).

[3] *School District* v. *Thomas* 363 p. 2nd 700 (Colo. 1961); *Eidenmiller* v. *Board of Education*, 170 N.E. 2nd 792 (711.1960).

services to many rapidly developing suburban and rural areas. Centennial celebrations of various events in U.S. history were held in 1961 with support from both public and private sources. Interest in the American background was intensified by these observances, which has also led to the restoration of historical buildings and other sites throughout the country. Appreciation of native and other cultures found expression in a wider variety of community programmes, such as folk festivals, exchange visits with sister centres and other institutions abroad, and archeological research throughout the Americas. In view of the extent of such official projects, this account will focus on efforts to preserve and encourage the culture of American Indians and other indigenous peoples.

Research activities in the various phases of Indian culture are carried on by the Federal Government through the Smithsonian Institution with the help of information supplied by the Indian Bureau of the Department of Interior and other groups. New activities of the Indian Bureau, in 1961, included plans for the establishment of an Institute of American Indian Arts at Santa Fe, New Mexico, which will offer courses in painting, sculpture, ceramics, weaving, creative writing drama, the dance and music, in addition to the usual academic courses required for high school graduation.

The Smithsonian Museum in Washington maintains a large display of artifacts assembled from excavations and other source materials, and aids in the development of similar collections in state and local museums near sites occupied by Indians in the past. The Smithsonian is also examining other such locations; by the end of 1961, over 5,000 archeological sites had been located and recorded; 1,100 of these had been excavated or recommended for further testing. One of the most important finds occurred near Fort Thompson, in South Dakota; artifacts recovered from this site during 1961 indicated human habitation approximately 9,000 years ago.

Work in progress during the year resulted in further reports on Indian history, art and related subjects. The collection of data on the more than 200 Indian languages still in use is an important aspect of Indian research. State archeological commissions, educational institutions, museums and other official and private agencies shared in the study and publication of findings. The Arctic Institute of North America, which collaborates with the Smithsonian, was working during 1961 on the tenth and eleventh volumes of the *Arctic Bibliography*, a series which abstracts and indexes the contents of publications in all fields and languages pertaining to the indigenous inhabitants of the Arctic and sub-Arctic regions.

Benefits of Scientific Advance

During 1961, major scientific efforts of government agencies were directed toward exploration of outer space and studies of the structure of the earth and of weather conditions, with emphasis directed toward using these and other new discoveries for a variety of beneficial purposes. The resources of many educational, industrial and private research institutions supplemented governmental efforts in these fields and exceeded them in many others.

In June 1961, the first rocket-borne soundings of the "top-side" of the ionosphere were made by a four-stage rocket carried to an altitude of over 600 miles. The purpose of the experiment was to test the sounding system to be used in a high altitude sounding satellite to be placed in orbit at a later date (i.e., "Telstar"). Results of information thus obtained regarding radio-wave propagation were of value to radio and television broadcasters, space scientists and operators of many types of communications systems.

For the first time, information obtained from earth satellites was used by the United States Weather Bureau in its daily weather forecastings. Forecasts began to be prepared automatically by a new computer at the National Meteorological Center and weather maps are now drawn by electronic data plotters for speedy nationwide distribution.

In the spring of 1961, the Weather Bureau also enlarged its efforts to uncover the secrets of tornadoes and severe local storms, which each year cause in the United States more than 200 deaths and property damage running into millions of dollars. For this purpose the Bureau operated a small fleet of instrument-laden aircraft designed to investigate the causes of tempestuous weather. Air and electronic devices already in use were employed to track and forecast several hurricanes which during the past year swept the southern and eastern seaboards. Because of the information and early warnings provided, the loss of life was kept to an unprecedented low level. For the purpose of dispersing the violence of such storms, experiments in seeding the convective cells of hurricanes were successfully carried out.

By the end of 1961, weather forecasts initiated in 1958 on the Mississippi river delta to aid farmers were extended to seven more areas of the United States, and automatic telephone forecast services were available in eleven cities.

Hydrographic surveys were carried on by ships of the U.S. Coast and Geodetic Survey, resulting in new nautical charts of the Hawaiian and Alaskan coast areas. Bathymetric or ocean deep surveys continued along the Atlantic, Gulf and Pacific coasts in line with a long-range charting programme. In coastal waters, particular attention was devoted to the location and recording of obstructions and dangers to navigation. More than 1,200,000 copies of nautical, and over 40,000,000 aeronautical, charts were distributed.

Information on earthquakes and seismic sea waves was furnished by the Federal Government to domestic and foreign scientists.

Advances in the fields of public health and medical sciences where both Government and privately financed research are large factors, are referred to elsewhere.

REALIZATION THROUGH INTERNATIONAL CO-OPERATION
(Article 28 of the Universal Declaration)

By its support to the United Nations and other international organizations and in programmes of co-operation with other countries, the United States continued its effort to forward, not only for its own citizens but for people everywhere, "an international order in which the rights and freedoms set forth" in the Declaration "can be fully realized".

In addition to its regular contribution to the United Nations and the specialized agencies more than 46 per cent of the funds contributed to UNICEF during 1961 came from the United States, as well as from 33 to 68 per cent of the United Nations funds for refugees and 40 per cent of the United Nations fund for technical assistance.

The United States Government also continued its bilateral programme of international co-operation in close to 100 countries and dependent territories in 1961, sharing with other governments, at their request, in efforts to improve education and health facilities and to increase economic productivity. By supplying expert advice and other forms of assistance, the United States co-operated in over 1,700 projects.

Contributions to child welfare in many countries also continued, with the United States Government not only giving support to an extensive school lunch programme in the United States, but in 83 other countries as well; under this programme more than 345,000 metric tons of foods were made available by the United States Government in 1961 to supplement the diets of needy children abroad.

Also of continued impact was the educational exchange programme of the United States Department of State which was expanded during 1961 to embrace a total of 113 countries and territories. Grants from the United States Government facilitated the exchange of some 7,000 students, teachers, university lecturers, research specialists, and distinguished leaders in government, industry, labour, news media, women's affairs, the arts, and other fields. Exchanges were further facilitated among groups of performing artists and athletic teams. Although official programmes represent only a small part of the number travelling abroad, they assure continuing contacts between cultural leaders in the United States and other countries. 1961 was also marked by the official opening at the University of Hawaii of the Center for Cultural Interchange between East and West, and the signing of educational exchange agreements between the United States and Ethiopia, and the United States and Nepal.

The year also was marked by a further expansion of international research activities and the Federal Office of Vocational Rehabilitation continued to implement a series of international exchanges. Fifteen American plastic surgery specialists, for example, were selected to work in rotation in a medical college and hospital in India in a broad programme to improve the rehabilitation of the victims of leprosy, and by the end of the year the first three surgeons had commenced a two-year tour abroad. Two prosthetic specialists were also sent to Yugoslavia under a somewhat similar arrangement. This interchange bears a direct relationship to a co-operative programme initiated in 1960, granting financial support for rehabilitation research to be carried on in nine countries: Brazil, Burma, the United Arab Republic, India, Indonesia, Israel, Pakistan, Poland and Yugoslavia.

Through bilateral treaties, basic human rights were guaranteed between the United States and three additional countries. Treaties of friendship, commerce and navigation with Pakistan and with Denmark, and a treaty of amity and economic relations with the Republic of Viet-nam came into force in 1961, each containing provisions for equitable treatment by each party of the nationals of the other with respect to human rights, including the liberty of conscience, the holding of religious services, freedom to gather and transmit information for dissemination to the public abroad, and the nationals' right to communicate with persons inside and outside the other's territories by mail, telegraph and other means open to general public use. Also guaranteed were reasonable and humane treatment for persons taken into custody, the right of an arrested person to information regarding accusations against him, and the right to be brought to trial with all convenient speed, with due consideration for the preparation of his defence and the services of competent counsel of his choice. By the end of 1961 the United States was a party to at least 30 bilateral treaties containing similar provisions.

VENEZUELA

CONSTITUTION OF 23 JANUARY 1961[1]

The Congress of the Republic of Venezuela:

. . .

With the aim of maintaining the independence and territorial integrity of the Nation, strengthening its unity and ensuring the freedom, peace and stability of its institutions;

Protecting and dignifying labour, upholding human dignity, promoting the general well-being and social security; achieving an equitable participation by all in the enjoyment of wealth, according to the principles of social justice, and promoting the development of the economy in the service of man;

Maintaining social and legal equality, without any discrimination on account of race, sex, creed or social condition;

Co-operating with all other nations and especially with the sister republics of the continent, in the aims of the international community, based on mutual respect for sovereignties, the self-determination of peoples, the universal guarantee of the individual and social rights of the human person, and the repudiation of war, conquest and economic predominance as instruments of international policy;

Supporting the democratic order as the sole means that may never be surrendered of ensuring the rights and dignity of citizens and favouring the peaceful extension thereof to all the peoples of the earth;

And preserving and increasing the moral and historic heritage of the Nation, forged by the people in their struggles for freedom and justice and by the thoughts and deeds of the great servants of their country, which found their noblest expression in Simón Bolívar, the Liberator,

decrees the following:

CONSTITUTION

Title I
THE REPUBLIC, ITS TERRITORY AND POLITICAL DIVISIONS

Chapter I
Fundamental Provisions

. . .

Art. 3. The Government of the Republic of Venezuela is and always shall be democratic, representative, responsible, and alternating.

Art. 4. Sovereignty resides in the people, who exercise it, by means of suffrage, through the branches of the Public Power.

. . .

Title II
NATIONALITY

Art. 35. The following are Venezuelans by birth:

1. Persons born in the territory of the republic;
2. Persons born in foreign territory of a father and mother who are Venezuelan by birth;
3. Persons born in foreign territory of a father or a mother who was born in Venezuela, provided always that the said persons establish their residence in the territory of the republic or declare their intention of accepting Venezuelan nationality;
4. Persons born in foreign territory of a naturalized Venezuelan father or naturalized Venezuelan mother, provided that before reaching eighteen years of age they establish their residence in the territory of the republic and provided further that before reaching twenty-five years of age they declare their intention of accepting Venezuelan nationality.

Art. 36. Aliens who obtain a certificate of naturalization shall be deemed to be Venezuelans by naturalization.

Aliens who by birth have the nationality of Spain or of a Latin American State shall be entitled to special facilities in obtaining a certificate of naturalization.

Art. 37. The following persons shall be deemed to be Venezuelans by naturalization provided that they declare that such is their desire:

1. An alien woman married to a Venezuelan;
2. Aliens who were minors on the date of naturalization of the person who has parental authority over them, provided that they reside in the territory of the republic and make the declaration before they reach twenty-five years of age; and
3. Aliens who are minors and adopted by Venezuelans, provided that they reside in the territory of the republic and make the declaration before reaching twenty-five years of age.

Art. 38. A Venezuelan woman who marries an alien retains her nationality unless she declares her intention to the contrary and acquires the nationa-

[1] Text published in *Gaceta Oficial*, No. 662 extraordinary, of 23 January 1961, and furnished by the Government of Venezuela.

lity of her husband according to the law of his country.

Art. 39. Venezuelan nationality shall be lost: (1) by voluntary option or acquisition of another nationality; (2) by the revocation of naturalization by a judicial decision according to the law.

Art. 40. Venezuelan nationality by birth shall be restored if the person who lost it becomes domiciled in the territory of the republic and declares his intention to recover it, or if he remains in the country for a period of not less than two years.

. . .

TITLE III
DUTIES, RIGHTS AND GUARANTEES

Chapter I
GENERAL PROVISIONS

Art. 43. Every person shall have the right to the free development of his personality, subject to no limitations other than those deriving from the rights of others and from the public and social order.

Art. 44. No legislative provision shall have retroactive effect except when it imposes a lesser penalty. Laws governing procedure shall apply from the time they enter into force, even in cases that are pending before the courts; but in criminal trials evidence already introduced, in so far as it is beneficial to the defendant, shall be considered in accordance with the law in force at the time the trial began.

Art. 45. Aliens shall have the same duties and rights as Venezuelans, subject to the limitations and exceptions established by this Constitution and the laws.

Political rights are reserved to Venezuelans, except as provided in article 111.

Venezuelans by naturalization who entered the country before reaching seven years of age and resided therein permanently until attaining majority shall enjoy the same rights as Venezuelans by birth.

Art. 46. Every act of the Public Power which violates or impairs the rights guaranteed by this Constitution shall be null and void, and the public officials and employees who order or execute it shall be held criminally, civilly or administratively liable, as the case may be, and orders of a superior authority, manifestly contrary to the Constitution and the laws shall not serve as an excuse.

Art. 47. Venezuelans or aliens shall not be entitled in any case to claim compensation from the republic, the states, or municipalities for damage, loss or expropriation that was not caused by the lawful authorities in the exercise of their public office.

Art. 48. Every agent of authority who executes measures restricting freedom shall produce evidence of his identity on the request of the persons affected.

Art. 49. The courts shall protect every inhabitant of the Republic in the enjoyment and exercise of the rights and guarantees established in this Constitution, in conformity with the law.

Proceedings shall be brief and summary and the competent judge shall have the power to re-establish immediately the infringed juridical situation.

Art. 50. The enunciation of rights and guarantees contained in this Constitution shall not be construed as a denial of others which, being inherent in the human person, are not expressly mentioned herein.

The absence of a law regulating these rights shall not impair the exercise thereof.

Chapter II
DUTIES

Art. 51. It shall be the duty of Venezuelans to honour and defend their country, and to safeguard and protect the interests of the nation.

Art. 52. Both Venezuelans and aliens shall comply with and obey the Constitution and the laws, and the decrees, resolutions and orders issued by legitimate agencies of the Public Power in the exercise of their functions.

Art. 53. Military service shall be compulsory and shall be rendered without distinction as to class or social condition, for the periods and on the occasions fixed by law.

Art. 54. Labour is a duty of every person fit to perform it.

Art. 55. Education shall be compulsory within the degree and conditions fixed by law. Parents and representatives are responsible for compliance with this duty, and the state shall provide the means by which all may comply with it.

Art. 56. Every person shall be bound to contribute to the public expenditures.

Art. 57. The obligations that are incumbent upon the state with respect to the assistance, education and well-being of the people shall not exclude those which, by virtue of social solidarity, are incumbent on individuals according to their capacity. The law may impose compliance with these obligations in those cases where it may be necessary. It may also impose on persons who aspire to practise specified professions, the duty of rendering service for a certain time in the places and under the conditions indicated.

Chapter III
INDIVIDUAL RIGHTS

Art. 58. The right to life is inviolable. The death penalty shall not be established by any law whatsoever and no authority shall carry it out.

Art. 59. Every person has the right to be protected against injury to his honour, reputation or private life.

Art. 60. Personal liberty and safety are inviolable, and consequently:

1. No person shall be arrested or detained, unless caught *in flagrante delicto*, except under the written

order of an official authorized to decree the detention, in the cases and subject to the formalities prescribed by law. The summary proceedings shall not be prolonged beyond the maximum legally fixed limit.

The accused shall have access to the charges made against him in the investigation and to all means of defence prescribed by law as soon as the corresponding writ of detention is issued.

If a punishable act has been committed, the police authorities may adopt the provisional measures of necessity or urgency, that are indispensable to ensure investigation of the act and the trial of the guilty parties. The law shall fix a brief and peremptory time-limit in which the judicial authorities shall be notified of such measures, and shall also establish a time-limit in which the latter shall rule on them and it shall provide further that the said measures shall be revoked and shall be without effect unless confirmed within the time-limit aforesaid.

2. No person shall be deprived of his liberty in respect of any obligation non-compliance with which has not been defined by law as an offence or other infraction of the law.

3. It shall not be lawful to hold any person incommunicado nor subject him to torture or other treatment which causes physical or moral suffering. If any person inflicts physical or moral hurt on a person subjected to restriction of his liberty he shall be liable to punishment.

4. No person shall be required to take an oath nor compelled to make a statement or to acknowledge guilt in a criminal trial against himself, nor against his spouse or the person with whom he cohabits although not married, nor against his relatives with the fourth degree of consanguinity or second of affinity.

5. No person shall be convicted in a criminal trial unless he has first been personally notified of the charges and heard in the manner prescribed by law.

Persons accused of an offence against the *res publica* may be tried *in absentia*, with the guarantees and in the manner prescribed by law.

6. It shall not be lawful to continue to hold any person in detention if an order for his release has been made by a competent authority or if he has completed the penalty imposed. The deposit of security required by law for the grant of provisional liberty of a detained person shall not be subject to a tax of any kind.

7. No person shall be sentenced to perpetual or infamous punishment. Punishment involving restriction of liberty shall not exceed thirty years.

8. No person shall be brought to trial for the same acts for which he has previously been tried.

9. No person shall be subjected to forced recruitment nor to military service except as provided by law.

10. Measures of social interest against a person in a condition of social dangerousness shall not be taken unless the conditions and formalities established by law are duly complied with. The said measures shall in all cases be directed to the readaptation of the individual to life in society.

Art. 61. Discrimination based on race, sex, creed, or social condition shall not be permitted.

Documents of identification for acts of civil life shall contain no mention of any kind respecting filiation.

No official form of address shall be used other than "citizen" [ciudadano] and "you" [usted], except in diplomatic formulas.

Titles of nobility or hereditary distinction shall not be recognized.

Art. 62. The home shall be inviolable. It may not be broken into except to prevent the committing of a crime or to carry out decisions of the courts, in accordance with the law.

Sanitary inspections which are to be made in conformity with the law shall not be carried out except after due notice has been given by the officials who order them or who are to make them.

Art. 63. Correspondence in all its forms shall be inviolable. Letters, telegrams, private papers and any other means of correspondence shall not be seized except by judicial authority, subject to the fulfilment of the legal formalities and the maintenance in every case of due secrecy respecting domestic and private affairs that have no relation to the proceedings in course. Books, receipts and accounting documents may be inspected or audited only by competent authorities, in conformity with the law.

Art. 64. Every person shall have the right to travel freely through the national territory, change his domicile or residence, leave the republic and return thereto, bring his property into the country or take it out, with no other limitations than those established by law. Venezuelans may enter the country without the necessity of any authorization whatever. No act of the Public Power may establish against Venezuelans the penalty of banishment from the national territory, except as commutation of some other penalty and at the request of the guilty party himself.

Art. 65. Every person shall have the right to profess his religious faith and to practise his religion privately or publicly provided it is not contrary to public policy or morality.

Religious faiths shall be subject to the supreme inspection of the National Executive, in conformity with the law.

It shall not be lawful to invoke religious beliefs or disciplines in order to avoid complying with the laws or to prevent any person from exercising his rights.

Art. 66. Every person shall have the right to express his thoughts orally or in writing and to make use of any means of dissemination, without previous censorship; notwithstanding the above if any person makes a statement which constitutes an offence he shall on conviction be liable to the penalty laid down by law.

Anonymity shall be forbidden. Propaganada in favour of war shall be prohibited and likewise propaganda offensive to public morality and propaganda for the purpose of inciting to disobedience of the laws; nevertheless analysis or criticism of legal principles shall not be repressed.

Art. 67. Every person shall have the right to present or address petitions to any public entity or official, concerning matters that are within their competence, and to obtain the appropriate reply thereto.

Art. 68. Every person shall have the right to utilize the agencies of the administration of justice in order to protect his rights and interests, under the terms and conditions established by law, which shall fix rules that ensure the exercise of this right by any person who does not have sufficient means to do so.

Defence shall be an inviolable right at every stage and grade of a trial.

Art. 69. No person shall be judged except by his natural judges nor sentenced to a punishment not established by a pre-existing law.

Art. 70. Every person shall have the right of association for lawful ends, in conformity with the law.

Art. 71. Every person shall have the right to meet with other persons, publicly or privately without previous permission, for lawful ends and without arms. Meetings in public places shall be governed by law.

Chapter IV
Social Rights

Art. 72. The state shall protect associations, corporate bodies, societies and communities that have as their purpose the better fulfilment of the aims of the human person and of social life, and shall promote the organization of co-operatives and other institutions devoted to the improvement of the public economy.

Art. 73. The state shall protect the family as the essential cell of society, and shall take steps to ensure the improvement of its moral and economic position.

The law shall protect marriage, promote the organization of the family patrimony which shall not be subject to attachment, and take the necessary steps to assist every family to acquire adequate and hygienic housing.

Art. 74. Motherhood shall be protected, regardless of the civil condition of the mother. The necessary measures shall be enacted to ensure full protection to every child, without discrimination of any kind, from his conception until he is full grown, under favourable material and moral conditions.

Art. 75. The law shall provide the necessary means to enable every child, regardless of his filiation, to know his parents so that the latter may fulfil their duty of aiding, feeding, and educating their children, and so that childhood and youth may be protected against abandonment, exploitation or abuse.

Filiation by adoption shall be protected by law. The state shall share with the parents, in a subsidiary manner and according to the possibilities of the latter, the responsibility incumbent on them in the rearing of children.

The support and protection of minors shall be the object of special legislation and of special courts and bodies.

