YEARBOOK
ON
HUMAN RIGHTS
FOR 1962

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CONTENTS

PART II

TRUST AND NON-SELF-GOVERNING TERRITORIES

PART III

INTERNATIONAL AGREEMENTS

YEARBOOK ON HUMAN RIGHTS FOR 1962

INTRODUCTION

Part I of the present *Yearbook on Human Rights* surveys constitutional, legislative and judicial developments affecting human rights in ninety-two States, and Part II similar events in various Trust and Non-Self-Governing Territories under the administration of five States. Part III (International Agreements) contains the texts of or extracts from six multilateral agreements, adopted mainly under the auspices of the United Nations, the International Labour Organisation or UNESCO, and a table showing the States having become parties during 1962 to forty-four selected multilateral agreements adopted in or since 1946 and bearing on human rights. Since the Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10 December 1948 is the basis for the selection of material for inclusion in the *Yearbook*, the contents of this publication cover a wide range of personal, civil, political, economic, social and cultural rights.

The rapid constitutional development which was reflected in recent issues of the *Yearbook* continued during 1962. The advantages of including human rights provisions in constitutions and some of the legal problems arising from such inclusion were touched upon in the introductions to the last two issues of the *Yearbook*. The present issue again includes a considerable amount of constitutional information. In 1962, new constitutions, or constitutional amendments, involving human rights provisions were adopted or promulgated or entered into force in Burundi, Chad, Cuba, the Dominican Republic, El Salvador, India, Jamaica, Kuwait, Madagascar, Mexico, Monaco, Morocco, Nepal, Pakistan, the Republic of Korea, Rwanda, Tanganyika, Trinidad and Tobago, Uganda and Western Samoa and in Aden, the Cook Islands, the Gambia, Northern Rhodesia and Southern Rhodesia. These constitutional changes are reflected by extracts contained in the present volume.

All the constitutions in question contain provisions relating to civil and political rights and some contain provisions relating to economic, social and cultural rights.

Most constitutions containing human rights provisions also specify the limitations which may legitimately be placed upon the exercise of the rights provided for. These limitations either are of continuing application or apply in the event of defined emergency situations. Examples are the last paragraph of the preamble to the Constitution of Madagascar (as amended in 1962) and the 1962 Constitutions of Nepal (article 17), of the Republic of Korea (article 32 (2)), of El Salvador (articles 26–27 and 175–178), of Trinidad and Tobago (sections 4 and 8) and of Uganda (sections 30–31).

The judicial protection of human rights is often provided for in constitutions. Judicial procedures available to the individual for the protection of his rights are defined in the 1962 constitutions of Jamaica (section 25), Trinidad and Tobago (section 6), Uganda (section 32) and Western Samoa (articles 4 and 81). Articles 164 and 221 of the 1962 Constitution of El Salvador refer to the specific remedies of, respectively, habeas corpus and *amparo*. The numerous judicial decisions dealt with in this volume, in the sections on Argentina, Australia, Austria, Belgium, Canada, Ceylon, Cyprus, the Federal Republic of Germany, India, Israel, Italy, Japan, Lebanon, Mexico, the Netherlands, New Zealand, Nigeria, Norway, Poland, Portugal, Romania, Thailand, Turkey and the United States of America, are illustrations of the judicial enforcement of human rights.

Some of the constitutions quoted from in this volume empower a judicial organ to declare a legislative or executive action unconstitutional in case of inconsistency with constitutional articles, including those dealing with human rights. Provisions for judicial review appear in the 1962 constitutions of Burundi (article 95), Chad (articles 64 and 67), El Salvador (article 96) and the Republic of Korea (article 102). Certain national legal systems permit judicial review without providing for it in the constitution, as is illustrated by the first of the judicial decisions reported on in the section on Thailand appearing in this volume.

Apart from the judicial procedures which are available specifically for the enforcement of rights, the court procedures applied to judicial hearings in general seem to be important for the protection of human rights. Relevant texts from which extracts appear in this volume include the Code of Criminal Procedure of 15 January 1962 of the Central Republic, Legislative Decree No. 8 of 1962 on criminal procedure of Hungary, the Code of Criminal Procedure of 14 November 1960 (amended on 29 June 1962) of the Ivory Coast, Act No. 17/60 of June 1960 of Kuwait, the Code

of Criminal Procedure of 20 September 1962 of Madagascar and the Statute of 1962 concerning legal representation in the Ukrainian Soviet Socialist Republic.

Some constitutions represented in this *Yearbook* provide for the right of the individual to present or address petitions or complaints to the competent authorities. These provisions appear in the 1962 constitutions of Burundi (articles 19 and 40), El Salvador (article 162), Kuwait (article 45). Monaco (article 31) and Republic of Korea (article 23).

During 1962, New Zealand and Norway were added to the countries where the institution of *Ombudsman* exists. Extracts from the relevant legislation appear in this volume. The *Ombudsman*, as envisaged in these laws, is an official appointed by the legislature with power to investigate and take certain action upon alleged violations of human rights. He may act either on a complaint or on his own initiative.

Some of the constitutions and legislation quoted from in this issue include provisions bearing on the responsibility of the State or its agents for violations of the rights of the individual, namely article 22 of the Constitution of Burundi, articles 19, 215 and 219 of the Constitution of El Salvador, article 114 of the Penal Code of Madagascar and article 26 of the Constitution of the Republic of Korea.

Various institutions or procedures designed to safeguard more particularly economic and social rights are illustrated in this volume. Article 194 of the Constitution of El Salvador requires the State to maintain an inspection service to ensure the observance of the laws on labour, welfare and social security, to assess their results and to suggest any desirable reforms. Article 5 of Act No. 2694 of Costa Rica, prohibiting discrimination in employment, defines certain functions to be performed by the Inspectorate-General of Labour. In Jordan, Regulation No. 1 of 1963 deals with labour inspectors and their functions. In Romania, decree No. 834/1962 of the Grand National Assembly and Decision No. 1108/1962 of the Council of Ministers instituted a new system of labour protection. In Finland, Act No. 420 of 27 July 1962 regulates the procedure to be followed in the settlement of labour disputes by State Mediators. Regulation No. 32 of 1963 of Jordan, on the settlement of labour disputes, deals with mediation and the reference of such disputes to the Industrial Court. The contributions to the present issue of the *Yearbook* by some States include information on economic measures designed to implement and protect human rights.

References to the Universal Declaration of Human Rights continue to be made in constitutions, legislation, judicial decisions and international agreements. The National Assembly of Burundi was "inspired by the Universal Declaration of Human Rights" when adopting the Constitution of 1962, according to the preamble to that text. The preamble to the Constitution of Chad of 1962 records that the people of Chad "solemnly proclaim their adherence to the principles of democracy as set out... in the Universal Declaration of 1948". Article 13 of the Constitution of Rwanda of 1962 provides that: "Fundamental freedoms as set forth in the Universal Declaration of Human Rights shall be guaranteed to all citizens...". In Israel, the provisions of the Universal Declaration concerning freedom of thought and freedom of expression were referred to in the case of *Israel Film Studios Ltd.* v. *Films Inspection Board* (10 December 1962), and its Articles 10 and 11, relating to the right to a fair and public hearing and the presumption of innocence, were cited by Judge Cohn in his dissenting opinion in *Gold.* v *Minister of Interior* (29 August 1962). Article 16 of the Universal Declaration was recalled in the preamble to the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which was opened by the General Assembly for signature and ratification on 10 December 1962.

The attention of readers interested in tracing information on specific rights in this volume is drawn to the fact that the index is arranged principally according to rights.

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

PART I

STATES

AFGHANISTAN

NOTE[1]

1. In accordance with a decision of the Council of Ministers, a special interministerial committee was formed to study the Universal Declaration of Human Rights and also the Draft Covenants on Human Rights, special consideration being given to the articles of the Draft Covenants adopted by the Third Committee of the General Assembly, to compare them with Afghan legislation and to recommend, if necessary, legislative reforms which could be proposed by the Government to the National Assembly to improve Afghan laws with a view to a better protection of the rights of man.

This Committee was composed of several Ministers and was assisted by several legal experts.

2. The Government of Afghanistan has invited a United Nations Seminar to meet in Kabul in 1964. This invitation has been accepted, and in May 1964 the Seminar on Human Rights in Developing Countries will be convened.

3. Delegations of societies interested in the promotion of the Status of Women in Afghanistan have visited various countries.

[1] Note furnished by H. E. Mr. Abdul Rahman Pazhwak, Permanent Representative of Afghanistan to the United Nations, Government-appointed correspondent of the *Yearbook on Human Rights*.

ALGERIA

ORDINANCE NO. 62-010 OF 16 JULY 1962 ESTABLISHING THE PROCEDURE FOR THE ELECTION OF MEMBERS OF THE NATIONAL ASSEMBLY[1]

TITLE II
QUALIFICATIONS OF ELECTORS

Art. 6. The following shall be electors in a single college:

(1) Algerian men and women who have reached the age of twenty-one years on the polling date;

(2) French nationals who have reached the age of twenty-one years on the polling date and can satisfy one of the following requirements:

(a) That they were born in Algeria and can prove that on 1 July 1962 they had been habitually resident in Algerian territory for ten years; or

(b) That they can prove that on 1 July 1962 they had been habitually and regularly resident in Algerian territory for ten years, and that their father or mother was born in Algeria and can prove that on 1 July 1962 he or she had been habitually resident therein for ten years; or

(c) that they can prove that on 1 July 1962 they had been habitually and regularly resident in Algerian territory for twenty years.

. . .

TITLE III
QUALIFICATIONS OF CANDIDATES

Art. 8. Any elector who has completed his twenty-third year and is not under a judicial disability or under detention may be a candidate for election.

Art. 9. The following officials may not be elected in the districts in which they exercise their functions:

(1) first presidents, presidents and members of the *parquet* of appeals courts;

(2) presidents, vice-presidents, judges and substitute judges, examining magistrates and members of the *parquet* of *tribunaux de grande instance*, and members of the lower judiciary *(juges d'instance)* and those of their substitutes who are remunerated for their services;

(3) prefects of police, prefects and chief clerical officers of prefectures;

(4) sub-prefects and members of administrative courts.

Art. 10. The holding of any public civil or military post remunerated out of the funds of the State or of a local community shall be incompatible with the office of member of the National Assembly.

Consequently, any official or agent of the State or of a local community who comes within the categories described above and who is elected as a member of the National Assembly shall be required to opt between his post and the office of member of the Assembly at the time when his election is validated by the Assembly.

. . .

TITLE IV
DECLARATION OF CANDIDATURE

. . .

Art. 15. No one may be a candidate on more than one list in the same district or in more than one district.

If a candidate stands for election on more than one list or in more than one district, he cannot be validly elected in any district.

. . .

TITLE VI
ELECTORAL PROPAGANDA

Art. 18. The electoral campaign shall open at midnight preceding 26 July 1962 and close at midnight following 9 August 1962.

Art. 19. During the electoral campaign, special sites shall be set aside in each *commune* for the affixing of electoral posters.

At each of these sites, an equal space shall be alloted for each list of candidates.

Art. 20. The dispatch and distribution of all documents containing electoral propaganda shall be governed by decree.

. . .

[1] Text published in the *Journal officiel de l'Etat algérien*, First Year, No. 2, of 17 July 1962.

ARGENTINA

NOTE[1]

I. LEGISLATION

Decree No. 631/62 makes freedom of education effective by prescribing a procedure under which graduates of private universities may qualify to exercise the various professions. Formerly such universities only gave academic diplomas.

II. JUDICIAL DECISIONS

A final system has been worked out for the exceptional procedure called *amparo*. Its significance is due to the rapidity of the proceedings and the importance of the cases in which it is allowed:

(a) When there is no other legal procedure for protecting a right;

(b) When the situation in question is such as to cause serious or irreparable harm;

(c) When the act violating the right is manifestly illegal;

(d) When the right violated is one guaranteed by the National Constitution.

The relevant passages of the judicial decisions concerning *amparo* read:

"Where it is obvious that any restriction placed upon any basic right of the individual is illegitimate, and that serious and irreparable damage would be caused if the matter were to be dealt with by ordinary administrative or judicial procedure, the judges should at once re-establish the restricted right by providing for recourse to *amparo*..." (Supreme Court of Justice, 5 September 1958, Case of Kot Samuel S.R.L.).

". . . In conformity with the doctrine established by this Court (Decisions 239, 459, 241, 291 *et al*), the admissibility of an application for *amparo* (protection), for example against an order of a Court, depends on the obvious and undeniable illegality of the act which is alleged to violate some constitutional guarantee" (Supreme Court of Justice, 16 October 1959, *B. Price* v. *National Customs Administration*).

". . . Since in this case a suitable procedure exists for obtaining protection of the rights claimed, and indeed was used by the applicant, the application for *amparo* must be rejected, in conformity with the invariable practice of this Court" (Supreme Court of Justice, 3 June 1960, Case of TRICERRI, S.A.).

". . . Since other legal means exist for obtaining protection of the rights claimed, and the case has not revealed any exceptional reason for departing from the established principle, the application must be rejected" (Supreme Court of Justice, 1 June 1960, Case of Juan P. ALBELO).

Requirement: "Proof that there has been an unlawful restriction of constitutional rights or guarantees, caused by an act tainted with obvious illegality".

"In view of the special circumstances of the case already related, there can be no doubt that serious and irreparable damage would be caused to the applicants if they were obliged to follow the ordinary procedure for enquiry into the validity of the resolution of the University Council cancelling their professional degrees, since in the meantime they would be barred from all practice of their profession, and would thereby suffer material damage. It must therefore be admitted that in this case there exist the exceptional circumstances which the Supreme Court took into account in allowing the application for *amparo* as an exceptional remedy" (Buenos Aires Federal Chamber, Civil and Commercial Court, 31 May 1960, Case of Cáceres Cowan, Blas and others).

[1] Information furnished by the Government of Argentina.

AUSTRALIA

HUMAN RIGHTS IN 1962[1]

I. Legislation

1. Political Rights

The right to vote at elections for the Commonwealth Parliament, the Parliament of the State of Western Australia and the Legislative Council of the Northern Territory of Australia has been extended to all aborigines; previously the right has been confined to limited classes of aborigines.[2]

The laws in question were as follows:

Commonwealth Electoral Act 1962;

Electoral Act Amendment Act 1962 (Western Australia);

Amendments of the Northern Territory Electoral Regulations (Commonwealth Statutory Rules 1962, No. 49).

2. Just and Favourable Conditions of Work

The Factories, Shops and Industries Act 1962 of the State of New South Wales is a lengthy enactment consisting of 152 sections and five schedules. The Act makes provision with respect to the supervision and regulation of factories, shops and certain other industries; and to the health, safety and welfare of persons employed therein; and to restrict the hours on week days and Sundays during which shops may be opened and certain trades may be carried on.

The Act replaces previous legislation on these subjects that was contained mainly in the Factories and Shops Act 1912 as amended. Sections 3 and 49 of the 1912 Act contained special provisions relating to the employment of Chinese in factories, in particular in furniture factories. The 1912 Act has now been repealed and the provisions in question have been completely omitted from the 1962 Act.

3. Right to Realisation of Economic, Social and Cultural Rights — Australian Aborigines

The Aboriginal Affairs Act 1962 of the State of South Australia, which is an Act to promote the welfare and advancement of aborigines and of other persons of aboriginal blood in the State, replaces earlier legislation on the subject. Most of the protective provisions of a restrictive character that were contained in the earlier legislation have been omitted from the new Act.

The duties of the Minister charged with the administration of the Act are described in section 15 as follows:

"15. It shall be the duty of the Minister —

"*(a)* to apportion, distribute, and apply as seems most fit, the moneys at the disposal of the Minister;

"*(b)* to manage and regulate the use of all reserves, but not so as to alienate any portion of such reserves from use by aborigines or persons of aboriginal blood;

"*(c)* to exercise general supervision and care over all matters affecting the welfare of aborigines and persons of aboriginal blood;

"*(d)* in his absolute discretion to distribute blankets, clothing, provisions and other relief or assistance to aborigines and persons of aboriginal blood;

"*(e)* in his absolute discretion to provide, in cases of need, when possible, for the maintenance and education of the children of aborigines and persons of aboriginal blood;

"*(f)* in his absolute discretion to apply part of the moneys at its disposal for the provision of housing and for the purchase of stock and implements to be lent to aborigines or persons of aboriginal blood to whom land has been allotted under section 21, and to apply the same accordingly either without payment or on such terms as are approved by the Minister, and no person shall, except with the approval of the Minister, acquire any title to any goods or chattels so lent as aforesaid;

"*(g)* to promote the social, economic and political development of aborigines and persons of aboriginal blood until their integration into the general community;

"*(h)* to collect information concerning the regional distribution of aborigines in South Australia and to promote research into the problems of aborigines."

The Act also established an Aboriginal Affairs Board with the duty of advising the Minister on the operation of the Act and on measures for promoting the welfare of aborigines and persons of aboriginal blood.

Section 25 provides that an aborigine who is suffering from a contagious or infectious disease may be ordered to undergo treatment. The section does not apply to an aborigine whose name has been removed from the Register of Aborigines to

[1] Note furnished by the Government of Australia.

[2] All aborigines have for some time had the right to vote at elections for the Parliaments of the States of New South Wales, Victoria, South Australia and Tasmania.

be kept under the Act on the ground that he is capable of accepting the full responsibilities of citizenship.

Section 30 provides that the Governor may by proclamation declare that the provisions of the Licensing Act 1932–1960 (South Australia) forbidding the consumption of alcohol by aborigines or persons of aboriginal blood shall not apply in any area or place specified in the proclamation.

II. Court Decisions

1. FREEDOM OF DISCUSSION ON AFFAIRS OF STATE — RIGHT TO FAIR TRIAL

REGINA *v.* TURNBULL

(1958) Tasmanian Law Reports 80[1]

Supreme Court of Tasmania

On the trial of Dr. Turnbull on charges of official corruption and corruption in relation to business contrary to sections 83 and 266 of the Criminal Code (Tasmania), it was held as follows:

(1) Statements made in the Tasmanian Parliament by the prisoner in his capacity as Treasurer of the State were protected from disclosure and no evidence could be given of such statements.

(2) However, evidence could be given as to the times of proceedings in the Parliament.

(3) Evidence could also be given as to meetings of the Caucus of the Parliamentary Labour Party.

(4) Business transacted at a meeting of the State Cabinet could not be disclosed, at least not without the consent of the representative of the Crown.

(5) Evidence should be received of communications made in the course of official discussions between the prisoner in his Ministerial capacity and the Under-Treasurer, the permanent head of the Treasury Department.

The following are extracts from the judgment of the trial judge, Gibson, J.:

"*Statements in Parliament*

"Is it reasonably necessary then that the members of the Parliament of Tasmania should be protected from the use of statements made by them in Parliament in civil or criminal proceedings? The answer must be given, I think, in the light of the history of parliamentary institutions. I have not the time, in the middle of a criminal trial, to trace that history through the constitutional struggles between Crown and Parliament culminating in the *Bill of Rights*, which declares that 'the freedom of speech and debates on proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament', I accept as accurate the statement of *Hood Phillips* (Constitutional Law, p.130) that 'Freedom of speech, which was first demanded by the Speaker in 1541, is the essential attribute of every free legislature, and may be regarded as inherent in the constitution of Parliament'

"The necessity for protection in relation to statements in Parliament applies with particular force to those of the responsible Ministers of the Crown. They are responsible to Parliament, and so have to answer to Parliament for their exercise of the administrative functions entrusted to the Cabinet by the enactments of Parliament. . .

"I disallow an objection to evidence as to times in the proceedings of the House of Assembly on 12 November 1957. I do not think that there is any necessity to protect this information from disclosure.

"I also disallow an objection to the evidence as to meetings of Caucus on 6 and 13 November 1957 when the accused was present, so far as it is based on a claim of Parliamentary privilege. The Caucus, or private meeting of members of a party, to determine joint action in Parliament, is essentially a body which operates outside Parliament, whatever effect it intends to produce in Parliament, and cannot, in my opinion, claim parliamentary privilege."

Proceedings of Cabinet

"In my opinion what is sought to be proved is inadmissible. The Cabinet consists of executive councillors who are members of Parliament and are also the responsible ministers of the Crown. As executive councillors, each of them takes the oath prescribed in the *Promissory Oaths Act* 1869, which requires that the person taking the oath shall not directly or indirectly reveal such matters as shall be debated in Council and committed to the secrecy of the Councillors. The oath is of ancient origin in English constitutional history, and in its Tasmanian form is not essentially different from that stated by *Coke* (4 Inst. 54). Ministers are not at liberty to divulge proceedings in Council without express permission from the Crown, and, of course, an officer who is directed merely to take minutes for the use of Cabinet can be in no different position. The general position is stated by *Todd* and is as follows:

> "'The deliberations of the cabinet upon all matters which engage their attention are strictly private and confidential' (Parliamentary Government in England, Vol. 2, p. 240)

"It is said to be doubtful whether the courts could be justified in permitting such a disclosure before them even if the Sovereign should grant permission to a Minister to do so (*op. cit.*, Vol. 1, p. 497). The learned contributors to the title 'Constitutional Law' in *Halsbury's Laws of England* express the opinion that the duty of secrecy, although said by *Todd* to be dependent upon the terms of the oath, 'is more probably a working rule which has been found to be necessary to outspoken discussion in the Cabinet' (3rd edn., Vol. 7, p. 354, note (0)).

"Whatever may be the basis of the rule, the general constitutional position is clear; and it is not competent without the consent of the representative of the Crown (and if *Todd's* opinion is correct, only doubtfully then) to divulge to a court of law either directly or indirectly what has happened in the Cabinet Council."

[1] Although this case was decided in 1958, the report only became available in the period under review. Dr. Turnbull was acquitted of the charges laid against him.

"Communications between Ministers and Senior Civil Servants

"The grounds put forward are that there should be a free discussion between the political head of the department and his civil service advisers, undeterred by possible consequences in the civil or criminal courts, and that I should uphold the objection as soon as it appears that disclosure of communications of that description within a department of the civil service is threatened. . .

"I have to consider the matter on the ground of public policy, including the ground that it is a matter of public interest that the truth shall, as far as possible, be ascertained at a criminal trial. This is subject to qualification by rules of evidence designed to exclude evidence of doubtful reliability, and by considerations of fairness. Against it should be set the principle that freedom of discussion on affairs of State, using that term in a wide sense, shall be free and untrammelled without fear of being called to account.

"In *R.* v. *Salter* ((1939) 34 Tas. L.R. 16) the principle of seeing justice to an accused person was invoked for the purpose of examining documents normally excluded without examination, but justice is concerned not only with the interests of the accused person, but also with the interests of the State.

"Public policy is an 'unruly horse'. It is clear that if one proceeds to develop one ground of public policy to the exclusion of all others it may be developed too far. The tendency of the courts is against the extension of areas of the law governed by public policy (See *Broome* v. *Broome* ([1955] 1 All E.R. 201)).

"Some proportion must, I think, be observed. Here I think the requirements of justice constitute the dominant element of public policy as to this particular relationship, and that the evidence should not be excluded on the grounds claimed."

2. RIGHT TO FAIR TRIAL — POLICE INTERROGATION

REGINA *v.* GOVERNOR OF METROPOLITAN GAOL

Ex parte Molinari (1962) Victorian Reports 156

Supreme Court of Victoria

These were habeas corpus proceedings brought by an immigrant to test the lawfulness of his detention in gaol pending his deportation under the Migration Act 1958 of the Commonwealth on the ground that he had been convicted of an offence within five years of his entry into Australia.