Art. 76. Every person shall have the right to the protection of his health.

The authorities shall supervise the maintenance of public health and shall provide the means of prevention and attention for those who lack them.

Every person shall be bound to submit to the health measures established by law, within limits imposed by respect for the human person.

Art. 77. The state shall take measures to improve the living conditions of the rural population.

The law shall establish an exceptional system required for the protection of Indian communities and their progressive incorporation into the life of the nation.

Art. 78. Every person shall have the right to an education. The state shall establish and maintain schools, institutions and services sufficiently endowed to ensure an access to education and to culture, with no other limitations than those deriving from the vocation and from aptitudes.

Education provided by public institutions shall be gratuitous in all phases. Nevertheless, the law may establish exceptions with respect to higher and special education, in the case of persons with means.

Art. 79. Every natural person or body corporate may freely devote himself to the arts or sciences, and, subject to a demonstration of his capacity, establish professorships and educational establishments under the supreme inspection and supervision of the state.

The state shall encourage and protect private education provided in accordance with the principles contained in this Constitution and the laws.

Art. 80. Education shall have as its aim the full development of the personality, the training of citizens to make them fit for life and the practice of democracy, the promotion of culture, and the development of a spirit of human solidarity.

The state shall organize and direct the educational system to enable it to fulfil the aims mentioned above.

Art. 81. Education shall be entrusted to persons of recognized morality and proved fitness for teaching, according to law.

The law shall guarantee to teachers occupational stability, a system of employment and a standard of living in accord with their high mission.

Art. 82. The professions that require a diploma and the conditions for the exercise thereof shall be determined by law.

Professional association [collegiación] is compulsory for the practice of those university professions that are determined by the law.

Art. 83. The state shall promote culture in its various forms and shall care for the protection and conservation of works, objects and monuments of historic or artistic value found in the country and strive to use them in the promotion of education.

Art. 84. Every person has the right to work. The state shall endeavour to achieve that every fit person may obtain employment that will provide him with worthy and decent means of existence.

Freedom of work shall not be subject to any other restrictions than those established by law.

Art. 85. Labour shall be the object of special protection. The law shall provide whatever is necessary to improve the material, moral and intellectual conditions of workers. The worker shall not renounce the provisions established by law in his favour or for his protection.

Art. 86. The law shall limit the maximum duration of working hours. Save for exceptions provided for, the normal duration of work shall not exceed eight hours a day or forty-eight hours a week, and for night work, in those cases in which this is permitted, it shall not exceed seven hours a day or forty-two hours a week.

All workers shall be entitled to a remunerated weekly day of rest and to paid vacations in conformity with the law.

A progressive diminution in working hours shall be promoted, within the scope of the social interest and in determined areas of activity, and suitable provisions shall be made for a better utilization of leisure time.

Art. 87. The law shall provide appropriate means conducive for obtaining fair wages; it shall establish rules for ensuring to every worker at least a minimum wage; it shall guarantee equal wages for equal work, without discrimination of any kind; it shall fix the participation in the profits of enterprises to which workers shall be entitled; and it shall protect wages and social benefits by exempting them from attachment in the proportion and cases specified by any other privileges and guarantees that it may prescribe.

Art. 88. The law shall adopt measures intended to guarantee stability of employment and shall establish the benefits to compensate for seniority of service of a worker and to protect him in case of unemployment.

Art. 89. The law shall determine the responsibility incumbent on a private person or body corporate for whose profit a service is rendered through an intermediary or contractor, without prejudice to the joint and several liability of the latter.

Art. 90. The law shall favour the development of the collective relationships of labour and shall issue the appropriate regulations for collective bargaining and the peaceful solution of disputes. Collective agreements are to be supported and the union clause may be included therein, under the conditions prescribed by law.

Art. 91. Unions of workers and of employers shall not be subject to any other requirements, with respect to their existence and operation, than those established by law for the purpose of ensuring a better accomplishment of their proper functions and of guaranteeing the rights of their members. The law shall protect in their employment, in a special manner, the promoters and directors of labour unions during the time and under the conditions required for ensuring union freedom.

Art. 92. Workers have the right to strike, under conditions fixed by law. In public services this right shall be exercised in those cases which the law may determine.

Art. 93. Women and workers under age shall receive special protection.

Art. 94. A system of social security shall be developed progressively, designed to protect all inhabitants of the republic against industrial accidents, sickness, disability, old age, death, unemployment and any other risks that can be covered by social security, and also against the charges derived from family life.

Persons who lack the economic means and who are not in a position to obtain them shall have the right to social assistance if they are covered by the social security system.

Chapter V
Economic Rights

Art. 95. The economic system of the republic shall be based on principles of social justice that ensure to all a dignified existence useful to the community.

The state shall promote economic development and the diversification of production, in order to create new sources of wealth, to increase the income level of the population, and to strengthen the economic sovereignty of the country.

Art. 96. Every person may freely engage in the lucrative activity of his choice, with no other limita-

tions than those provided in this Constitution and those established by law for reasons of safety, health or other reasons of social interest.

The law shall enact rules to prevent usury, undue price increases and, in general, abusive manoeuvres directed toward obstructing or restricting economic freedom.

Art. 97. Monopolies shall not be permitted. Concessions granting exclusive rights may be authorized, in conformity with the law, for a limited period, for the establishment and operation of works and services of public interest.

The state may reserve to itself specified industries, undertakings or services of public interest, for reasons of national benefit, and shall promote the creation and development of a basic heavy industry under its control.

The law shall decide in all matters relating to industries promoted and directed by the state.

Art. 98. The state shall protect private initiative, without prejudice to its power to enact measures for planning, rationalizing and promoting production and to regulate the circulation, distribution and consumption of wealth, in order to stimulate the economic development of the country.

Art. 99. The right to own property is guaranteed. By virtue of its social function property shall be subject to the taxes, restrictions and obligations imposed by law for purposes of public benefit or the general interest.

Art. 100. Rights in scientific, literary, and artistic works, inventions, names, trademarks, and mottos shall be entitled to protection for the time and under the conditions indicated by law.

Art. 101. No property of any kind shall be expropriated except on grounds of public benefit, under an enforceable judgement and subject to the payment of fair compensation. In the case of the expropriation of real property, for reasons of agrarian reform or the expansion and improvement of towns, and in cases of serious national interest specified by law, payment may be deferred for a specified time, or subject to partial cancellation by the issue of bonds of compulsory acceptance, with sufficient guarantee.

Art. 102. Confiscation shall not be decreed or executed except in those cases permitted by article 250. In the case of aliens this shall not apply to measures that are accepted by international law.

Art. 103. Lands acquired for purposes of exploration or the working of mining concessions, including hydrocarbons and other combustible minerals, shall revert to the nation in full ownership, without indemnity of any kind, upon termination of the concession for any reason whatsoever.

Art. 104. Railways, highways, pipelines and other means of communication or transportation constructed by enterprises exploiting natural resources shall be at the service of the public, under the conditions and subject to the limitations established by law.

Art. 105. The system of latifundia is contrary to the social interest. The law shall make adequate provision for the elimination thereof, and shall establish a system for the purpose of granting land to rural workers and inhabitants who lack it, and shall provide them with the means necessary for making it productive.

Art. 106. The state shall give attention to the protection and conservation of the natural resources within its territory, and the operation thereof shall be directed primarily toward the collective benefit of Venezuelans.

Art. 107. The law shall establish rules governing participation of foreign capital in the national economic development.

Art. 108. The republic shall favour Latin American economic integration. To this end it shall strive to co-ordinate resources and efforts to promote economic development and increase the common well-being and security.

Art. 109. The law shall regulate the composition, organization, and powers of the advisory bodies deemed necessary to hear the opinions of private economic sectors, the consuming public, organizations of workers, professional associations, and the universities, in matters of interest to economic life.

Chapter VI
POLITICAL RIGHTS

Art. 110. Voting is a right and a public function. Its exercise shall be compulsory, within the limits and conditions established by law.

Art. 111. All Venezuelans who have reached eighteen years of age and who are not subject to civil disability or political disqualification are voters.

Voting in municipal elections may be extended to aliens, subject to such residence and other requirements as the law may establish.

Art. 112. Voters who can read and write and who are over twenty-one years of age may be elected to and are fit to hold public office, with no other restrictions than those established in this Constitution and those derived from the requirements of fitness prescribed by law for holding specified positions.

Art. 113. The electoral laws shall ensure freedom and secrecy of the vote, and shall include the right of minorities to proportional representation.

Electoral bodies shall be composed in such a way that no political party or group predominates, and their members shall be entitled to the privileges established by law to ensure independence in the performance of their functions.

Competing political parties have the right of supervision over the electoral process.

Art. 114. All Venezuelans qualified to vote have the right to associate together in political parties in order to participate, by democratic methods, in the guidance of national policy.

The Legislature shall regulate the organization and activities of political parties in order to safeguard their democratic character and to guarantee their equality before the law.

Art. 115. Citizens have the right to demonstrate peacefully and without arms, subject only to the conditions established by law.

Art. 116. The republic recognizes asylum on behalf of any person subject to persecution or who is in danger, for political reasons, subject to the conditions and requirements established by law and the rules of international law.

Title IV
THE PUBLIC POWER

Chapter I
General Provisions

. . .

Art. 121. The exercise of the Public Power carries with it individual responsibility for abuse of power or for violation of the law.

. . .

Title V
THE NATIONAL LEGISLATIVE POWER

Chapter I
General Provisions

Art. 138. The Legislative Power shall be exercised by Congress, consisting of two chambers: the Senate and the Chamber of Deputies.

. . .

Art. 140. The following shall not be eligible as senators or deputies:

1. The President of the republic, the ministers, the secretary of the President of the republic, and the presidents and directors of the autonomous institutes, until three months after permanent separation from their posts;

2. The governors and secretaries of government of the states, the federal district, and federal territories until three months after permanent separation from their posts, if the representation corresponds to their jurisdiction, or while holding the position if another jurisdiction is concerned; and

3. National, state, or municipal officials and employees and those of autonomous institutes or of enterprises in which the state has a deciding participation, if the election takes place, in the jurisdiction where they serve, except in cases of a temporary, electoral, welfare, teaching or academic positions, or legislative or municipal representation.

The law may establish the ineligibility of certain electoral officials.

. . .

Chapter II
The Senate

. . .

Art. 148. For the constitution of the Senate two senators shall be elected from each state by universal and direct vote and two from the federal district, plus the additional senators resulting from the application of the principle of representation of minorities as established by law, which shall also determine the number and manner of election of alternates.

Those citizens who have held the office of the Presidency of the republic by popular election or have held it, in accordance with Article 187 of this Constitution, for more than half a term, shall also be members of the Senate unless they have been convicted of an offence committed in the performance of their functions.

Art. 149. To be a senator, a person must be a Venezuelan by birth and over thirty years of age.

. . .

Chapter III
The Chamber of Deputies

Art. 151. The Chamber of Deputies shall be constituted by the election by universal and direct vote and with the proportional representation of minorities, of as many deputies determined as may be by law, on the basis of a prescribed population, which shall not exceed one per cent of the total population of the country.

. . .

Art. 152. In order to be a deputy a person must be a Venezuelan by birth and over twenty-one years of age.

. . .

Chapter V
Enactment of Laws

Art. 173. The President of the republic shall promulgate the law within ten days after the date of receipt; but within that period, with the approval of the Council of Ministers, he may send a request together with a statement of his reasons to Congress for its reconsideration, to amend certain provisions or withdraw its approval of all or a part of the law.

. . .

In any case, if the objection is based on unconstitutionality, the President of the republic may, within the period fixed for promulgation of the law, have recourse to the Supreme Court of Justice, requesting its decision as to the alleged unconstitutionality. The court shall decide within a time-limit of ten days, reckoned from the date of receipt of the communication from the President of the republic. If the court should deny the claim of unconstitutionality or fail to decide within the aforementioned time-limit, the President of the republic shall promulgate the law within five days after the decision of the court or the expiration of the period aforesaid.

. . .

TITLE VI
THE NATIONAL EXECUTIVE POWER

Chapter I
THE PRESIDENT OF THE REPUBLIC

. . .

Art. 182. To be elected President of the republic a person must be a Venezuelan by birth, over thirty years of age, and a layman.

Art. 183. The election of President of the republic shall be by universal and direct vote, in conformity with the law. The candidate who obtains the relative majority of votes shall be proclaimed elected.

Art. 184. The President in office at the time of an election or a person who has held the presidency for more than one hundred days during the year immediately preceding the election, or the relatives of such persons within the third degree of consanguinity or second degree of affinity, shall not be eligible for the Presidency of the Republic.

Likewise, a person in the position of minister, governor, or secretary to the presidency of the republic on the day on which he became a candidate or at any time between that date and the election, shall not be eligible for the presidency of the republic.

Art. 185. A person who has occupied the presidency of the republic for a constitutional term or for more than half thereof shall not again be President of the republic or hold such office within ten years following the end of his term of office.

. . .

TITLE VII
THE JUDICIAL POWER AND THE STATE LEGAL DEPARTMENT

. . .

Chapter II
THE SUPREME COURT OF JUSTICE

. . .

Art. 215. The Supreme Court of Justice shall have the following functions:

. . .

3. To declare the total or partial nullity of national laws and other acts of the legislative bodies that are in conflict with this constitution;

4. To declare the total or partial nullity of state laws, municipal ordinances, and other acts of the deliberative bodies of the states and municipalities that are in conflict with this constitution;

. . .

6. To declare the nullity of regulations and other acts of the National Executive if they violate this constitution;

. . .

Chapter IV
THE STATE LEGAL DEPARTMENT

Art. 218. The State Legal Department shall supervise the strict observance of the constitution and the laws; it shall be under the direction and responsibility of the Chief State Counsel [Fiscal General] of the republic, with the help of such officials as may be specified by the organic law.

. . .

Art. 220. The State Legal Department shall have the following functions:

1. To ensure that constitutional rights and guarantees are respected;

. . .

4. To supervise the correct enforcement of the laws and the guarantee of human rights in jails and other prison establishments;

. . .

TITLE IX
EMERGENCY

Art. 240. The President of the republic may declare a state of emergency in the event of internal or external conflict or whenever well-founded reasons exist that either of these may occur.

Art. 241. In case of emergency, of disorder that may disturb the peace of the republic, or of grave circumstances that affect economic or social life, the President of the republic may restrict or suspend the constitutional guarantees, or some of them, with the exception of those proclaimed in article 58 and in sections 3 and 7 of article 60.

The decree shall state the reasons on which it is based, the guarantees that are restricted or suspended, and whether it shall be in force in all or a part of the national territory.

The restriction or suspension of guarantees shall not interrupt the functioning nor affect the prerogatives of the branches of the National Power.

Art. 242. The decree to declare a state of emergency or order the restriction or suspension of guarantees shall be issued in Council of Ministers and shall be submitted for consideration by the Chambers in joint session or by the Delegated Committee, within ten days after its publication.

Art. 243. The Decree to restrict or suspend the guarantees shall be revoked by the National Executive, or by the Chambers in joint session, when the reasons for which it was issued no longer exist. Cessation of the state of emergency shall be declared by the President of the republic in Council of Ministers and with the authorization of the Chambers in joint session or of the Delegated Committee.

Art. 244. If there are well-founded indications of imminent disturbance of the public order, which do not justify the restriction or suspension of constitutional guarantees, the President of the republic, in Council of Ministers, may adopt the measures necessary to prevent the occurrence of such events.

The said measures shall be limited to the detention or confinement of the parties suspected in the case and shall be submitted to the consideration of Congress or of the Delegated Committee within ten days following their adoption. If either body declares them to be unjustified, they shall cease to have effect

forthwith; otherwise they shall be maintained for a period that shall not exceed ninety days. The law shall regulate the exercise of this power.

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TRANSITIONAL PROVISIONS
OF THE CONSTITUTION

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Second. — Aliens to whom clauses Nos. 2 and 3 of Article 37 apply shall be entitled, provided that they attain the age of twenty-five years within one year following the date on which this constitution takes effect, to make the declaration of intention within that period.

. . .

Third. — Pending the enactment of a law to establish the special facilities to which article 36 of the constitution refers, the acquisition of Venezuelan nationality by those who by birth had the nationality of Spain or of a Latin American state shall continue to be governed by the statutory provisions now in force.

. . .

Fifth. — Pending the enactment of a special law to govern the protection of personal liberty in conformity with the provisions of article 49 of the constitution, the following rules shall apply:

Every person who becomes subject to deprivation or restriction of his liberty, in violation of constitutional guarantees, shall have the right to apply for a writ of *habeas corpus* to the judge of the criminal court of first instance who has jurisdiction at the place where the act which caused the application was carried out or where the aggrieved person is to be found.

Upon receipt of the application, which may be made by any person, the judge shall immediately order the official in whose custody the aggrieved person is held, to report within twenty-four hours the grounds for deprivation or restriction of liberty, and shall open a summary investigation.

The judge shall decide, within a time-limit not exceeding ninety-six hours after submission of the application, on the immediate release of the aggrieved person or the end of the restrictions imposed, if he finds that the legal formalities for deprivation or restriction of liberty were not fulfilled. The judge may make this decision conditional upon the deposit of security by the aggrieved person or prohibit his departure from the country for a period of not more than thirty days, if this is considered necessary.

Having made the decision the judge of first instance shall consult with the Superior Court to which the security must be sent on the same or the following day. The consultation shall not prevent immediate execution of the decision. The Superior Court shall render its decision within seventy-two hours following the date of receipt of the case.

Sixth. — Until the time limits and periods to which the last paragraph of No. 1 of article 60 of the constitution refers have been fixed by ordinary legislation, the police authorities who have adopted preventive detention measures must place the accused at the disposal of the appropriate court within a time limit of not more than eight days, together with a report on the action taken, for purposes of the investigation. The examining court must decide, with respect to the detention, within a time limit of ninety-six hours, except in serious and complicated cases requiring a longer time, which in no case shall exceed eight days. Only the police authorities are empowered to take the measures provided for in article 60 of the constitution, since according to law they are auxiliary officials of the Administration of Justice.

YUGOSLAVIA

DEVELOPMENTS IN 1961 IN THE FIELD OF THE PROTECTION OF HUMAN RIGHTS[1]

One of the characteristic features of social development in Yugoslavia in 1961 has been the substantial progress made in all fields for the protection and application of human rights. The gradual introduction of a system of self-government in enterprises and later in the public services, laid down by laws enacted in previous years, continued to be further broadened by other federal regulations and laws and provisions of the republics. The steady expansion of the material resources of self-government provided a possibility for this system to become more comprehensive and to develop further in practice. In addition, regulations embodying experience gained thus far, with direct bearing upon the protection of human rights confirmed in every-day practice, were also codified. Certain new provisions constituting further improvement in the protection of human rights have also been effected.

The following is a summary of the more important federal provisions, and provisions introduced by the republics in 1961[2] relating directly to the application of human rights in the field of execution of criminal sanctions, labour legislation, health, social welfare, and education.

I. CRIMINAL SANCTIONS

The changes which occurred in the system of criminal law in the Federal People's Republic of Yugoslavia in 1959 (amendment of the Penal Code and the Code of Criminal Procedure) resulted in the enactment of new provisions in the field of the execution of criminal sanctions, which include sanctions pursuant to old regulations in addition to new ones, and the experience and knowledge gained in daily practice made the enactment of new provisions imperative. A new Act on the Execution of Criminal Sanctions was therefore adopted in 1961. This Act, however, lays down only the principles, while details remain to be further elaborated through other provisions. First in the series of these provisions is the Regulation on Execution of the Penalty of Deprivation of Liberty, enacted in 1961.

The new provisions embody the essential elements of the former provisions, elaborating them further, and at the same time introducing new provisions which have, to a great extent, already been developed and confirmed by practice. They also bring the system of execution of sanctions into harmony with the changes in the system of sanctions. The principle of individualization of penalty has come to an even fuller expression and to this end greater authority has been granted to the organs executing them.

1. Act on the Execution of Criminal Sanctions
(*Official Gazette of the FPRY*, No. 24/61)

The Act covers criminal sanctions pronounced by the court in criminal proceedings — i.e., (1) penalties, (2) security measures, and (3) educational-reformatory measures. The basic principle is that persons against whom these sanctions are executed are deprived of, or restricted in, their rights only within the limits necessary for the realisation of the purpose of specific sanctions in pursuance of the law.

The execution of penalties and security measures, in conformity with this Act and other provisions, falls within the exclusive province of Federal legislation. On the other hand, the Act lays down only the general rules for the execution of educational measures which, in turn, will be further elaborated through provisions enacted by the people's republics.

The Act emphasizes the duty of authorities in charge of the execution of these sanctions to co-operate with those social organizations which could extend to them the necessary assistance depending upon their activities and tasks. The costs incurred in the execution of a penalty are not borne by the person against whom the penalty is administered.

The purpose of the penalty of deprivation of liberty is to educate persons to live and work in conformity with the law and to exercise their duties as citizens after the restoration of their liberty.

The convicted persons must be treated in a humane manner and with due respect for their personal dignity; their physical and mental health must be protected in a way most adaptable to their personality. All convicts are classified for this purpose. It is necessary to develop among them a feeling of personal responsibility: they must be extended facilities and encouraged to participate in the discharge of common duties and assignments, such as cultural-educational

[1] Note prepared by Dr. Boško Jakovljević, Research Fellow of the Institute for International Politics and Economics, Belgrade, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] The original texts of the legal provisions described here were published in the *Official Gazette of the Federal People's Republic of Yugoslavia*, in the Serbo-Croat, Slovene and Macedonian languages, and in the official gazettes of the people's republics.

activities, productive work, maintenance of order and hygiene, etc.

The sentence as a rule is served in common and separately only in cases prescribed by this Act.

Convicted persons are obliged to work if they are capable of it. Facilities are provided for them to engage in useful activities, the aim of which is to acquire, retain or improve their skills, working aptitudes and professional qualifications. General education and vocational training is organzied for those who may derive benefit from it. Various forms of cultural-educational work and physical training are carried on. Furthermore, daily newspapers and other information media are placed at their disposal.

Sentence is carried out in (1) penal corrective establishments where persons serving a sentence of one year or more are placed, and (2) prisons, for persons serving short-term sentences.

There are three types of penal corrective establishments: closed, semi-closed and open, depending upon the degree of limitation of liberty.

In addition to the general ones, there are special penal corrective establishments: (*a*) open, (*b*) closed, for younger adults — i.e., convicts — who at the time of their commitment to penal corrective establishment were of age but under twenty-three years, and (*c*) minors. Other types of penal corrective establishments may, if necessary, be also set up. Military personnel serve their sentence in military prisons.

When sentenced to serve a sentence, a convicted person who is still at liberty is summoned to report on a specified date to an appropriate institution but he must receive the summons eight days in advance. The sentence may be suspended upon appeal: (1) if the convict has been affected by an acute disease; (2) if death or serious illness has occurred in the immediate family; (3) if he is required to attend to urgent agricultural or seasonal work by a household lacking other manpower; (4) if he is under obligation to complete a specific assignment already begun and failure to do so would result in a substantial loss; (5) if suspension of sentence is necessary in order that the convicted person may finish school or sit for an examination for which he has been preparing; (6) in cases where both spouses or other members of a household have been convicted and the simultaneous execution of their sentences would endanger the welfare of aged, sick and minors; (7) if the convicted person is a mother nursing a child under one year of age or a pregnant woman expecting a child within three months. The secretariat for internal affairs of a district people's committee acts upon an appeal for deferment of sentence. Complaints against the decision of this secretariat may be lodged with the secretariat of state for internal affairs of a respective republic.

Convicted persons are acquainted with the by-laws, their rights and duties, and disciplinary measures as soon as they start to serve their sentence. The text of this Act, the Regulation on Execution of Penalty of Deprivation of Liberty, and the by-laws are accessible to all convicts.

Accommodation must be kept sanitary and suitable to climatic conditions, and nutrition must be adequate for the maintenance of health and physical fitness.

Working hours may not exceed the normal working hours prescribed for a corresponding job outside the prison. Inmates may not engage more than two hours daily in activities necessary for the maintenance of sanitary and normal living conditions within the institution. Convicted persons are entitled to eight hours of uninterrupted rest within each period of twenty-four hours, and to one day of rest per week. Those who have worked continually for eleven months are eligible to fourteen days rest in the course of one year. General provisions governing hygienic, technical and labour safety measures are also applicable to the working conditions of convicted persons. The convicts are entitled to disability insurance in case of accidents at work or occupational diseases.

Convicted persons receive remuneration for their work varying from one-fifth to one-third of remuneration which is paid for similar jobs outside prison; overtime work is paid for in full. Inmates who, owing to circumstances beyond their control, cannot work, receive financial support to cover their basic requirements, while those who become ill while at work, receive fifty per cent of their average monthly pay.

Convicted persons are entitled to free health protection: medical care and hospitalization; upon the request of his mother, a child may remain with her until it reaches one year of age.

Convicted persons may receive correspondence and address written representations to authorities and institutions for the purpose of protecting their rights. Foreign citizens are permitted to contact the consular organs of their state or the state which protects their interests. Stateless persons as well as refugees are permitted to contact an official organization which, in conformity with international law, protects their interests.

Convicted persons may send letters to members of their immediate family and other persons twice a month (those committed to prison) or once a month (those committed to rigorous imprisonment). Convicted persons are always informed of serious illness or death of a member of the family; members of the family are also advised in case of serious illness or transfer of a convicted person. Inmates may receive visitors twice or once a month, according to whether they are committed to prison or to rigorous imprisonment. A consular representative or a representative of an official organization concerned with the protection of refugees is permitted to visit a convicted foreign citizen or refugee in conformity with the by-laws; this right may be denied in cases where a

similar right is denied Yugoslav representatives in the state of which the convicted person is a citizen.

Inmates may receive parcels of clothing, items for personal use and printed matter not detrimental to their education once a month (once in two months in the case of persons committed to rigorous imprisonment). They may also receive food and money within the limits of special provisions.

Authorities of penal institutions may grant the inmates special privileges for good behaviour or if they distinguish themselves at work such as: the right to send and receive correspondence more frequently, the right to receive visitors within and outside the institution without supervision, to receive parcels, greater freedom of movement; seven-day leave of absence, and permission to spend an uninterrupted annual leave in part, or in full, outside the institution.

A convicted person, may, for justified reasons and upon his request, be granted interruption of the execution of punishment up to three months.

A convicted person has the right to present a complaint to the governor; if he has failed to receive a reply or if he is dissatisfied with it he may, through the intervention of the prison authorities, bring the matter to the attention of the respective secretariat of state for internal affairs; he may also raise the issue with a commissioner on inspecting tour of the prison, without there being present an official of the institution in which the convicted person is serving his sentence.

The governor is empowered to grant a prisoner a conditional release one month prior to the expiration of his term of sentence for good behaviour, provided that such a person has already served three-quarters of the time for which he was convicted.

Special committees, established in each municipality, which comprise the competent authority and representatives of social organizations, are obliged to extend assistance to released convicts.

Special provisions deal with the execution of penalties in prisons for minors, introduced with the amendment of the Penal Code in 1959. The rules governing the execution of penalty in such prisons are milder than in the case of prisons for adults and are executed in special institutions or wards.

The law further regulates the execution of other penalties: fines, confiscation of property (family homes, farm buildings, land, livestock and farm equipment, in the case of a convicted farmer who is, however, exempted from confiscation to the extent required for the upkeep of his family). Death penalties, which are very rarely pronounced (a pregnant woman or a seriously ill person cannot be executed), are carried out without the presence of public.

The second section of the Act deals with provisions governing six different forms of security measures: commitment to an institution for protection and medical treatment; obligatory medical treatment of alcoholics and narcotic addicts; prohibition of engagement in specific professions; loss of driving licence; deprivation of property and assets, and deportation.

The third section of the Act deals with general provisions on the execution of educational-corrective measures against minors, provisions which are going to be further developed by the people's republics through their own regulations. Only the principles for the commitment to disciplinary centres, where minors spend the irtime working and studying, are specified. These establishments cannot be linked with penal corrective establishments. This section of the Act also deals with measures pertaining to greater supervision on the part of parents, placement and supervision in a foster family, guardianship, institutional measures, educational establishments, educational-reformatory homes and establishments for handicapped minors.

This Act entered into force on 21 July 1961.

2. Regulation on the Execution of the Penalty of Deprivation of Liberty

(*Official Gazette FPRY*, No. 29/61)

This regulation was enacted in conformity with the Act on the Execution of Criminal Sanctions for the purpose of further elaborating the provisions pertaining to the Act. The regulation sets out in detail the rights of convicted persons, which are of great significance in the proper execution of penalty. Among others, this regulation elaborates on the work of the health service provided for convicts; the rights of pregnant and parturient women; commitment to execution of penalty; classification and admittance, whereby convicted persons are classified depending on their personal aptitudes, bearing in mind the nature of the offence, the penalty, and the former life of the convicted person and his health and age. The rules on accommodation prescribe the furnishing of a separate bed and at least 8 cubic metres of space per person, sufficient light to facilitate work and reading without damaging eyesight and the necessary sanitation. Convicted persons receive at least three meals a day, totalling 2,500 calories, and drinking water at any time. A convicted person may spend one-third of his remuneration for work on personal needs, one-third is kept by the establishment in the form of savings, and the remainder as well as what is unused of the part allocated for personal necessities may be sent to the family. Convicted persons may dispose freely of any work bonus received.

The Regulation prescribes the obligations of an institution, such as organized tuition for minors and younger adults who have not received elementary school education. Questions pertaining to libraries and reading rooms and the right to procurement of books and newspapers are also dealt with.

Leave of absence outside the institution may be granted for good behaviour, and provisions exist dealing with persons who spend their leave within

the institution and who are allocated special premises in which they may spend their free time. Another significant improvement is that persons housed in an open penal corrective institution may be employed outside that institution. Special provisions governing prisons for minors prescribe, *inter alia*, minimum food allowances of 3,000 calories daily, at least three hours of free time spent daily in the fresh air, entertainment and competitive programmes. Leave of absence for the purpose of visiting parents is granted twice a year, for the duration of fourteen days each, to those with best behaviour records.

In the provisions outlined above concerning the execution of criminal sanctions, together with the amended provisions of Penal Code and criminal procedure, the contemporary concepts on repression and prevention of crime and application of principles of re-education and integration into society have been further stressed. It is for this reason that principles on humanitarianism, individualization of execution of penalties, development of a sense of personal responsibility and active participation in the execution of penalty, common serving of sentence and classification according to personality, principles governing work, regulations pertaining to post-penal welfare and other essential principles and rules have been fully covered and elaborated on in great detail by the aforementioned provisions (the Act contains 165 articles, and the regulation 94) in order that, within the limits permissible in this sphere, the rights of persons towards whom the society has been compelled to apply measures of social defence may be protected in an objective and precise manner.

II. LABOUR LEGISLATION

Act amending the Law on Labour Relations

(*Official Gazette of the FPRY*, No. 8/61)

In conformity with the general development of self-government in the sphere of workers' management, the Act embodies changes which grant greater rights to workers in the field of labour relations. The right to make their own decisions is further developed in matters pertaining to working hours, hiring and dismissal, apportionment of income, etc. A workers' council is authorized, subject to approval by the municipal council of producers, to introduce a 45-hour working week in conformity with a decision taken by the Federal Executive Council. Workers are authorized to stipulate in their internal rules on labour relations within an enterprise in which they are employed, or by decision of the workers' council, on specific conditions under which overtime work may be introduced. However, the council of producers of a respective municipal people's committee may prohibit overtime work if it proves to be detrimental to the health of workers (in case of injuries, sickness, etc.).

The Act has granted greater freedom of action and autonomy to organizational units (departments of enterprises). Instead of the workers' council or a commission appointed by the workers' council representing an entire undertaking, workers may entrust organizational units within an enterprise to effect decisions on hiring and dismissal. They may also adopt rules on salary distribution within their respective units.

III. HEALTH

Acts on Health Protection and Health Service

After the enactment of the General Federal Act on Organization of Health Service in 1960 (see *Yearbook on Human Rights for 1960*) all people's republics have enacted their own laws on health protection and health service on the basis of that Act, further elaborating its provisions.[1]

IV. SOCIAL WELFARE

Regulation on Disablement Allowances

(*Official Gazette of the FPRY*, 53/61)

Within the system of welfare for disabled war veterans, families of disabled war veterans, now deceased, and families of those who died during the war, disability allowance is one of the most significant forms of grants. This allowance is of particular importance, as it makes such families eligible for free health protection and provides for the granting of an allowance for educational purposes to children of those who died during the war.

This regulation, enacted on the basis of the Disabled War Veterans, Act, introduced changes into the system of disability allowances and also made provisions for its increase.

The following are eligible for disability allowance:

(1) Disabled — group I-V (disability 80 per cent and over) irrespective of age and working capacity;

(2) Disabled — group VI-X (disability 70-20 per cent) if they are totally or permanently unfit for work.

In view of the fact that this actually is a subsistence allowance, persons with other sources of income are, as a rule, not eligible. The following conditions determine eligibility:

(1) Persons who neither hold a regular job nor receive pensions in the amount of 10,300 dinars per month;

(2) Persons who are not engaged in a profession or economic activity;

(3) Provided that income of a household does not exceed 5,500 dinars monthly per member, or 10,300 dinars monthly, if the person in question is a self-supporting disabled war veteran classed under group I-V, whose household does not receive income from agriculture.

[1] See *Official Gazette of the People's Republic of Slovenia*, No. 9/61; *Serbia*, No. 27/61; *Bosnia and Hercegovina*, No. 18/61; *Montenegro*, No. 17/61; *Croatia*, No. 17/61; *Macedonia*, No. 17/61.

Beneficiaries of disability allowances, if over fifty-five years of age (women) or sixty-five (men), or persons totally and permanently disabled, are eligible for this allowance under conditions analogous to those described above.

The basis for determining the right to a disability allowance and fixing the amount is the total land revenue, adjusted to correspond with the respective category of disabled.

Children of those who have died during the war receive special disability allowances up to the age of twenty-five for the purpose of education and qualification for independent work, provided that the income per member of the household does not exceed a specified sum.

V. EDUCATION

The General Education Act enacted by the Federal People's Assembly stipulates only the general principles of all forms of education.[1] The laws adopted by people's republics further elaborate these provisions for each specific type of school, depending upon the needs and circumstances prevailing within the respective republic. Two types of act enacted by the people's republics in 1961 should be mentioned in particular:

(1) Act on Higher Education

(*Official Gazette of the People's Republic of Slovenia*, No. 39/60; *Macedonia*, No. 20/61; *Croatia*, 27/61 and *Bosnia and Hercegovina*, No. 29/61)

These Acts deal with educational principles in high schools, in which instruction is imparted after finishing secondary school education.

(2) Acts on Special Schools

(*Official Gazette of the People's Republic of Bosnia and Hercegovina*, No. 18/61; *Macedonia*, No. 11/61; *Croatia*, No. 29/61; *Serbia*, No. 48/61; *Montenegro*, No. 27/61)

These Acts deal with general principles of schooling in special schools in which physically handicapped and mentally retarded children are educated and trained for independent life and work.

[1] See *Yearbook on Human Rights for 1958*, p. 268.

PART II

TRUST AND NON-SELF-GOVERNING TERRITORIES

A. Trust Territories

AUSTRALIA

TRUST TERRITORY OF NAURU

NOTE[1]

The *Public Service Ordinance 1961* enacts a new legislative code in relation to the Public Service of the territory. It deals with the composition and administration of the Public Service and the terms and conditions of employment therein.

Section 18 (1) provides that a person is not eligible for appointment to a permanent office in the service unless he is a Nauruan or a person recommended by the Public Service Commissioner. Section 18 (2) goes on to provide as follows:

"(2) The Commissioner shall not recommended that a person who is not a Nauruan be appointed to an office in the Public Service unless the Commissioner is of the opinion that there is no officer or a Nauruan who is available and as capable of performing the duties of the office."

[1] Note furnished by Mr. Patrick Brazil, Attorney-General's Department, Canberra, government-appointed correspondent of the *Yearbook on Human Rights*.

TRUST TERRITORY OF NEW GUINEA[1]

NOTE[2]

Child Welfare Ordinance 1961

The *Child Welfare Ordinance 1961* of the Territory of Papua and New Guinea is a comprehensive measure of 135 sections relating to the welfare of children. It follows the lines of the child welfare codes of the Australian States, except that adaptations have been made to suit territory conditions. The ordinance came into operation on 13 April 1962, and applies to children under the age of 16 years, irrespective of race.

A brief description of the matters dealt with is as follows:

(*a*) *Administration.* — The Director of Child Welfare is responsible for the administration of the ordinance. A Child Welfare Council is set up with the functions, among others, of advising the director on child welfare in the territory and making an annual report to the administrator of the territory on the working of the ordinance and any other matter relating to child welfare in the territory.

(*b*) *Allowances in respect of destitute children living with parents.* — The director may in certain circumstances grant an allowance for the support of a destitute child to the mother, father or a single woman who has adopted the child.

(*c*) *Institutions.* — The Administrator may approve a mission station, reformatory, orphanage, school, home or other establishment as an institution for the purposes of the ordinance.

(*d*) *Mentally defective children.* — Provision is made for the admission of mentally defective children to homes established for their care.

(*e*) *Children's courts.* — All offences by children other than homicide, and allegations that a child is destitute, incorrigible or uncontrollable are cognizable by children's courts set up under the ordinance. A special bench is provided; at least one of the members must be a woman. Restrictions are placed on publicity of proceedings. The courts may, instead of proceeding to conviction, follow any one of a number of specified courses — e.g., it may adjourn the hearing to enable the child to undergo such discipline or instruction for the purpose of reforming or rehabilitating the child, as the court, on the recommendation of a welfare officer, sees fit to order.

(*f*) *Destitute, neglected, incorrigible and uncontrollable children.* — A children's court may declare a child to be a destitute, neglected, incorrigible or uncontrollable child and order the child so declared to be committed to the care of the director or another person, or sent to an institution, or released on probation.

(*g*) *Affiliation proceedings.*

(*h*) *Wards* (defined to mean a child committed to the care of the director or sent to an institution

[1] This territory and the Territory of Papua are governed under an administrative union by the name of the Territory of Papua and New Guinea.

[2] Note furnished by Mr. Patrick Brazil, Attorney-General's Department, Canberra, government-appointed correspondent of the *Yearbook on Human Rights*.

or declared to be a ward or admitted to a home for mentally defective children). — Provision is made for the maintenance, custody and apprenticeship of wards.

(*i*) *Offences in respect of children.* — Failure by a person to provide adequate and proper food, clothing, lodging, nursing aid and medical aid for a child in his care is made an offence under the ordinance. Assaulting, ill-treating or exposing a child is also made an offence.

(*j*) *Employment of children.* — It is an offence for a person to cause or allow a child to take part in a public exhibition or performance if by so taking part the child would endanger his life or limb. A child is prohibited from engaging in street trading between 8 p.m. and 6 a.m. or at any time on Sunday.

(*k*) *Adoption of children.* — Provision is made for the adoption of children by order of the supreme court of the territory. However, adoption by native custom is still possible.

(*l*) Licensing of places established or used for the reception of children apart from their parents and of day nurseries and kindergartens.

Native Apprenticeship Ordinance 1961

This ordinance amends the *Native Apprenticeship Ordinance 1951-1960.* It provides for the maintenance and payment of the fares of the spouse and children of certain apprentices and the granting of holidays with pay.

B. Non-Self-Governing Territories

AUSTRALIA

TERRITORY OF PAPUA[1]

NOTE[2]

Child Welfare Ordinance 1961

Native Apprenticeship Ordinance 1961

These enactments are described in the note on the Trust Territory of New Guinea.

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[1] This territory and the Trust Territory of New Guinea are governed under an administrative union by the name of the Territory of Papua and New Guinea.

[2] Note furnished by Mr. Patrick Brazil, Attorney-General's Department, Canberra, government-appointed correspondent of the *Yearbook on Human Rights*.

PORTUGAL

PORTUGUESE GUINEA, ANGOLA AND MOZAMBIQUE

NOTE

Legislative decree No. 43893 of 6 September 1961 (*Diário do Governo*, No. 207, of 6 September 1961) repealed legislative decree No. 39666 on the Status of Indigenous Persons of Portuguese Nationality in the Provinces of Portuguese Guinea, Angola and Mozambique, of 20 May 1954, extracts from which appeared in the *Yearbook on Human Rights for 1954*, pp. 236-8.

Concerning this event, the Government of Portugal has communicated the following:

"The problem of the status of indigenous persons has always been of great concern to the Portuguese legislator. This concern explains the traditional existence in Portuguese legislation of special provisions governing the juridical status of aboriginal individuals. As a result, Portugal has traditionally respected the private law of populations incorporated in the national community from the time of the Discoveries.

"With the nation spreading onto every continent, coming into contact with peoples and cultures of every variety and welcoming each with the same sense of fraternity, precepts had to be laid down giving expression to what the Portuguese way of life stood for. The laws intended to protect the populations which became part of the Portuguese people came to constitute a coherent whole. It was known as the 'Estatuto dos Indígenas'.

"Even at the time of the enactment of the Portuguese Civil Code, which became applicable to the overseas territories by decree of 18 November 1869, there was still no misunderstanding possible as to the scope of these legal prescriptions, inspired by irreproachable principles. Nor was there any doubt as to the citizenship of all who came under Portuguese sovereignty, for citizenship meant nationality, and the latter had always been acquired by all according to the same rules.