In the course of his judgment, Sholl, J. made some observations on the subject of police interrogation of witnesses at police stations or detective offices. He pointed out that in Australia oral evidence by police of alleged confessions by accused persons is admissible in evidence if the confession is voluntary, and then went on to say:

"Unless a citizen is actually arrested on a stated charge, he is not obliged to go with police to a police station, and if he is questioned in those circumstances he is entitled first to be warned, and may say nothing if he likes. The public generally does not know this, and many people are taken to police stations or headquarters and questioned without any arrest or charge having first been made. Interviews take place on police premises while two or more police, and sometimes many more, are present or nearby. This alone may, and in some cases probably does, have an intimidatory effect. If a lay interpreter is used to interview a foreigner, one does often find that he or the police do prepare and produce contemporary written records of questions and answers put to and obtained from the person interviewed by him. In such a case the presence of the interpreter, who is outside the police force, gives to judges and juries some assurance at any rate, if improper intimidation is alleged, that it would have been less likely in his presence. But in other cases, an allegation of intimidation by threats or violence often puts the tribunal in a real difficulty. The present operation of s.399 of the Crimes Act means, in effect, that a man with a criminal record is likely to have it disclosed to the jury if he alleges intimidation, and to that extent he would seem, to a policeman improperly disposed to use intimidation, a safer victim. Many judges, I venture to think, are satisfied that some violence is inflicted by some police in police premises from time to time. At all events, when I have to decide questions of fact involving such an allegation, I am entitled and bound, like a juror, to use my own common sense and knowledge of the world, such as it is, and after many years in the law, including some knowledge of the criminal courts, both at the Bar and on the Bench, that is something which I personally bear in mind. No doubt, it is not nearly as common as some persons believe, or as accused persons allege. But a few police officers, acting improperly, necessarily affect the standing and credibility of all in the eyes of a tribunal which has to deal with an allegation of intimidation by police. As is frequently and correctly enough said, such an allegation is easy to make, and difficult to disprove, and is very tempting as a possible means of escape from a genuine confession which a wrongdoer has subsequently — perhaps after obtaining legal advice — repented of having made. None the less, my own approach to such a question is, I am bound to say, now considerably affected by the consideration that police officers do not avail themselves of other modern means of recording interviews with accused persons, even in circumstances where such facilities would be available — a course which would go a long way towards reassuring the tribunals to which they are subsequently recounted — certainly judges and, in my own opinion, juries too. For example, the tape recording of such interviews, though used overseas, according to one's reading, has not, to my knowledge, been used here. Or official licensed shorthand writers, not attached to the Police Department, but bound by the obligations of a licensed shorthand writer, might be used to record such interviews. Or again, a magistrate or a justice of the peace might be called in, and could testify by certificate to the correctness of a transcript of the interview. I have heard it asserted that accused persons or their legal representatives could, even if any such means were used, still allege that a tape recording had been tampered with or falsified, or that a licensed shorthand writer, or magistrate, or justice of the

peace, had connived with the police to present a false account of an interview. One might pay attention to the assertion if any such methods had been tried, and any such allegations had been made with respect to them. But, to my knowledge, none has been tried, and I venture to think that such allegations would be rare indeed. One thing I am certain of, and that is that interviews so proved would seem to the courts far more real, and would carry a far more satisfactory assurance of accuracy, than does most of the present verbal testimony of police officers relating interviews of which they have recorded their own versions for the police brief, subsequently learning them by heart, so far as possible, in order to repeat them in court. Speaking for myself, I should certainly feel far more satisfaction with the record of a duly licensed shorthand writer, recording such an interview in accordance with his oath, than I habitually feel with the verbal recounting by police witnesses of oral interviews in a fashion which, as it seems to me, usually cannot be word for word accurate, and which one often suspects is not exhaustive. I have drawn attention to these matters because I regard this case as touching upon a real important problem in judicial proceedings on the criminal side of the courts. It is one about which I have for a considerable time felt that something should be done, but I have observed no indication of any inclination on the part of the police administration to adopt what as a judge I should regard as much more satisfactory methods. That there may well be difficulties, I can easily see, especially outside the metropolitan area. But where there are means whereby a court can get an actual verbatim record of police interviews with accused persons, my own view is that I should much prefer to have it if I am to act on the interview, or advise a jury that it may act on it, especially in a matter involving an accusation of serious crime. One of my brother judges has drawn my attention to the fact that in some of the Indian jurisdictions, though the police may and do interview suspects, the interviews themselves are not admissible in evidence, but are merely material on which the police may found further inquiries. In those jurisdictions, a confession, if it is to be made and proved, must be made before a magistrate. The problem is a real one. In this country less radical reforms might go a long way towards solving it."[1]

3. RIGHT TO FAIR TRIAL — CONFESSIONS BY AUSTRALIAN ABORIGINES

REGINA *v.* KINA

(1962) Queensland Reports 139

Supreme Court of Queensland

Section 34(1.) (*a*) of the *Aboriginals Preservation and Protection Acts* 1939 *to* 1946 of the State of Queensland provides as follows:

"Where an admission of guilt or confession before trial is obtained from any aboriginal charged or suspected of any crime, misdemeanour, or offence, indictable or otherwise, it shall not be admissible or received in evidence unless, on inquiry from the aboriginal in Chambers in the presence only of the judge, the Crown Prosecutor and the defendant's counsel, the judge is satisfied that the aboriginal understood the meaning of his statement or confession and that such statement or confession was obtained voluntarily, and without duress or pressure of any sort."

Held by the Court (Gibbs, J.) that the section requires *inter alia* that the judge must be satisfied, on the basis of what the aboriginal says in Chambers, that the confession was in fact obtained. If the aboriginal consistently denies having made the confession, it is impossible for the judge to be satisfied that it was made.

The judgment also dealt with the meaning of the phrase "pressure of any sort" appearing in section 34 (1.) (*a*):

"From what the accused told me in Chambers I am satisfied that in relation to the confession generally, no pressure of any sort was applied to him. However, the accused says that while he was writing the statement, the detective sergeant, who was standing by his side, said to him, "Say you picked up the frying pan'. The accused wrote in these words, 'I then picked up the frying pan and hit her with it a number of times and which she bled from the cut'. He said that he put those words in because the detective sergeant asked him to mention the frying pan and he says that he has not and had not any recollection of whether in fact he used the frying pan. The question is whether the fact that he was asked by a person in authority to mention the frying pan, in the circumstances, amounts to 'pressure of any sort'.

"In this regard also, the meaning of the section is not free from difficulty. It is, of course, a basic principle that a confession in a criminal case is not admissible unless it was voluntarily made and in determining whether the confession is voluntarily made, courts are not limited by any category of inducements which may prevail over a man's will — see the discussion in *McDermott* v. *The King* ([1948] 76 C.L.R. 501, at p. 512).

"When the section speaks of a confession being obtained voluntarily, that, of course, implies that the confession was not obtained as a result of duress. Nevertheless, there is an express mention of duress and there is a further express mention of pressure of any sort. It seems to me, difficult as the section is, that it must be liberally construed as being intended to confer the greatest possible protection on a class of persons who, for one reason or another, it may be thought need more protection than other members of the community.

"Viewed in that light, the only effect that can be given to the words 'pressure of any sort' must be to make them include some sort of pressure which

[1] The use of tape recorders and stenographers for the purpose of recording confessions was subsequently discussed at the 1963 United Nations Seminar on the Role of the Police in the Protection of Human Rights held at Canberra, Australia. The procedure appeared to most participants to be an ideal. From the point of view of the police and the investigation of crime, however, it was found that it would not be practicable in many circumstances and in many countries.

would fall short of that which would render the confession involuntary. It does seem to me that 'pressure of any sort' is exerted within the meaning of the section if the statement has resulted from the exercise of influence by a person in authority that led the accused person to say or write something that he would not otherwise have written and in the truth of which he does not believe.

"In the present case, it does seem to me that if one accepts the statement in Chambers of the aboriginal, it is proper to conclude that those words in the confession do result from 'pressure' in the wide sense that must be attributed to the word in its context in that section. As I have said it is immaterial whether or not I accept the truth of what was told to me by the aboriginal, because if I reject his account of what occurred, then my inquiries must fail to satisfy me as to the circumstances in which the confession was obtained.

"It will be seen, of course, that the section places the judge entirely in the hands of the accused in relation to the admissibility of the confessions and that, of course, may be the intention of the section. It replaced a section which entirely excluded a confession made by an aboriginal."

4. LIBERTY AND SECURITY OF THE PERSON

REGINA *v.* JOHNSON

(1962) Queensland Weekly Notes No. 37

Court of Criminal Appeal

The appellant in this appeal had been convicted of having carnal knowledge of his sister aged 15 years. He was of sub-normal intelligence, and the trial judge, acting under section 18(1) *(a)* of the Criminal Law Amendment Act of 1945 of the State of Queensland directed that he be examined by two medical practitioners. Both practitioners reported that the the appellant was not incapable of exercising proper control over his sexual instincts; one only of the practitioners reported that he required care, supervision and control in an institution. The trial judge, purporting to act under section 18(6) *(a)* of the Act, directed that he be detained in an institution for four years.

Section 18(6) *(a)* reads as follows:

"18. — (6). If the medical practitioners report to the judge that the offender or, in the case of an application made under subsection four of this section the judge is of the opinion that the prisoner, is not incapable of exercising proper control over his sexual instincts, but that his mental condition is subnormal to such a degree that he requires care, supervision and control in an institution either in his own interests or for the protection of others, and the judge after considering the report and any evidence submitted in rebuttal thereof is of opinion that the offender requires such care, supervision, and control, the judge may —

"*(a)* Direct that the offender or prisoner be detained in an institution either for such period as the judge directs or during His Majesty's pleasure."

Held by the Court of Criminal Appeal that section 18(6) must be construed strictly since it empowers the judge to give drastic directions concerning the liberty of the subject. In order to found the judge's jurisdiction under the provision all the practitioners concerned must report as the section prescribes. This was not the position in the instant case and the judge's direction as to detention at an institution must therefore be quashed.

In substitution for that sentence the appellant should be admitted to probation under the supervision of a probation officer for three years.

AUSTRIA

PROTECTION OF HUMAN RIGHTS IN LEGISLATION AND JUDICIAL DECISIONS IN 1962[1]

A. Legislation (Acts and Ordinances)

I. FUNDAMENTAL FREEDOMS

1. Right to a Proper Hearing

(a) Under the Federal Constitutional Act, *BGBl. (Bundesgesetzblatt)* No. 162/1962, and the Judicial Administration Act, *BGBl*, No. 180/1962, the administration of the judicial service was placed on a sound, comprehensive footing. Officials of the higher judicial service are specially trained persons who are not judges but to whom the handling of certain minor court business in civil cases before courts of first instance may be transferred under the supervision of the competent judge.

(b) Under the Amendment of 1962 concerning criminal procedure, *BGBl.* No. 229, the position of the accused in criminal cases was further improved and additional means of defence made available to him.

2. Right to own Property

(a) Under Federal Act *BGBl.* No. 108/1962, the division of funds of the reception organizations established in accordance with Article 26 of the Austrian State Treaty was settled.

(b) Federal Act *BGBl.* No. 177/1962 made provision for the compensation of displaced and expelled persons, and thus forms part of the legislation for the liquidation of property damage sustained as a result of the Second World War or its aftermath.

3. Right to Freedom of Belief and Conscience

(a) The Religious Instruction Act was recently amended with a view to ensuring the right to freedom of belief and conscience within the public school system (cf. Federal Act *BGBl.* No. 243/1962).

(b) In order to make it easier for the Protestant Church to found religious schools that Church was given a grant from the Federation, under Federal Law *BGBl.* No. 249/1962, for the establishment of Protestant schools in Burgenland.

4. Right to Freedom of Association (and Assembly)

Modifications and additions were made to the Assembly Act, 1951, under Federal Act *BGBl.* No. 102/1962. These modifications reflect practical requirements and involve no basic reshaping of the Assembly Act.

5. Right to participate in the Formation of National Policy

Under the Federal Constitutional Act Amendment of 1962, *BGBl.* No. 205, local authority law was reshaped and the autonomy of local authorities thereby guaranteed to the fullest extent.

II. RIGHT TO SOCIAL SECURITY

Social security legislation underwent further development in 1962, as in previous years. Of the wealth of legislation in this field, only the following three Acts will be mentioned:

1. Under the ninth Amendment to the General Social Insurance Act, *BGBl.* No. 13/1962, additions and modifications were made to many details of the regulations governing general social insurance, in the light of intervening experience.

2. Federal Act *BGBl.* No. 185/1962 made further regulations concerning the granting of benefits to female civil servants on maternity leave.

3. Under Federal Act *BGBl.* No. 235/1962, service conditions for domestic servants and domestic employees were revised in accordance with modern social insurance principles.

III. CULTURAL RIGHTS

1. Under Federal Constitutional Act *BGBl.* No. 215/1962, the Federal School Supervision Act, *BGBl.* No. 240/1962, the School Attendance Act, *BGBl.* No. 241/1962, the School Organization Act, *BGBl.* No. 240/1962, and the Private School Act, *BGBl.* No. 244/1962, a comprehensive system of school legislation was instituted.

2. In order to raise the necessary funds for the construction and operation of a college for social and economic sciences at Linz, a special fund was established under Federal Act *BGBl.* No. 189/1962.

[1] Note furnished by the Government of Austria.

B. International Agreements

1. In connexion with the comprehensive readjustment of the school system, already mentioned, a concordat was concluded with the Holy See in order to settle matters associated with that system (cf. *BGBl.* No. 273/1962).

2. With a view to ensuring reliable jurisdiction by the European Court of Human Rights, Austria concluded the fourth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe, whereby the judges of the European Court of Human Rights were granted the privileges and immunities necessary for the exercise of their functions (cf. *BGBl.* No. 88/1962).

3. In the interest of free exchange of information, an agreement was concluded between Austria and Yugoslavia concerning the establishment and operation of Austrian information agencies in Yugoslavia (cf. *BGBl.* No. 194/1962).

C. Judicial Decisions

In the year under review, no changes took place in the field of fundamental rights and freedoms, so far as the Constitutional Court was concerned. From the wealth of decisions handed down by this Court in the matter of human rights, only the following may be mentioned as particularly noteworthy:

1. As far back as 1959 (cf. the decisions of the Constitutional Court of 9 March 1959, B 292/58, and of 10 March 1959, B 209/58), the Constitutional Court ruled that every association must have a name which must not be contrary to law or justice, threaten the security of the State, contain untrue statements, or be misleading. In connexion with this decision, the Constitutional Court on 24 March 1962, B 213/61, ruled that an association might nevertheless use neutral (imaginary) names, if they were immediately recognizable as such.

2. With reference to the principle of equality, to which even the legislator must adhere in Austria, the Constitutional Court handed down the following two interesting decisions:

(a) In its decision of 23 March 1962, B 342/1961, the Constitutional Court ruled that differences resulting from the marking of boundaries did not conflict with the principle of equality unless the demarcation was effected contrary to all objective experience, so that a false result produced not merely cases of hardship.

(b) According to the decision of 28 June 1962, B 334/61, the legislator was not obliged, when making a general provision standardizing exceptions, to take into account every possible case to which the general rule did not apply.

BELGIUM

NOTE[1]

I. Legislation

LABOUR LEGISLATION[2]

1. Work Contract

A. Guaranteed weekly wage

After having been extended once again — this time until 31 December 1962 — by the Royal Order of 21 June 1962 (*Moniteur belge*, 27 June 1962, p. 5,520), the arrangements provided for in the Act of 20 July 1960 were very substantially amended by the Act of 10 December 1962 (*Moniteur belge*, 15 December 1962, p. 11,350).

Formerly, the employer was obliged to pay remuneration, in the percentages legally specified, in respect of the first seven days of incapacity for work due to illness or accident, only when the said incapacity lasted at least fourteen days, and provided that the person concerned had had at least six months' service in the undertaking.

Since 1 January 1963, this obligation has been extended to cover all incapacity due to illness or accident, regardless of duration (although one day may be deducted if the incapacity lasts for less than two weeks), and the qualifying length of service has been reduced to one month.

The question whether the guaranteed weekly wage became payable afresh in the event of a relapse had given rise to controversy. It was settled by the Act of 10 December 1962 which provides that in the event of a relapse occurring within twelve working days from the date of returning to work the employer is not obliged to pay remuneration in respect of the first seven days of incapacity, but only in respect of that part of the said period in respect of which no remuneration was paid during the initial incapacity, unless the worker produces a medical certificate establishing that the incapacity was caused by a different illness or accident.

B. Termination of contract

Provisions similar to those already applicable in respect of contracts of salaried employment have been made applicable to work contracts by the aforesaid Act, as follows:

"The contract must be terminated by a written communication indicating the starting date and duration of the period of notice; if the other party refuses to sign the duplicate of such communication as evidence of its receipt, the notice shall be given by registered letter, to run with effect from the third working day following the data of dispatch, or by writ served by a legal officer.

"While under notice, the worker shall be entitled to absent himself once or twice a week for the purpose of seeking work without loss of wages, but the total period of absence may not exceed one working day per week.

"Termination, even for serious reasons, is not authorized if the party contemplating such action has been aware of the grounds for it for at least three days (instead of two days, as under the former provisions), and such grounds must be notified to the other party by registered letter within three days of his dismissal."

The Act of 10 December 1962 also settled another controversial issue by providing that the length of service to be taken into consideration in determining the amount of notice to be given shall be reckoned to the date on which the said notice begins to run.

C. Suspension of contract

It is now provided that during such time as the undertaking is closed for the annual holidays, notice given by the employer shall be suspended. On the other hand, notice given by a worker shall continue in effect.

Furthermore, the Act of 10 December 1962 contains details concerning the implementation of the provisions of article 28 *quater* of the Work Contract Act regarding the suspension of contracts because of lack of work due to economic causes.

2. Contract of Employment

In the case of probationary contracts, or of contracts concluded for a specified duration of less than three months or for a specified task the performance of which will normally require less than three months, the employer is not obliged to pay remuneration in respect of the first thirty days of incapacity due to illness or accident.

Under the new provisions, he must nevertheless pay remuneration in such cases in respect of the first seven days of incapacity, under the same conditions as in the case of workers.

The provisions already referred to regarding relapses, the calculation of length of service for purposes of notice and the suspension of notice during works holidays have also been included in

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

[2] Extract from the *Revue de droit social*, 1963, No. 3, p. 105.

the Act respecting the contracts of salaried employment.

The provisions of the Work Contract Act relating to the following matters have also been made applicable to employees:

"the right to leave of absence without loss of earnings in connexion with family events or with the performance of civic duties;

"the right to remuneration in the event of late arrival at work for reasons beyond the control of the person concerned, or of inability to begin work or to go on working, likewise for reasons beyond the control of the person concerned; termination of contract by the employer during the employee's illness; in future, such action will be authorized only when the employee has been ill for six months, instead of three months as previously;

"termination for serious reasons; this is not authorized if the party contemplating such action has been aware of the grounds for it for three days at least.

II. Judicial Decisions

An accused may not require that witnesses in his favour be heard and cross-examined in court. Interrogation of such witnesses by the local police authority is sufficient. The contention that Article 6 (3) (d) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, approved by Belgium by the Act of 13 May 1955, required examination of witnesses on behalf of the accused under the same conditions as witnesses against him is not justified under Belgian law. The Convention did not make any change in the provisions of Articles 153 and 190 of the Code of Criminal Procedure since the legislature in ratifying the Convention said nothing concerning changes to be made in the legislation. (Judgement of the 19th Chamber of the Court of First Instance at Brussels, of 30 October 1962).

Under Articles 153, 175, 189, 210 and 211 of the Code Criminal Procedure, in correctional and police matters, the judge responsible for deciding on the facts of the case is not bound to hear witnesses if he considers such a hearing of no value. Article 6 (3) (d) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, approved by Belgium by the Act of 13 May 1955, does not deprive the judge responsible for deciding on the facts of the case of the exclusive right of determining whether other witnesses for or against the accused should be heard before he forms his opinion on the case (Judgement of the Supreme Court of Appeal at Brussels of 20 July 1962.)

The Court of Appeals of Brussels on 31 August 1962 overruled the Order of 31 July 1962 of the Court of First Instance of Mons which had authorized the enforcement of a warrant of arrest issued by the examining magistrate at Lograno (Spain) on 16 November 1959 against Sanchez-Rodriguez, residing at the time in Belgium, on the basis of the Extradition Treaty of 17 June 1870 between Belgium and Spain and the Act of 15 March 1874. The grounds for the Court's decision was a letter from the delegation for Belgium and Luxembourg at the High Commissioner's Office for Refugees stating that Sanchez-Rodriguez was recognized as a refugee in France. The Court held that "Article 33-I of the 1951 International Convention relating to the Status of Refugees, approved by the Act of 26 June 1953, requires that Sanchez-Rodriguez should not be handed over the Spanish authorities."

BRAZIL

ACT NO. 4,109, OF 27 JULY 1962, ESTABLISHING THE OFFICIAL VOTING LIST IN ELECTIONS BY THE PROPORTIONAL SYSTEM AND PROMULGATING OTHER PROVISIONS[1]

Art. 13. The Electoral Tribunal shall give widespread publicity through the press, radio and television, and by means of posters displayed in public places, to particulars of the candidates of all parties with their respective emblems and abbreviations, and the colours in which they will appear in the lists.

1. Those particulars shall be displayed, preferably in large-scale reproductions of the lists, also in the buildings where the electoral divisions are situated.

2. The political parties may publish the facts referred to above in this article.

3. Radio and televison stations, whatever their power output, including those belonging to the Federation, States, Federal District and territories, municipalities, autonomous enterprises, companies and foundations, shall, during the 60 (sixty) days preceding the 48 (forty-eight) hours of the poll in each electoral district of the country, reserve free of charge 2 (two) hours daily for political campaigning, namely, one hour during the day between 1 p.m. and 6 p.m., and one hour at night between 8 p.m. and 10 p.m., in strict rotation, by parties and allocated in proportion to their respective representation in the National Congress, State Legislative Assemblies and Municipal Chambers.

4. To ensure compliance with the provisions laid down in the preceding paragraphs, the allocation of time for the various parties shall be determined and checked by the Electoral Tribunal.

5. In the event of a party coalition, consideration shall be given to ensuring equality as prescribed herein.

6. Time not used by any party shall be redistributed among the rest and no party may surrender or transfer its time.

7. During the period designated in paragraph 3 of this article for political campaigning free of charge, any contracts signed by the radio and television enterprises which may circumvent or render inoperative the rules therein specified shall be invalid.

8. At the beginning of the time reserved for each party, the names of its registered candidates shall be announced in alphabetical order, the rest of the time being allocated equally among those candidates.

9. Half the time mentioned in paragraph 3 of this article shall be reserved for campaigning by candidates to the National Congress when their election coincides with that of State and municipal candidates.

10. Radio and television stations shall not charge for political campaigning prices higher than those in force during the previous 6 (six) months for ordinary publicity.

11. Radio and television stations must publicize, during the 30 (thirty) days preceding elections, communications of the Electoral Tribunal, for a maximum of 15 (fifteen) minutes between 6 p.m. and 10 p.m.

12. Apart from the time provided for in paragraph 3 of this article for campaigning free of charge, during the 30 (thirty) days preceding elections in any part of Brazil, private or party campaigning, whether direct or indirect, by means of radio, television and loudspeakers, shall be prohibited, except for the broadcasting of public meetings provided such meetings are held in places determined by the competent authority, in accordance with the law.

13. During the 15 (fifteen) days preceding the poll, the publication, in any form, of the results of 'primary' or pre-electoral surveys is prohibited.

14. The legal representatives or administrators of any television or radio enterprise which contravenes paragraphs 3, 7, 8, 10, 11, 12 or 13 of this article and those responsible for the campaigning shall be liable to 6 (six) months' to 2 (two) years' detention.

. . .

Art. 15. During the 60 (sixty) days preceding the polls, political parties shall enjoy priority in the mails for the delivery of the electoral lists and campaign publicity of their registered candidates.

. . .

[1] Text furnished by Dr. Carlos Medeiros Silva, Procurator General of Brazil, government-appointed correspondent of the *Yearbook on Human Rights*, and published in *Diario Oficial* of 27 July 1962.

ACT NO. 4,117, OF 27 AUGUST 1962, INSTITUTING THE BRAZILIAN TELECOMMUNICATION CODE[1]

Chapter I

INTRODUCTION

Art. 1. The telecommunications services throughout Brazilian territory, including territorial waters and air space, and wheresoever they may enjoy rights of extra-territoriality by virtue of international principles and conventions, shall comply with the provisions of the present Act and the regulations laid down for its enforcement.

. . .

Chapter III

COMPETENCE OF THE FEDERAL GOVERNMENT

Art. 10. The Federal Government shall have exclusive competence:

I. to maintain and exploit directly:

(a) the services which constitute the National Telecommunications System, including its international links;

(b) the public telegraph, inter-State telephone and radio services, except as otherwise provided herein, including broadcasting and the international service;

II. to control whatever telecommunications services it may license, authorize or permit.

Art. 11. The Federal Government shall also control the telecommunications services licensed, permitted or authorized by the States or municipalities in all matters pertaining to compliance with the general provisions established herein and to the integration of those services in the National Telecommunications System.

. . .

Chapter IV

THE NATIONAL TELECOMMUNICATIONS COUNCIL

Art. 14. The National Communications Council is hereby created and shall be organized in accordance with the provisions of this Act.

. . .

Art. 29. The National Telecommunications Council shall:

. . .

(t) Suggest rules for censorship of the telecommunications services, in the event of the declaration of a state of siege;

. . .

(aa) Issue licences for the operation of radio and broadcasting stations after checking, by inspection, compliance with the technical requirements;

. . .

(ad) Impose fines on, and suspend the operations of, any broadcasting station which transmits or utilizes, in whole or in part, the broadcasts of similar stations without previous authorization;

(ae) Ensure that the identity or call-sign and the position of the transmitting station and of the station of origin are indicated in any retransmission.

(af) Ensure compliance, on the part of broadcasting stations, with the programming aims and obligations specified in article 38;

. . .

Chapter V

TELECOMMUNICATIONS SERVICES

. . .