"Portuguese tradition, it may be said, was to recognize and accept traditional cultures and political institutions. In so doing it extended to all men effective guarantees instead of guarantees which the diversity of political structures would render merely nominal. This respect for local usages and customs allied to a firm purpose of assimilation led to the harmonious multiracial society which exists in Portuguese territory and which represents one of the greatest services ever rendered to the dignity of man.

"Legislative decree No. 43893, of 6 September 1961, therefore seeks to take yet another step towards the attainment of those goals and, taking advantage of the results obtained so far, places the problem in the context of the evolution and progress of the overseas population.

"On the other hand, the Portuguese constitutional principle giving an interim character to special protective measures of the kind contained in legislative decree No. 39666, itself requires that they be frequently reviewed so as to bring them into harmony with the realities they were designed to meet: the more so as the evolution of the population takes place at an ever faster rate as a result of the measures and resources devoted to that evolution. The decision recently taken was based on the conclusions of studies by specialized centres, some of them already published, and on the unanimous vote of the plenary body of the Honourable Overseas Council, whose sections had been making a careful examination of the problem over a long period. The repeal of legislative decree No. 39666 was thus a logical step in the evolution of our legislation in this field."

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

BRITISH GUIANA

THE CONSTITUTION OF BRITISH GUIANA[1]

Part I

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 convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this article if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case —

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

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

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

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

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

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

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question authorizes the infliction of any punishment or the administration of any treatment that was lawful in British Guiana immediately before the date when this Constitution comes into force.

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 article, "forced labour" does not include —

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

(*b*) Any labour required of a member of a defence force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as such a member, any labour which that person is required by law to perform in place of such service; or

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

4. (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases —

(*a*) In execution of the sentence or order of a court in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;

(*b*) In execution of the order of a court made 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;

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

(*e*) In the case of a person who has not attained the age of twenty-one years, for the purpose of his education or welfare;

(*f*) For the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community:

(*g*) For the purpose of preventing the unlawful entry of that person into British Guiana or for the purpose of effecting the expulsion, extradition or other lawful removal from British Guiana of that person or the taking of proceedings relating thereto.

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

[1] The Constitution is annexed to the British Guiana (Constitution) Order in Council, 1961, published as *Statutory Instruments*, 1961, No. 1188, by H.M. Stationery Office, London.

(3) Any person who is arrested or detained in such a case as is mentioned in sub-paragraph (*c*) or (*d*) of paragraph 1 of this article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said sub-paragraph (*d*) 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 reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

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

5. (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 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 affect or may affect 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 established by law and constituted in such a manner as to secure its independence and impartiality.

(3) All proceedings of every court and proceedings for the determination of a person's civil rights or obligations before any other tribunal (including the announcement of the decision of the court or tribunal) shall be held in public:

Provided that the court or other tribunal may, to such extent as it may consider necessary in special circumstances where publicity would prejudice the interests of justice or in interlocutory civil proceedings, or to such extent as it may be empowered or required by law so to do in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of twenty-one years or the protection of the private lives of persons concerned in the proceedings, exclude from its proceedings persons other than the parties thereto and their legal representatives.

(4) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this paragraph to the extent that the law in question imposes upon any such person the burden of proving particular facts.

(5) Every person who is charged with a criminal offence —

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

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

(*c*) Shall be permitted to defend himself in person or by a legal representative of his own choice;

(*d*) Shall be afforded facilities 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 witnesses called by the prosecution; and

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

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

(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 which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it 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 any other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal proceedings relating to the conviction or acquittal; and no person who shows that he has been pardoned for a criminal offence shall be tried for that offence:

Provided that nothing in any law shall be held to be inconsistent with this paragraph by reason only that it authorizes any court to try a member of a defence force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under service law; but any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under service law.

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

(10) In sub-paragraphs (*c*) and (*d*) of paragraph 5 of this article "legal representative" means an advocate authorized to practise as such in British

Guiana or, except in relation to proceedings before a court in which a solicitor has no right of audience, a solicitor who is so authorized.

6. (1) Every person shall be entitled to respect for his private and family life and his home.

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

(*a*) In the interests of defence, public safety, public order, public morality, public health or the economic well-being of the community; or

(*b*) For the purpose of protecting the rights and freedom of other persons,

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

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

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

(3) No religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in any place of education managed or wholly maintained by that community or denomination.

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

(*a*) In the interests of defence, public safety, public order, public morality or public health; or

(*b*) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited interference of members of any other religion,

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

8. (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this article the said freedom includes freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

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

(*a*) Which is reasonably required —

(i) In the interests of defence, public safety, public order, public morality or public health; or

(ii) For the purpose of protecting the rights, reputations and freedoms of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, or the exhibition of cinematograph films; or

(*b*) Which imposes restrictions upon persons holding office under the Crown or upon members of a defence force or of the police force,

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

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

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

(*a*) Which is reasonably required —

(i) In the interests of defence, public safety, public order, public morality or public health; or

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

(*b*) Which imposes restrictions upon persons holding office under the Crown or upon members of a defence force or of the police force,

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

10. (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of movement, and for the purposes of this article the said freedom means the right to move freely throughout British Guiana, the right to reside in any part thereof, the right to enter British Guiana and immunity from expulsion therefrom.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent

with or in contravention of this article to the extent that the law in question makes provision —

(*a*) Which is reasonably required —

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

(ii) For the purpose of protecting the rights or freedoms of other persons,

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

(*b*) For the removal of persons from British Guiana to be tried outside British Guiana for criminal offences, or to be present at the hearing outside British Guiana of appeal proceedings relating to their conviction in British Guiana of criminal offences, or to undergo imprisonment outside British Guiana in execution of the sentences or orders of courts in respect of criminal offences of which they have been convicted;

(*c*) For the imposition of restrictions on the movement or residence within British Guiana of any person who does not belong to British Guiana or the exclusion or expulsion from British Guiana of any such person; or

(*d*) For the protection, well-being or advancement of the Amerindians of British Guiana.

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

(4) For the purposes of this article, a person shall be deemed to belong to British Guiana if he is a British subject and —

(*a*) Was born in British Guiana or of parents who at the time of his birth were ordinarily resident in British Guiana; or

(*b*) Has been ordinarily resident in British Guiana 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 the Commonwealth; or

(*c*) Has obtained the status of a British subject by reason of the grant by the Governor of British Guiana of a certificate of naturalization under the British Nationality and Status of Aliens Act, 1914, or the British Nationality Act, 1948; or

(*d*) Is the wife of a person to whom any of the foregoing sub-paragraphs of this paragraph 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 law under the age of eighteen years of a person to whom any of the foregoing sub-paragraphs of this paragraph applies.

11. (1) A person of a particular community, race, 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 the Government of British Guiana to disabilities or restrictions to which persons of other communities, races, 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, races, places of origin, religions or political opinions.

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

(*a*) For the appropriation of revenues or other funds of British Guiana;

(*b*) With respect to the entry into or exclusion from, or the employment, movement or residence within, British Guiana of persons who do not belong to British Guiana for the purposes of the last foregoing article;

(*c*) For the protection, well-being or advancement of the Amerindians of British Guiana;

(*d*) With respect to the marriage or divorce of persons of a particular place of origin or religion;

(*e*) For the imposition of any restriction on the rights and freedoms protected by articles 6 to 10 of this Constitution, being such a restriction as is authorized by paragraph 2 of article 6, paragraph 4 of article 7, paragraph 2 of article 8 or article 9, or sub-paragraph (*a*) of paragraph 2 of article 10, as the case may be; or

(*f*) For imposing any disability or restriction or according 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.

(3) Nothing in paragraph 1 of this article shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this constitution or any other law.

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

(*a*) Requiring the prompt payment of adequate compensation;

(*b*) Giving to any person claiming such compensation a right of access, for the determination of his

interest in or right over the property and the amount of compensation, to the Supreme Court; and

(*c*) Giving to any party to proceedings in the Supreme Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that court sitting as a court of original jurisdiction.

(2) Nothing in this article shall affect the operation of any law of the Legislature in force immediately before the date when this Constitution comes into force, or the making after that date and operation of any law which amends or replaces any such law as aforesaid and does not —

(i) Add to the interests, rights or property that may be acquired or taken possession of;

(ii) Add to the purposes for which or circumstances in which any interest, right or property may be acquired or taken possession of;

(iii) Make the conditions governing entitlement to any compensation or the amount thereof less favourable to any person having any interest in or right over any property; or

(iv) Deprive any person of any right such as is mentioned in sub-paragraph (*b*) or sub-paragraph (*c*) of paragraph 1 of this article.

(3) Subject to the provisions of paragraph 5 of this article, nothing in this article shall be construed as affecting the making or operation of any law so far as it provides for the acquisition or taking of possession of property —

(*a*) In satisfaction of any tax, rate or due;

(*b*) By way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence;

(*c*) As an incident of a lease, tenancy, mortgage, charge, bill of sale or contract;

(*d*) Of the Amerindians of British Guiana for the purpose of its care, protection or management;

(*e*) By way of the vesting and administration of trust property, enemy property, or the property of persons adjudged or otherwise declared bankrupt, persons of unsound mind, deceased persons, or bodies corporate or unincorporate in the course of being wound up;

(*f*) In the execution of judgements or orders of courts;

(*g*) By reason of its being in a dangerous state or injurious to the health of human beings, animals or plants;

(*h*) In consequence of any provision with respect to the limitation of actions; or

(*i*) For so long as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out of work thereon for the purpose of soil conservation.

(4) Nothing in this article shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate which is established directly by any law in force in British Guiana and in which no moneys have been invested other than moneys provided by any legislature established for British Guiana.

(5) The resumption of possession by or on behalf of the Crown of any property expressed (in whatever manner) to be held by any person during Her Majesty's pleasure otherwise than by reason of a breach of any condition of defeasance subject to which such property was held as aforesaid shall be deemed to be a compulsory taking of possession, of such property for the purposes of this article;

Provided that such resumption of possession shall not be required to be authorized by a written law.

13. (1) If any person alleges that any of the provisions of this part of this constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matters which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction —

(*a*) To hear and determine any application made by any person in pursuance of the preceding paragraph; and

(*b*) To determine any question arising in the case of any person which is referred to it in pursuance of the next following paragraph,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this part of this constitution to the protection of which the person concerned is entitled:

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

(3) If in any proceedings in any court established for British Guiana other than the Supreme Court any question arises as to the contravention of any of the provisions of this part of this constitution the court in which the question has arisen shall refer the question to the Supreme Court unless, in its opinion, the raising of the question is merely frivolous or vexatious.

(4) No law of the Legislature shall make provision with respect to rights of appeal from any determination of the Supreme Court made in proceedings brought in the Supreme Court in pursuance of this article that is less favourable to any party thereto than the rights of appeal from determinations of the Supreme Court that are accorded generally to

parties to civil proceedings in that court sitting as a court of original jurisdiction.

(5) No appeal shall lie from any determination under this article that any application or the raising of any question is merely frivolous or vexatious.

. . .

14. (1) This article applies to any period when —

(*a*) Her Majesty is at war; or

(*b*) There is in force a proclamation (in this article referred to as a "proclamation of emergency") made by the governor and published in the *Gazette* declaring that a state of public emergency exists for the purposes of this article; or

(*c*) There is in force a resolution of each chamber of the Legislature in favour of which there were cast the votes of not fewer than nine members of that chamber, in the case of a resolution of the Senate, and twenty-two members of that chamber, in the case of a resolution of the Legislative Assembly, declaring that democratic institutions in British Guiana are threatened by subversion.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of paragraph 2 of article 3, article 4, any provision of article 5 other than paragraph 7 thereof, or any provision of articles 6 to 11 of this constitution to the extent that the law in question makes in relation to any period to which this article applies provision, or authorizes the doing during any such period of anything, which is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

(3) (*a*) Where any proclamation of emergency has been made, copies thereof shall as soon as is practicable be laid before both chambers of the Legislature, and if by reason of adjournment or prorogation those chambers are not due to meet within five days the governor shall, by proclamation published in the *Gazette*, summon them to meet within five days and they shall accordingly meet and sit upon the day appointed by the proclamation and shall continue to sit and act as if they had stood adjourned or prorogued to that day.

(*b*) A proclamation of emergency shall, unless it is sooner revoked by the governor, cease to be in force at the expiration of a period of fourteen days beginning on the date on which it was made or such longer period as may be provided under the next following sub-paragraph, but without prejudice to the making of another proclamation of emergency at or before the end of that period.

(*c*) If at any time while a proclamation of emergency is in force (including any time while it is in force by virtue of the provisions of this sub-paragraph) a resolution is passed by each chamber of the Legislature approving its continuance in force for a further period, not exceeding three months, beginning on the date on which it would otherwise expire, the proclamation shall, if not sooner revoked, continue in force for that further period.

(4) A resolution such as is referred to in sub-paragraph (*c*) of paragraph 1 of this article shall, unless it is sooner revoked by a resolution of the chamber by which it was passed, cease to be in force at the expiration of two years beginning on the date on which it was passed or such shorter period as may be specified therein, but without prejudice to the passing of another resolution by that chamber in the manner prescribed by that sub-paragraph at or before the end of that period.

15. (1) Where —

(*a*) Any person is lawfully detained only by virtue of paragraph 2 of article 14 of this constitution; or

(*b*) The movements or residence within British Guiana of any person are lawfully restricted (otherwise than by order of a court) by virtue only of such a provision as is referred to in sub-paragraph (*a*) of paragraph 2 of article 10 of this constitution or only of paragraph 2 of article 14 of this constitution,

and that person so requires at any time during the period of detention or restriction not earlier than six months after he last made such a requirement during that period, his case shall be reviewed by a tribunal established for the purposes of this article.

(2) On any review by a tribunal in pursuance of the last foregoing paragraph of the case of any person the tribunal may make recommendations concerning the necessity or expedience of continuing the detention or restriction to the authority by whom it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendation.

(3) A tribunal established for the purposes of this article shall be so established by law and constituted in such manner as to secure its independence and impartiality and presided over by a person appointed by the Chief Justice of the Supreme Court from among the persons authorized to practise in British Guiana as advocates or solicitors.

16. (1) In this part of this constitution, unless it is otherwise expressly provided or required by the context —

"Contravention" in relation to any requirement includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"Court" means the Supreme Court and any court (other than a court constituted by or under service law) established by a law of the Legislature the members of which hold or are acting in offices to which article 91 of this constitution applies, and includes the Federal Supreme Court of the West Indies and Her Majesty in Council:

Provided that —

(*a*) In articles 1, 3 and 4, paragraphs 3, 5, 6 and 8 but not the proviso thereto) of article 5, article 10,

paragraph 3 of article 11, and paragraph 3 of article 13 it includes, in relation to an offence against service law, a court constituted by or under service law; and

(*b*) In articles 3 and 4 it includes, in relation to such an offence, an officer of a defence force or of the police force;

"Defence force" means any naval, military or air force raised under a law of the Legislature;

"Member", in relation to a defence force or other armed force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

"Service law" means a law regulating the discipline of members of a defence force or of the police force.

(2) Any reference in articles 1, 4, 10, 11 and 12 of this constitution to a criminal offence shall be construed as including an offence against service law, and any such reference in paragraphs 4 to 9 of article 5 of this constitution shall, in relation to proceedings before a court constituted by or under service law, be construed in the same manner.

(3) Nothing done under the authority of the law of any country other than British Guiana to a member of an armed force raised under that law and lawfully present in British Guiana shall be held to be in contravention of this part of this constitution.

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Part IV

THE LEGISLATURE

General

46. There shall be, for British Guiana, two chambers of the Legislature which shall be styled, respectively, the Senate and the Legislative Assembly.

The Senate

47. (1) Subject to article 51 of this constitution, the Senate shall consist of thirteen members (in this constitution referred to as "senators") who shall be appointed by the governor by instrument under the Public Seal in accordance with this article.

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The Legislative Assembly

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55. (1) Subject to the provisions of paragraph 2 of this article, a person shall be qualified to be registered as an elector for elections to the Legislative Assembly in an electoral district if, and shall not be so qualified unless, on the qualifying date, he —

(*a*) Is a British subject of the age of twenty-one years or upwards;

(*b*) Is resident in British Guiana and either has been so resident for a period of two years immediately before the qualifying date or is domiciled in British Guiana; and

(*c*) Has such connection with that electoral district by virtue of residence therein as may be prescribed by any law of the Legislature.

(2) No person shall be qualified to be registered as an elector for elections to the Legislative Assembly in any electoral district who on the qualifying date —

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

(*b*) Is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in British Guiana; or

(*c*) Is disqualified for such registration by virtue of any law of the Legislature relating to offences connected with elections.

(3) In this article, "qualifying date" means such date as may be appointed by or under any law of the Legislature as the date with reference to which a register of electors for the electoral district concerned shall be compiled or revised.

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57. Subject to the next following article, a person shall be qualified to be elected as a member of the Legislative Assembly if, and shall not be qualified to be so elected unless, he —

(*a*) Is a British subject of the age of twenty-one years or upwards;

(*b*) Has resided in British Guiana for a period of two years immediately before the date of his nomination for election or is domiciled and resident in British Guiana at that date; and

(*c*) Is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Assembly.

58. (1) No person shall be qualified to be elected as a member of the Legislative Assembly who —

(*a*) Is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state;

(*b*) Is disqualified for membership of the Legislative Assembly by any law of the Legislature enacted in pursuance of the next following paragraph;

(*c*) Has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged;

(*d*) Is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in British Guiana;

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

a court, or is under such a sentence of imprisonment the execution of which has been suspended;

(*f*) Is disqualified for membership of the Legislative Assembly by any law of the Legislature by reason of his holding, or acting in, any office the functions of which involve —

(i) Any responsibility for, or in connection with, the conduct of any election, or

(ii) Any responsibility for the compilation or revision of any electoral register;

(*g*) Is disqualified for membership of the Legislative Assembly by virtue of any law of the Legislature relating to offences connected with elections; or

(*h*) Is disqualified for membership of the Legislative Assembly by any law of the Legislature by reason of his having any such interest in any such government contract as may be prescribed by any such law.

(2) The Legislature may by law provide that, subject to such exceptions and limitations (if any) as may be prescribed therein, a person shall be disqualified for membership of the Legislative Assembly by virtue of —

(i) His holding or acting in any office or appointment specified (either individually or by reference to a class of office or appointment) by such law;

(ii) His belonging to any of the armed forces of the Crown specified by such law or to any class of person so specified that is comprised in any such force; or

(iii) His belonging to any police force specified by such law or to any class of person so specified that is comprised in any such force.

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MISCELLANEOUS

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83. For the purposes of sub-paragraph (*f*) of paragraph 1 of article 49, sub-paragraph (*a*) of paragraph 2 of article 55 and sub-paragraph (*e*) of paragraph 1 of article 58 of this constitution —

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

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

STATE OF MALTA

THE MALTA (CONSTITUTION) ORDER IN COUNCIL 1961

Made on 24 October 1961[1]

. . .

Part II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

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

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

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

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

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

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

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case —

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

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

[1] Published in *Statutory Instruments* 1961, by H.M. Stationery Office, London.

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

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

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

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

(*a*) In execution of the sentence or order of a court, whether in Malta or elsewhere, in respect of a criminal offence of which he has been convicted;

(*b*) In execution of the order of a court punishing him for contempt of that court or of a court inferior to it;

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

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

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

(*f*) In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

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

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

(*i*) For the purpose of preventing the unlawful entry of that person into Malta, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Malta or the taking of proceedings relating thereto.

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

(3) Any person who is arrested or detained —

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

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

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

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

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

(6) If any person who is lawfully detained by virtue only of such a law as is referred to in the last foregoing subsection so requests at any time during the period of that detention not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice of Malta from among the persons entitled to practise in Malta as advocates or legal procurators.

(7) On any review by a tribunal in pursuance of the last foregoing subsection of the case of any detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by whom it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

8 (1) No person shall be held in slavery or servitude or required to perform forced labour.

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

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

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

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

(*d*) Any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community.

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

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

any description of punishment that was lawful in Malta immediately before the appointed day.

10. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by the law applicable to that taking of possession or acquisition —

(*a*) For the prompt payment of adequate compensation;

(*b*) Securing to any person claiming such compensation a right of access to an independent and impartial court or tribunal established by law for the purpose of determining his interest in or right over the property and the amount of any compensation to which he may be entitled, and for the purpose of obtaining prompt payment of that compensation; and

(*c*) Securing to any party to proceedings in that court or tribunal relating to such a claim a right of appeal from its determination to the Court of Appeal in Malta.

(2) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property —

(*a*) In satisfaction of any tax, rate or due;

(*b*) By way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence;

(*c*) As an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(*d*) By way of the vesting or administration of trust property, enemy property or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or unincorporate in the course of being wound up;

(*e*) In the execution of judgements or orders of courts;

(*f*) By reason of its being in a dangerous state or injurious to the health of human beings, animals or plants;

(*g*) In consequence of any law with respect to the limitation of actions;

(*h*) For so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon —

(i) Of work of soil conservation or the conservation of other natural resources; or

(ii) Of agricultural development or improvement that the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed, to carry out.