Art. 38. With regard to licences and authorizations for broadcasting services, the following provisions shall be complied with in addition to any other requirements:

(a) Directors and managers shall be Brazilian by birth and the technicians concerned with the operation of the transmitting equipment shall be Brazilians or foreigners officially residing exclusively in Brazil; nevertheless, in exceptional circumstances and with the express authorization of the Telecommunications Board, foreign specialists shall be admitted under contract to perform the last-named functions;

(b) To be valid, changes in the statutes and constitutive acts of the enterprises shall require approval by the Government, after it has heard the views of the National Telecommunications Board;

(c) Concessions and portions or shares of registered capital may not be transferred unless this is authorized by the Government after it has heard the views of the National Telecommunications Board;

(d) In the higher interests of Brazil, the information, amusement, advertising and publicity services of the broadcasting enterprises shall be subordinate to the educational and cultural objectives of broadcasting;

(e) Broadcasting transmitters, except television transmitters, shall retransmit daily, from 7 p.m. to 8 p.m., except on Saturdays, Sundays and holidays, the official information programme of the Brazilian authorities, 30 (thirty) minutes being reserved for publication of the news bulletin prepared by the two Chambers of the National Congress;

(f) By the selection of their personnel and also by the work regulations in the transmitting stations, enterprises must create conditions which will discourage any of the offences specified in the present Act;

(g) The same person shall not take part in the management of more than one concessionaire or licensed enterprise providing the same type of broadcasting service in the same locality;

(h) Broadcasting transmitters, including television transmitters, must fulfil their information function by reserving a minimum of 5% (five per

[1] Text furnished by Dr. Carlos Medeiros Silva, Procurator General of Brazil, government-appointed correspondent of the *Yearbook on Human Rights*, and published in *Diario Oficial* of 5 October 1962.

cent) of their time for the transmission of news services.

Sole paragraph. No person enjoying parliamentary or special legal immunity shall be eligible to exercise the functions of director or manager of a licensed radio or television enterprise.

Art. 39. During the 90 (ninety) day period preceding the general national elections or elections in the district in which they are situated, broadcasting stations shall reserve 2 (two) hours daily free of charge for campaigning, one hour during the day and the other between 8 p.m. and 11 p.m.; this time shall be allotted in strict rotation to the different parties and in proportion to their respective representation in the National Congress and Legislative Assemblies.

1. For the purpose of this article, the distribution of time allotted to the different parties shall be determined by the Electoral Tribunal, after hearing the views of the representatives of the leadership of the respective parties.

2. Where parties have applied for permission to campaign jointly, the time mentioned above shall be allotted to the various groups of parties so applying.

3. Time not used by any party shall be redistributed among the rest and no party may surrender or transfer its time to any other.

4. The Electoral Court shall settle any differences that may arise from the application of this article.

Art. 40. Radio stations shall publish, 60 (sixty) days before the elections mentioned in the previous article, the announcements of the Electoral Tribunal for a maximum of 30 (thirty) minutes.

Art. 41. Radio and television stations shall not charge for political campaigning prices higher than those charged during the previous 6 (six) months for ordinary publicity.

. . .

Art. 44. Broadcasting services shall not be leased to or authorized for partnerships or enterprises which are not exclusively composed of the Brazilians to whom article 129, paragraphs I and II, of the Federal Constitution refer.

. . .

Art. 47. No broadcasting station belonging to the Federation, States, territories or municipalities, or in which those public bodies corporate hold a majority of the shares, shall be used for political campaigning or to publish opinions for or against any political party, its organs, representatives or candidates, except as otherwise provided in the electoral legislation.

Art. 48. No broadcasting station shall transmit or utilize, in whole or in part, the broadcasts of similar stations, national or foreign, without their prior authorization. During such a broadcast the station shall announce that it is retransmitting or using someone else's broadcast and shall indicate its own identity and location and also those of the station of origin.

. . .

Chapter VII

OFFENCES AND PENALTIES

Art. 52. Freedom of broadcasting does not exclude punishment of those who abuse it.

Art. 53. The use of broadcasting for the purpose of committing a crime or offence, as defined in the legislation in force in Brazil, including:

(a) incitement to disobey the laws or judicial decisions;

(b) divulgation of State secrets or matters prejudicial to national defence;

(c) insult to the national honour;

(d) propaganda inciting to war or acts of violence designed to subvert the political or social order;

(e) promotion of discrimination on the basis of class, colour, race or creed;

(f) incitement to rebellion or mutiny in the armed forces or law enforcement services;

(g) acts jeopardizing the international relations of Brazil;

(h) offence against domestic and public morality and decency;

(i) slander, insult or defamation of the Legislative, Executive or Judiciary powers or their respective members; and

(j) dissemination of false news, constituting a threat to public, economic and social order,

shall constitute an abuse of the freedom of broadcasting.

. . .

Art. 56. Any person who, in violation of the law or regulations, exhibits an original text or any document on file, or who divulges or communicates, informs or intercepts, transmits to another person or uses the contents, gist, meaning, interpretation, information or purpose of any communication addressed to a third person shall be guilty of a breach of telecommunications secrecy.

1. Any person who illegally receives, divulges or uses an intercepted broadcast shall also be guilty of such a breach.

2. Only the governmental services of official stations and posts may intercept telecommunications.

Art. 57. The following shall not constitute breaches of telecommunications secrecy:

I. The reception of a telecommunicated message by a person who is legally authorized to do so directly or in co-operation.

II. Information given:

(a) to the addressee of the message or his legal representative;

(b) to the intermediaries necessary for the routing of the telecommunication;

(c) to the commander or chief under whose immediate order the service is provided;

(d) to government officials attached to the concessionnaires and licensees;

(e) to the competent judge, upon his request or notification.

Sole paragraph. The prohibitions set forth in this Act shall not apply to radio communications intended for public reception, amateur radio communications, those relating to vessels or aircraft in distress, or those broadcast in public emergencies.

. . .

Art. 80. The collection, drafting, dissemination or promotion by broadcasting of news, reports, commentaries, debates and interviews shall be deemed to be equivalent to the activities of professional journalists.

Art. 81. Independently of any penal action that may be taken, any person who is libelled, slandered, or injured by a broadcast shall be entitled to institute proceedings for redress in the civil courts, charging acts of commission or omission, severally against the offender, concessionnaire or licensee, and against any person who benefited from the offence and who contributed to it in any way.

1. The proceedings shall be conducted in accordance with the ordinary process of law established in the Code of Civil Procedure.

2. For the proceedings to be carried out, they must be initiated within 30 (thirty) days from the date of the libellous, slanderous or injurious transmission.

3. In order to exercise the right of redress, the injured party must notify the accused party by judicial or extrajudicial means, within 5 (five) days in the case of a concessionnaire or licensee operating equipment of 1 or less kW and 10 (ten) days in the case of the rest, that he must not erase the recording or destroy the script referred to in article 86 of this Act.

4. No concessionnaire or licensee may erase a recording or destroy a script which is the subject of the notification referred to in this article until the final ruling of the court has been given on the respective application for redress or moral injury.

Art. 82. In the case of libel, the truth of the allegation shall be admitted as a ground for excluding the obligation to compensate, provided this evidence is submitted within the time laid down for the reply.

Sole paragraph. The truth of the allegation, presented as evidence within the aforesaid time-limit, shall always be accepted in the case of libel or slander where the injured party exercises a public function in the Federation, States or municipalities, in an autonomous entity, or in a semi-governmental enterprise.

. . .

Art. 87. The provisions relating to redress of moral injury shall apply, *mutatis mutandis*, to slander in the press; the initial application must be drawn up immediately and accompanied by a copy of the newspaper or periodical containing the libel, slander or injury.

Art. 88. Criminal proceedings in respect of offences under this Act and Act No. 2083, dated 12 November 1953, must be initiated within 2 (two) years from the date of the relevant broadcast or publication, and the court must render its judgement within double that period.

Sole paragraph. The injured party's right of complaint or of representation, or that of his legal representative, shall be forfeited unless it is exercised within 3 (three) months from the date of the relevant broadcast or publication.

Art. 89. Any person injured by a broadcast shall be entitled to reply.

Art. 90. The right of reply consists in the transmission of the injured party's written reply within 24 (twenty-four) hours of its receipt, at the same time of day, on the same programme, and over the same transmitting station as that over which the offence was committed.

. . .

Art. 91. The right of reply may be exercised by the injured party in person, by his duly authorized proxy or by his legal representative.

Sole paragraph. Where the offence is committed against a deceased person, the right of reply may be exercised by the spouse, ascendant, descendant or collateral kinsman of that person.

. . .

Art. 92. If the application to make a reply is not granted within 24 (twenty-four) hours, the injured party, his duly authorized proxy or his legal representative or any person covered by article 91, sole paragraph, may claim the right under the law to do so in person within 24 (twenty-four) hours of notification by the judicial authority.

Art. 93. After the application to make a reply has been approved, the judge shall, within 24 (twenty-four) hours, order the concessionnaire or licensee to state, within the same period of time, the reasons he may have had for not broadcasting it.

Sole paragraph. Within the following 24 (twenty-four) hours, the judge shall announce his decision, whether or not the party concerned has availed himself of the opportunity to state his reasons. The decision shall also state:

(a) The time for the reply;

(b) The cost of the transmission where the convicted offender, or the complainant who has lost the case, must pay it;

(c) That the reply is free of charge, where:

(i) the right of payment has been forfeited in pursuance of article 90, paragraph 4, of this Act;

(ii) the offender is a person bound by a responsibility or work contract to the concessionnaire or licensee;

(iii) the offender is a person not bound by a responsibility or work contract to the concessionnaire or licensee, but where the concessionnaire or licensee is convicted of an act of commision or omission.

Art. 94. An appeal may be made against the judgement with a view to recovering the price paid for broadcasting the reply, but such appeal shall not suspend execution of the judgement.

Art. 95. Broadcasting of the reply shall be refused:

(a) Where it is irrelevant to the facts referred to in the offending broadcast;

(b) Where it contains slanderous, injurious or libellous language directed against the concessionnaire or licensee;

(c) Where it concerns official documents or publications;

(d) Where it refers to third persons and may entitle them to reply in their turn;

(e) Where a period of more than 30 (thirty) days has elapsed between the offending broadcast and the respective application to make a reply.

Art. 96. The broadcasting of a reply, other than a spontaneous reply, shall not prevent the injured party from seeking redress for the offences committed against him.

Art. 97. Speeches made in the National Congress, and the votes and opinions of its members, are inviolable so far as their transmission by telecommunications is concerned.

Sole paragraph. During a state of siege, such speeches, votes and opinions shall be made public only if expressly authorized by the Officers of the Chamber to which the Congress member belongs.

. . .

ACT NO. 4,121, OF 27 AUGUST 1962 CONCERNING THE LEGAL STATUS OF MARRIED WOMEN[1]

Art. 1. Articles. . . 233, 240, 242, 246, 248,. . . 380, 393, 1579 and 1611 of the Civil Code. . . are hereby amended to read as follows:

. . .

"II

"Article 233. The husband shall be the head of the conjugal partnership and shall act in that capacity, with the co-operation of his wife, in the common interest of the couple and the children (arts. 240, 247 and 251).

"He shall:

"I. Be responsible for the legal representation of the family;

"II. Be responsible for the administration of the joint property and of such of his wife's private property as is placed under his administration in virtue of the matrimonial régime adopted or of the ante-nuptial agreement (arts. 178, para. 9, sub-para. I, *c*, 274, 289, sub-para. I, and 311);

"III. Have the right to fix the domicile of the family. However, the wife may have recourse to the court in the event that the decision taken is prejudicial to her;

"IV. Provide for the maintenance of the family, subject to the provisions of articles 275 and 277.

"III

"Article 240. A woman shall assume, upon marriage, the names of her husband and the status of his companion, consort and help-mate in family responsibilities, and shall provide material and moral guidance for the family.

"IV

"Article 242. A wife may not, without her husband's permission (art. 251):

"I. Perform any acts which he would be unable to perform without her consent (art. 235);

"II. Alienate, or encumber with a real charge, her private immovable property, whatever the property régime may be (arts. 263, sub-paras. II, III and VIII, 269, 275 and 310);

"III. Alienate her real rights in the immovable property of another person;

"IV. Contract obligations which may involve the alienation of property of the marriage.

"V

"Article 246. A wife who carries on a gainful occupation separate from that of her husband shall have the right to perform all acts necessary to carry on and protect her occupation. The product thus earned by her work and any property acquired thereby shall, unless otherwise provided in the ante-nuptial agreement, constitute reserved property of which she shall be free to dispose subject, however, to the provisions of article 240, last part, and article 242, sub-paras. II and III.

"Sole paragraph. Neither the product of the wife's work nor the property referred to in this article shall be subject to attachment for the husband's debts, save where such debts have been contracted in the interest of the family.

"Article 248. A married woman shall be free:

"I. To exercise the right vested in her over the persons and property of children of a former marriage (art. 393);

"II. To disencumber or reclaim immovable property of the marriage which her husband has encumbered or alienated without her consent and without authorization in lieu granted by the court (art. 235, sub-para. I);

"III. To cancel any sureties entered into or gifts made by the husband in contravention of the provisions of article 285, sub-paras. III and IV;

"IV. To reclaim any joint property movable or immovable, donated or transferred by the husband to his concubine (art. 1177).

[1] Text furnished by Dr. Carlos Medeiros Silva, Procurator General of Brazil, government-appointed correspondent of the *Yearbook on Human Rights*, and published in *Diario Oficial* of 3 September 1962.

"Sole paragraph. This right prevails regardless of whether the wife is living with her husband or not and even if the gift is disguised in the form of a sale or other contract;

"V. To dispose of property acquired in accordance with the preceding sub-paragraph and of any other property which she possesses and which is not subject to her husband's administration, except immovable property;

"VI. To take such precautions and action as she is entitled to take against her husband, concerning her dowry or other personal property which is subject to his administration;

"VII. To perform any other acts not prohibited by law.

. . .

"XI

"Article 380. During the marriage, parental authority shall vest in the parents and shall be exercised by the husband with the co-operation of his wife. If either parent is absent or unable to act, the said authority shall vest solely in the other parent.

"Sole paragraph. In the event of a dispute between the parents regarding the exercise of parental authority, the father's decision shall prevail. However, the mother shall have the right of recourse to the court in order to settle the dispute.

"XII

"Article 393. A mother who remarries shall not lose her rights of parental authority over the children of her previous marriage and shall exercise the said rights without any interference by her husband.

"XIII

"Art. 1579. The surviving spouse of a marriage solemnized under the régime of community property shall, until the partition of the estate, remain in possession thereof with the responsibilities of head of the household.

"1. If, however, the surviving spouse is the wife, this provision shall apply only if she was living with her husband at the time of his death, unless it is proved that she was unable to do so through no fault of her own.

"2. If there is no surviving spouse, the co-heir who has the property in his physical possession and under his administration shall appoint the maker of the inventory. The order of preference among the co-heirs shall be determined by their capacity.

"3. If there is no spouse or heir, the executor shall make the inventory.

"XIV

"Article 1611. In the absence of descendants and ascendants, succession shall pass to the surviving spouse unless at the time of the other spouse's death they were divorced.

"1. If the matrimonial property régime was not that of universal community, the widowed spouse shall be entitled *durante viduitate* to the usufruct of one quarter of the property of the deceased spouse if there are children of the latter or of the marriage, and to one half if there are no children, even if there are surviving ascendants of the *de cujus*.

"2. A surviving spouse married under the régime of universal community shall, for so long as he lives and does not remarry, retain, without prejudice to his share in the estate, the real right of habitation in the immovable property intended as the family residence, where it is the only property of that nature to be inventoried.

". . . ."

Art. 2. A wife who has property or income of her own shall be obliged, as under the régime of separation of property (art. 277 of the Civil Code), to contribute to the joint expenses if the joint property is insufficient to meet them.

Art. 3. A bond of any kind signed by one only of the spouses, even if they were married under the régime of universal community, shall bind only the private property of the signatory and the joint property up to the limit of joint ownership.

Art. 4. This Act shall enter into force 45 (forty-five) days after its publication; all provisions conflicting therewith are hereby repealed.

BURUNDI

CONSTITUTION OF THE KINGDOM OF BURUNDI

ENTERED INTO FORCE ON 1 JULY 1962[1]

MWAMBUTSA IV
KING OF THE BURUNDI

To all those present and to come, Greetings.

Affirming our belief in God and our conviction of the high dignity of the human person;

Resolved to safeguard fundamental human rights;

Seeking to promote the unity of the Burundi people and the economic, social and cultural advancement of each and every inhabitant of Burundi under a genuinely democratic régime;

Inspired by the Universal Declaration of Human Rights and the Charter of the United Nations;

The National Assembly has adopted and we confirm the following:

. . .

Title II
THE BARUNDI AND THEIR RIGHTS

Art. 4. Burundi status shall be acquired, retained and forfeited in accordance with the rules prescribed by law.

Art. 5. Naturalization shall be granted by the legislative power. Naturalization shall confer on an alien the status of a Burundi.

Art. 6. There shall be no racial discrimination in the State. The Burundi shall be equal before the law, and they alone shall be eligible for civilian and military employment, save as may be otherwise provided by law with respect to particular individuals.

Art. 7. Individual freedom shall be guaranteed. No person may be prosecuted or arrested save in the cases and in the manner prescribed by law.

Art. 8. No person may be removed against his will from the jurisdiction of the judge assigned to his case by law.

Art. 9. No penalty may be established or applied save in pursuance of a law.

Art. 10. The domicile shall be inviolable, and no domiciliary visit may be made save in the cases and in the manner prescribed by law.

Art. 11. Individual landed property shall be guaranteed. Special laws shall prescribe the relevant procedures.

Art. 12. No person may be deprived of his property save in the public interest, and then only in the cases and in the manner prescribed by law and against just and prior compensation.

Art. 13. Freedom of religion and the public exercise thereof, as also freedom to express opinions with regard to religion, shall be guaranteed.

The penalties applicable to offences committed in connexion with the exercise of such freedoms shall be prescribed by law.

Art. 14. The State may not intervene in either the appointment or the installation of the ministers of any religion whatsoever nor prohibit them from corresponding with their superiors or, subject to the provisions concerning ordinary liability in respect of the Press and publications, from publicizing their activities.

Art. 15. Both civil marriages and religious marriages shall be recognized by the Constitution.

Polygamy shall be abolished; the manner of its abolition to be prescribed by special laws.

Art. 16. Education shall be free. The punishment of offences shall be regulated solely by law.

Art. 17. The Press shall be free subject only to the restrictions imposed by law. The law shall provide severe punishment for any attempt against the security of the State.

Art. 18. The right of association and assembly shall be enjoyed by all the Burundi except where such association or assembly is contrary to law or morality.

Art. 19. Every person shall have the right to address to the public authorities petitions signed by one or more persons.

Only the constituted authorities shall have the right to submit collective petitions.

Art. 20. The secrecy of correspondence shall be inviolable. However, agents authorized to open suspect letters entrusted to the mails shall be specified by law.

Art. 21. The official languages of Burundi shall be Kirundi and French.

Art. 22. Save as otherwise provided by law with regard to Ministers, no prior authorization shall be required to bring actions against public officials for acts performed in the course of their duties.

Title III
POWERS

Art. 23. All powers derive from the Nation.

[1] Published in *Infor-Burundi*, weekly bulletin of the Burundi National Press Office, No. 67-69 of 15, 22 and 29 April 1963.

They shall be exercised in the manner prescribed by the Constitution.

. . .

Chapter I

THE NATIONAL ASSEMBLY AND THE SENATE

Section I

Common Provisions

Art. 30. The members of the National Assembly and of the Senate, elected in accordance with the law, shall represent the Nation.

Art. 31. The meetings of the chambers shall be public unless they are held in closed committee at the request of their respective Presidents or of five members.

The respective chambers shall then decide by an absolute majority whether the meeting should be resumed in public on the same subject.

. . .

Art. 40. Petitions may not be submitted to the chambers in person.

Each chamber may refer to the Ministers the petitions addressed to it. The Ministers shall give explanations regarding their contents whenever the National Assembly or the Senate so request.

. . .

Art. 44. The deputies shall be elected directly by the citizens of Burundi of both sexes who satisfy the requirements for voters prescribed by law. Each voter shall have only one vote.

. . .

Section II

The National Assembly

Art. 49. To be eligible for election to the National Assembly, a person must:

(a) Be a citizen of Burundi by birth, or have been naturalized;

(b) Be in possession of his political rights;

(c) Have attained the age of twenty-five years;

(d) Have his domicile in Burundi.

Section III

The Senate

Art. 50. The Senate may be established on the initiative of the legislative power; the qualifications for election and the form of election and organization shall be prescribed by law.

Chapter II

THE KING AND HIS MINISTERS

. . .

Section II

The Ministers

Art. 78. No person may be a Minister unless he is a citizen of Burundi by birth.

. . .

Chapter III

THE JUDICIARY

Art. 83. Disputes concerning civil rights shall fall exclusively within the competence of the courts.

Art. 84. Disputes concerning political rights shall fall within the competence of the courts save as otherwise provided by law.

Art. 85. No tribunal or claims court may be established otherwise than by virtue of a law.

Art. 86. Hearings before the courts shall be public, unless a public hearing would be dangerous to order or morality, in which case the court shall issue a judgement to that effect.

In the case of political and press offences, the decision to hear the case *in camera* must be unanimous.

Art. 87. Every judgement shall state the reasons which it is based. It shall be pronounced in public.

Art. 88. A jury shall sit in all criminal cases where the death penalty or life imprisonment can be imposed and in the case of political and press offences.

. . .

Art. 93. No judge may accept a salaried office from the Government unless he exercises it without charge and there is no incompatibility as determined by law.

. . .

Art. 95. The Supreme Court. . . shall judge the constitutionality of the laws.

. . .

Title IV

FINANCES

Art. 99. No tax, charge or duty for the benefit of the State, the provinces or the communes may be levied except by virtue of a law.

. . .

Title VI

GENERAL PROVISIONS

. . .

Art. 116. Every alien who is properly in the territory of Burundi shall enjoy the protection granted to persons and property, save as otherwise provided by law.

. . .

Art. 118. The Constitution may not be suspended either in full or in part.

Title VII

AMENDMENT OF THE CONSTITUTION

Art. 119. The legislative power shall have the right to declare that there are grounds for the amendment of such constitutional provision as it indicates. After such declaration, the two chambers shall be dissolved without further formalities. New chambers shall be convoked as provided in article 63. Such chamber or chambers, as also the crown counsellors, shall rule in agreement with the King on the points submitted for amendment.

Two thirds of the membership of the chamber or of each chamber shall be required in such case to constitute a quorum, and no amendment shall be adopted unless supported by at least two thirds of the votes cast.

. . .

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

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 1962 (EXTRACTS)

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 1962 was over 2,090,000, representing an increase of 3.5 per cent over the preceding year.

During the past year the population received from public consumption funds 5.5 per cent more than in 1961 in the form of public education, medical services, social insurance and various grants and benefits.

Private deposits in savings banks increased by 10 per cent and amounted to some 302 million roubles by the end of the year. The number of depositors rose to 1,288,000.

The volume of State and co-operative retail trade in 1962 amounted to 2,450 million roubles, representing an increase of 8.5 per cent over 1961 in comparable prices.

The retail turnover of consumer co-operatives trading in rural areas amounted to 958.6 million roubles, representing an increase of 9 per cent over the previous year. In addition, consumer co-operatives sold, at local market prices, 27.3 million roubles' worth of foodstuffs purchased from collective farmers or received from collective farms on a commission basis.

The State and co-operative retail trade plan for the year was fulfilled 101 per cent, the retail trade network fulfilling its plan 101 per cent and public catering 100.3 per cent.

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

Over 2 million persons, or approximately one-quarter of the whole population of the Republic, received training of some kind.

The number of students attending general education schools, including schools for young workers and rural youth, was 1,577,000 at the beginning of the 1962–63 school year, an increase of 106,000 over the preceding year. The transition from universal seven-year to universal eight-year education was completed in 1962. During that year, matriculation certificates were issued to 36,000 persons.

The network of boarding schools was expanded. At the beginning of the 1962–63 school year there were 121 boarding schools with a total enrolment of more than 34,000 children, or 39 per cent more than in the previous year. The number of students enrolled in extended-day schools and groups was 16 per cent higher at the beginning of the current school year compared with the previous year, and amounted to 38,700.

Some 159,000 persons were studying at higher and specialized secondary educational establishments, including 75,700 at higher educational establishments. In 1962, 22,800 young specialists graduated from these two types of establishments, including 8,700 with higher education; of the latter, 2,800 were engineers. Of the students enrolled for day-time courses at higher educational establishments, 5,000 or 55 per cent had completed a period of practical work of not less than two years.

At the beginning of the 1962–63 school year, more than 180,000 persons were pursuing studies without interruption of employment. Of these 103,000 were attending schools for young workers and rural youth and over 77,000 were studying at higher and specialized secondary educational establishments.

The network of scientific institutions was expanded. The number of scientific workers employed by scientific institutions, higher educational establishments and other organizations increased by 25 per cent over the previous year and was about 10,000 by the end of 1962.

The number of cinema installations was increased. Cinema attendance rose by more than 3.5 million visits as compared with the preceding year.

There was large-scale construction of dwellings and public amenities.

In the past year, a total of 2,065,000 square metres of housing financed by the State, by the population and with the help of State loans was brought into occupancy in towns and workers' settlements. Of this a total of 1,325,000 square metres of housing was brought into occupancy by State and co-operative enterprises and organizations. In addition, 18,000 dwellings were built 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 101 per cent for the Republic as a whole, and the plan for bringing housing into occupancy was fulfilled to the extent of 102 per cent.

There was an increase in State capital investment in the construction of educational, cultural, scientific and health institutions. The number of general

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

education schools constructed with funds allocated under the State plan and brought into operation in 1962 exceeded the corresponding figure for 1961 by 26 per cent and the number of hospitals and polyclinics by 52 per cent.

Much work was done on supplying gas to dwellings. The number of apartments provided with gas increased during the past year by 60 per cent. There was a considerable increase in the consumption of gas by the population and by undertakings and institutions for community and household use.

Medical services to the population were improved. The number of hospital beds increased by 9 per cent compared with 1961 and the number of doctors by over 4 per cent. The network of health institutions for children of pre-school age was expanded. Pioneer camps in rural areas accommodated 7 per cent more children in the summer of 1962 than in the preceding year.

ACT CONCERNING THE STATE BUDGET OF THE BYELORUSSIAN SSR FOR 1962, ADOPTED ON 21 DECEMBER 1961 AT THE SIXTH SESSION OF SUPREME SOVIET OF THE BYELORUSSIAN SSR, FIFTH CONVOCATION

EXTRACTS

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

Article 1. To approve the State budget of the Byelorussian SSR for 1962 submitted by the Council of Ministers of the Byelorussian SSR, together with the amendments adopted on the report of the Budget Commission of the Supreme Soviet of the Byelorussian SSR, providing for total revenue and expenditure of 1,351,273,000 roubles.

Article 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 1962 at the sum of 1,252,079,000 roubles.

Article 3. To appropriate a total of 607,380,000 roubles under the State budget of the Byelorussian SSR for 1962 for the financing of the national economy: the continued development of heavy industry, the building industry, light industry, the foodstuffs industry, agriculture, transport, housing and municipal services and other branches of the national economy.

Article 4. To appropriate a total of 663,845,000 roubles under the State budget of the Byelorussian SSR for 1962, including 116,122,000 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, vocational schools, libraries, clubs, theatres, the press, broadcasting and other educational and cultural activities; hospitals, crèches, sanatoria, and other health and physical culture establishments; pensions and allowances.

DECREE CONCERNING THE FURTHER IMPROVEMENT OF MEDICAL SERVICES FOR THE RURAL POPULATION, ADOPTED ON 27 JUNE 1962 AT THE SEVENTH SESSION OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR, FIFTH CONVOCATION

(EXTRACTS)

The Communist Party and the Soviet Government devote enormous attention to the protection of public health, the creation of a large network of medical institutions and the provision of free medical services to the population. Only a socialist State assumes responsibility for protecting and steadily improving the health of the entire population.

New evidence of this concern for the health of the Soviet people is provided by the decisions of the Twenty-Second Congress of the Communist Party of the Soviet Union and by the programme of the CPSU which make provision for fully meeting the needs of the urban and rural populations for every kind of high quality medical services, and for the further enlargement of the network of medical institutions and the provision of the latest equipment.

The Supreme Soviet of the Byelorussian SSR notes that local Soviets of Working People's Deputies, health agencies and medical personnel in the Republic, in carrying out the decisions of the Party and the Government concerning the protection of the health of the working people, have made a considerable effort to enlarge the system of health institutions, improve curative and preventive services and reduce morbidity.

Allocations for public health have been increasing from year to year. Presently, many district and village hospitals have been enlarged and a number of new medical institutions built, so that the number of hospital beds in the Republic has been increased by 12,230 over the past three years. The network of outpatient departments, polyclinics and pharmacies has been expanded and a large

number of first aid and mid-wifery centres have been moved from rented premises.

In district and village hospitals, the number of doctors and medical personnel with intermediate qualifications has been increased. All district hospitals are staffed with doctors specialized in the main branches of medicine.

Rural medical institutions have been provided with better equipment, instruments and means of transport. During the past three years alone, forty-eight physiotherapy centres and fifty-six X-ray rooms have been opened and laboratories for clinical diagnosis have been established in most hospitals.

Greater prosperity, improved cultural standards and the quality of medical services have contributed to a further decline in the morbidity and mortality rates and to greater life expectancy. Compared with 1940, the death rate in Byelorussia has been halved, and is now the lowest in the world; infant mortality has been reduced to a fraction of what it used to be.

For the purpose of further improving the medical care and health services provided for the rural population of the Republic, the Supreme Soviet of the Byelorussian SSR hereby resolves:

1. The Ministry of Health of the Byelorussian SSR and the regional, district, city, village and hamlet Soviets of Working People's Deputies shall ensure a further expansion of the network of medical institutions and improvement of their work, and shall ensure absolute fulfilment of all measures elaborated in the Republic in compliance with the Decree of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR concerning measures for the further improvement of the medical care and health services provided for the population of the USSR.

2. The Ministry of Health of the Byelorussian SSR and the regional, district, village and hamlet Soviets of Working People's Deputies shall take steps to eliminate shortcomings in the health services provided for the population. The standards and quality of the work done by curative and preventive medical institutions shall be further raised and the forms and methods of medical care shall be constantly improved. Wider use shall be made of medical discoveries and the latest experience gained in medical practice.

Early action shall be taken to open hospitals or village first-aid stations at State and collective farms in whose immediate vicinity there are no medical institutions, and also mother and child clinics at large village hospitals. Better use shall be made of hospital beds in village hospitals.

Steps shall be taken to expand further the network of pharmacies and dispensaries, and the provision to the population and medical institutions of medicines, medical instruments, articles of hygiene and articles needed in care of the sick shall be improved.

3. The Ministry of Health of the Byelorussian SSR and the local Soviets of Working People's Deputies shall improve the selection, assignment and further training of medical personnel, particular attention being paid to the assignment of physicians and medical personnel with intermediate qualifications to the staffs of rural curative and preventive medical institutions. After every three years of continuous work in village hospitals or first-aid stations, doctors shall undergo further training.

4. The region, district, village and hamlet Soviets of Working People's Deputies and health organs shall improve the curative and preventive services available in rural areas.

5. The Ministries of Construction and of Health of the Byelorussian SSR and the local Soviets Working People's Deputies shall be responsible for high quality of construction work being done on medical institutions and for their being brought into operation on schedule.

6. The local Soviets of Working People's Deputies shall devote greater attention to improving the medical services available to the rural population; they shall systematically place these questions on the agenda of their meetings and of meetings of the executive committees; they shall promote a higher level of activity of the standing health commissions and of the public councils at medical institutions; they shall ensure wider public control over the work of health institutions and wider public assistance to the latter; and they shall broaden the patronage of rural medical institutions by urban medical institutions.

7. The Ministries of Culture and of Health of the Byelorussian SSR, the State Committee for Broadcasting and Television of the Council of Ministers of the Byelorussian SSR and the local Soviets of Working People's Deputies shall make wider use of broadcasting, cinema and television for increasing the people's knowledge of health and hygiene matters. The dissemination of medical information shall be systematically undertaken by village clubs and houses of culture.

The Ministry of Education of the Byelorussian SSR shall ensure that teachers give better training to their pupils in matters of health and hygiene.

8. The Council of Ministers of the Byelorussian SSR shall consider the proposals relating to matters of health made by deputies at the session of the Supreme Soviet of the Byelorussian SSR.

DECREE OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF BYELORUSSIA, THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR AND THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR DATED 18 DECEMBER 1962 CONCERNING THE ESTABLISHMENT OF A PARTY AND STATE CONTROL COMMITTEE OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF BYELORUSSIA AND THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR.

The Central Committee of the Communist Party of Byelorussia, the Presidium of the Supreme Soviet of the Byelorussian SSR and the Council of Ministers of the Byelorussian SSR hereby decree:

To establish a Party and State Control Committee of the Central Committee of the Communist Party of Byelorussia and the Council of Ministers of the Byelorussian SSR.

[In pursuance of this Decree, Party and State Control Committees have also been established in regions, towns and collective and State farm production administrations. At undertakings, building sites, State and collective farms and organizations, groups have been established for promoting the work of Party and State Control Committees with the participation of the broad masses of the population.

Party and State control organs constitute an efficient means of giving the broad masses of the working people a share in administering the State, in supervising the strict enforcement of law and order, and also in bringing about improvements in the administrative machinery and the timely application of proposals made by the working people.]

CAMBODIA

DECREE (KRAM) NO. 83-CE ON THE PRESS OF 25 APRIL 1962[1]

Art. 1. Persons expressing their opinions in articles which appear in political and news periodicals published in Cambodia shall indicate their identity close to the title of the article and above the article itself. The form of such identification shall be established by an order *(kret)*.

Art. 2. Any newspaper or periodical failing to observe the provisions of article 1 above may temporarily or permanently be suspended from publication by an order *(kret)* made in the Council of Ministers and immediately enforceable.

Art. 3. No aliens may be proprietors or editors of newspapers or periodicals published in Cambodia, unless they have prior authorization from the Minister of Information.

Any infringement of the provisions of this article is punishable by a term of imprisonment or a second-degree correctional fine.

Copies and reproductions of unauthorized written works are liable to confiscation by the authorities.

. . .

[1] Text furnished by the Government of Cambodia.

CANADA

NOTE[1]

I. FEDERAL LEGISLATION

Social Security and Income Maintenance

As a result of the increased cost of living, rates of benefit under a number of federal welfare programmes were increased. Federal Old Age Security pensions were increased by $10 a month to $65 a month,[2] Allowances under the federal-provincial programmes of old age assistance,[3] and allowances for blind[4] and for disabled persons[5] were increased by a like amount and the permissible income limits raised. Other federal amendments liberalized benefits payable to veterans or their dependants and to persons entitled to civilian war pensions.[6] The monthly rate of family assistance paid on behalf of children under 16 years admitted or readmitted to Canada for permanent residence was brought into line with the rate of family allowances for children of residents.

National Welfare Grants

The National Welfare Grants programme, consisting of a General Welfare and Professional Training Grant and a Welfare Research Grant, was initiated by the federal Government in 1962, and is administered by the Department of National Health and Welfare. The programme is designed to strengthen and develop welfare services in Canada. The general welfare provision makes funds available for demonstration and other projects to improve welfare administration, to develop provincial consultative and co-ordinating services, and to strengthen and extend public and voluntary welfare services. Funds are also available for bursaries and training grants for graduate social work study, for scholarships and fellowships, for short-term staff training programmes, and for teaching and field instruction grants to Canadian Schools of Social Work. Grants are on a matching basis with the provinces, except for the grants for teaching and field instruction, research grants, and grants for scholarships and fellowships.

National Council of Welfare

An amendment to the Department of National Health and Welfare Act[7] provided for the establishment of a National Council of Welfare. It is intended that the functions and duties of the Council shall be to consider matters relating to welfare activities in Canada and to act in an advisory capacity to the Minister of National Health and Welfare.

Food and Drug Control

Amendments to the Food and Drugs Act[8] were enacted to give more effective control over the distribution of drugs. These were concerned with providing authority to prescribe the conditions respecting the distribution of samples of drugs to the medical, dental, veterinary and pharmacy professions, to prohibit the sale of certain designated drugs in the interests of public health and to more clearly define the requirements regarding the introduction of new drugs for clinical trial and marketing.

At a federal-provincial conference in August, 1962, the federal Government announced that it would share with the provinces the cost of a programme of assistance for children born with malformation associated with the use of the drug thalidomide.

Immigration Regulations

New Immigration Regulations,[9] which went into force on February 1, 1962, enunciate the principle that all persons regardless of race, citizenship or country of residence may qualify for admission to Canada as immigrants if they have the necessary education, training, skills or other special qualifications to enable them to fit into the Canadian economic and social structure.

Also the sponsorship provisions contained in the former regulations were expanded to allow the admission of a wider range of immediate dependants and close relatives. These apply not only to sponsors who are Canadian citizens but include persons other than Canadians who have been legally admitted to Canada for permanent residence and who wish to bring forward a mother, father, husband, wife, grandparent, an intended wife or an unmarried minor child. This provision is of universal application. Special provisions regarding the admissibility of certain relatives such as brothers and sisters, dependent sons and daughters, orphaned nephews and nieces, etc. which apply to certain countries specified in the former regulations were unchanged.

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[1] Note furnished by the Government of Canada.

[2] *Statutes of Canada, 1962*, c. 5.

[3] *Statutes of Canada, 1962*, c. 4.

[4] *Statutes of Canada, 1962*, c. 2.

[5] *Statutes of Canada, 1962*, c. 3.

[6] *Statutes of Canada, 1962*, cc. 6, 7, 10, 11, 29.

[7] *Statutes of Canada, 1962–63*, c. 16.

[8] *Statutes of Canada, 1962–63*, c. 15.

[9] SOR/62–36, SOR/62–37, gazetted 14 February, 1962.

In addition the new regulations extend the jurisdiction of the Immigration Appeal Board so that all appeals are now heard by this independent tribunal, which is free to conduct its proceedings independently of departmental officials. For the first time also, the regulations codify and clarify the procedures and the rights and privileges of persons subject to deportation.

II. PROVINCIAL LEGISLATION

Anti-Discrimination Measures

Ontario enacted the Ontario Human Rights Code, which consolidated and strengthened four earlier anti-discrimination laws — the Fair Employment Practices Act, the Female Employees' Fair Remuneration Act, the Fair Accommodation Practices Act and the Ontario Human Rights Commission Act.[1] A new provision was added making it illegal for any person to deny occupancy of any apartment in any building with more than six self-contained dwelling units on grounds of race, creed, colour, nationality, ancestry or place of origin. Another new provision prohibited discrimination with respect to the services or facilities provided in public places or with respect to any term or condition of occupancy of any apartment. The Ontario Human Rights Commission was made responsible for the administration and enforcement of the Code, as well as for planning and carrying out educational activities, and a full-time Director was appointed. Provision was made for distributing the Code to all secondary schools in the provinces.[2]

In Nova Scotia, an Interdepartmental Committee on Human Rights was established to deal specially with social and economic problems of minority groups. While primarily concerned with improving the lot of the Negro population, the Committee is also required to study and make recommendations as to how the fundamental rights of every citizen may be made secure, regardless of race, creed, colour, nationality, ancestry or place of origin.

Anti-discrimination clauses were inserted in new civil service legislation enacted in two provinces. The revised Civil Service Act in Nova Scotia[3] provides that examinations are open to all persons eligible for appointment to the Civil Service without regard to race, religion, religious creed, colour or ethnic or national origin. The new Prince Edward Island Civil Service Act[4] states that no examination may be conducted so as to elicit information concerning the political or religious opinions or affiliations of an applicant.

Labour Relations

Amendments to the Manitoba Labour Relations Act[5] made trade unions and employers' organizations legal entities capable of suing and being sued for a violation of the Act or a breach of a collective agreement, permitted the appointment of a mediator, to be selected and paid by the parties, as an alternative to the regular conciliation procedure and provided for public prosecutions. In Ontario, amendments to the Labour Relations Act[6] strengthened the unfair labour practices provisions and authorized special procedures to facilitate collective bargaining and dispute settlement in the construction industry. A new Industrial Relations Act[7] in Prince Edward Island brought procedures more into line with general Canadian practice and introduced new provisions permitting preferential hiring agreements, subject to certain restrictions, and prohibiting union dues collected by the check-off from being used for political purposes. Quebec amendments[8] provided for speedier hearings of complaints of dismissal for union activities. New provisions in British Columbia[9] gave collective bargaining rights to hydro employees but prohibited strikes and lockouts, providing instead for compulsory arbitration of disputes.

Workmen's Compensation

Five provinces amended their workmen's compensation laws to provide increased benefits to injured workmen or their dependants.[10] Nova Scotia and Prince Edward Island increased the maximum annual earnings on which compensation is based and. New Brunswick raised disability pensions in respect of past accidents to current levels. In Newfoundland and Prince Edward Island the waiting period was reduced. Pensions to widows and children were increased in New Brunswick, Nova Scotia and Saskatchewan and in New Brunswick the age limit to which children's allowances are payable was raised.

Medical Insurance

Saskatchewan became the first province to initiate a universal, comprehensive medical care insurance programme.[11] The plan, authorized in 1961 and financed from premium collections and government appropriations, went into force in July 1962.

Social Security and Income Maintenance

Under their programme of aid to needy mothers with dependent children, two provinces extended benefits for children who continue to attend school. New Brunswick[12] extended benefits for children from the end of the school year in which the seventeenth

[1] *Statutes of Ontario, 1961–62*, c. 93.

[2] *Legislature of Ontario Debates*, 10 December 1962, p. 178.

[3] *Statutes of Nova Scotia, 1962*, c. 3.

[4] *Statutes of Prince Edward Island*, 1962, c. 5.

[5] *Statutes of Manitoba, 1962*, c. 35.

[6] *Statutes of Ontario, 1961–62*, c. 68.

[7] *Statutes of Prince Edward Island, 1962*, c. 18.

[8] *Statutes of Quebec, 1962*, c. 41.

[9] *Statutes of British Columbia, 1962*, c. 8.

[10] *Statutes of New Brunswick, 1961–62*, c. 72; *Statutes of Newfoundland, 1962*, c. 32; *Statutes of Nova Scotia, 1962*, c. 56; *Statutes of Prince Edward Island, 1962*, c. 41; *Statutes of Saskatchewan, 1962*, c. 45.

[11] *Statutes of Saskatchewan, 1961* (2nd Session), c. 1; *1962* (2nd Session), c. 1.

[12] *Statutes of New Brunswick, 1961–62*, c. 30.

birthday falls to that in which the eighteenth birthday falls. Ontario[1] extended benefits for as long as a child is attending secondary school and making satisfactory progress.

In Ontario, an amendment to The Indian Welfare Services Act[2] extended benefits under The Mothers' Allowances Act to Indian mothers on the same basis as to other needy mothers; formerly benefits were available only to Indian mothers who were widows or whose husbands were disabled.

Services for Elderly Persons

In Ontario an amendment to The Homes for the Aged Act[3] protects the rights of residents of homes through the limitation of the recovery of maintenance costs to those assets prescribed by regulations under the Act. In recognition of the importance of recreational centres for elderly persons, provincial grants for the construction of such centres were made available under The Elderly Persons Social and Recreational Centres Act,[4] the first of its kind in Canada.

Child Welfare

In Ontario, measures were enacted to provide greater flexibility in dealing with habitual truants and to protect the interests of children in court hearings and adoption proceedings. An addition to The Schools Administration Act[5] provides that a child found to be habitually absent from school without lawful excuse be dealt with by a judge of a juvenile and family court in the same way as a juvenile delinquent under the Juvenile Delinquents Act. This gives the judge wider discretionary powers in imposing sentence than were formerly permitted if the child were dealt with under The Training School Act.

An amendment to The Child Welfare Act[6] permits the judge of a juvenile court to dispense with the presence of a child at a hearing to determine neglect, when he considers it to be in the best interests of the child. Under this amendment, also, the same protection relating to the giving of consent for adoption is extended to children born in wedlock as to those born out of wedlock, that is, written consents to the adoption of a child born in wedlock may be given only after the child is seven days of age, and any person who has given his consent in writing may cancel it within twenty-one days after it was given.

In Saskatchewan an amendment to the Child Welfare Act[7] specifies that notice of the court hearing need not be given to the municipality in which a child is apprehended as neglected, if in the opinion of the Director of Child Welfare, there are socially sound reasons for not giving it. The provisions respecting confidentiality of files or documents pertaining to personal histories which have come into existence through anything done under or pursuant to the Act are extended to adults as well as to children. Also, the amendment provides that no member of the staff of the Department of Social Welfare and Rehabilitation shall be competent or compellable to give evidence at any trial, hearing or other proceeding of any statement made to him in confidence in the course of his duties under the Act. The former section was more limited in its application to evidence in any matrimonial cause.

Legitimation and Birth Registration

Two provinces, Manitoba and Ontario, each enacted a Legitimacy Act[8] to be effective from 1 July 1962. These Acts, like the Acts of the three western Provinces of British Columbia (1960), Alberta (1960), and Saskatchewan (1961), broaden the conditions for legitimation. This legislation is as recommended by the Conference of Commissioners on Uniformity of Legislation in Canada.

The re-enacted Vital Statistics Act[9] of British Columbia sets out the procedure respecting the birth registration of a child born to a married woman who requests that her husband not be shown as the father of the child since, at the time of conception of the child she was living separate and apart from him. No particulars as to the father need be given unless the mother and the person acknowledging himself to be the father jointly so request. At their request, also, the birth may be registered showing the surname of the person acknowledging himself to be the father as the surname of the child.

Other Developments

In Manitoba, the Government, in co-operation with the Law Society of Manitoba, made provision for extending the voluntary programme of legal aid to the indigent to all parts of the province. In the criminal field, counsel appointed to defend indigents accused of indictable offences will act without fee in police courts. The Attorney General's Department will provide a free copy of evidence taken at the preliminary hearing and, if there are reasonable grounds of appeal, transcriptions of trial evidence on the appeal. The Government will also pay expenses of counsel representing indigent accused in areas where local counsel are not available and will also pay *per diem* counsel fees to lawyers representing indigent accused persons in the higher courts.

A Law Reform Committee composed of prominent lawyers with the Legislative Counsel as permanent secretary was also set up in Manitoba to give counsel and advice on statutes protecting the legal rights of citizens and to initiate discussions on any other points affecting the legal rights of citizens.[10]

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[1] *Statutes of Ontario, 1962–63*, c. 86.
[2] *Statutes of Ontario, 1962–63*, c. 63.
[3] *Statutes of Ontario, 1961–62*, c. 53.
[4] *Statutes of Ontario, 1961–62*, c. 37.
[5] *Statutes of Ontario, 1961–62*, c. 130.
[6] *Statutes of Ontario, 1961–62*, c. 14.
[7] *Statutes of Saskatchewan, 1962*, c. 11.
[8] *Statutes of Manitoba, 1962*, c. 38; *Statutes of Ontario, 1961–62*, c. 71.
[9] *Statutes of British Columbia*, 1962, c. 66.
[10] *Legislative Assembly of Manitoba Debates*, 6 April 1962, pp. 1509–10.

In Newfoundland, the Penitentiary Act was amended to provide for the commutation of sentences, so that a person serving a sentence of a year or less may now earn a remission of his sentence.[1]

III. JUDICIAL DECISIONS

During the year 1962, on several occasions the Courts in Canada dealt with the issues of human rights and freedoms in general and the application of the Canadian Bill of Rights in particular. Some of the cases reached the higher Courts, and a selected list of these judgments, decided in 1962, is as follows:

In July 1962, the Saskatchewan Court of Appeal in Shumiatcher *v.* Attorney-General for Saskatchewan[2] quashed an information on the ground that it did not meet the requirements of section 492(3) of the Criminal Code of Canada relating to sufficiency of detail of the circumstances of the alleged offence. In addition to noting that this fundamental principle of criminal law is contained in the requirements of the above provision of the Criminal Code, one of the judges commented, as *obiter*, that such a requirement also falls within the ambit of paragraph *(e)* of section 2 of the Canadian Bill of Rights, namely, that 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."

In the field of powers and privileges of legislative assemblies, the Courts of the Yukon Territory dealt, in the case of Chamberlist *v.* Collins, Livesey and Castonguay,[3] with the power of the Yukon Territorial Council, the legislative assembly for that Territory, to determine the eligibility of an elected member to sit and to participate in the proceedings of the Council.

Under the relevant legislation, the Elections Ordinance, reference was made to certain disqualifications governing eligibility to act as a member of the Council. The Council had determined that the member in question was ineligible by reason of beneficial interests in contracts involving expenditure of Territorial funds.

The Courts upheld the principle that it is the fundamental right and privilege of a legislative assembly to determine the fitness and eligibility of a person to participate in the proceedings of that assembly and that such a determination is not, in the absence of a statute so stating, transferred to the courts.

In Regina ex rel Graham *v.* Leonard,[4] the Appellate Division of the Alberta Supreme Court confirmed that a provincial Attorney-General, when he intervenes in a criminal action launched by a private prosecutor, is entitled, in his discretion, to enter a stay of proceedings under Section 490 of the Criminal Code, and in such a situation the private prosecutor had not been deprived of his rights and privileges under the *Canadian Bill of Rights*.