(3) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided by any legislature in Malta.

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

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

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

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

(*c*) To enable a department of the Government of Malta, or a local government authority, or a body corporate established by law for a public purpose, to enter on the premises of any person in order to value those premises for the purpose of any tax, rate or due, or in order to carry out work connected with any property which is lawfully on those premises and which belongs to that government, that authority, or that body corporate, as the case may be;

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

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

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

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

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

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

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

(*e*) Shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that court

on the same conditions as those applying to witnesses called by the prosecution; and

(*f*) Shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge; and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

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

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

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

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

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

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

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

(10) Nothing in the last foregoing subsection shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority —

(*a*) May consider necessary or expedient in circumstances where publicity would prejudice the interests of justice; or

(*b*) May be empowered by law to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

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

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

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

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

(*d*) Any provision of this section, other than paragraphs (*a*), (*d*) and (*f*) of subsection 2, subsection 4 and subsection 6, to the extent that the law in question authorizes the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency.

(12) In this section "legal representative" means a person entitled to practise in Malta as an advocate or, except in relation to proceedings before a court in which a legal procurator has no right of audience, as a legal procurator.

13 (1) All persons in Malta shall have full liberty of conscience and enjoy the free exercise of their respective modes of religious worship.

(2) No person shall be subject to any disability or be excluded from holding any office by reason of his religious profession.

14. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent

with or in contravention of this section to the extent that the law in question makes provision —

(*a*) That is reasonably required —

(i) In the interests of defence, public safety, public order, public morality or public health; or

(ii) For the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or

(*b*) That imposes restrictions upon public officers. and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

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

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

(*a*) That is reasonably required —

(i) In the interests of defence, public safety, public order, public morality or public health; or

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

(*b*) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

16. (1) Any person who alleges that any of the provisions of this part of this order has been, is being, or is likely to be, contravened in relation to him, or such other person as the Civil Court, First Hall, in Malta may appoint at the instance of any person who so alleges, may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the Civil Court, First Hall, for redress.

(2) The Civil Court, First Hall, shall have original jurisdiction to hear and determine any application made in pursuance of the preceding subsection, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any rights to which any person concerned may be entitled under this part of this order:

Provided that the court may, if it considers it desirable so to do, decline to exercise its powers under this subsection in any case where it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) Where any question as to the interpretation of any of the provisions of this part of this order arises in any proceedings in any court other than the Civil Court, First Hall, or the Court of Appeal in Malta, the person presiding in that court shall refer the question to the Civil Court, First Hall, unless, in his opinion, the raising of the question is merely frivolous or vexatious; and that court shall give its decision on any question referred to it under this subsection and, subject to the next following subsection, the court in which the question arose shall dispose of the question in accordance with that decision.

(4) Any party to proceedings brought in the Civil Court, First Hall, in pursuance of this section shall have the same rights of appeal as are accorded generally to parties to civil proceedings in that court.

(5) No appeal shall lie from any determination under this section that any application or the raising of any question is merely frivolous or vexatious.

. . .

17. (1) In this part of this order, unless the context otherwise requires —

"Contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"Disciplinary law" means a law regulating the discipline —

(*a*) Of any disciplined force; or

(*b*) Of persons serving prison sentences;

"Disciplined force" means —

(*a*) A naval, military or air force;

(*b*) The Malta Police Force;

(*c*) The Admiralty Constabulary in Malta; or

(*d*) The Malta Prison Service;

"Member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In this part of this order "a period of public emergency" means any period during which —

(*a*) Her Majesty is at war; or

(*b*) There is in force a resolution of the Assembly supported by the votes of not less than two-thirds of all the members of the Assembly declaring that a state of public emergency exists.

(3) A resolution such as is referred to in paragraph (*b*) of the last foregoing subsection shall remain in force for twelve months or such shorter period as may be specified therein:

Provided that any such resolution may be extended from time to time for a further period not exceeding

twelve months by another resolution of the Assembly passed in the manner prescribed by that paragraph and may be revoked at any time by resolution of the Assembly.

(4) In relation to any person who is a member of a disciplined force raised under a law enacted by any legislature in Malta, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this part of this order other than sections 6, 8 and 9.

(5) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Malta, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this part of this order.

. . .

Part VI

LEGISLATIVE ASSEMBLY

. . .

46. Subject to the provisions of the next following section, a person shall be qualified to be elected a member of the Assembly if, and shall not be qualified to be so elected unless, he has the qualifications for registration as a voter for the election of members of the Assembly mentioned in section 51 of this order.

47. (1) No person shall be qualified to be elected a member of the Assembly who —

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

(*b*) Holds, or is acting in, any public office;

(*c*) Is a party to, or is a partner with unlimited liability in a partnership or a director or manager of a company which is a party to, any contract with the Government of Malta for or on account of the public service, and has not, within one month before the date of election, published in the Gazette a notice setting out the nature of any such contract, and his interest, or the interest of any such partnership or company, therein;

(*d*) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth;

(*e*) Is interdicted or incapacitated for any mental infirmity or for prodigality by a court in Malta, or is otherwise determined in Malta to be of unsound mind;

(*f*) Has been sentenced by a court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term of or exceeding one year, or has been sentenced by a court in Malta to any punishment upon conviction of any crime referred to in sub-title II of title VII of book first of the Malta Criminal Code (*a*) (which sub-title relates to crimes against the peace and honour of families and against morals), 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;

(*g*) Holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any election of members of the Assembly or the compilation or revision of any electoral register; or

(*h*) Is disqualified for membership of the Assembly under any law for the time being in force in Malta because he has been convicted of any offence connected with the elections of members of the Assembly.

(2) A person shall not be treated as holding, or acting in, a public office for the purposes of this section —

(*a*) If he is on leave of absence pending relinquishment of a public office;

(*b*) By reason only that he —

(i) Is receiving any remuneration in respect of his tenure of the office of Minister; or

(ii) Is receiving a pension or other like allowance in respect of public service; or

(*c*) If he is a teacher at the Royal University of Malta who is not by the terms of his employment prevented from the private practice of his profession or called upon to place his whole time at the disposal of the Government of Malta.

(3) A provision in any law for the time being in force in Malta that a person shall not be treated as holding, or acting in, a public office for the purposes of this section shall have effect as if it were included in this section.

. . .

51. Subject to the provisions of the next following section, a person shall be qualified to be registered as a voter for the election of members of the Assembly if, and shall not be qualified to be so registered unless —

(*a*) He is a British subject;

(*b*) He has attained the age of twenty-one years; and

(*c*) He is resident in Malta and has been so resident for a period of not less than one year immediately preceding his registration:

Provided that no member on full pay of any part of Her Majesty's forces maintained by the annual vote of the Parliament of the United Kingdom shall be entitled to be so registered unless he is domiciled in Malta.

52. No person shall be qualified to be registered as a voter for the election of members of the Assembly if —

(*a*) He is interdicted or incapacitated for any mental infirmity or for prodigality by a court in Malta

or is otherwise determined in Malta to be of unsound mind;

(*b*) He has been sentenced by a court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term of or exceeding one year, or has been sentenced by a court in Malta to any punishment upon conviction of any crime referred to in sub-title II of title VII of book first of the Malta Criminal Code (*a*) (which sub-title relates to crimes against the peace and honour of families and against morals), and has not either suffered the punishment to which he was sentenced, or such other punishment as may by competent authority have been substituted therefor, or received a free pardon; or

(*c*) He is disqualified for registration as a voter under any law for the time being in force in Malta because he has been convicted of any offence connected with the election of members of the Assembly.

. . .

STATE OF SINGAPORE

THE WOMEN'S CHARTER, 1961

ORDINANCE NO. 18 OF 1961, ASSENTED TO ON 30 MAY 1961

NOTE

This ordinance provided for the solemnization and registration of marriages and amended and consolidated the law relating to divorce, the rights and duties of married persons, the maintenance of wives and children and the punishment of offences against women and girls. As from 2 March 1961, any unmarried person was permitted to marry only one person and any person already married to one or more person was not permitted to marry a further person; Muslim marriages, however, were excepted from this provision. No non-Muslim marriage involving a person under eighteen was to be valid except where the appropriate Minister has authorized marriage by a girl under eighteen. Except in the case of Muslim marriages, (i) section 45 of the ordinance bound the husband and wife to co-operate in safeguarding the interests of the union and in caring and providing for the children; both were to have the right separately to engage in any trade or profession or in social activities and both were to have equal rights in the running of the matrimonial household; and (ii) section 47 accorded a married woman the right to hold property and to contract as a *feme-sole.*

PART III

INTERNATIONAL AGREEMENTS

UNITED NATIONS

CONVENTION ON THE REDUCTION OF STATELESSNESS, 1961[1]

The Contracting States,

Acting in pursuance of resolution 896 (IX), adopted by the General Assembly of the United Nations on 4 December 1954,

Considering it desirable to reduce statelessness by international agreement,

Have agreed as follows:

Article 1

1. A contracting State shall grant its nationality to a person born in its terrritory who would otherwise be stateless. Such nationality shall be granted:

(*a*) At birth, by operation of law, or

(*b*) Upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

A contracting State which provides for the grant of its nationality in accordance with sub-paragraph (*b*) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

2. A contracting State may make the grant of its nationality in accordance with sub-paragraph (*b*) of paragraph 1 of this article subject to one or more of the following conditions:

(*a*) That the application is lodged during a period, fixed by the contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;

(*b*) That the person concerned has habitually resided in the territory of the contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;

(*c*) That the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;

(*d*) That the person concerned has always been stateless.

3. Notwithstanding the provisions of paragraphs 1 (*b*) and 2 of this article, a child born in wedlock in the territory of a contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless.

4. A contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the contracting State in whose territory he was born because he has passed the age for lodging his application or has not fulfilled the required residence conditions, if the nationality of one of his parents at the time of the person's birth was that of the contracting State first above mentioned. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such contracting State. If application for such nationality is required, the application shall be made to the appropriate authority by or on behalf of the applicant in the manner prescribed by the national law. Subject to the provisions of paragraph 5 of this article, such application shall not be refused.

5. The contracting State may make the grant of its nationality in accordance with the provisions of paragraph 4 of this article subject to one or more of the following conditions:

(*a*) That the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the contracting State;

(*b*) That the person concerned has habitually resided in the territory of the contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;

(*c*) That the person concerned has always been stateless.

Article 2

A foundling found in the territory of a contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.

Article 3

For the purpose of determining the obligations of contracting States under this convention, birth on a ship or in an aircraft shall be deemed to have

[1] Adopted on 28 August 1961 by the United Nations Conference on the Elimination or Reduction of Future Statelessness.

taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be.

Article 4

1. A contracting State shall grant its nationality to a person, not born in the territory of a contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that State. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such contracting State. Nationality granted in accordance with the provisions of this paragraph shall be granted:

(*a*) At birth, by operation of law, or

(*b*) Upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

2. A contracting State may make the grant of its nationality in accordance with the provisions of paragraph 1 of this article subject to one or more of the following conditions:

(*a*) That the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the contracting State;

(*b*) That the person concerned has habitually resided in the territory of the contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;

(*c*) That the person concerned has not been convicted of an offence against national security;

(*d*) That the person concerned has always been stateless.

Article 5

1. If the law of a contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality.

2. If, under the law of a contracting State, a child born out of wedlock loses the nationality of that State in consequence of a recognition of affiliation, he shall be given an opportunity to recover that nationality by written application to the appropriate authority, and the conditions governing such application shall not be more rigorous than those laid down in paragraph 2 of article 1 of this Convention.

Article 6

If the law of a contracting State provides for loss of its nationality by a person's spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality.

Article 7

1. (*a*) If the law of a contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality.

(*b*) The provisions of sub-paragraph (*a*) of this paragraph shall not apply where their application would be inconsistent with the principles stated in articles 13 and 14 of the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations.

2. A national of a contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country.

3. Subject to the provisions of paragraphs 4 and 5 of this article, a national of a contracting State shall not lose his nationality, so as to become stateless, on the ground of departure, residence abroad, failure to register or on any similar ground.

4. A naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.

5. In the case of a national of a contracting State, born outside its territory, the law of that State may make the retention of its nationality after the expiry of one year from his attaining his majority conditional upon residence at that time in the territory of the State or registration with the appropriate authority.

6. Except in the circumstances mentioned in this article, a person shall not lose the nationality of a contracting State, if such loss would render him stateless, notwithstanding that such loss is not expressly prohibited by any other provision of this convention.

Article 8

1. A contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.

2. Notwithstanding the provisions of paragraph 1 of this article, a person may be deprived of the nationality of a contracting State;

(*a*) In the circumstances in which, under paragraphs 4 and 5 of article 7, it is permissible that a person should lose his nationality;

(*b*) Where the nationality has been obtained by misrepresentation or fraud.

3. Notwithstanding the provisions of paragraph 1 of this article, a contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one more of the following grounds, being grounds existing in its national law at that time:

(*a*) That, inconsistently with his duty of loyalty to the Contracting State, the person

(i) has, in disregard of an express prohibition by the contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or

(ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;

(*b*) That the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the contracting State.

4. A contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.

Article 9

A contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

Article 10

1. Every treaty between contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. A contracting State shall use its best endeavours to secure that any such treaty made by it with a State which is not a party to this convention includes such provisions.

2. In the absence of such provisions a contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition.

Article 11

The contracting States shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.

Article 12

1. In relation to a contracting State which does not, in accordance with the provisions of paragraph 1 of article 1 or of article 4 of this convention, grant its nationality at birth by operation of law, the provisions of paragraph 1 of article 1 or of article 4, as the case may be, shall apply to persons born before as well as to persons born after the entry into force of this convention.

2. The provisions of paragraph 4 of article 1 of this convention shall apply to persons born before as well as to persons born after its entry into force.

3. The provisions of article 2 of this convention shall apply only to foundlings found in the territory of a contracting State after the entry into force of the convention for that State.

Article 13

This convention shall not be construed as affecting any provisions more conducive to the reduction of statelessness which may be contained in the law of any contracting State now or hereafter in force, or may be contained in any other convention, treaty or agreement now or hereafter in force between two or more contracting States.

Article 14

Any dispute between contracting States concerning the interpretation or application of this convention which cannot be settled by other means shall be submitted to the International Court of Justice at the request of any one of the parties to the dispute.

Article 15

1. This convention shall apply to all non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any contracting State is responsible; the contracting State concerned shall, subject to the provisions of paragraph 2 of this article, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which the convention shall apply *ipso facto* as a result of such signature, ratification or accession.

2. In any case in which, for the purpose of nationality, a non-metropolitan territory is not treated as one with the metropolitan territory, or in any case in which the previous consent of a non-metropolitan territory is required by the constitutional laws or practices of the contracting State or of the non-metropolitan territory for the application of the convention to that territory, that contracting State shall endeavour to secure the needed consent of the non-metropolitan territory within the period of twelve months from the date of signature of the convention by that contracting State, and when such consent has been obtained the contracting State shall notify the Secretary-General of the United Nations. This convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General.

3. After the expiry of the twelve-month period mentioned in paragraph 2 of this article, the contracting States concerned shall inform the Secretary-Gen-

eral of the results of the consultations with those non-metropolitan territories for whose international relations they are responsible and whose consent to the application of this convention may have been withheld.

Article 16

1. This convention shall be open for signature at the Headquarters of the United Nations from 30 August 1961 to 31 May 1962.

2. This convention shall be open for signature on behalf of:

(*a*) Any State Member of the United Nations;

(*b*) Any other State invited to attend the United Nations Conference on the Elimination or Reduction of Future Statelessness;

(*c*) Any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

3. This convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. This convention shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 17

1. At the time of signature, ratification or accession any State may make a reservation in respect of articles 11, 14 or 15.

2. No other reservations to this convention shall be admissible.

Article 18

1. This convention shall enter into force two years after the date of the deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to this convention after the deposit of the sixth instrument of ratification or accession, it shall enter into force on the ninetieth day after the deposit by such State of its instrument of ratification or accession or on the date on which this convention enters into force in accordance with the provisions of paragraph 1 of this article, whichever is the later.

Article 19

1. Any contracting State may denounce this convention at any time by a written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect for the contracting State concerned one year after the date of its receipt by the Secretary-General.

2. In cases where, in accordance with the provisions of article 15, this convention has become applicable to a non-metropolitan territory of a contracting State, that State may at any time thereafter, with the consent of the territory concerned, give notice to the Secretary-General of the United Nations denouncing this convention separately in respect of that territory. The denunciation shall take effect one year after the date of the receipt of such notice by the Secretary-General, who shall notify all other contracting States of such notice and the date or receipt thereof.

Article 20

1. The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States referred to in article 16 of the following particulars:

(*a*) Signatures, ratifications and accessions under article 16;

(*b*) Reservations under article 17;

(*c*) The date upon which this convention enters into force in pursuance of article 18;

(*d*) Denunciations under article 19.

2. The Secretary-General of the United Nations shall, after the deposit of the sixth instrument of ratification or accession at the latest, bring to the attention of the General Assembly the question of the establishment, in accordance with article 11, of such a body as therein mentioned.

Article 21

This convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

INTERNATIONAL LABOUR ORGANISATION

WORKERS' HOUSING RECOMMENDATION, 1961

RECOMMENDATION NO. 115, ADOPTED BY THE INTERNATIONAL LABOUR CONFERENCE AT ITS 45TH SESSION, GENEVA, 1961[1]

Whereas the Constitution of the International Labour Organisation provides that the Organisation shall promote the objects set forth in the Declaration of Philadelphia, which recognises the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve the provision of adequate housing; and

Whereas the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations recognizes that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including ... housing"; and

Whereas the United Nations and the International Labour Organisation have agreed, as set forth in the Integrated Work Programme of the United Nations and the Specialized Agencies in the Field of Housing and Town and Country Planning, noted by the Economic and Social Council and by the Governing Body of the International Labour Office in 1949, that the United Nations has an over-all responsibility within the general field of housing and town and country planning and the International Labour Organisation a special concern for matters relating to workers' housing;

The Conference recommends that each Member should, within the framework of its general social and economic policy, give effect to the following general principles in such manner as may be appropriate under national conditions:

GENERAL PRINCIPLES

I. SCOPE

1. This recommendation applies to the housing of manual and non-manual workers, including those who are self-employed and aged, retired or physically handicapped persons.

II. OBJECTIVES OF NATIONAL HOUSING POLICY

2. It should be an objective of national policy to promote, within the framework of general housing policy, the construction of housing and related community facilities with a view to ensuring that adequate and decent housing accommodation and a suitable living environment are made available to all workers and their families. A degree of priority should be accorded to those whose needs are most urgent.

3. Attention should also be given to the upkeep, improvement and modernization of existing housing and related community facilities.

4. The aim should be that adequate and decent housing accommodation should not cost the worker more than a reasonable proportion of income, whether by way of rent for, or by way of payments towards the purchase of, such accommodation.

5. Workers' housing programmes should provide adequate scope for private, co-operative and public enterprise in house building.

6. In view of the fact that programmes of large-scale permanent housing construction may compete directly with programmes for economic growth and development — since scarce skilled and semi-skilled labour or scarce material resources may be needed for housing as well as for other types of production required for the expansion of production capacity — housing policy should be co-ordinated with general social and economic policy, so that workers' housing may be given a degree of priority which takes into account both the need therefor and the requirements of balanced economic development.

7. Each family should have a separate, self-contained dwelling, if it so desires.

III. THE RESPONSIBILITY OF PUBLIC AUTHORITIES

8. (1) The competent national authorities, having due regard to the constitutional structure of the country concerned, should set up a central body with which should be associated all public authorities having some responsibility relating to housing.

(2) The responsibilities of the central body should include —

(*a*) Studying and assessing the needs for workers' housing and related community facilities; and

(*b*) Formulating workers' housing programmes, such programmes to include measures for slum clearance and the rehousing of occupiers of slum dwellings.

(3) Representative employers' and workers' organizations, as well as other organizations concerned, should be associated in the work of the central body.

9. National housing programmes should aim at ensuring, consistently with other national goals and

[1] Published in International Labour Office: *Official Bulletin*, vol. XLIV, 1961, No. 1.

within limits set by housing and related needs, that all private and public resources which can be made available for the purpose are co-ordinated and utilized for the construction of workers' housing and related community facilities.

10. Where a substantial permanent increase of house-building capacity is required in order to meet national needs for workers' housing on a continuing basis, economic development programmes should include, consistently with other national goals, measures to provide in the long run the skilled manpower, materials, equipment and finance required for house building.

11. Public authorities should, to the extent required and as far as practicable, assume responsibility either for providing directly or for stimulating the provision of workers' housing on a rental or home-ownership basis.

IV. Housing Provided by Employers

12. (1) Employers should recognize the importance to them of the provision of housing for their workers on an equitable basis by public agencies or by autonomous private agencies, such as co-operative and other housing associations, separate from the employers' enterprises.