The Court of Appeal agreed with the reasoning of the trial judge, who held that the action taken by the provincial Attorney-General in withdrawing the charges did not abridge any right of an individual to equality before the law and the protection of the law as guaranteed by Section 1*(b)* of the *Canadian Bill of Rights*. Also, the Court of Appeal agreed with the stand taken by the trial judge that Section 2*(e)* of the *Canadian Bill of Rights*, which postulates "the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations", does not embrace the right to prosecute charges founded on insufficient evidence.

In June 1962, in Canadian Pacific Railway Co. *v.* Zambri,[5] the Supreme Court of Canada upheld the conviction of the Canadian Pacific Railway Company for discharging employees of the Royal York Hotel in Toronto who were on strike called by the union in compliance with the provisions of the Ontario Labour Relations Act, and held that the dismissal from employment by reason only of ceasing to work as a result of the strike violated the provisions of that Act. Further, the Court held that, since all statutory requirements had been complied with, the strike was a lawful activity of the union and the employees, as members of the union, had the right to participate in that lawful activity of the union. Consequently, the dismissals of the employees by reason only of their ceasing to work as a result of the strike were prohibited by law.

[1] *Statutes of Newfoundland, 1962*, c. 59.

[2] (1962) 39 W.W.R., Part 10, p. 577.

[3] (1962) 39 W.W.R., Part 2, p. 65.

[4] (1962), 39 W.W.R., Part 6, p. 343.

[5] (1962), 34 D.L.R., Part 9, p. 654.

CENTRAL AFRICAN REPUBLIC

ACT NO. 61/221 OF 2 JUNE 1962 INSTITUTING THE LABOUR CODE OF THE CENTRAL AFRICAN REPUBLIC[1]

TITLE I

GENERAL PROVISIONS

Art. 1. This Act institutes the Labour Code of the Central African Republic. In this Act "worker" means 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). For the purpose of determining whether or not a person is to be regarded as a worker, no account shall be taken of the legal position of the employer or of the employee.

Art. 2. Workers enjoying advantages which are superior to those provided by this Act shall continue to enjoy such advantages.

Art. 3. The provisions of this Act shall not apply to:

(1) Officers of the administration of justice or civil servants;

(2) Commissioned officers, non-commissioned officers or other ranks;

(3) The personnel of the Guard of the Central African Republic, except unestablished civilian personnel.

Art. 4. Forced or compulsory labour is absolutely forbidden. The term "forced or compulsory labour" means any labour or service demanded of an individual under threat of any penalty, being a labour or service which the said individual has not freely offered to perform.

However, the term "forced or compulsory labour" shall not include:

(a) Any labour or service required under the laws on compulsory military service and directed to work of a purely military character;

(b) Any labour or service forming part of the normal civic obligations of citizens of the Central African Republic, to be defined by a later Act;

(c) Any work or service required of an individual as the result of a sentence passed by a court of law; such work or service, however, must be carried out under the supervision of the public authorities, and the said individual must not be handed over to or placed at the disposal of any private individual, company or private corporation;

(d) Any labour or service required in case of *force majeure*, i.e. in the event of war, calamity or threat of a calamity such as fire, flood, famine, earthquake, violent epidemic or epizootic, invasion by harmful animals, insects or plant pests or, in general, in any circumstances endangering or likely to endanger the life or the normal conditions of existence of the entire population or any part thereof;

(e) Minor village work, i.e. work which is carried out for the direct benefit of the community by its members, and which may on that account be deemed a normal civic obligation of members of the community, provided that the inhabitants themselves or their direct representatives have the right to decide whether or not such work is necessary.

TITLE II

TRADE UNIONS

Chapter I

PURPOSE AND CONSTITUTION OF TRADE UNIONS

Art. 5. Trade unions shall have as their sole object the study and defence of the economic, industrial, commercial and agricultural interests of the trade or profession concerned.

Art. 6. Persons carrying on the same trade, similar crafts or allied trades associated in the preparation of specific products, or the same profession, shall be free to form a trade union. Every worker or employer shall be free to join a trade union selected by him within his own trade or profession.

However, no alien shall join a trade union unless he has been resident in the territory of the Central African Republic for at least two years and the laws of his country of nationality grant the same rights to Central African Republic nationals who have settled in that country.

In virtue of the Convention of Establishment signed between the French Republic and the Central African Republic, promulgated by Act No. 60/153 of 26 July 1960, nationals of the French Republic shall not be regarded as aliens for the purposes of this Act.

Art. 7. The founders of every trade union shall register the by-laws and the names of those who are responsible in any capacity for its management or direction.

Registration shall be carried out at the principal office of the prefecture or sub-prefecture in which the trade union is formed. A receipt for the items

[1] Text printed separately.

registered must be issued by the prefect or sub-prefect without delay. Copies of the by-laws and of the receipt for the items registered shall be sent by the prefect to the following authorities:

Minister for the Interior;
Minister responsible for Labour;
Procureur de la République for the area;
Inspector of labour for the area.

It shall be the responsibility of the *procureur de la République* and the inspector of labour, acting either on their own initiative or at the request of the Minister for the Interior or the Minister responsible for Labour, to call upon the leaders of trade unions to repeal or amend the provisions of illicit or illegal by-laws.

The civil court shall be competent to order the dissolution of any trade union which has not as its sole object the study and defence of the occupational, economic, industrial, commercial or agricultural interests of the trade or profession concerned. Application shall be made to the court by the *procureur*, acting either *ex officio* or at the request of the Minister for the Interior, the Minister responsible for Labour or any other interested person.

. . .

Art. 10. The members who serve as officers of a trade union must:

(1) have carried on the trade or profession concerned for the past five years;

(2) be citizens of the Central African Republic or citizens of one of the States on a list to be established by decree; with, in the latter case, the proviso that:

(a) the persons concerned furnish proof of three years residence in the territory of the Central African Republic;

(b) the laws of their country of nationality grant the same rights to Central African Republic citizens who have settled in that country;

(3) be in possession of their civil rights.

Nationals of the French Republic shall be treated as nationals of the Central African Republic in virtue of Act No. 60/153 promulgated on 26 July 1960.

Art. 11. The following shall not serve as officers of a trade union:

(a) any person who has been sentenced to imprisonment otherwise than for an offence of negligence not accompanied by the offence of taking flight;

(b) any person who has been sentenced to permanent or temporary disqualification for inclusion in an electoral roll;

(c) any person for whom an administrator has been appointed or who has been deprived by the court, pursuant to the laws authorizing such deprivation, of his right to be elected.

Art. 12. Minors over sixteen years of age may join trade unions unless their father, mother or guardian objects.

. . .

Chapter V

FEDERATIONS OF TRADE UNIONS

Art. 30. Trade unions which have been duly formed in accordance with the provisions of this Act shall be free to unite for the study and defence of their economic, industrial, commercial and agricultural interests. They may form themselves into any manner of federation and affiliate themselves with international organizations of workers or employers.

Art. 31. The provisions of articles 5, 7, 8, 9, 10, 11, 12, 15 and 16 shall apply to federations of trade unions, which must in addition report under article 7 the names and registered addresses of the member trade unions. Their by-laws must give rules for the representation of the member trade unions on the governing body and in the general meetings.

. . .

[Other provisions of the Code deal with contracts of employment, wages, hours of work, the employment of women and children, weekly rest, leave, health and safety, labour inspection, labour disputes and penalties.]

ACT NO. 61/280 OF 15 JANUARY 1962 AMENDING THE PENAL CODE[1]

Art. 1. The below-mentioned articles of the Penal Code are amended as follows:

. . .

Art. 133. "Insult *(offense)* includes contempt for authority *(outrage)*, defamation and abusive language *(injure)*. Any person who by any means insults. . ." (remainder of article unchanged).

. . .

Art. 2. The following paragraph is added at the end of article 77:

"Any person who engages in any other manoeuvre or act likely to imperil public security or to cause serious political disturbances, to foment hatred of the Government or to violate the country's laws shall be liable to imprisonment for not less than one year and not more than five years. He may also be deprived of all or some of the rights specified in article 17 for a period of not less than five years and not more than ten years from the day on which he completes the serving of his sentence. He may be subjected to restrictions of residence for a similar term."

. . .

[1] Text published in the *Journal Officiel de la République Centrafricaine*, fourth year, No. 3, of 1 February 1962. The amendment helps to explain the way in which the code uses the words *outrage*, *injure* and *offense*, which were translated somewhat differently in the 1961 *Yearbook*.

ACT NO. 61/265 OF 15 JANUARY 1962 ESTABLISHING A CODE OF CRIMINAL PROCEDURE[1]

Book I.— Prosecution and judicial inquiry

. . .

TITLE II. — JUDICIAL INQUIRY

Chapter I

Flagrante delicto CRIMES AND OFFENCES

. . .

Art. 32. (a) The officer of the criminal police may undertake all searches, entry of premises and searches of the person.

(b) Unless requested by a person in the house or unless an exception is provided by law, entry of premises and searches may take place only between 5 a.m. and 6 p.m.

. . .

Art. 35. (a) In places where a judicial officer of the *Ministère public* resides, if the officer of the criminal police, for the purposes of the investigation, considers it necessary to hold at his disposal one or more persons suspected of having taken part in the offence, he may not hold them for more than forty-eight hours.

(b) In all other places where, because of distance or communication difficulties, the defendant cannot be brought immediately before the competent judicial officer, the officer of the criminal police may issue an order of committal to prison, which shall be valid for a maximum of fifteen days, which period may be renewed once in case of imperative necessity, proof of which shall be furnished; within forty-eight hours the officer of the criminal police shall advise the judicial officer who may order the defendant's immediate release or his transfer to the place where the officer's court sits, or issue a warrant of committal to prison in the manner prescribed by article 140, or institute an examination.

(c) The officer of the criminal police may issue a warrant to compel attendance against any person suspected of having taken part in the offence.

. . .

Chapter II

PRELIMINARY INVESTIGATION

Art. 40. (a) The officers of the criminal police shall undertake a preliminary investigation either of their own motion or on instructions from the *Ministère public.*

(b) They shall carry out all the operations provided for in articles 32, 33 and 34 of this Code, subject to the following provisions: an entry of premises, search or search of the person may be made only with the express consent of the person who is the object thereof, which shall be recorded in the report. Witnesses shall be heard without administration of an oath.

(c) If, for the purposes of the investigation, the officer of the criminal police considers it necessary to hold at his disposal one or more persons suspected of having taken part in a crime or a correctional offence, the provisions of article 35 above shall be applied.

Chapter III

THE EXAMINATION

Section I. — General Provisions

Art. 41. The preliminary examination shall be mandatory for crimes. In the absence of special provisions, it shall be optional for correctional offences.

. . .

Section II. — Complaint of the Civil Claimant

Art. 46. Any person who claims to have been injured by a crime or a correctional offence may become a civil claimant by lodging a complaint with the examining officer.

. . .

Art. 52. Where, after an examination instituted on the complaint of a civil claimant, a decision finding that no action should follow has been rendered, the accused person and all persons mentioned in the complaint, without prejudice to a prosecution for malicious accusation, may, if they do not resort to civil remedies, ask for damages from the complainant in the manner indicated below.

(b) The action for damages must be brought within three months from the day on which the decision finding that no action should follow became absolute. It shall be brought by a summons directly before the Correctional Court in which the examination of the case was conducted. That Court shall immediately be furnished with the file of the examination that was concluded by the decision that no action should follow, with a view to its communication to the parties. The trial shall take place in chambers; the parties, or their counsel, and the *Ministère public* shall be heard. The judgement shall be pronounced in open court.

(c) In the case of a conviction, the Court may order that its judgement shall be published, in whole or in part, in one or more newspapers which it shall designate, at the expense of the convicted person. It shall fix a maximum cost for each insertion.

(d) A motion to reconsider a judgement granted by default, where appropriate, and an appeal shall be admissible within the ordinary limitations of time in correctional cases.

(e) The appeal shall be taken to the Chamber of Correctional Appeal, which shall decide according to the same rules as the Court.

(f) The decision of the Appeal Court may be transferred to the Supreme Court, as in criminal cases.

. . .

[1] Text published in the *Journal Officiel de la République Centrafricaine*, fourth year, No. 3, of 1 February 1962.

Section IV. — Hearing of Witnesses

Art. 55. The examining judge shall order, by a summons, any persons whose testimony he considers to be useful in establishing the truth to appear before him.

. . .

Art. 57. (a) Any person who, having been summoned, does not comply, shall be sentenced by order of the examining judge to a fine of not less than 10,000 francs. This decision shall not be subject to appeal. Furthermore, on the recommendation of the *Ministère public*, the examining judge may issue a warrant to compel him to appear as a witness.

(b) A witness sentenced to a fine may be discharged therefrom if he offers legitimate excuses. The same fine shall be imposed on a witness who refuses to take an oath or to testify.

(c) Where it is established by a medical certificate that a witness is unable to appear, the examining judge shall go to his place of residence to receive his statement.

. . .

Art. 61. Minors who are fifteen years of age shall be heard without the taking of an oath.

. . .

Section V. — Interrogation and Confrontation

Art. 63. (a) At the first appearance of the accused person, the examining judge shall verify his identity, shall inform him of each of the acts he is alleged to have committed, and shall advise him that he is free not to make any statement. It shall be so stated in the record.

(b) If the accused person wishes to make statements, they shall be received forthwith by the examining judge.

(c) The judicial officer shall advise the accused person of his right to select a counsel from among the advocates enrolled at one of the courts of the Republic. It shall be so stated in the record.

(d) A civil claimant shall also have the right to the assistance of counsel from the time of his first hearing.

(e) If the accused person is permitted to remain at liberty, he must inform the examining judge of his current place of residence and of all changes of address. He must, in the record of his first appearance, establish an address for service in the town in which the court sits.

. . .

Art. 65. (a) An accused person under detention may communicate freely with his counsel immediately after his first appearance before the examining judge.

(b) The examining judge shall have the right to order a prohibition on communication for a period of ten days, which may be renewed once.

(c) The prohibition on communication shall in no case apply to the accused person's counsel.

. . .

Art. 67. (a) Counsel for the accused person and counsel for the civil claimant may attend the interrogations or hearings and confrontations of their client. If they reside at the place where the examination is conducted, they must be advised by the judge of the day and hour of any interrogation, hearing or confrontation.

(b) Counsel shall be informed, either by the sending of a registered letter, or by the service of notice by the registrar or by any citizen entrusted with public service functions, at least twenty-four hours before the interrogation.

(c) The records of the proceedings, in that case, shall be placed at the disposal of counsel twenty-four hours before the accused person is interrogated or the civil claimant is heard.

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Section IX. — Provisional Release

Art. 81. (a) In all cases, the examining judge, on the application of the accused person and on the conclusions of the *Ministère public*, may order the accused person's provisional release, provided that the accused person establishes an address for service in the place in which the court sits or undertakes to appear immediately at all the proceedings and for the enforcement of the judgement when he is summoned thereto.

(b) The examining judge, on the conclusions of the *procureur de la République*, may quash any order for committal to prison or warrant of arrest, provided that the accused person complies with the provisions of the foregoing paragraph.

(c) In correctional cases, where the maximum penalty imposed by the law is one year's imprisonment or less, provisional release shall be granted as of right to a defendant domiciled in the Republic after he has been interrogated on his first appearance before the examining judge.

(d) This provision shall not apply to persons previously sentenced to a penalty of correctional imprisonment for a correctional offence under ordinary law or to a criminal penalty.

(e) The accused person shall cease to be entitled to provisional release if, without a substantial reason, he does not comply with the examining judge's request to appear.

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Art. 83. (a) If the examining judge considers that the continued detention of the accused person is necessary to the establishment of the truth and to the conduct of the examination, he shall issue an order denying the application. Notice of this order shall be given forthwith by the registrar to the accused person.

(b) If his application for provisional release has been granted, the defendant, in the document recording the notice given to him by the registrar, shall establish an address for service in the place in which the examining authority sits.

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Art. 86. The examining judge may issue a warrant of arrest or order for committal to prison if the accused person, after he has obtained provisional release, does not appear although he is notified to do so. The examining judge may do the same if

new and serious circumstances render detention necessary. Nevertheless, an accussed person who has been set free by the arraignment chamber reversing an order of the examining judge may be arrested again only on a warrant issued by the chamber.

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Art. 88. (a) A defendant who has been committed for trial by the Criminal Court shall be placed under arrest by virtue of an order or a decision committing him for trial by the Criminal Court, which shall include a writ of *capias*. Nevertheless, if he has been provisionally released or if he has never been detained, the *Ministère public* may authorize the defendant to submit to detention one day before the hearing.

(b) That privilege shall cease if the defendant does not appear on the day designated for the performance of the formalities laid down in article 188, paragraphs *(c)* and *(d)*.

Chapter IV

ORDERS CONCLUDING THE EXAMINATION

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Art. 91. (a) If the examining judge considers that the act does not constitute a crime, a correctional offence or a petty offence, or that there is not sufficient evidence of the guilt of the accused person, he shall issue an order finding that no action should follow and, if the accused person had been arrested, he shall be set free.

(b) The examining judge shall rule on the restitution of seized objects; he shall fix costs and shall direct the civil claimant, if there is one in the case, to pay the costs. However, a civil claimant in good faith may be exonerated from paying all or part of the costs by a special order containing a statement of reasons.

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Art. 93. If the examining judge considers that the act constitutes only a petty offence, he shall commit the accused person for trial by the court and shall order his release, if he is under arrest.

Art. 94. (a) If a correctional offence is found to be of a kind punishable by correctional penalties, the examining judge shall commit the defendant for trial by the court.

(b) If, in that case, the correctional offence may entail a penalty of imprisonment, the defendant, if he is under detention pending trial, shall remain so provisionally.

(c) If the correctional offence does not entail a penalty of imprisonment, the defendant shall be set free on condition that he appear before the competent court on the designated day.

Art. 95. (a) If the examining judge considers that the act is of a kind punishable by criminal penalties and that there is a sufficient basis for indictment, he shall commit the accused person for trial by the Criminal Court and shall issue a writ of *capias* against him.

(b) Notice of that order for committal to trial shall be given as soon as practicable, on pain of invalidity, to the defendant and to his counsel, and the defendant shall be accorded the right of appeal within forty-eight hours following the giving of the notice. A copy of the order shall be delivered to the defendant.

(c) The defendant shall remain in detention. If it has not been possible to arrest him, he shall be sought by virtue of the writ of *capias*.

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Chapter VI

THE ARRAIGNMENT CHAMBER

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Art. 103. (a) The arraignment chamber shall deal directly with appeals from the *Ministère public*, the civil claimant or the accused person.

(b) The file of the proceedings shall be transmitted to it forthwith by the *procureur général*, who shall attach thereto his written conclusions.

Art. 104. The civil claimant, the accused person and the witnesses shall not appear. The civil claimant and the accused person may submit statements.

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Book II. — Judgements and review thereof

TITLE I. — GENERAL PROVISIONS

Art. 115. (a) The correctional courts shall try petty offences and correctional offences.

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TITLE II. — PROCEEDINGS BEFORE THE COURTS WITH RESPECT TO PETTY OFFENCES AND CORRECTIONAL OFFENCES

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Chapter III

JUDGEMENT OF CORRECTIONAL OFFENCES AND PETTY OFFENCES

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Art. 123. In all cases relating to petty offences and correctional offences, the defendant may be represented by a counsel, or may ask to be judged on the written record in his absence. The Court may, nevertheless, order him to appear in person.

Art. 124. (a) The examination shall be public, on pain of invalidity, unless a public hearing is prejudicial to order or morals. In that event, the Court shall so declare by a judgement. Nevertheless, the president may forbid all or some minors access to the court room.

(b) The *procureur de la République*, the civil claimant or his counsel, shall state the case. The defendant shall be interrogated; witnesses for or against him shall be heard, if necessary, and motions to disqualify witnesses from testifying shall be made and decided; documents supporting the conviction or the acquittal of the defendant shall be presented. The civil claimant shall explain in detail the relief he seeks. The *procureur de la République* shall sum up the case and shall submit his conclusions; the defendant and the persons liable for others who cannot be held liable under the criminal law for a correctional offence shall put forward their defence.

The parties to the case may speak in rebuttal, in the same order, but the defendant or his counsel shall always speak last.

Judgement shall be pronounced immediately or, at the latest, at the hearing following that at which the examination is concluded.

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Art. 127. (a) If the witnesses do not speak French, their statements shall be received through an interpreter who is under oath.

(b) Interpreters who are not under oath shall take an oath to interpret faithfully the remarks of persons speaking other languages. The administration of the oath shall be mentioned in the record of the proceedings.

(c) Interpreters must be at least eighteen years of age.

(d) Even if the parties or the *Ministère public* consent thereto, an interpreter may not be selected from among the parties, the witnesses or the judges.

(e) If an accused person or a witness is a deaf-mute and cannot write, the president, of his own motion, shall appoint as interpreter the person who is most accustomed to conversing with him.

(f) Where a deaf-mute can write, the proceedings shall be in the form of written questions and replies, which shall be read out by the registrar.

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Chapter IV

PROCEEDINGS WITH RESPECT TO *flagrante delicto* OFFENCES

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Art. 140. (a) Any accused person, not subject to a penalty of rigorous imprisonment, who has been arrested *flagrante delicto* for an act punishable by correctional penalties or for a petty offence of the fifth category shall be brought forthwith before the *procureur de la République*, who shall interrogate him and who may commit him to prison, if necessary.

(b) The accused person shall be brought before the Court at the next hearing.

(c) Witnesses may be orally summoned by any officer of the criminal police or officer of the security police. They shall be obliged to appear on pain of the penalties set out in article 57.

(d) The president shall advise the accused person of his right to request time in which to prepare his defence.

(e) If the accused person invokes that right, the Court shall grant him a period of least three days.

(f) The advice given by the president and the reply of the accused person shall be mentioned in the judgement.

(g) The provisions of this article must be observed, on pain of invalidity.

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Chapter V

JUDGEMENT OF CHILDREN

Art. 143. Offences of any kind committed by minors under sixteen years of age shall be examined and judged in chambers by the president of the Court or by a judicial officer appointed by him as a children's judge.

Art. 144. In cases of crimes or correctional offences, the procedure provided for in articles 41 to 98 shall be mandatory. If persons who have attained their majority are also accused in the same proceedings, the ordinary court shall have jurisdiction.

Art. 145. (a) The children's judge may take any appropriate measures concerning the custody of the minor.

(b) An order for committal to prison may not be issued in respect of minors under fourteen years of age.

Art. 146. The children's judge shall appoint an advocate, or, failing him, an official, an officer or a citizen whom he deems to be capable of ensuring the defence of the minor both during the examination and for the trial.

Art. 147. Judgements rendered in application of article 143 may be appealed to the Appeal Court. No record of the proceedings may appear in the Press, on penalty of imprisonment for two months to one year and a fine of 50,001 to 120,000 francs.

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Chapter VII

DEFAULT AND MOTION TO RECONSIDER JUDGEMENT BY DEFAULT

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Art. 154. (a) A motion may be made to reconsider judgements or decisions rendered by default.

(b) The motion shall automatically annul every part of the judgement that concerns the interests of the party who made the motion. The motion of the defendant to reopen the operative part of the judgement or of the decision on the prosecution shall automatically entail a motion to reopen the operative part of the judgement or of the decision on the civil action.

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TITLE III

Sole Chapter

APPEAL FROM JUDGEMENTS

Art. 158. (a) Appeals may be taken from judgements rendered in petty offence cases which impose a term of imprisonment or in which the fines, restitution and other civil compensation exceed the sum of 5,000 francs, in addition to costs.

(b) Appeals may be taken from judgements on the merits rendered in correctional cases.

(c) An appeal from any interlocutory judgement may be taken only at the same time as an appeal from the judgement on the merits.

(d) If the registrar refuses to receive an appeal

from an interlocutory judgement, he shall draw up a report of his action which shall be transmitted forthwith to the president of the Court, who shall issue an order deciding the matter.

Art. 159. The right to appeal shall be vested in:

1. The defendants or the parties liable;

2. The civil claimant, with respect to his civil interests only;

3. The *procureur de la République* for the Court;

4. The *procureur général* for the Appeal Court.

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Book III. — Some special proceedings

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Chapter XIII

REHABILITATION OF CONVICTED PERSONS

Art. 272. Any person sentenced by a court of the Central African Republic to a criminal or correctional penalty may be rehabilitated in his rights.

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CEYLON

NOTE[1]

I. LEGISLATION

A. Criminal Law

Criminal Law (Special Provisions) Act, No. 1 of 1962

This was an Act to make special provision for, *inter alia*, the trial of persons suspected of having committed, or charged with having committed, offences against the State, on or about 27 January 1962.[2]

Section 114 of the Penal Code provided that whoever wages war against the Queen, or attempts to wage such war or abets the waging of such war, was liable to be punished with death, or simple or rigourous imprisonment of either description, which may be extended to twenty years and further that such offender shall forfeit all his property. This section was amended by Section 6(1) of the above-mentioned Act, which provided that the simple or rigorous imprisonment shall extend to at least ten years, but not to more than twenty years.

Section 114 of the Penal Code provided that whoever conspired to commit any of the offences set out in section 114 or conspired to deprive the Queen of the Sovereignty of Ceylon, or of any part thereof, of any of Her Majesty's Realms and Territories, or conspired to overawe, by means of criminal force or the show of criminal force, the Government of Ceylon, was liable to be punished with simple or rigorous imprisonment which may extend to twenty years and was also liable to be fined. Section 6(2)(*a*) of the present Act amended this section, by further providing that, whoever conspired to overthrow, or attempted or prepared or did any act, or conspired to do, or attempted or prepared to do any act calculated to overthrow, or with the object or intention of overthrowing, otherwise than by lawful means, the Government of Ceylon by law established, or conspired to murder or attempted to murder, or wrongfully confine, or conspired or attempted or prepared to wrongfully confine the Governor-General or the Prime Minister or any other member of the Cabinet of Ministers, with the intention of introducing him or compelling him to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Prime Minister or Cabinet Minister, would be liable to punishment.

Punishment with death, or simple or rigourous imprisonment which shall extend to at least ten years but not to more than twenty years and the liability to forfeit all property, too was included by this amendment.

By Section 21 of the Act, these amendments to the Penal Code, were to cease to be operative after the conclusion of all legal proceedings connected with or incidental to any offence against the State, committed on or about 27 January 1962, or from one year after the commencement of the Act, whichever was later. It was also provided in this section that the Senate and the House of Representatives may by resolution extend the operation of the Act from time to time for periods not exceeding one year.

By Section 20 of the Act, the term, 'Offence against the State' was to mean any Act or omission made punishable by Chapter six of the Penal Code (Sections 114–127).

By section 19, this Act was deemed to have come into operation on 1 January 1962.

B. Law of Evidence

Criminal Law (Special Provisions) Act. No. 1 of 1962

This was an Act to make special provision for, *inter alia*, the trial of persons suspected of having committed, or charged with having committed, offences against the State, on or about 27 January 1962.

Under Section 24 of the Evidence Ordinance a confession made by an accused person is irrelevant in a criminal proceeding if the confession appears to a court to have been caused by any inducement, threat or promise in reference to the charge against the accused person, proceeding from a person in authority or from another person in the presence of a person in authority, which in the opinion of the Court would appear to have given the accused person reasonable grounds to suppose that by making the confession he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Under Section 25 of the Evidence Ordinance no confession made to a police officer shall be proved as against a person accused of any offence. Section 26 of the Ordinance provides that no confession shall be proved against a person if such confession was made by such person whilst he was in the custody of a police officer, unless such confession was made in the immediate presence of a Magistrate.

In the case of a joint trial of more persons than one, for the same offence, section 30 of the Ordinance provides that, if a confession made by one of such persons is proved, which affects some other of such persons, then the court shall not take into consideration such a confession against that other person.

Section 12 of the Criminal Law (Special Provi-

[1] Note furnished by the Government of Ceylon.

[2] See also the paragraphs appearing under the next two headings.

sions) Act, No. 1 of 1962, enacted that the provisions of sections 25, 26 and 30 shall not apply in the case of any offence against the State.

The prohibition contained in section 122(3) of the Criminal Procedure Code, that statements made to Police Officers cannot be used for any purpose other than to prove that a witness made a different statement at a different time or to refresh the memory of the person recording it, was done away with, in the case of offences against the State.

Section 12 of this Act further provided, in the case of offences against the State:

(a) A statement, whether a confession or not, and made by a person whilst he was in the custody of a police officer or not and whether such statement was made in the immediate presence of a Magistrate or not, could be proved against such person.

(b) The provisions of section 24 of the Evidence Ordinance would apply to a statement referred to in paragraph *(a)* above. The burden of proving that section 24 of the Ordinance applied to such a statement lay on the person making such an assertion.

(c) The statement referred to, in paragraph *(a)* above, could be proved against the person making it, only if such statement was made to a police officer not below the rank of Assistant Superintendent.

(d) The statement referred to in paragraph *(a)* above could be proved as against the person who made it, as well as against any other person jointly charged with such person, if, but only if, such statement is corroborated in material particulars by evidence other than a statement proved under paragraph *(a)* above.

By Section 21 these amendments to the Evidence Ordinance were to cease to be operative after the conclusion of all legal proceedings connected with or incidental to any offence against the State, committed on or about 27 January 1962 or from one year after the commencement of the Act, whichever is later. It was also provided in this section that the Senate and the House of Representatives may by resolution extend the operation of the Act from time to time for periods not exceeding one year.

By section 19, this Act was deemed to have come into operation on 1 January 1962.

C. Judicial Procedure

1. *Criminal Law (Special Provisions) Act, No. 1 of 1962*

This was an Act to make special provision for, *inter alia*, the apprehension and detention of persons suspected of having committed or charged with having committed offences against the State on or about 27 January 1962.

Special provisions were made in Part I of the Act for the arrest and detention of persons suspected of having committed offences against the State. The Inspector-General of Police or any other police officer authorised by him was given the power to arrest any person, suspected of committing any offence against the State, without a warrant. A person so arrested could be kept in custody for a period of sixty days or until the proceedings in respect of the offence against the State were commenced, whichever date was earlier. The fact of the arrest and the place of detention had to be notified to the Magistrate having jurisdiction over the place where the arrest took place.

A person so arrested could be detained in a prison established under the Prisons Ordinance or in such other place as directed by the Inspector-General of Police.

Sections 36, 37 and 38 of the Criminal Procedure Code, which required that any person arrested without a warrant had to be produced before a Magistrate within twenty-four hours and that all police officers in charge of police stations should report cases of all persons arrested without warrant, to the Magistrate, were not to apply in the case of persons arrested and detained under this Act.

Under Section 440A of the Criminal Procedure Code, the Minister of Justice has the power to direct that a person be tried before the Supreme Court at Bar by three Judges without a jury, for the offence of sedition or for any other offence which by reason of civil commotion, disturbance of public feeling or any other similar cause, he may consider to be appropriately triable without a jury. Section 4 of this Act amended this section giving the Minister of Justice power to direct that offences against the State be so tried.

The power that a court, constituted under Section 440A of the Criminal Procedure Code, had, to admit a person, charged before the Court, to bail, was amended by the additional requirement that the Attorney-General should consent to the granting of bail.

Section 8 of this Act provided that a direction of the Minister of Justice issued under Section 440A as amended, could not be called in question by Writ or otherwise.

Section 9 of this Act gave the power to the Minister of Justice to nominate three Judges of the Supreme Court at Bar. It was also provided that the constitution of the Court and its jurisdiction could not be called in question whether by Writ or otherwise.

Section 14 of this Act gave the power to the Court to commence or continue a trial of a person for an offence against the State, in the absence of such person, if the Court was satisfied that that such person was evading arrest or absconding or feigning illness.

By Section 15 of this Act, the right of appeal to the Court of Criminal Appeal, in respect of convictions for offences against the State, was abolished.

By Section 21 of this Act these amendments to the Criminal Procedure Code were to cease to be operative after the conclusion of all legal proceedings connected with or incidental to any offence against the State, committed on or about 27 January 1962 or from one year after the commencement of the Act, whichever is later. It was also provided in this section that the Senate and the

House of Representatives may by resolution extend the operation of the Act from time to time, for period not exceeding one year.

By Section 19, this act was deemed to have come into operation on 1 January 1962.

2. *Criminal Law Act, No. 31 of 1962*

This Act was passed in consequence of the decision of the Court constituted under the provisions of the Criminal Law (Special Provisions) Act 1 of 1962.

Sections 4, 8, 9, 10 and 14 of the Criminal Law (Special Provisions) Act were repealed. Section 440A of the Criminal Procedure Code was repealed and a new section 440A was enacted making provision of the trial of a person for any offence punishable under Sections 114, 115 or 116 of the Penal Code, before the Supreme Court at Bar by three Judges, without a jury. In the case of offences against the State, or offences which, by reason of civil commotion, disturbance of public feeling or other similar cause, were appropriately triable by the Supreme Court at Bar, the Minister of Justice was given the power to direct that the trial of a person for such an offence be held before the Supreme Court at Bar, by three Judges without a jury.

The provisions regarding the granting of bail except with the consent of the Attorney-General, and the commencement and continuation of a trial in the absence of an accused person under certain circumstances, were re-enacted.

By section 4 of this Act, a new section 440B was inserted in the Criminal Procedure Code, giving the Chief Justice the power to name the three Judges before whom the trial at Bar shall be held.

The Direction and Nomination made by the Minister of Justice and the information filed by the Attorney-General, under the Criminal Law (Special Provisions) Act. No 1 of 1962, were to be of no force in law.

3. *Appeals (Privy Council) Amendment Act, No. 29 of 1962*

A party asking for leave to appeal to the Privy Council has to enter into good and sufficient security to the satisfaction of the Supreme Court, in a sum not exceeding three thousand rupees, for the due prosecution of the appeal within a month from the hearing of the application for leave to appeal. Such period could have been extended for special reasons, if an application in that behalf was made to the Court before the expiry of the month. This Act enables such an application to be made within thirty days after the expiry of the period of one month.

D. Economic Rights

1. *Industrial Disputes (Amendment) Act, No. 4 of 1962*

By this Act provisions were made, giving a certain measure of protection to workmen who were to be retrenched. A workman to be retrenched was entitled to a month's notice in writing and the retrenchment was not to be effected till the expiry of a period of two months thereafter. If in the meantime an Industrial Dispute arose or was apprehended in consequence of the retrenchment, then the retrenchment was not to be effected pending the settlement of the dispute.

This Act also enabled a Court of law, convicting an employer of the offence of terminating without good cause the services of a workman or of reducing a workman to a lower grade or class, to order such employer to re-instate the workman or to restore such workman to his proper grade. Provision was also made for the recovery of the remuneration of a workman whose services were so terminated or whose grade or class was lowered, by order of Court.

The court was also empowered to order employers, convicted of offences, to pay moneys due to workmen under any settlement, award or collective agreement. Such sums were to be recovered as fines.

2. *Police (Amendment) Act, No. 15 of 1962*

By this Act, power was given to the Minister of Defence and External Affairs acting in concurrence with the Minister of Finance, to make regulations for the establishment and operation of a scheme for the part of compensation in respect of the permanent, total or partial disablement or death of police officers in the discharge of their duties.

3. *Licensing of Traders Act, No. 22 of 1962*

This Act made provision for recovery through a court of law, as if it were a fine, of any sum of money which a trader has been required to pay to the Consolidated Fund of Ceylon by a Punitive Order.

4. *Control of Insurance Act, No. 25 of 1962*

This Act made provision for the regulation and supervision of the business of Insurance. All persons carrying on the business of Insurance were required to register themselves with the Controller of Insurance. Insurers who had transacted life assurance business in Ceylon prior to 1 January 1962 and who had not discharged their liabilities in respect of such assurances were required to maintain sufficient assets in Ceylon to discharge such liabilities. Provisions were also made for the inspection of accounts of Insurers, by the Controller.

E. Health

Maternity Benefits (Amendment) Act, No. 24 of 1962

This Act provided for the establishment and maintenance of creches for children under six years of age, where more than the prescribed number of women workers were employed in any mine, factory or prescribed establishment.

The Commissioner of Labour was given the power to inspect any mine, factory or prescribed establishment to ascertain whether the provisions of this Act were being observed.

II. JUDICIAL DECISIONS

A. Right to a Fair Trial

1. *The Queen* v. *Mapitigama Buddharakkita Thera and 2 others*, 63 N.L.R. 433

(1) Where several accused are tried jointly, and one of them elects to give evidence on oath in his own behalf and, in doing so, inculpates his co-accused, the jury should be warned of the danger of basing a conviction of the co-accused on the evidence of the witness unless it is corroborated in material particulars. It cannot be contended that the evidence of the witness is totally inadmissible against the co-accused as being a "confession" within the meaning of Section 30 of the Evidence Ordinance.

(2) Where in a case to which section 27 of the Evidence Ordinance did not apply, oral evidence, which was objected to as inadmissible, was nevertheless admitted of an oral statement made by an accused person to a police officer who was investigating a cognizable offence under Chapter 12 of the Criminal Procedure Code.

Held, that the use of the oral statement made to the police officer by the accused was as obnoxious to the prohibition contained in Section 122(3) of the Criminal Procedure Code as the use of the same statement reduced into writing.

(3) It is an unwritten rule that, except in the case of expert witnesses, Counsel does not interview a witness once he is in the witness box. Once the cross-examination commences, even an expert is not interviewed.

(4) The sentence of death passed on the accused appellants for the commission of the offence of conspiracy to commit or abet murder was illegal for the reason that the offence was committed by them during the period of operation of the suspension of the Capital Punishment Act. No. 20 of 1958. The retrospective operation of the provisions of the suspension of Capital Punishment (Repeal) Act, No. 25 of 1959, relating to the imposition of capital punishment on a person convicted of an offence of murder which had been committed prior to the date of the commencement of that Act, was not applicable to the offence of conspiracy to commit or abet murder.

2. *Attorney-General* v. *Piyasena*, 63 N.L.R. 489

Where, at the close of the prosecution case in a summary trial, the Magistrate purports to acquit the accused person on the ground that the charge was illegally framed, the order of the Magistrate amounts in law to a discharge of the accused under section 191 of the Criminal Procedure Code and not to an acquittal under section 190. In such an event the accused may be prosecuted again for the same offence in fresh proceedings.

3. *S. Kandasamy* v. *C. Subramaniam*, 63 N.L.R. 574

Where, in a criminal case, the complainant has reason to fear that he will not obtain an impartial and fair hearing from the Magistrate, it is open to him to make an application for the hearing of the case to be taken up before a different Magistrate.

4. *The Queen* v. *Aluthge Don Hemapala*, 64 N.L.R.1

(i) Although Counsel for an appellant cannot as of right rely on a ground not stated in the notice of appeal, the Court of Criminal Appeal may in an exceptional case permit such a ground to be argued where it is in the interests of justice to do so.

(ii) (By the majority of the court) Where, in a trial before the Supreme Court, the accused elects in terms of Section 165B of the Criminal Procedure Code to be tried by a jury drawn from an English speaking panel of jurors, not only the evidence of the witnesses but also the addresses of counsel in Sinhala must be interpreted into English, even when the jury and counsel have expressed their ability to understand and follow the proceedings in Sinhala.

5. *J. Anandagoda* v. *The Queen*, 64 N.L.R. 73

(i) The test whether a statement is a confession within the meaning of Section 17(2) and 25 of the Evidence Ordinance is an objective one, whether to the mind of a reasonable person reading the statement at the time and in the circumstances in which it was made it can be said to amount to a statement that the accused committed the offence in question or which suggested the inference that he committed the offence. The statement must be looked at as a whole and it must be considered on its own terms without reference to extrinsic facts. It is not permissible, in judging whether the statement is a confession, to look at other facts which may not be known at the time or which may emerge in evidence at the trial. But equally, it is irrelevant to consider whether the accused intended to make a confession. If the facts in the statement added together suggest the inference that the accused is guilty of the offence, then it is none the less a confession, even although at the same time the accused protests his innocence.

It cannot be contended that a statement made to a police officer is inadmissible in evidence under the provisions of Section 122(3) of the Criminal Procedure Code unless there is sufficient material to show that the police officer to whom the statement was made was conducting an investigation under Chapter 12 of the Code.

(ii) The appellant was tried, together with the second accused, upon an indictment which charged them both with the offence of conspiracy to murder X. They were also charged that they did "in the course of the same transaction" commit the offence of murdering X. Both of them were found not guilty on the first count of conspiracy. On the second count of murder the appellant was found guilty, and the second accused was found not guilty.

The trial Judge refused to accede to a motion made by the appellant's Counsel, at the commencement of the trial, for a separate trial in view of the damaging nature of a statement made by second accused in which he implicated the appellant while exonerating himself. In the summing-up, however,

the Judge warned the jury that the second accused's statement was not evidence against the appellant.

Held that the trial Judge did not exercise his discretion wrongly in refusing a separate trial.

Held further that there was no inconsistency in the jury's verdict in finding both accused not guilty on the first count (conspiracy to murder) and the second accused not guilty and the appellant guilty of the second count (murder). It could not be contended that the words "in the course of the same transaction" in the second count referred to the first count and that the accused could not commit murder in the course of a transaction of which he had previously been found not guilty.

6. *The Queen* v. *W. Don Wilbert*, 64 N.L.R. 83

Except for the limited purpose contemplated by Section 27 of the Evidence Ordinance, oral evidence of statements made by an accused person to a police officer in the course of an investigation under Chapter 12 of the Criminal Procedure Code cannot be proved by the prosecution, even as admissions; they may, however, be used to discredit a witness under Section 122(3), in which case the relevant passages should be put to the witness only after he enters the witness box and the written record should be produced and marked.

The conducting of experiments at an inspection of the scene of an offence should be avoided unless it is necessary to do so in the interests of justice. Inspection is permissible provided it is done in the presence of the Judge to clarify evidence already given and is really in substitution of or supplementary to plans and photographs produced in the case.

It is not open to the Court to call or allow to be led fresh evidence for the prosecution after the case for the defence has been closed, unless a matter arises *ex improviso*. (But, where the defence is concerned, a certain degree of latitude is permitted.)

The rule that an accused person, when he wishes to give evidence, should be called into the witness-box before his witnesses are called is not a hard-and-fast rule.

7. *The Queen* v. *A. K. Peter*, 64 N.L.R. 120

When Counsel is assigned to defend an accused person in a trial before the Supreme Court, he should be allowed sufficient time for the preparation of his case and for obtaining instructions from the accused.

8. *The Queen* v. *K. Siriwardene et al*, 64 N.L.R. 239

Ten persons were charged on different counts with house-breaking in respect of two different houses, premises Nos. 570 and 953. In respect of premises No. 570 the first accused was not charged with any offence, but nevertheless all ten accused were joined in one indictment.

Held that there was a misjoinder of charges. The mere fact that count 1 of the indictment stated that the offences were committed in the course of the same transaction could not cure the defect when in point of fact the evidence did not disclose that they were so committed in the course of the same transaction.

Held further that a misjoinder of charges is an illegality and not an irregularity capable of being cured.

9. *Gunawardena* v. *Edirisinghe*, 64 N.L.R. 279

An appellate court may revise the trial judge's conclusion on a pure question of fact if the reasons given by the trial judge are not satisfactory, or if it unmistakably so appears from the evidence.

10. *The Queen* v. *Murugan Ramasamy*, 64 N.L.R. 433

In a trial for attempted murder by shooting with a gun, a statement made by the accused to a Police Sergeant in the course of an inquiry under Chapter 12 of the Criminal Procedure Code was admitted in evidence. The statement was as follows: "I am prepared to point out the place where the gun and cartridges are buried."

Held that the statement fell within the prohibition in Section 122(3) of the Criminal Procedure Code and could not, therefore, be admitted in evidence. A statement by an accused person containing information in consequence of which a fact is deposed to as discovered is not admissible in evidence if the statement was made to a police officer in the course of an inquiry under Chapter 12 of the Criminal Procedure Code. A statement which cannot be used under Section 122(3) of the Criminal Procedure Code cannot be proved under Section 27 of the Evidence Ordinance.

Held further that the onus of satisfying the Court of Criminal Appeal that no substantial mis carriage of justice has actually occurred, in a case in which the point raised in appeal is decided in favour of the appellant, is upon the Crown.

11. *G. R. Daniel Appuhamy* v. *The Queen*, 64 N.L.R. 481

Under Section 440(1) of the Criminal Procedure Code it is for the Court, and not for the jury, to decide whether false evidence has been given by a witness, and if in the Court's opinion the witness has given false evidence, then the Supreme Court has power to sentence summarily "as for contempt of the Court".

A rider brought by the jury to the effect that the witness should be dealt with for giving false evidence is not equivalent to a verdict of guilty to a charge of perjury.

It is not necessary when proceeding under section 440(1) for the accusation of giving false evidence to be stated with the particularity required in a court in an indictment. If the Court is of opinion that the whole of a witness's evidence was false, it may be sufficient just to say that. But when it is not suggested that the whole of a witness's evidence is false, it is essential that the witness be left in no doubt as to which parts are alleged to be false. The Court should, before sentencing a witness, give the witness an opportunity of explanation and possibly of correcting a misapprehension as what had been in fact said or meant.

B. Constitutional Provisions

The Queen v. *D. J. F. D. Liyanage and others*, 64 N.L.R. 313

Section 2 of the Official Language Act, No. 33 of 1956, reads as follows:

"The Sinhala language shall be the one official language of Ceylon:

"Provided that where the Minister considers it impracticable to commence the use of only the Sinhala language for any official purpose immediately on the coming into force of this Act, the language or languages hitherto used for that purpose may be continued to be so used until the necessary change is effected as early as possible before the expiry of the 31st day of December 1960, and if such change cannot be effected by administrative order, regulations may be made under this Act to effect such change."

Sections 8 and 9 of the Criminal Law (Special Provisions) Act, No. 1 of 1962, read as follows:

"8. Any direction issued by the Minister of Justice under section 440A of the Criminal Procedure Code shall be final and conclusive, and shall not be called in question in any Court, whether by way of writ or otherwise.

"9. Where the Minister of Justice issues a direction under section 440A of the Criminal Procedure Code that the trial of any offence shall be held before the Supreme Court at Bar by three Judges without a jury, the three Judges shall be nominated by the Minister of Justice, and the Chief Justice if so nominated or if he is not so nominated, the most senior of the three Judges so nominated, shall be the president of the court.

"The Court consisting of the three Judges so nominated shall, for all purposes, be duly constituted, and accordingly the constitution of that court and its jurisdiction to try that offence, shall not be called in question in any court, whether by way of Writ or otherwise".

On 23 June 1962 the Minister of Justice, purporting to act under section 440A of the Criminal Procedure Code as amended by Section 4 of the Criminal Law (Special Provisions) Act, No. 1 of 1962, directed that certain persons be tried before the Supreme Court at Bar by three Judges without a jury. Thereafter, on the same day, purporting to act under section 9 of the Criminal Law (Special Provisions) Act, he filed a document nominating three Judges to preside over the trial. The direction and nomination and the communication thereof to the Court, were effected only in the English language and not in the Sinhala language.

Held: (1) that even assuming that on or after 1 January 1961 official acts of officials could have been or can be performed only in the Sinhala language, as English is still admittedly the language of the Court the communication by the Minister to the Court, by documents made out in English, of the direction and nomination of Judges by him was a sufficient compliance with the existing law and was not rendered null and void by the provisions of section 2 of the Official Language Act, read with the Language of the Courts Act, No. 3 of 1961.

(ii) that section 8 of the Criminal Law (Special Provisions) Act empowering the Minister of Justice to issue a direction that a Trial at Bar be held by three Judges without a jury under Section 440A of the Criminal Procedure Code is *intra vires* the Legislature.

(iii) that the provision in section 8 of the Act that any direction of the Minister "shall not be called in question in any court" excluded the admissibility of evidence to establish the existence of *mala fides* in the Minister.

(iv) that section 9 of the Act is *ultra vires* the Constitution because *(a)* the power of nomination conferred on the Minister is an interference with the exercise by the Judges of the Supreme Court of the strict judicial power of the State vested in them by virtue of their appointment in terms of section 52 of the Ceylon (Constitution) Order-in-Council, 1946 or is in derogation thereof, and *(b)* the power of nomination is one which has hitherto been invariably exercised by the Judicature as being part of the exercise of the judicial power of the state, and cannot be reposed in anyone outside the Judicature.

(v) that the Minister's power of nominating the three Judges, even had it been *intra vires* the Constitution, would have offended against the cardinal principle that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

C. Citizenship

1. *N. K. K. Shanmugam* v. *The Commissioner for Registration of Indian and Pakistani Residents*, 64 N.L.R. 29

The appellant, who made application to the registered as a citizen of Ceylon under the Indian and Pakistani Residents (Citizenship) Act, was married in India on the 16th March 1944. The wife did not arrive in Ceylon till October 1945.

Held that the failure of the wife to commence residence in Ceylon within the first year of the date of marriage, as required by section 6(2) (ii) of the Statute, disentitled the appellant to citizenship. Although the wife remained in India because of the war conditions prevailing at that time, such non-residence in Ceylon could not be construed as interruption of residence within the meaning of section 6 of the Act (as amended).

2. *Mohamed Sahib* v. *Commissioner of Registration of Indian and Pakistani Residents*, 64 N.L.R. 307

A person, who applies for citizenship under section 4 of the Indian and Pakistani Residents (Citizenship) Act after the expiry of the period prescribed in section 5, is not entitled to claim that his application is within time merely because he had been described as a dependant of another person in a similar application made earlier by the latter within the prescribed period.