(2) It should be recognized that it is generally not desirable that employers should provide housing for their workers directly, with the exception of cases in which circumstances necessitate that employers provide housing for their workers, as, for instance, when an undertaking is located at a long distance from normal centres of population, or where the nature of the employment requires that the worker should be available at short notice.

(3) In cases where housing is provided by the employer —

(*a*) The fundamental human rights of the workers, in particular freedom of association, should be recognized;

(*b*) National law and custom should be fully respected in terminating the lease or occupancy of such housing on termination of the workers' contracts of employment; and

(*c*) Rents charged should be in conformity with the principle set out in paragraph 4 above, and in any case should not include a speculative profit.

(4) The provision by employers of accommodation and communal services in payment for work should be prohibited or regulated to the extent necessary to protect the interests of the workers.

V. Financing

13. (1) The competent authorities should take such measures as are appropriate to ensure the execution of the accepted programmes of workers' housing by securing a regular and continuous provision of the necessary financial means.

(2) For this purpose —

(*a*) Public and private facilities should be made available for loans at moderate rates of interest; and

(*b*) Such facilities should be supplemented by other suitable methods of direct and indirect financial assistance such as subsidies, tax concessions and reduction of assessments, to appropriate private, co-operative and public owners of housing.

14. Governments and employers' and workers' organizations should encourage co-operative and similar non-profit housing societies.

15. Public authorities should endeavour to ensure that public and private facilities for loans on reasonable terms are available to workers who wish to own or to build their dwellings, and should take such other steps as would facilitate home ownership.

16. National mortgage insurance systems or public guarantees of private mortgages should be established as a means of promoting the building of workers' housing in countries where a sound credit market exists and where such systems are considered appropriate.

17. Appropriate measures should be taken in accordance with national practice —

(*a*) To stimulate saving by individuals, co-operative societies and private institutions which can be used to finance workers' housing; and

(*b*) To encourage investment by individuals, co-operative societies and private institutions in the construction of workers' housing.

18. Workers' housing built with assistance from public funds should not become the object of speculation.

VI. Housing Standards

19. As a general principle, the competent authority should, in order to ensure structural safety and reasonable levels of decency, hygiene and comfort, establish minimum housing standards in the light of local conditions and take appropriate measures to enforce these standards.

VII. Measures to Promote Efficiency in the Building Industry

20. Governments, in association with employers' and workers' organizations, should promote measures to achieve the most efficient use of available resources in the building and associated industries and, where necessary, should encourage the development of new resources.

VIII. House Building and Employment Stabilization

21. National housing programmes should be planned so as to permit a speeding up of the construction of workers' housing and related community facilities during slack periods.

22. Appropriate measures should be taken by governments and employers' and workers' organizations to increase the annual output of workers' housing and related facilities by reducing seasonal unemployment in the building industry, subject to the principles referred to in paragraph 6 above.

IX. Town, Country and Regional Planning

23. The development and execution of workers' housing programmes should conform to sound town, country and regional planning practice.

24. (1) Public authorities should take all appropriate steps to prevent land speculation.

(2) Public authorities should —

(*a*) Have the power to acquire land at a fair price for workers' housing and related community facilities; and

(*b*) Create land reserves in appropriate situations in order to facilitate advance planning of such housing and facilities.

(3) Such land should be made available for workers' housing and related community facilities at a fair price.

X. Application of General Principles

25. In applying the general principles set forth in this recommendation, each member of the International Labour Organisation and the employers' and workers' organizations concerned should be guided, to the extent possible and desirable, by the accompanying suggestions concerning methods of application of the recommendation.

SUGGESTIONS CONCERNING METHODS OF APPLICATION

I. General Considerations

1. Workers' housing programmes adopted and pursued in accordance with paragraph 8 of the general principles should be such as to lead to maximum improvement in workers' housing conditions as quickly as relevant considerations — such as available national resources, state of economic development, technology and priorities competing with housing — permit.

2. Special consideration should be given in national housing programmes, particularly in developing countries, to the housing needs of workers employed in, or required by, industries or regions which are of great national importance.

3. In establishing and carrying out workers' housing programmes, special attention should be given at the local level to —

(*a*) The size and age and sex composition of the worker's family;

(*b*) The relationship of the persons within the family; and

(*c*) The particular circumstances of physically handicapped persons, persons living on their own and aged persons.

4. Measures should be taken, where appropriate, to achieve a more effective utilization of the existing supply of rental housing by encouraging an exchange of occupancies in accordance with housing needs, arising for example from size of family or place of work.

5. The competent authorities should give special attention to the particular problem of housing migrant workers and, where appropriate, their families, with a view to achieving as rapidly as possible equality of treatment between migrant workers and national workers in this respect.

6. The collection and analysis of comprehensive building and population statistics as well as the undertaking of sociological studies should be encouraged as essential elements in the formulation and execution of long-term housing programmes.

II. Housing Standards

7. The housing standards referred to in paragraph 19 of the general principles should relate in particular to—

(*a*) The minimum space per person or per family as expressed in terms of one or more of the following, due regard being had to the need for rooms of reasonable dimensions and proportions:

(i) Floor area;

(ii) Cubic volume; or

(iii) Size and number of rooms;

(*b*) The supply of safe water in the workers' dwelling in such ample quantities as to provide for all personal and household uses;

(*c*) Adequate sewage and garbage disposal systems;

(*d*) Appropriate protection against heat, cold, damp, noise, fire, and disease-carrying animals, and, in particular, insects;

(*e*) Adequate sanitary and washing facilities, ventilation, cooking and storage facilities and natural and artificial lighting;

(*f*) A minimum degree of privacy both —

(i) As between individual persons within the household; and

(ii) For the members of the household against undue disturbance by external factors; and

(*g*) Suitable separation of rooms devoted to living purposes from quarters for animals.

8. Where housing accommodation for single workers or workers separated from their families is collective, the competent authority should establish housing standards providing, as a minimum, for —

(*a*) A separate bed for each worker;

(*b*) Separate accommodation of the sexes;

(*c*) Adequate supply of safe water;

(*d*) Adequate drainage and sanitary conveniences;

(e) Adequate ventilation and, where appropriate, heating; and

(f) Common dining rooms, canteens, rest and recreation rooms and health facilities, where not otherwise available in the community.

9. Workers' housing standards should be revised from time to time to take account of social, economic and technical development and increases of real income per head.

10. In general, and in localities where employment opportunities are not of a temporary character, workers' housing and related community facilities should be of durable construction.

11. The aim should be to construct workers' housing and related community facilities in the most suitable materials available, having regard to local conditions, such as liability to earthquakes.

III. Special Schemes

12. In the developing countries special consideration should be given, as an interim measure pending development of a skilled labour force and of a building industry, to schemes such as large-scale aided self-help schemes for short-life housing, which offer one means for improvement in housing conditions, particularly in rural areas. Simultaneously, steps should be taken in these countries for the training of unemployed and unskilled workers for the building industry, thereby increasing the capacity for building permanent dwellings.

13. All appropriate measures should be taken by governments, employers and employers' and workers' organizations to assist home ownership by workers and, where desirable, self-help housing schemes. Such measures might include, for example —

(a) The provision of technical services, such as architectural assistance and, where necessary, competent supervision of the work;

(b) Research into housing and building matters and publication and dissemination of manuals and simple, illustrated pamphlets containing information on such matters as housing design, housing standards, and building techniques and materials;

(c) Training in simple building techniques for self-help housing;

(d) The sale or hire of equipment, materials or tools at less than cost;

(e) Reduced interest rates and similar concessions, such as direct financial subsidies towards the initial capital outlay, the sale of land at less than developed cost and long leases of land at nominal rents.

14. All appropriate measures should be taken, where necessary, to give families information concerning the maintenance and rational use of facilities in the home.

IV. Housing Provided by Employers

15. In cases where housing is provided by the employer the following provisions should apply unless equivalent protection of the worker is ensured whether by law or by collective or other binding agreements:

(a) The employer should be entitled to repossess the accommodation within a reasonable time in the event of termination of the worker's contract of employment;

(b) The worker or his family should be entitled to a reasonable period of continued occupancy to enable a satisfactory alternative dwelling to be obtained when he ceases to exercise his employment by reason of sickness, incapacity, the consequences of employment injury, retirement or death;

(c) The worker who, in the event of termination of his employment, is obliged to vacate his accommodation, should be entitled to receive fair compensation —

(i) For crops which he is growing, with permission, on land belonging to the employer; and

(ii) As a general rule, for improvements enhancing permanently the amenities of the accommodation, which are made with the agreement of the employer, and the value of which has not yet been written off through use.

16. A worker occupying housing provided by his employer should maintain the premises in the condition in which he found them, fair wear and tear excepted.

17. Persons having social relations or business, including trade union business, with a worker occupying accommodation provided by the employer, should be entitled to free access to the house occupied by such worker.

18. The possibility should be examined, where appropriate, of a public authority or other institution or worker-occupants acquiring for a fair price, ownership of housing provided by the employer, except in cases where such housing is within the operational area of the undertaking.

V. Financing

19. Public authorities should either finance directly or give financial assistance to rental housing schemes, especially for certain groups of workers, such as heads of newly formed families, single persons and those whose mobility is desirable for a balanced development of the economy.

20. Loans granted to workers in accordance with paragraph 15 of the general principles should cover all, or a substantial part of, the initial cost of the dwelling unit and should be repayable over a long period of time and at a moderate rate of interest.

21. Provident funds and social security institutions should be encouraged to use their reserves available

for long-term investment to provide facilities for loans for workers' housing.

22. In the case of loans granted to workers to promote home ownership, adequate provision should be made to protect the worker against the loss of his financial equity in his house on account of unemployment, accident or other factors beyond his control, and in particular to protect his family against the loss of his financial equity in the event of his death.

23. Public authorities should render special financial assistance to workers who, by reason of inadequate income or excessively heavy outlay in respect of family responsibilities, are unable to obtain adequate accommodation.

24. In cases where public authorities provide direct financial assistance toward home ownership, the recipient should assume financial and other responsibilities with respect to such housing in so far as his capacity permits.

25. Public authorities giving financial assistance to housing programmes should ensure that tenancy or ownership of such workers' houses should not be refused on grounds of race, religion, political opinion or trade union membership.

VI. Measures to Promote Efficiency in the Building Industry

26. Workers' housing programmes should be carried out on a long-term basis, and should be spread over the whole year, in order to obtain the economies of continous operation.

27. Appropriate measures should be taken for improving and, where necessary, expanding facilities for the training of skilled and semi-skilled workers, supervisory personnel, contractors and professional personnel, such as architects and engineers.

28. Where there is a shortage of building materials, tools or equipment, consideration should be given to such measures as giving priority to the construction of factories producing these goods, importing equipment for such factories and increasing trade in these goods.

29. Having full regard to considerations of health and safety, building codes and other regulations pertaining to design, materials and construction techniques should be so formulated as to permit the use of new building materials and methods, including locally available materials and self-help methods.

30. Special attention should be given, among other measures, to improved planning and organization of work on the site, to greater standardization of materials and simplification of working methods and to the application of the results of building research.

31. Every effort should be made to eliminate restrictive practices on the part of contractors, building-material suppliers and workers in the building industry.

32. National institutions should be developed for the purpose of undertaking research into social, economic and technical problems of workers' housing. Where appropriate, use might be made of such services as can be made available by the regional housing centres sponsored or assisted by the United Nations and other appropriate international organizations.

33. Every effort should be made to promote the efficiency of small-scale building contractors, for example by placing at their disposal information on low-cost materials and methods of building, by the provision of centralised facilities for hiring tools and equipment, by specialized training courses and by establishing suitable financial facilities where they do not already exist.

34. Measures for reducing building costs should not result in a lowering of the standards of workers' housing and related facilities.

VII. House-building and Employment Stabilization

35. Where unemployment in the construction industry is markedly in excess of the transitional unemployment which occurs during the period between the cessation of a construction workers' employment on one site and the commencement of his employment on another site, or where there is substantial unemployment outside the construction industry, programmes for workers' housing and related facilities should be expanded, where appropriate, to offer employment to as many unemployed persons as possible.

36. In periods of declining private construction or declining economic activity in general and in cases where there is a need for an increased volume of construction, the government should take special action to stimulate the construction of workers' housing and related facilities by local authorities, or private enterprise or both, by such means as financial assistance or extension of their borrowing powers.

37. Measures for increasing, if necessary, the volume of private housing might include a reduction in the rate of interest and in the size of down payment required, and the lengthening of the amortization period.

38. Where appropriate, measures to be taken to reduce seasonal unemployment in the construction industry may include —

(*a*) The use of all appropriate plant, machinery, materials and techniques to enable construction work to be carried out in a safe and satisfactory manner and to protect the worker during periods traditionally regarded as unfavourable for the carrying out of construction operations;

(*b*) Education of those concerned regarding the technical feasibility and social desirability of not interrupting construction in unfavourable climatic conditions;

(*c*) The payment of subsidies to offset in whole or in part additional costs which might be involved in construction under such conditions; and

(*d*) The timing of various operations in programmes of workers' housing and related facilities in such manner as will help to reduce seasonal unemployment.

39. Appropriate steps should be taken, where necessary, to ensure administrative and financial co-ordination between the various central and local public authorities, and between them and private bodies, in carrying out an employment stabilization programme affecting the construction of workers' housing and related facilities.

VIII. Rent Policy

40. (1) Although in the highly industrialized countries with a high and rising standard of living one of the long-term objectives should be that rents should tend to cover the normal costs of housing accommodation, taking into account the principles laid down in paragraph 4 of the general principles, it should be a general aim that as the result of higher real wages and increased productivity in the building industry the percentage of the workers' income devoted to rent covering the normal cost of the dwelling should progressively diminish.

(2) No increase in rent should permit more than a reasonable rate of return for the investment.

(3) During periods of acute housing shortage, measures should be taken to prevent an undue rise in rents of existing workers' housing. As the housing shortage eases and a sufficient number of workers' dwellings of decent quality become available to meet the need, these measures may be, where appropriate, progressively relaxed, subject to the provisions of this paragraph.

IX. Town, Country and Regional Planning

41. Workers' housing should, in so far as practicable and taking into account available public and private transport facilities, be within easy reach of places of employment, and in close proximity to community facilities, such as schools, shopping centres, recreation areas and facilities for all age groups, religious facilities and medical services, and should be so sited as to form attractive and well-laid-out neighbourhoods, including open spaces.

42. In the design of houses and the planning of new communities for workers, every effort should be made to consult those bodies representative of future occupants best able to advise on the most suitable means of meeting their housing and environmental needs.

43. The siting of workers' housing should take into consideration the possibility of air pollution from factories, and topographical conditions which may have an important bearing on the disposal of surface run-off and of sewage and other wastes.

44. In the construction of short-life housing it is particularly important to ensure community planning and control over density of occupancy.

45. It is desirable to adopt the principle of providing in towns and cities for inter-related zones, such as residential, commercial and industrial zones, with a view to ensuring as agreeable an environment as possible for the worker and his family and to minimising the time spent and risks incurred by workers in going to and from work.

46. With a view to combating slums, the competent authorities, in collaboration, as appropriate, with civic and other organizations concerned, as well as with landlords, home owners and tenants, should take all practicable measures for the rehabilitation of slum areas by means such as renovation and modernization of structures which are suitable for such action and the conservation of buildings of architectural or historical interest. The competent authorities should also take appropriate action to ensure adequate housing accommodation for families which may be temporarily displaced during the period when such rehabilitation is being carried out.

47. In order to lessen overcrowding in large urban centres, plans for future development should be formulated on a regional basis, with a view to preventing over-concentration of industry and population and to achieving a better balance between urban and rural development.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

CONVENTION AGAINST DISCRIMINATION IN EDUCATION

Adopted on 14 December 1960[1]

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 14 November to 15 December 1960, at its eleventh session,

Recalling that the Universal Declaration of Human Rights asserts the principle of non-discrimination and proclaims that every person has the right to education,

Considering that discrimination in education is a violation of rights enunciated in that declaration,

Considering that, under the terms of its constitution, the United Nations Educational, Scientific and Cultural Organization has the purpose of instituting collaboration among the nations with a view to furthering for all universal respect for human rights and equality of educational opportunity.

Recognizing that, consequently, the United Nations Educational, Scientific and Cultural Organization, while respecting the diversity of national educational systems, has the duty not only to proscribe any form of discrimination in education but also to promote equality of opportunity and treatment for all in education,

Having before it proposals concerning the different aspects of discrimination in education, constituting item 17.1.4 of the agenda of the session,

Having decided at its tenth session that this question should be made the subject of an international convention as well as of recommendations to Member States,

Adopts this convention on the fourteenth day of December 1960.

Article 1

1. For the purposes of this convention, the term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

(*a*) Of depriving any person or group of persons of access to education of any type or at any level;

(*b*) Of limiting any person or group of persons to education of an inferior standard;

(*c*) Subject to the provisions of article 2 of this convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or

(*d*) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

2. For the purposes of this convention, the term "education" refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.

Article 2

When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of article 1 of this convention:

(*a*) The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opporunity to take the same or equivalent courses of study;

(*b*) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level;

(*c*) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

[1] UNESCO document 11C/Resolutions, p. 119 (1960).

Article 3

In order to eliminate and prevent discrimination within the meaning of this convention, the States parties thereto undertake:

(*a*) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;

(*b*) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;

(*c*) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;

(*d*) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;

(*e*) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.

Article 4

The States parties to this convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

(*a*) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;

(*b*) To ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent;

(*c*) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;

(*d*) To provide training for the teaching profession without discrimination.

Article 5

1. The States parties to this convention agree that:

(*a*) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace;

(*b*) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their convictions;

(*c*) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:

(i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty;

(ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and

(iii) That attendance at such schools is optional.

2. The States parties to this convention undertake to take all necessary measures to ensure the application of the principles enunciated in paragraph 1 of this article.

Article 6

In the application of this convention, the States parties to it undertake to pay the greatest attention to any recommendations hereafter adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization defining the measures to be taken against the different forms of discrimination in education and for the purpose of ensuring equality of opportunity and treatment in education.

Article 7

The States parties to this convention shall in their periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this convention, including that taken for the formulation and the development of the national policy defined in article 4 as well as

the results achieved and the obstacles encountered in the application of that policy.

Article 8

Any dispute which may arise between any two or more States parties to this convention concerning the interpretation or application of this convention, which is not settled by negotiation shall at the request of the parties to the dispute be referred, failing other means of settling the dispute, to the International Court of Justice for decision.

Article 9

Reservations to this convention shall not be permitted.

Article 10

This convention shall not have the effect of diminishing the rights which individuals or groups may enjoy by virtue of agreements concluded between two or more States, where such rights are not contrary to the letter or spirit of this convention.

Article 11

This convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.

Article 12

1. This convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.

2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 13

1. This convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited to do so by the Executive Board of the Organization.

2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 14

This convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

Article 15

The States parties to this convention recognize that the convention is applicable not only to their metropolitan territory but also to all non-self-governing, trust, colonial and other territories for the international relations of which they are responsible; they undertake to consult, if necessary, the governments or other competent authorities of these territories on or before ratification, acceptance or accession with a view to securing the application of the Convention to those territories, and to notify the Director-General of the United Nations Educational, Scientific and Cultural Organization of the territories to which it is accordingly applied, the notification to take effect three months after the date of its receipt.

Article 16

1. Each State party to this convention may denounce the convention on its own behalf or on behalf of any territory for whose international relations it is responsible.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation.

Article 17

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States Members of the Organization, the States not members of the Organization which are referred to in article 13, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in articles 12 and 13, and of the notifications and denunciations provided for in articles 15 and 16 respectively.

Article 18

1. This convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become parties to the revising convention.

2. If the General Conference should adopt a new convention revising this convention in whole or in part, then, unless the new convention otherwise provides, this convention shall cease to be open to ratification, acceptance or accession as from the date on which the new revising convention enters into force.

Article 19

In conformity with Article 102 of the Charter of the United Nations, this convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

RECOMMENDATION AGAINST DISCRIMINATION IN EDUCATION

Adopted on 14 December 1960[1]

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 14 November to 15 December 1960, at its eleventh session,

Recalling that the Universal Declaration of Human Rights asserts the principle of non-discrimination and proclaims that every person has the right to education,

Considering that discrimination in education is a violation of rights enunciated in that declaration,

Considering that, under the terms of its constitution, the United Nations Educational, Scientific and Cultural Organization has the purpose of instituting collaboration among the nations with a view to furthering for all universal respect for human rights and equality of educational opportunity,

Recognizing that, consequently, the United Nations Educational, Scientific and Cultural Organization, while respecting the diversity of the national educational systems, has the duty not only to proscribe any form of discrimination in education but also to promote equality of opportunity and treatment for all in education,

Having before it proposals concerning the different aspects of discrimination in education, constituting item 17.1.4 of the agenda of the session,

Having decided at its tenth session that this question should be made the subject of an international convention as well as of recommendations to member States,

Adopts this recommendation on the fourteenth day of December 1960.

The General Conference recommends that member States should apply the following provisions by taking whatever legislative or other steps may be required to give effect, within their respective territories, to the principles set forth in this Recommendation.

[Subject to the substitution of "Recommendation" for "Convention", the provisions of section I of the recommendation are identical to those of article 1 of the Convention against Discrimination in Education.]

II

When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of section I of this recommendation:

[The remaining provisions of section II are identical to clauses a-c of article 2 of the convention.]

[1] UNESCO Document 11 C/Resolutions p. 123 (1960).

III

In order to eliminate and prevent discrimination within the meaning of this recommendation, member States should:

(*a*) Abrogate any statutory provisions and any administrative instructions and discontinue any administrative practices which involve discrimination in education;

(*b*) Ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;

(*c*) Not allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;

(*d*) Not allow, in any form of assistance granted by the public authorities to educational institutions, any restriction or preference based solely on the ground that pupils belong to a particular group;

(*e*) Give foreign nationals resident within their territory the same access to education as that given to their own nationals.

IV

Member States should furthermore formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

[The remaining provisions of section IV are identical to clauses a-d of article 4 of the convention.]

V

Member States should take all necessary measures to ensure the application of the following principles;

[The remaining provisions of section V are identical to clauses 1. a-c of article 5 of the convention.]

VI

In the application of this recommendation, member States should pay the greatest attention to any recommendations hereafter adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization defining the measures to be taken against the different forms of discrimination in education and for the purpose of ensuring equality of opportunity and of treatment in education.

VII

Member States should in their periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization, on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Recommendation, including that taken for the formulation and the development of the national policy defined in section IV as well as the results achieved and the obstacles encountered in the application of that policy.

COUNCIL OF EUROPE

EUROPEAN SOCIAL CHARTER

Signed at Turin, 18 October 1961[1]

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realization of human rights and fundamental freedoms;

Considering that in the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950, and the Protocol thereto signed at Paris on 20 March 1952, the member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified;

Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin;

Being resolved to make every effort in common to improve the standard of living and to promote the social well-being of both their urban and rural populations by means of appropriate institutions and action,

Have agreed as follows:

PART I

The contracting parties accept as the aim of their policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realized:

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon;

2. All workers have the right to just conditions of work;

3. All workers have the right to safe and healthy working conditions;

4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families;

5. All workers and employers have the right to freedom of association in national or international organizations for the protection of their economic and social interest;

6. All workers and employers have the right to bargain collectively;

7. Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed;

8. Employed women, in case of maternity, and other employed women as appropriate, have the right to a special protection in their work;

9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests;

10. Everyone has the right to appropriate facilities for vocational training;

11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable;

12. All workers and their dependents have the right to social security;

13. Anyone without adequate resources has the right to social and medical assistance;

14. Everyone has the right to benefit from social welfare services;

15. Disabled persons have the right to vocational training, rehabilitation and resettlement, whatever the origin and nature of their disability;

16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development;

17. Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection;

18. The nationals of any one of the contracting parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons;

19. Migrant workers who are nationals of a contracting party and their families have the right to protection and assistance in the territory of any other contracting party;

PART II

The contracting parties undertake, as provided for in part III, to consider themselves bound by the

[1] *European Treaty Series*, No. 35.

obligations laid down in the following articles and paragraphs.

Article 1

THE RIGHT TO WORK

With a view to ensuring the effective exercise of the right to work, the contracting parties undertake:

1. To accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;

2. To protect effectively the right of the worker to earn his living in an occupation freely entered upon;

3. To establish or maintain free employment services for all workers;

4. To provide or promote appropriate vocational guidance, training and rehabilitation.

Article 2

THE RIGHT TO JUST CONDITIONS OF WORK

With a view to ensuring the effective exercise of the right to just conditions of work, the contracting parties undertake:

1. To provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

2. To provide for public holidays with pay;

3. To provide for a minimum of two weeks' annual holiday with pay;

4. To provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;

5. To ensure a weekly rest period which shall, as far as possible, coincide with the day recognized by tradition or custom in the country or region concerned as a day of rest.

Article 3

THE RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the contracting parties undertake:

1. To issue safety and health regulations;

2. To provide for the enforcement of such regulations by measures of supervision;

3. To consult, as appropriate, employers' and workers' organizations on measures intended to improve industrial safety and health.

Article 4

THE RIGHT TO A FAIR REMUNERATION

With a view to ensuring the effective exercise of the right to a fair remuneration, the contracting parties undertake:

1. To recognize the right of workers to a remuneration such as will give them and their families a decent standard of living;

2. To recognize the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;

3. To recognize the right of men and women workers to equal pay for work of equal value;

4. To recognize the right of all workers to a reasonable period of notice for termination of employment;

5. To permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Article 5

THE RIGHT TO ORGANIZE

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organizations for the protection of their economic and social interests and to join those organizations, the contracting parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Article 6

THE RIGHT TO BARGAIN COLLECTIVELY

With a view to ensuring the effective exercise of the right to bargain collectively, the contracting parties undertake:

1. To promote joint consultation between workers and employers;

2. To promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

3. To promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognize:

4. The right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might

arise out of collective agreements previously entered into.

Article 7

THE RIGHT OF CHILDREN AND YOUNG PERSONS TO PROTECTION

With a view to ensuring the effective exercise of the right of children and young persons to protection, the contracting parties undertake:

1. To provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education.

2. To provide that a higher minimum age of admission to employment shall be fixed with respect to prescribed occupations regarded as dangerous or unhealthy;

3. To provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;

4. To provide that the working hours of persons under 16 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;

5. To recognize the right of young workers and apprentices to a fair wage or other appropriate allowances;

6. To provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;

7. To provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay;

8. To provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;

9. To provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;

10. To ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

Article 8

THE RIGHT OF EMPLOYED WOMEN TO PROTECTION

With a view to ensuring the effective exercise of the right of employed women to protection, the contracting parties undertake:

1. To provide either by paid leave, by adequate social security benefits or by benefits from public funds for women to take leave before and after childbirth up to a total of at least 12 weeks;

2. To consider it as unlawful for an employer to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such a time that the notice would expire during such absence;

3. To provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;

4. (*a*) To regulate the employment of women workers on night work in industrial employment;

(*b*) To prohibit the employment of women workers in underground mining, and, as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy, or arduous nature.

Article 9

THE RIGHT TO VOCATIONAL GUIDANCE

With a view to ensuring the effective exercise of the right to vocational guidance, the contracting parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including school children, and to adults.

Article 10

THE RIGHT TO VOCATIONAL TRAINING

With a view to ensuring the effective exercise of the right to vocational training, the contracting parties undertake:

1. To provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped in consultation with employers' and workers' organizations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;

2. To provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;

3. To provide or promote, as necessary:

(*a*) Adequate and readily available training facilities for adult workers;

(*b*) Special facilities for the re-training of adult workers needed as a result of technological development or new trends in employment;

4. To encourage the full utilization of the facilities provided by appropriate measures such as:

(*a*) Reducing or abolishing any fees or charges;

(*b*) Granting financial assistance in appropriate cases;

(*c*) Including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;

(*d*) Ensuring, through adequate supervision, in consultation with the employers' and workers' organizations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.

Article 11

THE RIGHT TO PROTECTION OF HEALTH

With a view to ensuring the effective exercise of the right to protection of health, the contracting parties undertake, either directly or in co-operation with public or private organizations, to take appropriate measures designed *inter alia*:

1. To remove as far as possible the causes of ill-health;

2. To provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;

3. To prevent as far as possible epidemic, endemic and other diseases.

Article 12

THE RIGHT TO SOCIAL SECURITY

With a view to ensuring the effective exercise of the right to social security, the contracting parties undertake:

1. To establish or maintain a system of social security;

2. To maintain the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention (No. 102) concerning Minimum Standards of Social Security;

3. To endeavour to raise progressively the system of social security to a higher level;

4. To take steps, by the conclusion of appropriate bilateral and multilateral agreements, or by other means, and subject to the conditions laid down in such agreements, in order to ensure:

(*a*) Equal treatment with their own nationals of the nationals of other contracting parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the contracting parties;

(*b*) The granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the contracting parties.

Article 13

THE RIGHT TO SOCIAL AND MEDICAL ASSISTANCE

With a view to ensuring the effective exercise of the right to social and medical assistance, the contracting parties undertake:

1. To ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;

2. To ensure that persons receiving such assistance shall not for that reason, suffer from a diminution of their political or social rights;

3. To provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;

4. To apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other contracting parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11th December 1953.

Article 14

THE RIGHT TO BENEFIT FROM SOCIAL WELFARE SERVICES

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the contracting parties undertake:

1. To promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment.

2. To encourage the participation of individuals and voluntary or other organizations in the establishment and maintenance of such services.

Article 15

THE RIGHT OF PHYSICALLY OR MENTALLY DISABLED PERSONS TO VOCATIONAL TRAINING, REHABILITATION AND SOCIAL RESETTLEMENT

With a view to ensuring the effective exercise of the right of the physically or mentally disabled to vocational training, rehabilitation and resettlement, the contracting parties undertake:

1. To take adequate measures for the provision of training facilities, including, where necessary, specialized institutions, public or private;

2. To take adequate measures for the placing of disabled persons in employment, such as specialized placing services, facilities for sheltered employment and measures to encourage employers to admit disabled persons to employment.

Article 16

THE RIGHT OF THE FAMILY TO SOCIAL, LEGAL AND ECONOMIC PROTECTION

With a view to ensuring the necessary conditions for the full development of the family, which is a

fundamental unit of society, the contracting parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.

Article 17

The Right of Mothers and Children to Social and Economic Protection

With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the contracting parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.

Article 18

The Right to engage in a Gainful Occupation in the Territory of Other Contracting Parties

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other contracting party, the contracting parties undertake:

1. To apply existing regulations in a spirit of liberality;

2. To simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;

3. To liberalize, individually or collectively, regulations governing the employment of foreign workers;

and recognize:

4. The right of their nationals to leave the country to engage in a gainful occupation in the territories of the other contracting parties.

Article 19

The Right of Migrant Workers and Their Families to Protection and Assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other contracting party, the contracting parties undertake:

1. To maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;

2. To adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;

3. To promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;

4. To secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

(*a*) Remuneration and other employment and working conditions;

(*b*) Membership of trade unions and enjoyment of the benefits of collective bargaining;

(*c*) Accommodation;

5. To secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;

6. To facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

7. To secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;

8. To secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

9. To permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;

10. To extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply.

PART III

Article 20

Undertakings

1. Each of the contracting parties undertakes:

(*a*) To consider part I of this charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;

(*b*) To consider itself bound by at least five of the following articles of part II of this charter: articles 1, 5, 6, 12, 13, 16 and 19;

(*c*) In addition to the articles selected by it in accordance with the preceding sub-paragraph, to consider itself bound by such a number of articles or numbered paragraphs of part II of the charter as it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than 10 articles or 45 numbered paragraphs.

2. The articles or paragraphs selected in accordance with sub-paragraphs (*b*) and (*c*) of paragraph 1 of this article shall be notified to the Secretary-General of the Council of Europe at the time when the instrument of ratification or approval of the contracting party concerned is deposited.

3. Any contracting party may, at a later date, declare by notification to the Secretary-General that it considers itself bound by any articles or any numbered paragraphs of part II of the charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification or approval, and shall have the same effect as from the thirtieth day after the date of the notification.

4. The Secretary-General shall communicate to all the signatory governments and to the Director-General of the International Labour Office any notification which he shall have received pursuant to this part of the charter.

5. Each contracting party shall maintain a system of labour inspection appropriate to national conditions.

PART IV

Article 21

REPORTS CONCERNING ACCEPTED PROVISIONS

The contracting parties shall send to the Secretary-General of the Council of Europe a report at two-yearly intervals, in a form to be determined by the Committee of Ministers, concerning the application of such provisions of part II of the charter as they have accepted.

Article 22

REPORTS CONCERNING PROVISIONS WHICH ARE NOT ACCEPTED

The contracting parties shall send to the Secretary-General, at appropriate intervals as requested by the Committee of Ministers, reports relating to the provisions of part II of the charter which they did not accept at the time of their ratification or approval or in a subsequent notification. The Committee of Ministers shall determine from time to time in respect of which provisions such reports shall be requested and the form of the reports to be provided.

Article 23

COMMUNICATION OF COPIES

1. Each contracting party shall communicate copies of its reports referred to in articles 21 and 22 to such of its national organizations as are members of the international organizations of employers and trade unions to be invited under article 27, paragraph 2, to be represented at meetings of the sub-committee of the Governmental Social Committee.

2. The contracting parties shall forward to the Secretary-General any comments on the said reports received from these national organizations, if so requested by them.

Article 24

EXAMINATION OF THE REPORTS

The reports sent to the Secretary-General in accordance with articles 21 and 22 shall be examined by a committee of experts, who shall have also before them any comments forwarded to the Secretary-General in accordance with paragraph 2 of article 23.

Article 25

COMMITTEE OF EXPERTS

1. The committee of experts shall consist of not more than seven members appointed by the committee of ministers from a list of independent experts of the highest integrity and of recognized competence in international social questions, nominated by the contracting parties.

2. The members of the committee shall be appointed for a period of six years. They may be reappointed. However, of the members first appointed, the terms of office of two members shall expire at the end of four years.

3. The members whose terms of office are to expire at the end of the initial period of four years shall be chosen by lot by the committee of ministers immediately after the first appointment has been made.

4. A member of the committee of experts appointed to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 26

PARTICIPATION OF THE INTERNATIONAL LABOUR ORGANISATION

The International Labour Organisation shall be invited to nominate a representative to participate in a consultative capacity in the deliberations of the committee of experts.

Article 27

SUB-COMMITTEE OF THE GOVERNMENTAL SOCIAL COMMITTEE

1. The reports of the contracting parties and the conclusions of the committee of experts shall be submitted for examination to a subcommittee of the Governmental Social Committee of the Council of Europe.

2. The sub-committee shall be composed of one representative of each of the contracting parties. It shall invite no more than two international organizations of employers and no more than two international trade union organizations as it may designate to be represented as observers in a consultative capacity at its meetings. Moreover, it may consult no more than two representatives of international non-governmental organizations having consultative status with

the Council of Europe, in respect of questions with which the organizations are particularly qualified to deal, such as social welfare and the economic and social protection of the family.

3. The sub-committee shall present to the committee of ministers a report containing its conclusions and append the report of the committee of experts.

Article 28

CONSULTATIVE ASSEMBLY

The Secretary-General of the Council of Europe shall transmit to the Consultative Assembly the conclusions of the committee of experts. The Consultative Assembly shall communicate its views on these conclusions to the committee of ministers.

Article 29

COMMITTEE OF MINISTERS

By a majority of two-thirds of the members entitled to sit on the committee, the committee of ministers may, on the basis of the report of the sub-committee, and after consultation with the Consultative Assembly, make to each contracting party any necessary recommendations.

PART V

Article 30

DEROGATIONS IN TIME OF WAR OR PUBLIC EMERGENCY

1. In time of war or other public emergency threatening the life of the nation any contracting party may take measures derogating from its obligations under this charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. Any contracting party which has availed itself of this right of derogation shall, within a reasonable lapse of time, keep the Secretary-General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary-General when such measures have ceased to operate and the provisions of the charter which it has accepted are again being fully executed.

3. The Secretary-General shall in turn inform other contracting parties and the Director-General of the International Labour Office of all communications received in accordance with paragraph 2 of this article.

Article 31

RESTRICTIONS

1. The rights and principles set forth in part I when effectively realized, and their effective exercise as provided for in part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2. The restrictions permitted under this charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Article 32

RELATIONS BETWEEN THE CHARTER AND DOMESTIC LAW OR INTERNATIONAL AGREEMENTS

The provisions of this charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

Article 33

IMPLEMENTATION BY COLLECTIVE AGREEMENTS

1. In member States where the provisions of paragraphs 1, 2, 3, 4 and 5 of article 2, paragraphs 4, 6 and 7 of article 7 and paragraphs 1, 2, 3 and 4 of article 10 of part II of this charter are matters normally left to agreements between employers or employers' organizations and workers' organizations, or are normally carried out otherwise than by law, the undertakings of those paragraphs may be given and compliance with them shall be treated as effective if their provisions are applied through such agreements or other means to the great majority of the workers concerned.

2. In member States where these provisions are normally the subject of legislation, the undertakings concerned may likewise be given, and compliance with them shall be regarded as effective if the provisions are applied by law to the great majority of the workers concerned.

Article 34

TERRITORIAL APPLICATION

1. This charter shall apply to the metropolitan territory of each contracting party. Each signatory government may, at the time of signature or of the deposit of its instrument of ratification or approval, specify, by declaration addressed to the Secretary-General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose.

2. Any contracting party may, at the time of ratification or approval of this charter or at any time thereafter, declare by notification addressed to the Secretary-General of the Council of Europe, that the charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations

it is responsible or for which it assumes international responsibility. It shall specify in the declaration the articles or paragraphs of part II of the charter which it accepts as binding in respect of the territories named in the declaration.

3. The charter shall extend to the territory or territories named in the aforesaid declaration as from the thirtieth day after the date on which the Secretary-General shall have received notification of such declaration.

4. Any contracting party may declare at a later date by notification addressed to the Secretary-General of the Council of Europe, that, in respect of one or more of the territories to which the charter has been extended in accordance with paragraph 2 of this article, it accepts as binding any articles or any numbered paragraphs which it has not already accepted in respect of that territory or territories. Such undertakings subsequently given shall be deemed to be an integral part of the original declaration in respect of the territory concerned, and shall have the same effect as from the thirtieth day after the date of the notification.

5. The Secretary-General shall communicate to the other signatory Governments and to the Director-General of the International Labour Office any notification transmitted to him in accordance with this article.

Article 35

Signature, Ratification and Entry into Force

1. This charter shall be open for signature by the members of the Council of Europe. It shall be ratified or approved. Instruments of ratification or approval shall be deposited with the Secretary-General of the Council of Europe.

2. This charter shall come into force as from the thirtieth day after the date of deposit of the fifth instrument of ratification or approval.

3. In respect of any signatory government ratifying subsequently, the charter shall come into force as from the thirtieth day after the date of deposit of its instrument of ratification or approval.

4. The Secretary-General shall notify all the Members of the Council of Europe and the Director-General of the International Labour Office of the entry into force of the charter, the names of the contracting parties which have ratified or approved it and the subsequent deposit of any instruments of ratification or approval.

Article 36

Amendments

Any member of the Council of Europe may propose amendments to this charter in a communication addressed to the Secretary-General of the Council of Europe. The Secretary-General shall transmit to the other members of the Council of Europe any amendments so proposed, which shall then be considered by the committee of ministers and submitted to the Consultative Assembly for opinion. Any amendments approved by the committee of ministers shall enter into force as from the thirtieth day after all the contracting parties have informed the Secretary-General of their acceptance. The Secretary-General shall notify all the members of the Council of Europe and the Director-General of the International Labour Office of the entry into force of such amendments.

Article 37

Denunciation

1. Any contracting party may denounce this charter only at the end of a period of five years from the date on which the charter entered into force for it, or at the end of any successive period of two years, and, in each case, after giving six months' notice to the Secretary-General of the Council of Europe, who shall inform the other parties and the Director-General of the International Labour Office accordingly. Such denunciation shall not affect the validity of the charter in respect of the other contracting parties provided that at all times there are not less than five such contracting parties.

2. Any contracting party may, in accordance with the provisions set out in the preceding paragraph, denounce any article or paragraph of part II of the charter accepted by it provided that the number of articles or paragraphs by which this contracting party is bound shall never be less than 10 in the former case and 45 in the latter and that this number of articles or paragraphs shall continue to include the articles selected by the contracting party among those to which special reference is made in article 20, paragraph 1, sub-paragraph (*b*).

3. Any contracting party may denounce the present charter or any of the articles or paragraphs of part II of the charter, under the conditions specified in paragraph 1 of this article in respect of any territory to which the said charter is applicable by virtue of a declaration made in accordance with paragraph 2 of article 34.

Article 38

Appendix

The appendix to this charter shall form an integral part of it.

APPENDIX TO THE SOCIAL CHARTER

Scope of the Social Charter in Terms of Persons Protected

1. Without prejudice to article 12, paragraph 4, and article 13, paragraph 4, the persons covered by articles 1 to 17 include foreigners only insofar as they are nationals of other contracting parties lawfully resident or working regularly within the territory of the contracting party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of articles 18 and 19.

This interpretation would not prejudice the extension of similar facilities to other persons by any of the contracting parties.

2. Each contracting party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the contracting party under the said Convention and under any other existing international instruments applicable to those refugees.