In view of the imperative provisions of section 5 of the Indian and Pakistani Residents (Citi-

zenship) Act, no officer can authorize a person to apply for registration under this Act two years after the prescribed date. Even if such an application has been received the Commissioner has no jurisdiction to entertain it.

D. Marriage Laws

Katchi Mohamed v. *A. F. C. Benedict, Inspector of Police,* 63 N.L.R. 505

A married man who belongs to the Muslim faith at the time of the marriage and who subsequently marries a second time, under the Marriage Registration Ordinance, a person not professing Islam, while his previous marriage is subsisting, commits thereby the offence of bigamy within section 362B of the Penal Code.

E. Personal Rights

1. *F. C. de Saram et al* v. *F. D. L. Ratnayake (Commissioner of Prisons) et al.,* 63 N.L.R. 522

Rights conferred by a repealed statute cannot be considered as rights which have been "acquired" by a person within the meaning of section 6(3)(*b*) of the Interpretation Ordinance, unless there has been some proceeding instituted by or against him in respect of that right.

A person who is held in detention on orders made under Regulation 23(i) of the Emergency (Miscellaneous Provisions and Powers) Regulations of 9 January 1962, is entitled, by virtue of Regulation 23(i), to a Writ of Mandamus to enable him to receive visits from, and to communicate with, his relations and friends and his legal adviser in accordance with the provisions of Part IX of the Prisons Ordinance and the rules made thereunder. The application for mandamus will be granted, even if, after the application has been filed, a new Regulation is published providing in general terms, without express provision relating to rights already acquired or to proceedings already instituted, that during its continuance all the provisions of Part IX of the Prisons Ordinance and the rules made under that Ordinance shall not apply to any person detained on an order made under Regulation 23(i). But the application for mandamus will not be granted if it is initiated after the new Regulation has come into operation, even though the applicant would have been entitled to the benefits of the prison rules if he had filed the application for mandamus prior to the date when the new Regulation was enacted; in such a case the person detained, who had not filed any application for Mandamus before the new Regulation was framed, cannot be said to have acquired a right within the meaning of section 6(3)(*b*) of the Interpretation Ordinance.

A direction given by the Permanent Secretary under the proviso to Regulation 23(3) of the Emergency Regulations is very far removed from an excutive Act. It is necessary, therefore, to scrutinise with great care any document which, assuming that if issued in due form it would have legal validity, is said to have been issued under that proviso. The document must purport to have been made or issued under section 10 of the Public Security Ordinance.

Section 6(3) of the Interpretation Ordinance dealing with the effect of repeal of a written law is applicable also when the operation of a law is suspended.

The term 'law' in section 5(2)(*d*) of the Public Security Ordinance could mean either a statute or a regulation.

2. *Linus Silva* v. *University Council of the Vidyodaya University,* 64 N.L.R. 104

Section 18 of the Vidyodaya and the Vidyalankara University Act, No. 45 of 1958, empowers the Council "to suspend or dismiss any officer or teacher on the grounds of incapacity or conduct which, in the opinion of not less than two-thirds of the members of the Council, renders him unfit to be an officer or teacher of the University."

Held that the power of the Council to determine the unfitness of an officer or teacher is qualified by words "on the grounds of incapacity or conduct". In deciding whether incapacity or misconduct exists the Council is required to act judicially, and not administratively, at the stage of ascertaining objectively the facts as to incapacity or misconduct. Failure, therefore, to give an officer or teacher an opportunity of being heard in his defence before his appointment is terminated would render the council amenable to a writ of *certiorari.*

Held further: (i) that when the Council purports, by its conduct, to have terminated the appointment of an officer under clause *(c)* of section 18, it cannot subsequently take up the position that the officer must in law be considered to have been dismissed by virtue of the power vested in it by clause *(f)* of section 18.

(ii) that the rule that the remedy by way of *certiorari* is not available where an alternative remedy is open to the petitioner is subject to the limitation that the alternative remedy must be an adequate remedy. Accordingly, where a Professor appointed under section 31 of the Vidyodaya University and the Vidyalankara University Act is wrongfully dismissed, without his defence being heard by the Council, he may seek his remedy by way of *certiorari* although the less adequate remedies by way of an action for damages for wrongful dismissal and by way of proceedings under section 31A of the Industrial Disputes Act, No. 43 of 1950 (as amended by Act No. 62 of 1957) may also be available to him.

3. *B. M. Kamalawathie* v. *N. G. de Silva and another,* 64 N.L.R. 252

The Supreme Court has jurisdiction to entertain an application for habeas corpus concerning the custody of minor children and is invested with the power to take away the custody of a child from the legal custody of the father and hand the child over to the mother if such a course is necessary in the best interests of the child's life, health or morals.

4. *A. M. Avaummah* v. *V. F. Solomonsz*, 64 N.L.R. 167

In an Application for a writ of habeas corpus made in respect of a person who was averred to be unlawfully detained by an officer-in-charge of a Police Station under an order made by the Permanent Secretary to the Ministry of Defence and External Affairs under Section 28(2) of the Immigrants and Emigrants Act.

Held that, when the detection of a person by an executive officer of the Crown is challenged as illegal by way of writ of habeas corpus, it is not a sufficient answer to justify that alleged detention by merely saying that the respondent is holding the corpus under an order made by some other executive officer of the Crown. In such a case it is necessary for the respondent to satisfy the Court as to the legality of the order under which he purports to detain the corpus.

F. Economic Rights

1. *The Ceylon Workers' Congress* v. *The Superintendent Kallebokka estate*, 63 N.L.R. 536

In an inquiry held under section 31(1) of the Industrial Disputes Act, as amended by Act No. 62 of 1957, it is incumbent upon the Labour Tribunal to follow principles of natural justice.

Although a *bona fide* inquiry may have been held by the employer before he dismissed a workman, the Labour Tribunal cannot refuse to hear evidence tendered by the workman, if the workman wishes to prove that the termination of his services was not just and equitable.

The Labour Tribunal is given a wider jurisdiction than Courts of law and can order the reinstatement of workmen even if their services have been lawfully terminated.

2. *H. A. Carolis Appuhamy* v. *K. Punchirala*, 64 N.L.R. 44

In an appeal under the Industrial Disputes (Amendment) Act, No. 62 of 1957 — Held that the failure of the Labour Tribunal to consider the version of the appellant amounted to a breach of a legal requirement entitling the appellant to appeal on a ground of law.

3. *The Ceylon Bank Employees Union* v. *S. B. Yatawara, et al*, 64 N.L.R. 49

The definitions of the terms 'employer' "industrial dispute", "Trade Union" and "workman" in section 47 of the Industrial Disputes Act, No. 43 of 1950, do not preclude a Trade Union consisting of several independent employers being made a party to an industrial dispute.

The definition of 'industrial dispute' does not limit a reference under section 4(2) of the Industrial Disputes Act to one which concerns a single employer and his workmen. It includes a dispute involving more than one employer on the one hand and their workmen on the other.

The Bank of Ceylon did not become a Government Department in consequence of the passing of the Finance Act, No. 65 of 1961. A public corporation, even when it is controlled by a Government Department, is not necessarily a servant or agent of the Crown.

Under section 40(1)(B) of the Industrial Disputes Act, it is open to an Industrial Court to allow, pending the inquiry into an industrial dispute which has been referred to it for settlement, an application made by the employer for approval of such court to punish workmen who are on strike. But the workmen with regard to whom the approval is being sought must be given notice of the application, in order that they may be heard before the court makes its order on the application.

4. *Shell Company of Ceylon Ltd.* v. *D. C. Pathirana*, 64 N.L.R. 71

A labour tribunal has jurisdiction under section 31B(4), read with section 31C(1), of the Industrial Disputes Act to grant relief to a workman in spite of the fact that his services have been lawfully and justifiably terminated by his employer.

A labour tribunal, having considered the circumstances in which a workman's services were terminated, ordered the payment of six weeks' wages to the workman in lieu of notice instead of two weeks' wages which had been offered to him in accordance with the terms of the contract of service.

Held that the tribunal had jurisdiction to grant such relief.

5. *Mrs. Bobby Arnolda (Bobby Arnolda Travel Service)* v. *N. R. Gopalan*, 64 N.L.R. 153

In an application made by a workman after the death of his employer, a labour tribunal has no jurisdiction under the Industrial Disputes Act to order the widow or legal representative of the deceased employer to pay the workman any wages, compensation or gratuity due to the workman for the period he was employed under the deceased. Such an order cannot be enforced by a Magistrate's Court under Section 33(2) of the Act, even if it was made by the Labour Tribunal with the consent of the parties.

The Supreme Court has wide revisionary powers over orders made by Magistrates without jurisdiction.

6. *New Dimbula Co. Ltd. and another* v. *R. L. Brohier and others*, 64 N.L.R. 380

Section 33(1)*(b)* of the Industrial Disputes Act (as amended by Act No. 62 of 1957) must be read as subject to the provisions of section 17(1), which empowers an arbitrator to make such award as may appear to him just and equitable. Accordingly where, in an industrial dispute referred to arbitration, the only question is whether an employee has been transferred unreasonably and without sufficient cause by his employer from one sphere of work to another, it is open to the arbitrator, if he

finds that the employee was improperly transferred, to order discontinuance of the employee's services with compensation.

Where an arbitrator, when giving his award, misdirects himself in interpreting a previous award in a different case, the misdirection would be an error of law on the face of the award and would render such part of the award as is affected by the error liable to be quashed by *certiorari.*

7. *The Ceylon Workers' Congress* v. *The Superintendent, Kallebokka Estate*, 64 N.L.R. 95.

Where a labourer's services have been terminated against his wish, section 23(1) of the Estate Labour (Indian) Ordinance does not *ipso facto* confer a right on the employer to terminate the services of the labourer's spouse.

CHAD

CONSTITUTIONAL LAW NO. 2/62 OF 16 APRIL 1962[1]

PREAMBLE

The people of Chad solemnly proclaim their adherence 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 1948, and as guaranteed by the present Constitution.

They affirm their intention to co-operate in peace and friendship with all peoples who share their ideal of justice, liberty, equality, fraternity and human solidarity.

The basic principles of the constitutional organization of the Republic of Chad are:

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

Institution of a democracy based on the system of the separation of powers — legislative, executive and judicial — and on the principle of government of the people by the people and for the people;

Guarantee of the rights of the citizen, which are based on the principles of freedom, humanity and equality.

The Republic of Chad, which is secular, democratic and social, affirms that:

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

The residence of every person inhabiting the territory of the Republic shall be inviolable; such residence may be entered only in the manner and in the cases specified by law;

The oppression of one group of the people by another is anti-constitutional;

Any demonstration or propaganda of an ethnic character shall be punished by law;

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

The Press shall be free, whatever its mode of expression.

The conditions for the exercise of the freedom of the Press shall be determined by law;

Public education shall be secular; it shall be given in the French language; a special place shall be given to the Arabic language. The education provided in all establishments of the Republic shall be free of charge;

All citizens are proclaimed to be equal as regards eligibility for all public offices;

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

The right to work and family assistance shall be guaranteed within the framework of the social laws; the same shall apply to freedom to work;

Citizens shall be equal with regard to taxation; they shall contribute to public expenses in proportion to their means.

The foregoing provisions shall constitute an integral part of this Constitution.

Title I

THE STATE AND SOVEREIGNTY

Art. 1. Chad is a sovereign republic, single and indivisible; the Republic recognizes the existence of the territorial communities established by law; it ensures the equality of all citizens before the law; it affirms the separation of religion and State.

. . .

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

The circumstances in which recourse may be had to a referendum shall be determined by law.

The representatives of the people shall be selected on a basis of universal and equal suffrage by secret vote.

All nationals of Chad, of both sexes, who are in possession of their civil and political rights, shall be electors, in the conditions determined by law.

No section of the people and no individual may assume the exercise of sovereignty.

Art. 3. The rights of citizens shall be guaranteed by the Constitution. They shall be indefeasible and inviolable and are based on the basic principles affirmed by the preamble to the Constitution.

The Republic shall ensure equality of rights to all, without distinction as to origin or religion.

Art. 4. Citizens shall be free to form political parties or groups which participate in the exercise of the suffrage. Such parties and groups may be formed and engage in their activities freely within the limits fixed by the laws and regulations. They shall respect the principles of national sovereignty and the laws of the Republic.

. . .

[1] Published in the *Journal Officiel de la République du Tchad* of 23 May 1962, No. 11, special. Text furnished by the Government of the Republic of Chad.

Title III

THE NATIONAL ASSEMBLY

Art. 20. The Parliament shall be constituted by a single Assembly, known as the National Assembly, the members of which shall bear the title of deputy.

. . .

Art. 22. Deputies shall be elected by direct universal suffrage from a national list.

. . .

Title VII

THE JUDICIAL AUTHORITY

Art. 58. Justice shall be administered in the territory of the State in the name of the people.

Art. 59. In the exercise of their functions, judges of the bench shall be subject only to the authority of the law.

The President of the Republic shall guarantee their independence.

He shall be assisted by the Superior Council of the Judiciary.

Art. 60. The Superior Council of the Judiciary shall be appointed by the plenary Assembly of the Supreme Court.

Art. 61. Judges of the bench shall be appointed by the President of the Republic on the proposal of the Minister for Justice after the Superior Council of the Judiciary has given its opinion. These judges may not be removed from office.

. . .

Art. 63. No one may be arbitrarily imprisoned.

An accused person shall be presumed innocent until he is proved guilty in accordance with a procedure providing the safeguards essential to his defence. The judicial authority, as the guardian of personal freedom, shall ensure respect for this principle as prescribed by law.

Title IX

THE SUPREME COURT

Art. 64. A Supreme Court shall be established which shall be judge of the constitutionality of laws and of the extent to which international agreements and commitments are in conformity with the Constitution. It shall also exercise the powers entrusted to it by the present Constitution.

. . .

Art. 67. There shall be no appeal against the jurisdictional decisions of the Supreme Court. They shall be binding on the public authorities and on all the administrative and judicial authorities. A provision declared by the Court not to be in conformity with the Constitution may not be promulgated or made the subject of an international agreement.

The Court's decisions shall be published in a special publication.

. . .

Title X

INTERNATIONAL TREATIES AND AGREEMENTS

. . .

Art. 71. If the Supreme Court, acting at the request of the President of the Republic or the President of the National Assembly, declares that an international instrument contains a clause which is contrary to the Constitution, authority to ratify it may not be granted without amendment of the Constitution.

Art. 72. Treaties or agreement which have been duly ratified shall, from the time of their publication, take precedence over laws, provided that in each case the agreement or treaty is applied by the other party.

Title XI

AMENDMENTS

. . .

Art. 75. No amendment procedure may be instituted or followed up when the territorial integrity of the Republic is infringed.

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

. . .

Title XIV

TRANSITIONAL PROVISIONS

. . .

Art. 87. The laws and regulations now in force in Chad, in so far as they do not contravene the present Constitution, shall remain applicable, subject to the enactment of new legislation.

Art. 88. The provisions necessary for the application of the present Constitution shall be the subject of laws passed by the National Assembly.

. . .

CHILE

NOTE[1]

During the year 1962 a considerable amount of legislation was enacted in Chile concerning institutional organization and social and economic matters.

Laws were promulgated dealing with the registration of voters and elections and containing procedural improvements intended to make the democratic participation of citizens in the electoral process as easy as possible. The new Registration of Voters Act (Act No. 14853, adopted by Supreme Decree No. 1001 of 2 May 1962; *Diario Oficial* No. 25243, of 14 May 1962) makes it compulsory to register and prescribes various penalties for offenders.[2]

The Land Reform Act[3] is very important for Chile because its basic objectives are to give those who till the soil an opportunity of owning it, to improve the levels of living of the rural population, and to increase agricultural production and productivity.

Act No. 14844 (*Diario Oficial* No. 25172, 18 February 1962) exempts from tax Press dispatches which are transmitted abroad through telecommunication enterprises by duly accredited journalists, news agencies, Press enterprises, newspapers, periodicals or information services, whether domestic or foreign.

Act No. 14907, promulgated by Supreme Decree No. 2787 of 14 September 1962, is the definitive and amended text of the Protection of Minors Act No. 10383 (*Diaro Oficial* No. 25360, 8 August 1962).

[1] Information furnished by Mr. Julio Arriegada Augier, former Under-Secretary of Public Education, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Extracts from the General Act concerning Elections appear below.

[3] A note on the Act appears below.

GENERAL ACT CONCERNING ELECTIONS

ACT NO. 14852 OF 16 MAY 1962[1]

CHAPTER I

ELECTION OF THE PRESIDENT OF THE REPUBLIC AND OF THE NATIONAL CONGRESS

Preliminary Title

First Paragraph

ELECTIONS IN GENERAL

. . .

Article 8. On the occasion of elections of municipal councillors, deputies or senators, or of the President of the Republic, all electoral propaganda through the medium of the Press or radio, advertisements, posters, signs, banners, placards and similar means of publicity, and in particular, mural propaganda, shall be prohibited at any time more than two months before the date of the election in the case of elections of senators, deputies and municipal councillors, and at any time more than six months before the date of voting in the case of the election of the President of the Republic. Within the said period, propaganda by means of signs, posters, banners, placards and similar means of publicity in the streets and squares and on other national property open to the public may be carried out in urban municipalities only with the authorization of the competent municipal council.

The judicial authority, *ex officio* or upon the petition of any person, shall order the removal of propaganda material which contravenes the provisions of the preceding paragraph. The *Juez de Letras de Menor Cuantía* (judge of the court) having jurisdiction in suits of lesser substance or the *Juez de Subdelegación* (local courts magistrate) of the locality in question shall be competent for this purpose. The hearing shall be oral and not subject to appeal, and judgement shall be delivered within three working days. The judicial authority may make not merely orders for the removal of propaganda material in the particular case at issue, but also orders of a broad and general nature relating to the territory within its jurisdiction. Removal orders shall be executed by the Corps of Carabineers, and the items removed shall be confiscated.

The publishers responsible for press publications or other publicity media, and the managers or administrators of radio stations or cinemas, who authorize or tolerate electoral propaganda outside the period of time permitted in this article shall be liable to imprisonment for sixty-one days together with a fine equivalent to three times the value of the propaganda concerned.

[1] Text published in *Diario Oficial* No. 25245, of 16 May 1962.

Newspaper, cinema and broadcasting undertakings may not charge, for the election propaganda of political parties or candidates, rates higher than the normal rates in force during the six months preceding the election concerned. The fine shall be fixed by the competent *Juez de Letras en lo Criminal* (judge competent to try criminal cases), in conformity with the procedure set out in article 68 of the General Act concerning Electoral Registration.

The fine referred to in the two preceding paragraphs shall be paid to the municipality within whose area of jurisdiction the offence is committed.

. . .

Second Part

TITLE VII

VOTING

Paragraph 1

. . .

DUTY TO VOTE SECRECY AND INDEPENDENCE OF VOTING

Article 62. Every elector shall have the duty to vote except in the case of a legal obstacle.

. . .

Article 63. Voting is secret and personal and it can be carried out only by the elector himself, without any coercion.

. . .

REGULATIONS GOVERNING THE ORGANIC ACT OF THE POSTAL AND TELEGRAPH SERVICES

SUPREME DECREE NO. 748 OF 21 MARCH 1962[1]

Article 252. The prohibition referred to in article 73 of the Organic Act (exclusion from the mails) shall be understood to apply to articles which display signs, drawings or writing which are offensive, insulting, threatening, slanderous and defamatory to the Nation, to persons or bodies corporate or to institutions under public or private law.

. . .

Article 260. The transmission of any telegraphic message shall be stopped if such message:

(a) Contains incitement to treason against the Nation or to rebellion against the constituted authorities, or is designed to promote disorder.

. . .

(c) Includes expressions which are offensive to the national emblems, or, with or without intent, is worded in a manner prejudicial to the credit or good name of the Nation, whether at home or abroad.

(d) Transmits information the object of which is to frustrate the measures taken for the restoration of internal peace or to obstruct the administration of justice.

. . .

[1] Text published in *Diario Oficial* of 15 May 1962. Text furnished by the Government of Chile.

LAND REFORM ACT, NO. 15,020 OF 15 NOVEMBER 1962

NOTE

Article 1 of this Act reads as follows:

"1. The exercise of property rights over rural land holdings shall be subject to such limitations as the maintenance and promotion of social order may require.

"The exercise of such rights shall furthermore be subject to such limitations as economic developments may require and to the obligations and prohibitions laid down in this Act and to such others as may be set forth in any regulations issued in pursuance thereof.

"It shall be the responsibility of all owners of agricultural land to cultivate their land, to increase its productivity and fertility, conserve its other natural resources and to make such investments as may be required to improve the working and utilization conditions of the land and raise the living standards of land workers in accordance with advances in technology."

The Act provides for the possibility of expropriation, in the public interest and in return for compensation, of lands which do not fulfil the social function of property as defined in the Act.

The Act appears in *Diario Oficial*, No. 25.403, of 27 November 1962.

Translations of the Act into English and French appear in *Food and Agricultural Legislation*, Volume XI, No. 4, of 1 June 1963, published by the Food and Agriculture Organization of the United Nations.

CHINA

ACT GOVERNING THE ADJUDICATION OF JUVENILE CASES

PROMULGATED BY PRESIDENTIAL ORDER ON 31 JANUARY 1962[1]

Chapter I

GENERAL PROVISIONS

Art. 1. This Act shall apply to the adjudication of juvenile correction cases and juvenile criminal cases. Matters not covered by this Act shall be dealt with in accordance with other relevant laws.

Art. 2. In this Act, the term "juvenile" shall mean any person over twelve but under eighteen years of age.

Art. 3. The Juvenile Tribunal of the District Court shall exercise jurisdiction over the following cases in accordance with the provisions of this Act:

(i) Cases in which a juvenile is alleged to have violated any criminal law or ordinance;

(ii) Cases in which a juvenile is deemed to be liable to violate a criminal law or ordinance in view of the fact that, in defiance of the authority of his parents or other person having supervisory power over him,

(a) he habitually associates with inveterate criminals;

(b) he frequents undesirable places;

(c) he belongs to a youth gang likely to disturb public order; or

(d) he habitually carries a knife or other dangerous weapon with intent to engage in fighting;

(iii) Cases in which a juvenile is homeless and is deemed likely to disturb social peace and order for any of the reasons mentioned in sub-paragraph (ii) above.

Art. 4. This Act shall not be applicable to cases in which a juvenile is charged with an offence punishable under the Regulations for the Suppression of Rebellion or under the Regulations for the Punishment of Rebel Spies during the Period of National Emergency.

Chapter II

ORGANIZATION OF JUVENILE TRIBUNALS

Art. 5. There shall be established in each District Court a separate chamber known as the "Juvenile Tribunal". To the extent practicable, the functions of the tribunal may be carried out by regular members of the District Court in accordance with the provisions of this Act.

Art. 6. The Juvenile Tribunal shall be composed of judges, probation officers, clerks and process servers.

Art. 7. Judges of the Juvenile Tribunal shall be selected from among those who, in addition to their general qualifications for judgeship, possess special knowledge and experience in juvenile correction cases.

. . .

Art. 9. 1. It shall be the duty of a probation officer:

(i) To investigate juvenile correction cases and to collect relevant materials;

(ii) To be responsible for the observation of juveniles committed to a juvenile observation centre;

(iii) To take charge of juveniles committed to protective custody;

(iv) To carry out other functions provided for in this Act.

2. In the performance of his duties, the probation officer shall follow the judge's instructions.

. . .

Art. 15. 1. A Juvenile Tribunal may, by means of a ruling, transfer a juvenile correction case under its jurisdiction to another Tribunal of a District Court which also has jurisdiction over the case, if, in its opinion, the change of venue will afford better protection to the juvenile concerned.

2. The Tribunal to which the case has been transferred may not transfer it to another Tribunal.

. . .

Art. 17. Any person who has knowledge of any of the cases referred to in article 3 (i) of this Act may report it to the competent Juvenile Tribunal.

Art. 18. 1. Public procurators, members of the judicial police or members of the Court shall refer to the competent Juvenile Tribunal any of the cases specified in article 3 (i) of this Act which come to their attention in the course of the performance of their duties.

2. The Juvenile Tribunal may not deal with any of the cases referred to in article 3 (ii) of this Act except at the request of the person having supervisory power over the juvenile concerned or unless the consent of such person has been given to the police. However, no such consent is necessary in cases involving membership in a youth gang likely to disturb public order.

3. The Juvenile Tribunal may not deal with any

[1] Text furnished by the Government of the Republic of China.

of the cases referred to in article 3 (iii) of this Act except at the request of the police.

Art. 19. 1. The Juvenile Tribunal to which a juvenile delinquency case has been transferred or reported in accordance with articles 15 and 17 or to which a request has been made in accordance with article 18 of this Act shall decide whether it should assume jurisdiction over the case on the basis of an investigation of the involvement of the juvenile concerned in the case, his character, experiences, physical and mental condition, family background, social environment, education and other relevant matters.

. . .