PART I

Paragraph 18

and

PART II

Article 18, paragraph 1

It is understood that these provisions are not concerned with the question of entry into the territories of the contracting parties and do not prejudice the provisions of the European Convention on Establishment, signed at Paris on 13 December 1955.

PART II

Article 1, paragraph 2

This provision shall not be interpreted as prohibiting or authorizing any union security clause or practice.

Article 4, paragraph 4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Article 4, paragraph 5

It is understood that a contracting party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exceptions being those persons not so covered.

Article 6, paragraph 4

It is understood that each contracting party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of article 31.

Article 7, paragraph 8

It is understood that a contracting party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great majority of persons under 18 years of age shall not be employed in night work.

Article 12, paragraph 4

The words "and subject to the conditions laid down in such agreements" in the introduction to this paragraph are taken to imply *inter alia* that with regard to benefits which are available independently of any insurance contribution a contracting party may require the completion of a prescribed period of residence before granting such benefits to nationals of other contracting parties.

Article 13, paragraph 4

Governments not parties to the European Convention on Social and Medical Assistance may ratify the Social Charter in respect of this paragraph provided that they grant to nationals of other contracting parties a treatment which is in conformity with the provisions of the said convention.

Article 19, paragraph 6

For the purpose of this provision, the term "family of a foreign worker" is understood to mean at least his wife and dependent children under the age of 21 years.

PART III

It is understood that the charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in part IV thereof.

Article 20, paragraph 1

It is understood that the "numbered paragraphs" may include articles consisting of only one paragraph.

PART V

Article 30

The term "in time of war or other public emergency" shall be so understood as to cover also the *threat* of war.

OTHER AGREEMENTS

GENERAL CONVENTION RELATING TO PERSONAL STATUS AND CONDITIONS OF ESTABLISHMENT, SIGNED AT TANANARIVE ON 12 SEPTEMBER 1961 BY THE HEADS OF STATE OR OF GOVERNMENT OF THE AFRICAN AND MALAGASY UNION[1]

The Government of the Republic of Cameroun,
The Government of the Central African Republic,
The Government of the Republic of the Congo,
The Government of the Republic of the Ivory Coast,
The Government of the Republic of Dahomey,
The Government of the Gabon Republic,
The Government of the Republic of Upper Volta,
The Government of the Malagasy Republic,
The Government of the Islamic Republic of Mauritania,
The Government of the Republic of the Niger,
The Government of the Republic of Senegal,
The Government of the Republic of Chad,

Considering it necessary to establish for their citizens in the territory of States of which they are not nationals a status as similar as possible to national status, in order to facilitate trade and the movement of persons between States,

Considering that their unanimous desire solemnly to affirm their solidarity and fraternity implies the conclusion of agreements conferring on their respective citizens a status very similar to national status,

Have agreed on the following provisions:

Art. 1. This convention shall apply, upon its entry into force, to the rights and benefits which each of the high contracting parties is prepared to recognize or accord within its territory to nationals of the other parties, on a basis of absolute reciprocity.

Art. 2. Citizens of each high contracting party shall be free at any time to enter the territory of any other contracting party, to travel and establish their residence within that territory and to leave it, subject to the laws and regulations applicable to nationals and to the provisions of police and public safety regulations.

The nature of the documents permitting entry into, residence in and departure from the territories of the signatory countries and the procedures for drawing up and issuing these documents shall be specified in a protocol relating to the movement of persons between the territories of the high contracting parties.

Art. 3. Under the same conditions and subject to the same reservations, citizens of each high contracting party shall enjoy the same rights and freedoms as nationals, with the exception of political rights. They shall be guaranteed the personal rights and safeguards set forth in the Universal Declaration of Human Rights, in particular, freedom to engage in cultural, religious, economic, professional or social activities, personal and public freedoms, such as freedom of thought, of conscience, of religion and worship, of opinion and expression, and of assembly and association, and freedom to form and to join national trade unions.

Art. 4. Nationals of each high contracting party may be employed in the civil service of another State as provided in the legislation of that State.

Art. 5. The rights and freedoms recognized above shall be without prejudice to the sovereign right of each government to deport citizens of another State.

Such action shall be reported immediately to the government of the State concerned. It shall be taken by personal decision of the head of government, who shall state the reasons for his decision.

The deporting State shall take every appropriate measure to safeguard the property and interests of the deported person.

Art. 6. Citizens of one high contracting party who have settled in the territory of another party may continue freely to practise their trade or profession in that territory on the same terms as nationals.

With respect to the opening of a business, the establishment of an industrial, commercial, agricultural or handicraft undertaking or firm, the exercise of a gainful occupation or the practice of a profession, citizens of any signatory State shall be treated as nationals, subject to such exceptions as may be necessitated by the economic and social situation of the country concerned.

The preceding paragraphs shall apply to legally recognized bodies corporate, subject to the public-law provisions of each country.

Art. 7. Citizens of each signatory State shall enjoy in the territory of the other parties the benefits of labour legislation and social laws on the same terms as nationals.

Art. 8. The governments of the high contracting parties undertake not to discriminate in any way

[1] Text communicated by the Government of the Malagasy Republic. See p. 223.

between their respective citizens as regards their enjoyment of the services of social, cultural and health institutions and their access to such institutions.

Art. 9. Citizens of each high contracting party shall enjoy in the territory of the other parties the same treatment as nationals with respect to civil rights, in particular, the right to invest capital, to acquire, own, administer or lease movable or immovable property, rights and interests of all kinds, and to enjoy and dispose of such property, rights and interests.

Art. 10. Each high contracting party undertakes to respect rights lawfully acquired in its territory by citizens of the other parties.

Each signatory country undertakes not to apply, with respect to property, rights or interests lawfully held in its territory by citizens of the other signatory countries, any measure likely to impair such property, rights or interests which is not applicable in the circumstances to its nationals.

In any event, any measure taken by a signatory State which impairs the movable or immovable property or interests in such property, of citizens of another signatory State shall be subject to payment of fair compensation.

Art. 11. No discriminatory fiscal measure may be taken with respect to nationals of any high contracting party residing in a country of which they are not citizens. These provisions shall apply both to bodies corporate and to individuals.

Art. 12. Citizens of each high contracting party may be represented on the same terms as nationals in commercial arbitral assemblies and on bodies representing economic interests.

Art. 13. Citizens of each high contracting party shall enjoy in the territory of the other parties, on the same terms as nationals, free access to tribunals of all kinds for the purpose of securing and defending their rights.

Art. 14. The high contracting parties agree that a subsequent convention shall resolve any conflicts of law and shall, in particular, establish the rules to govern the status of individuals.

Art. 15. The high contracting parties shall ratify this convention and shall deposit the instruments of ratification with the Government of the Republic of Dahomey as soon as they are in a position to do so.

An official record shall be made of the deposit of each instrument of ratification and a certified true copy of such record shall be sent through the diplomatic channel to each of the contracting States.

It shall enter into force between the ratifying States thirty days after the deposit by each of them of the instruments of ratification referred to in paragraph 1 of this article, and not later than 30 January 1962.

Art. 16. This convention shall remain in force for a term of five years, beginning on 30 January 1962, regardless of the date of deposit of the instruments of ratification.

The convention shall continue in force automatically for successive five-year terms, unless denounced.

Notice of denunciation shall be given at least six months before the expiry of the term specified in paragraph 1 of this article to the Government of the Republic of Dahomey, which shall inform the other States thereof. It shall have effect only with respect to the State which has given such notice.

The convention shall remain in force in respect of the other contracting States.

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Signed in Rome on 26 October 1961[1]

Article 1

Protection granted under this convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this convention may be interpreted as prejudicing such protection.

Article 2

1. For the purposes of this convention, national treatment shall mean the treatment accorded by the domestic law of the contracting State in which protection is claimed:

(*a*) To performers who are its nationals, as regards performances taking place, broadcast, or first fixed, on its territory;

(*b*) To producers of phonograms who are its nationals, as regards phonograms first fixed or first published on its territory;

(*c*) To broadcasting organizations which have their headquarters on its territory, as regards broadcasts transmitted from transmitters situated on its territory.

2. National treatment shall be subject to the protection specifically guaranteed, and the limitations, specifically provided for, in this convention.

. . .

[1] Text furnished by the Secretariat of UNESCO.

Article 4

Each contracting State shall grant national treatment to performers if any of the following conditions is met:

(*a*) The performance takes place in another contracting State;

(*b*) The performance is incorporated in a phonogram which is protected under article 5 of this convention;

(*c*) The performance, not being fixed on a phonogram, is carried by a broadcast which is protected by Article 6 of this convention.

Article 5

1. Each contracting State shall grant national treatment to producers of phonograms if any of the following conditions is met:

(*a*) The producer of the phonogram is a national of another contracting State (criterion of nationality);

(*b*) The first fixation of the sound was made in another contracting State (criterion of fixation);

(*c*) The phonogram was first published in another contracting State (criterion of publication).

2. If a phonogram was first published in a non-contracting State but if it was also published, within thirty days of its first publication, in a contracting State (simultaneous publication), it shall be considered as first published in the contracting State.

3. By means of a notification deposited with the Secretary-General of the United Nations, any contracting State may declare that it will not apply the criterion of publication or, alternatively, the criterion of fixation. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.

Article 6

1. Each contracting State shall grant national treatment to broadcasting organizations if either of the following conditions is met:

(*a*) The headquarters of the broadcasting organization is situated in another contracting State;

(*b*) The broadcast was transmitted from a transmitter situated in another contracting State.

By means of a notification deposited with the Secretary-General of the United Nations, any contracting State may declare that it will protect broadcasts only if the headquarters of the broadcasting organization is situated in another contracting State and the broadcast was transmitted from a transmitter situated in the same contracting State. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.

Article 7

1. The protection provided for performers by this convention shall include the possibility of preventing:

(*a*) The broadcasting and the communication to the public, without their consent, of their performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation;

(*b*) The fixation, without their consent, of their unfixed performance;

(*c*) The reproduction, without their consent, of a fixation of their performance:

(i) If the original fixation itself was made without their consent;

(ii) If the reproduction is made for purposes different from those for which the performers gave their consent;

(iii) If the original fixation was made in accordance with the provisions of article 15, and the reproduction is made for purposes different from those referred to in those provisions.

2. (1) If broadcasting was consented to by the performers, it shall be a matter for the domestic law of the contracting State where protection is claimed to regulate the protection against rebroadcasting, fixation for broadcasting purposes, and the reproduction of such fixation for broadcasting purposes.

(2) The terms and conditions governing the use by broadcasting organizations of fixations made for broadcasting purposes shall be determined in accordance with the domestic law of the contracting State where protection is claimed.

(3) However, the domestic law referred to in subparagraphs 1 and 2 of this paragraph shall not operate to deprive performers of the ability to control, by contract, their relations with broadcasting organizations.

. . .

Article 14

The term of protection to be granted under this convention shall last at least until the end of a period of twenty years computed from the end of the year in which:

(*a*) The fixation was made — for phonograms and for performances incorporated therein;

(*b*) The performance took place — for performances not incorporated in phonograms;

(*c*) The broadcast took place — for broadcasts.

Article 15

1. Any contracting State may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this convention as regards:

(*a*) Private use;

(*b*) Use of short excerpts in connexion with the reporting of current events;

(*c*) Ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;

(*d*) Use solely for the purposes of teaching or scientific research.

2. Irrespective of paragraph 1 of this article, any contracting State may, in its domestic laws and regulations, provide for the same kinds of limitations, with regard to the protection of performers, producers of phonograms and broadcasting organizations, as it provides for, in its domestic laws and regulations in connexion with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with this convention.

. . .

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)

No States became parties to the Convention during 1961.

2. *Convention relating to the Status of Refugees (Geneva, 1951)* (see *Yearbook on Human Rights for 1951*, pp. 581-8)

During 1961, the following became parties to the Convention, by instruments of ratification, accession or declaration deposited on the dates indicated: Argentina (15 November), Cameroun (23 October),[2] Colombia (10 October), Ivory Coast (8 December),[2] and Niger (25 August).[2]

3. *Convention on the Political Rights of Women (New York, 1952)* (see *Yearbook on Human Rights for 1952*, pp. 375-6)

During 1961, Argentina and India became parties to the Convention, by instruments of ratification or accession deposited on 27 February and 1 November 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 1961.

5. *Slavery Convention of 1926 as amended by the Protocol of 7 December 1953 (signed in New York)* (see *Yearbook on Human Rights for 1953*, pp. 345-6)

During 1961, Ireland and Nigeria[3] became parties to the Convention, by instrument of acceptance deposited on 31 August and a declaration of 26 June respectively.

6. *Convention on the Status of Stateless Persons (New York, 1954)* (see *Yearbook on Human Rights for 1954*, pp. 369-375)

No States became parties to the Convention during 1961.

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. 289-291)

During 1961, Ireland and Nigeria[3] became parties to the Convention by instrument of accession deposited on 18 September and declaration of 26 June respectively.

8. *Convention on the Nationality of Married Women (New York, 1957)* (see *Yearbook on Human Rights for 1957*, pp. 301-2)

Australia became a party to the Convention, by instrument of accession deposited on 14 March 1961.

9. *Convention on the Reduction of Statelessness (New York, 1961)* (see above, pp. 427-30)

No States became parties to the Convention during 1961. This Convention has not yet entered into force.

II. INTERNATIONAL LABOUR ORGANISATION

1. *Social Policy (Non-Metropolitan Territories) Convention, 1947* (see *Yearbook on Human Rights for 1948*, pp. 420-5)

No States became parties to the Convention during 1961.

2. *Right of Association (Non-Metropolitan Territories) Convention, 1947* (see *Yearbook on Human Rights for 1948*, pp. 425-7)

No States became parties to the Convention during 1961.

[1] Concerning the status of these agreements at the end of 1960, see *Yearbook on Human Rights for 1960*, pp. 437-9. 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, 1961*, 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] This State recognized itself as being bound, as from the date of its independence, by the agreement, the application of which had been extended to its territory by the State previously responsible for the conduct of its foreign relations.

[3] This State recognized itself as being bound, as from the date of its independence, by the agreement, the application of which had been extended to its territory by the State previously responsible for the conduct of its foreign relations.

3. *Freedom of Association and Protection of the Right to Organize Convention, 1948* (see *Yearbook on Human Rights for 1948*, pp. 427-30)

During 1961, the ratifications of the following were registered, on the dates indicated: Kuwait (21 September), Mauritania (20 June),[1] Niger (27 February),[1] Sierra Leone (15 June).[1]

4. *Right to Organize and Collective Bargaining Convention, 1949* (see *Yearbook on Human Rights for 1949*, pp. 291-2)

During 1961, the ratifications of the following were registered, on the dates indicated: Chad (8 June), Gabon (29 May), Ivory Coast (5 May), Federation of Malaya (5 June), Senegal (28 July), Sierra Leone (13 June).[1]

5. *Equal Remuneration Convention, 1951* (see *Yearbook on Human Rights for 1951*, pp. 469-70)

During 1961, the ratifications of the following were registered, on the dates indicated: Gabon (13 June), Guatemala (2 August), Ivory Coast (5 May).

6. *Social Security (Minimum Standards) Convention, 1952* (see *Yearbook on Human Rights for 1952*, pp. 377-89)

No States ratified the Convention during 1961.

7. *Maternity Protection Convention (Revised), 1952* (see *Yearbook on Human Rights for 1952*, pp. 389-92)

No States ratified the Convention during 1961.

8. *Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955* (see *Yearbook on Human Rights for 1955*, pp. 325-7)

No States ratified the Convention during 1961.

9. *Abolition of Forced Labour Convention, 1957* (see *Yearbook on Human Rights for 1957*, pp. 303-4)

During 1961, the ratifications of the following were registered, on the dates indicated: Belgium (23 January), Chad (8 June), Dahomey (22 May), Gabon (29 May), Guinea (11 July), Ivory Coast (5 May), Kuwait (21 September), Libya (13 June), Senegal (28 July), Sierra Leone (13 June),[1] Somalia (8 December) and Turkey (29 March).

10. *Discrimination (Employment and Occupation) Convention, 1958* (see *Yearbook on Human Rights for 1958*, pp. 307-8)

During 1961, the ratifications of the following were registered, on the dates indicated: Byelorussian SSR (4 August), Dahomey (22 May), Gabon (29 May), Federal Republic of Germany (15 June), Ghana (4 April), Hungary (20 June), Ivory Coast (5 May), Libya (13 June), Madagascar (11 August), Mexico (11 September), Pakistan (24 January), Poland (13 May) Somalia (8 December), Switzerland (13 July), Ukrainian SSR (4 August), USSR (4 May) and Yugoslavi (2 February).

[1] This State recognized itself as being bound, as from the date of its independence, by the agreement, the application of which had been extended to its territory by the State previously responsible for the conduct of its foreign relations.

III. United Nations Educational, Scientific and Cultural Organization

1. *Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character (Beirut, 1948)* (see *Yearbook on Human Rights for 1948*, pp. 431-3)

No States became parties to the agreement during 1961.

2. *Agreement on the Importation of Educational, Scientific and Cultural Material and Protocol thereto (Lake Success, 1950* (see *Yearbook on Human Rights for 1950*, pp. 411-15)

Nigeria[1] became a party to the agreement, by declaration deposited on 26 June 1961.

3. *Universal Copyright Convention and Protocols thereto (Geneva 1952)* (see *Yearbook on Human Rights for 1952*, pp. 398-403)

During 1961, the following became parties to the Convention and Protocols 1-3, by instruments of ratification or accession deposited on the dates indicated: Sweden (1 April), Nicaragua (16 May), Denmark (9 November) and Paraguay (11 December). In the same year Nigeria became party to the Convention on 14 November.

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. 308-9)

During 1961, the following became parties to the Convention, by instruments of ratification or accession deposited on the dates indicated: Congo (Leopoldville) (18 April), Mali (18 May), Nigeria (5 June), Norway (19 September), Luxembourg (29 September) Cameroun (12 October), Madagascar (13 November) and Gabon (4 December).

During 1961, the following became parties to the protocol, by instruments of ratification or accession deposited on the dates indicated: Ecuador (8 February), Congo (Leopoldville) (18 April), Mali (18 May), Nigeria (5 June), Norway[2] (19 September), Luxembourg (29 September), Cameroun (12 October), Madagascar (3 November), Gabon (4 December) and Guinea (11 December).

[2] With a reservation.

5. *Convention Concerning the International Exchange of Publications, Paris, 1958*) (see *Yearbook on Human Rights for 1960*, p. 434)

During 1961, the following became parties to the Convention, by instruments of ratification or accession deposited on the dates indicated: Ecuador (8 February), China (26 April), United Kingdom (1 June), and Italy (2 August). The Convention entered into force on 23 November 1961.

6. *Convention Concerning the Exchange of Official Publications and Government Documents between States* (*Paris, 1958*) (see *Yearbook on Human Rights for 1960*, p. 434)

During 1961, the following became parties to the Convention, by instruments of ratification or accession deposited on the dates indicated: Ecuador (8 February), China (26 April), United Kingdom (1 June) and Italy (2 August). The Convention entered into force on 30 May 1961.

7. *Convention against Discrimination in Education* (*Paris, 1960*) (see above, pp. 437-9)

During 1961, the following became parties to the Convention, on the dates indicated: France (11 September) and Israel (22 September).

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 1961.

2. *Inter-American Convention on the Granting of Political Rights to Women* (*Bogotá, 1948*) (see *Yearbook on Human Rights for 1948*, pp. 438-9)

No States became parties to the Convention during 1961.

3. *Inter-American Convention on the Granting of Civil Rights to Women* (*Bogotá, 1948*) (see *Yearbook on Human Rights for 1948*, pp. 439-40)

No States became parties to the Convention during 1961.

4. *Convention on Diplomatic Asylum* (*Caracas, 1954*) (see *Yearbook on Human Rights for 1955*, pp. 330-2)

The Dominican Republic became a party to the Convention by instrument of ratification deposited on 14 December 1961.

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 1961.

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 1961.

2. *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms* (*Paris, 1952*) (see *Yearbook on Human Rights for 1952*, pp. 411-12)

No States became parties to the protocol during 1961.

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. 355-57)

Greece became a party to the Convention and the protocol by instruments of ratification deposited on 29 May 1961 and 29 September 1961 respectively.

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)

Greece became a party to the Convention and the protocol on 29 May 1961 and 29 September 1961 respectively.

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 1961.

6. *European Convention on Establishment* (*Paris, 1955*) (see *Yearbook on Human Rights for 1956*, pp. 292-7)

Denmark became a party to the Convention by instrument of ratification deposited on 9 March 1961.

VI. Other Instruments

Geneva Conventions of 12 August 1949 (see *Yearbook on Human Rights for 1949*, pp. 299-309)

During 1961, the ratifications and confirmations of the four conventions were registered by the following, on the dates indicated: Portugal (14 March), Paraguay (25 October), Colombia (8 November).

In addition, the following newly independent States confirmed their participation in the four conventions: Congo (Leopoldville), Ivory Coast, Upper Volta and Nigeria.

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