Art. 24. To the extent that they are compatible with the nature of juvenile correction cases, the provisions of the Code of Criminal Procedure in regard to witnesses, expert testimony, interpreters, inspection, search and attachment shall apply, *mutatis mutandis*, to such cases.

Art. 25. The Juvenile Tribunal may seek such assistance from the police, local autonomous bodies, schools, hospitals and other institutions as may be required for the performance of its duties.

Art. 26. 1. Whenever necessary, the Juvenile Tribunal may, by a ruling, take either of the following two measures in respect of the juvenile concerned:

(i) commit him to the custody of his statutory agent, parents, near relatives, the person having charge of him or any other appropriate person;

(ii) commit him to a juvenile observation centre in cases where it is impossible or undesirable to take the action referred to in sub-paragraph (i) above.

2. The period during which a juvenile may be kept in a juvenile observation centre shall not exceed one month. The Tribunal shall revoke the ruling committing the juvenile to the centre as soon as reasons for the committal cease to exist.

. . .

Art. 27. 1. The Juvenile Tribunal shall, by a ruling, refer a juvenile case to the procurator of a competent Court on the basis of any of the following findings:

(i) that the juvenile concerned is suspected of having committed the offence specified in article 272, paragraph 1 or 2, of the Penal Code;

(ii) that he is suspected of having committed an offence for which the maximum principal penalty is over ten years' imprisonment and that such a penalty is more fitting in view of his character, behaviour and other considerations;

(iii) that he has reached the age of eighteen.

2. The provisions of paragraph 1 (ii) of this article shall not be applicable to juveniles less than sixteen years of age.

Art. 28. If, on the basis of its findings, the Juvenile Tribunal decides that a case should not be entertained because it does not constitute juvenile delinquency or for other reasons, it shall make a ruling to that effect.

Art. 29. 1. If, on the basis of its findings, the Juvenile Tribunal considers it appropriate not to entertain a case involving a minor offence, it may make a ruling to that effect and at the same time order the statutory agent of the juvenile concerned or any other person having charge of him to impose strict control upon him.

2. Prior to making such a ruling, the Tribunal may, at its discretion, require the juvenile concerned to perform the following acts subject to the agreement of the injured party:

(i) to apologize to the injured party;

(ii) to make a statement of repentance;

(iii) to pay a suitable sum of money to the injured party as compensation.

3. The statutory agent of the juvenile concerned or any other person having charge of him shall be equally responsible for payment of the compensation referred to in paragraph 1 (iii) of this article.

Art. 30. If, on the basis of its findings, the Juvenile Tribunal decides to entertain a juvenile case, it shall make a ruling to initiate the proceedings.

Art. 31. 1. After the initiation of proceedings, the staturory agent of the juvenile concerned or any other person having charge of him may engage counsel for him. The Tribunal may, however, reject the appointment as counsel of any person it regards as objectionable.

2. The provisions of articles 33 and 34 and article 35, paragraph 2, of the Code of Criminal Procedure shall apply, *mutatis mutandis*, to counsel for a juvenile.

Art. 32. 1. The Juvenile Tribunal shall set a date for the hearing.

2. The persons mentioned in article 21 above shall be summoned to appear before the Tribunal on the date of hearing. Counsel for the juvenile concerned shall also be notified of the date of hearing.

Art. 34. The hearing shall be held *in camera*, provided that relatives and teachers of the juvenile concerned, persons interested in youth welfare and any other persons approved by the Tribunal may be admitted.

Art. 35. The hearing shall be conducted in such a manner as to show kindness and sincere concern for the juvenile concerned.

Art. 36. On the date of hearing, the juvenile concerned, his statutory agent, the person having charge of him, and his counsel shall be allowed to address the Tribunal.

Art. 37. 1. On the date of hearing, the Juvenile Tribunal shall examine the necessary evidence.

2. The facts of a juvenile correction case shall be established by evidence.

Art. 38. The Juvenile Tribunal may, whenever necessary, take the following actions:

(i) to order persons other than the juvenile concerned to leave the courtroom while the latter is making a statement;

(ii) to order the juvenile to leave the courtroom while another person is making a statement.

Art. 39. On the date of hearing, the probation officer shall state his opinion before the Tribunal unless the Tribunal considers it unnecessary for him to do so.

Art. 40. If the hearing results in any of the findings specified in article 27 above, the Juvenile Tribunal shall make a ruling to refer the case to a competent Court.

Art. 41. If, as a result of the hearing, the Tribunal finds that the case does not call for any corrective measure to be taken against the juvenile concerned, it shall make a ruling to that effect.

Art. 42. 1. Aside from the actions that it may take in accordance with articles 40 and 41 above, the Juvenile Tribunal may order, by a ruling, that one of the following measures be taken in respect of the juvenile concerned:

(i) reprimand;

(ii) committal to protective custody;

(iii) committal to a reformatory institution, it being understood that a juvenile should always be committed to protective custody instead of a reformatory institution if the case involves only a minor offence and he has never been sentenced to a criminal penalty nor charged with an offence for which he was not prosecuted on the grounds specified in article 232 of the Code of Criminal Procedure, nor subjected to a "peace protection measure".

2. In the ruling referred to in the preceding paragraph, the Tribunal may also order that either of the following measures be taken in respect of the juvenile:

(i) in the case of a juvenile addicted to narcotic drugs or alcoholic drinks, that he be committed to an appropriate institution for cure;

(ii) in the case of a juvenile apparently suffering from physical or mental defects, that he be committed to an appropriate institution for treatment.

3. No definite period shall be prescribed for any of the measures taken under paragraph 1 (ii) and (iii) of this article.

. . .

Art. 44. 1. For the purpose of determining whether a juvenile should be subjected to any corrective measure, the Juvenile Tribunal may decide, by a ruling, to place the juvenile under the observation of a probation officer for a certain period.

2. In the ruling referred to in the preceding paragraph, the Tribunal may also:

(i) instruct the juvenile to observe certain rules of behaviour; and

(ii) instruct his statutory agent or any other person having charge of him to fulfil certain conditions in the exercise of supervision over him.

3. The probation officer shall submit a report on the results of observation carried out in accordance with paragraph 1 of this article, together with his own opinion.

Art. 45. If a juvenile subject to any corrective measure is subsequently convicted of a criminal offence in a final decision, the Tribunal which ordered the corrective measure may set it aside by a separate ruling.

Art. 46. 1. If a juvenile subject to a corrective measure is subsequently ordered to be subject to another corrective measure in a final decision in a different case, the Tribunal which orders the latter measure may decide, by a ruling, which of the measures should be executed.

2. Once a decision has been made to execute one of the measures in accordance with the preceding paragraph, the other measure shall be deemed to have been cancelled even if it has begun to be executed.

Art. 47. 1. If, after having ordered a corrective measure, the Juvenile Tribunal finds that it has no jurisdiction over the case, it shall set aside that measure by a ruling.

2. The organ responsible for the execution of a corrective measure shall bring to the attention of the Juvenile Tribunal any information tending to indicate lack of jurisdiction as provided in the preceding paragraph.

3. The provisions of article 27, paragraph 1 (iii) of this Act, shall apply, *mutatis mutandis*, to rulings made under paragraph 1 of this article.

. . .

Section II

Execution of Corrective Measures

Art. 50. 1. In administering a reprimand, the judge shall explain to the juvenile concerned the undesirable nature of his activities and admonish him to observe specific rules of behaviour, and may also ask him to make a statement of repentance.

2. The statutory agent of the juvenile concerned or any other person having charge of him, and his attorney shall be called upon to witness the administering of reprimand.

Art. 51. 1. The probation officer shall be responsible for the protective custody of a juvenile. The officer shall inform the juvenile of the rules of behaviour to be observed, maintain constant contact with him, advise him from time to time of his activities and provide guidance in matters concerning his education, medical care and employment and the improvement of his environment.

2. In the exercise of the functions set forth in the preceding paragraph, the probation officer shall, whenever necessary, consult with the statutory agent of the juvenile or any other person having charge of him.

3. On the recommendation of the probation officer, the Juvenile Tribunal may commit the juvenile to a youth welfare organization, police organ, local self-government body, voluntary organization, near relative of the juvenile or any other appropriate person for protective custody under supervision by the probation officer.

Art. 52. 1. A juvenile subject to reformatory education as a corrective measure shall be committed to an appropriate institution where he may receive reformatory education according to the nature of his offence and the level of his knowledge.

. . .

Art. 53. 1. The period of protective custody or reformatory education shall not exceed three years.

2. After a juvenile has completed his term of reformatory education, the local education board shall examine his record and issue him an appropriate certificate.

Art. 54. If a juvenile had already reached the age of eighteen when he was committed to protective custody or reformatory education, or if he has since reached that age, he shall not be subject to protective custody or reformatory education beyond his twenty-first year of age.

Art. 55. Protective custody of a juvenile may be discontinued if it has proved to be so successful as to make further execution of the measure unnecessary. On the other hand, a juvenile subject to protective custody may be committed to a reformatory institution instead, if protective custody has proved to be ineffectual in view of his frequent violation of the rules which he was ordered to observe.

Art. 56. 1. Reformatory education of a juvenile may be discontinued if after one year of such education further execution of the measure is deemed unnecessary.

2. Where reformatory education has been discontinued, the juvenile concerned shall be placed under protective custody for the remainder of his term of reformatory education. He may, nevertheless, be recommitted to a reformatory institution in case of serious violation of the rules which he was ordered to observe. In such an event, the period during which he was placed under protective custody shall not be counted as part of his term of reformatory education.

Art. 57. 1. Where it is found necessary to substitute reformatory education for protective custody in respect of a juvenile as provided in article 55, or to substitute protective custody for reformatory education or to resume reformatory education as provided in article 56 of this Act, the organ of execution shall apply to the Tribunal which ordered the original measure for authorization of the proposed action, by submitting a report of the case together with supporting documents.

2. Where it is considered desirable to discontinue reformatory education in respect of a juvenile, the organ of execution shall apply to its superior organ for authorization of the proposed action, by submitting a report of the case together with supporting documents. It shall also notify the Tribunal which ordered the original measure of the proposed action.

Art. 58. The measures specified in article 42, paragraph 2 (i) and (ii), shall remain in effect until the juvenile concerned has been cured of addiction or disease, or has reached the age of twenty. If such measures are ordered in respect of a juvenile to be placed under protective custody, they shall be executed concurrently with the measure of protective custody. However, if they are ordered in respect of a juvenile to be committed to a reformatory institution, they shall be executed first unless they can be executed concurrently with the measure of reformatory education without adverse effect on the latter measure.

. . .

Art. 60. 1. After its ruling regarding a corrective measure becomes final, the Juvenile Tribunal may order the juvenile concerned or the person responsible for his maintenance to bear all or part of the living and education expenses that he may incur while being subjected to the corrective measure, due account being taken of the financial resources of the parties concerned. Those who are indigent shall be exempted from such an obligation.

2. The order referred to in the preceding paragraph shall have the same legal force as the title for execution in civil cases.

Chapter III

Interlocutory Appeals

Art. 61. An interlocutory appeal against the ruling of a Juvenile Tribunal concerning a corrective measure may be lodged by the juvenile concerned, his statutory agent, any other person having charge of him, or his attorney. Such an appeal may not be made by an attorney against the express wishes of the party who engages him.

Art. 62. An interlocutory appeal may be lodged by the injured party in a juvenile delinquency case against the ruling of a Juvenile Tribunal by which

(i) it decides not to entertain the case in accordance with article 28 and article 29, paragraph 1, of this Act; or

(ii) it decides not to impose any corrective measure on the juvenile in accordance with article 41 of this Act.

. . .

Art. 64. The provisions of articles 398 to 404, the first part of article 405, and article 406 of the Code of Criminal Procedure shall apply, *mutatis mutandis*, to interlocutory appeals made under this chapter.

Chapter IV

Juvenile Criminal Cases

Art. 65. No juvenile shall be subject to criminal prosecution and penalty unless his case has been transferred to criminal jurisdiction in accordance with article 27 of this Act.

Art. 66. If a juvenile has already been subjected to a corrective measure under article 42 of this Act in consequence of an offence, he shall not be liable to criminal prosecution and penalty for the same offence unless such corrective measure has been set aside in accordance with articles 45 and 47 of this Act.

Art. 67. The provisions of article 19, paragraph 1, and article 25 of this Act shall apply, *mutatis mutandis*, to the investigation and trial of juvenile criminal cases.

Art. 68. An accused juvenile shall not be held in detention unless circumstances so require.

2. A juvenile under detention shall be confined in a juvenile observation centre.

Art. 69. 1. During the period when a juvenile is under investigation or trial, he shall, so far as possible, be segregated from other accused persons.

2. Where a juvenile criminal case is related to another criminal case, such cases shall, so far as possible, be dealt with separately.

Art. 70. 1. The proceedings of a juvenile criminal case may be held *in camera.*

2. The proviso of article 34 of this Act shall apply, *mutatis mutandis,* to cases where the proceedings are held *in camera.*

3. The Juvenile Tribunal may not deny any request to hold the proceedings in public that may be made by the lineal ascendant or guardian of the juvenile concerned.

Art. 71. No juvenile shall be sentenced to the death penalty or imprisonment for life unless he is convicted of the offence specified in article 272, paragraph 1, of the Penal Code.[1] Where the principal penalty prescribed for an offence is death, it shall be reduced to imprisonment for a term of not less than ten nor more than fifteen years. Where the principal penalty prescribed for an offence is life imprisonment, it shall be reduced to imprisonment for a term of not less than seven nor more than ten years.

Art. 72. 1. No juvenile may be punished with the deprivation of civil rights.

2. After a juvenile has served his sentence or has been granted pardon, he shall be entitled to full benefits under the law concerning civil rights as if he had not been convicted of any criminal offence.

. . .

Art. 74. 1. If a juvenile serving a sentence of imprisonment has proved himself to have reformed, he may be granted parole after he has served the sentence for seven years in the case of life imprisonment, or after he has served one-third of the sentence in the case of imprisonment for a definite term.

2. The provisions of the preceding paragraph shall also apply to juveniles who have been serving a sentence of life imprisonment prior to the promulgation of this Act or who are to serve a sentence of life imprisonment under a final judicial decision pronounced before the promulgation of this Act.

Art. 75. A juvenile on parole or under suspension of sentence shall be placed under the protective custody of a probation officer assigned by the Juvenile Tribunal.

Chapter V

SUPPLEMENTAL PROVISIONS

Art. 76. 1. It shall not be lawful for a newspaper, magazine or other publication to publish any report on a juvenile correction or criminal case, other than those made public by the Juvenile Tribunal, or to print any picture of the juvenile concerned so as to enable the reader to identify the juvenile through information on his name, age, occupation, residence, domicile, physical features, etc.

2. Violations of the rule set forth in the preceding paragraph shall be dealt with by the competent Court in accordance with the provisions of the Publications Act.

. . .

Art. 78. The provisions of this Act concerning the reduction of penalties shall not apply to cases where a juvenile commits a criminal offence as a result of his membership in a youth gang whose activities disturb public order. On the contrary, ringleaders of such gangs shall be liable to heavier penalties.

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[1] Article 272, paragraph 1, of the Penal Code provides: "Any person who commits homicide against his lineal blood ascendants shall be liable to the death penalty or imprisonment for life."

COLOMBIA

DECREE NO. 3378 OF 19 DECEMBER 1962, TO PROTECT AND REGULATE THE RIGHT OF ASSOCIATION PROVIDED FOR IN SECTIONS 353 AND 354 OF THE LABOUR CODE[1]

NOTE

Article 1 of the decree provides as follows:

"1. The following shall be deemed to be acts on the part of the employer violating trade union freedom of association:

"*(a)* to obstruct or hinder his staff from joining any industrial association protected by the law by fear or favour, threats or promises, or to make such membership or non-membership a condition for obtaining employment or remaining in employment or being considered fit to receive increments or bonuses of any kind;

"*(b)* to dismiss or suspend workers, or modify their conditions of work on account of their activities directed towards the founding of industrial associations;

"*(c)* to refuse to bargain with any industrial association which submits a statement of claims according to due process of law;

"*(d)* to dismiss or suspend any of his staff who are members of an industrial association or to modify their conditions of work for the purpose of obstructing or hindering the exercise of the right of association;

"*(e)* to adopt retaliatory measures against workers who have appeared as plaintiffs or as witnesses or who have assisted in any other way in administrative inquiries into cases of alleged contravention of the above rule".

Article 2 deals with penalties.

English and French translations of the decree have been published by the International Labour Office as *Legislative Series*, 1962, Colombia 1.

[1] Published in *Diario Oficial*, No. 30994, of 25 January 1963.

CONGO (DEMOCRATIC REPUBLIC OF)

NOTE

The Permanent Representative of the Democratic Republic of Congo to the United Nations has informed the United Nations Secretariat that, during 1962, no constitutional change took place, and no judicial decision was delivered, which would be suitable for inclusion in the *Yearbook on Human Rights*.

COSTA RICA

ACT NO. 2694 PROHIBITING ALL FORMS OF DISCRIMINATION IN EMPLOYMENT

ENTERED INTO FORCE ON 26 NOVEMBER 1960[1]

THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF COSTA RICA,

Considering:

1. That article 56 of the Political Constitution elevates work to the status of a right of the individual and an obligation towards society;

2. That the same article of the Constitution lays upon the State the duty of endeavouring to ensure that every inhabitant of the Republic has honourable, useful and properly remunerated employment and that employment shall not result in the establishment of conditions which in any way detract from the freedom of man or reduce his labour to the status of a mere commodity;

3. That article 56 of the Constitution also lays down that the State shall guarantee the right freely to choose employment;

4. That, in conformity with the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly, everyone has the right to life, everyone has the right to work, to free choice of employment, to protection against unemployment and to equal pay for equal work, all these rights being without distinction of any kind such as race, colour, sex, language, religion, political opinion, national or social origin, property, birth or any other status, such as descent, civil status or age;

5. That Convention 111 and Recommendation 111 adopted by the International Labour Organisation, of which Costa Rica is a member, concerning discrimination in respect of employment and occupation, contain many provisions similar to those of the Universal Declaration of Human Rights, mentioned in the previous paragraph, which amplify and develop them;

6. That it is desirable and urgent to promulgate an Act, which, through generally respected provisions, gives effect to article 56 of the Constitution and embodies the relevant principles of the Universal Declaration of Human Rights and Convention 111 and Recommendation 111 of the International Labour Organisation concerning discrimination in respect of employment and occupation, thus preventing the occurrence, both in State organizations and in private enterprises of situations which involve the abhorrent practice of discrimination in violation of the sacred rights which constitute the natural and human legacy of every individual,

DECREES:

Art. 1. All kinds of discrimination deriving from distinctions, exclusions or preferences and based on considerations of race, colour, sex, age, religion, civil status, political opinion, national origin, social origin, descent or property, which limits equality of opportunity or treatment in respect of employment or occupation, shall be prohibited.

Art. 2. The foregoing prohibition shall not include distinctions, exclusions or preferences deriving from the qualifications necessary for the proper fulfilment of the functions or duties appropriate to the type of responsibility or employment involved, the sole criterion being the nature of such responsibility or employment and the aptitudes of the worker.

Art. 3. So far as the State and its institutions and agencies are concerned, any appointment, dismissal, suspension, transfer, exchange, promotion or recognition effected in violation of the provisions of this Act shall be liable to cancellation at the request of the party concerned and the procedures followed in respect of the recruitment or selection of personnel shall be invalidated in so far as they violate this Act.

Art. 4. Any employee of the State or its institutions or agencies, subject to the regulations of the Civil Service or covered by the provisions of the Labour Code, who, in the exercise of his public functions concerning the recruitment, selection, appointment, termination or movement of personnel, or in any other way, practises discrimination, shall be suspended for eight days, and in the case of a second such offence he shall be dismissed.

Art. 5. Any individual employer or any of his representatives who, in that capacity, practises discrimination shall be liable to the penalties laid down in article 612 of the Labour Code. However, provided the employers or his representatives do not commit a second offence, the Inspectorate-General of Labour may grant them a reasonable time-limit within which to remedy the violation, if this is possible.

. . .

[1] Text published in *La Gaceta*, No. 267, of 26 November 1960.

CUBA

NOTE[1]

1. *Release of accused persons pending trial*

Article 528 of the Criminal Procedure Act, as it existed before the Revolution, provided that persons imprisoned pending trial for criminal offences had the right to be released when they had been in custody before trial during the maximum period of imprisonment prescribed by the Code for the offence in respect of which they had been detained.

The Revolution, by Act No. 925 of 1961, amended this provision, in the sense that the person detained would be released after he had been in custody before trial during the minimum period of imprisonment prescribed for the offence with which he had been charged. The article as it now stands reads:

"Article 528. Remand in custody shall last only for so long as the grounds therefore exist. Nevertheless, when the period of remand in custody has equalled the period of the minimum sentence prescribed for the offence or for the most serious of more than one offence forming the subject of the proceedings, and without regard to any circumstances which might mitigate criminal liability, the judge or court hearing the case shall *ex officio* modify the order which directed imprisonment, releasing the accused immediately and requiring him to fulfil *apud acta* the obligation prescribed in article 530 for the obtaining of provisional release. This privilege shall not accrue when bail is not allowed or when the beneficiary fails to comply with the obligation *apud acta.*

"The person detained or imprisoned shall be released at such stage of the proceedings at which his innocence is established. All authorities involved in proceedings shall reduce to a minimum the period during which persons awaiting trial are detained or imprisoned."

Considering, moreover, that in the case of minor offences the minimum penalty is nothing, it may be stated that in the case of such offences the accused are released until the beginning of the trial, without any surety being required of them. And even where criminal offences are at issue the accused are released when, prior to the beginning of the trial, they have been detained or imprisoned for the period of the minimum sentence mentioned above.

2. *Conditional release of sentenced persons*

The Code of Social Defence, as it stood at the time of the triumph of the Revolution, stipulated that all persons sentenced to deprivation of liberty were entitled to conditional release when they had served three quarters of the term to which they had been sentenced, provided that the sentence was for more than one year; thus a person who had been sentenced to eleven months and twenty-nine days of imprisonment was, whatever his behaviour or good record in prison, obliged to serve the full sentence and was not entitled to conditional release. It is easy to see the disadvantages of the proviso in question in the case of lighter sentences.

The Revolutionary Government, by Act No. 993 of 1961, amended article 98 of the Code and thereby established the right of any convicted person to obtain conditional release when he had served one quarter of the term of imprisonment to which he had been sentenced, provided that that term exceeded six months. In other words, it reduced from three quarters to one quarter the part of the sentence which must be served in order to obtain entitlement to conditional release, and reduced the limit from one year to six months — which has enabled persons convicted of minor offences to obtain release within a matter of months after being sentenced. As amended, article 98 reads: "Persons sentenced to more than six months' deprivation of liberty who have served at least one quarter of the term of imprisonment to which they were sentenced, shall be conditionally released, provided that, in the opinion of the Higher Council of Social Defence and subject to a statement by the Minister of the Interior, they have earned this privilege through clear proof of irreproachable conduct and effectively guarantee that they will lead an honest and industrious life".

3. *Access to employment*

Article 1, paragraph C, of the Ministry of Labour's Order No. 5798 dated 29 August 1962 prescribes the manner in which vacancies occurring in employment are to be filled. It is there made clear that, when a decision to fill a vacancy is taken, training must take precedence over seniority and years of service. In the order we read: "Every vacancy occurring in the personnel of a place of employment shall be filled on the basis of requirements as to proficiency, evidence of which must be produced beforehand. Where two or more workers satisfy the requirements as to proficiency, preference shall be given to the worker with the longest service in the place of employment".

4. *Housing*

The Urban Reform Act, which was promulgated on 14 October 1960, establishes the right of every person to a dwelling. Article 1 reads:

"Every family is entitled to a decent dwelling.

[1] Information furnished by the Government of Cuba.

"The State shall give effect to this right in three stages, as follows:

"(*a*) *Present Stage.* The State shall enable each family to purchase the dwelling in which it is residing, with the sum currently being paid as rent, over a period of not less than five and not more than twenty years, to be reckoned from the year in which the building was constructed.

"(*b*) *Immediate future stage.* The State shall, with the funds obtained under this Act and with other funds, undertake a mass construction of housing, against monthly payments which shall not exceed 10 per cent of the family income.

"(*c*) *Subsequent future stage.* The State shall construct dwellings with its own funds and shall make the dwellings thus constructed available to every family free of charge and for its permanent use."

It is anticipated that, under socialist planning, the Cuban State will be able to guarantee free housing within fifteen years.

Nevertheless, it can be stated that that ultimate stage is already at hand in the villages which are being constructed by the Rural Housing Department of the National Agrarian Reform Institute and in the sugarcane co-operatives. Co-operative members pay for the houses with their earnings. The workers employed on the People's Farms, where new production techniques are being introduced, enjoy free housing and electricity.

The benefits of urban reform are not confined to rented dwellings or to dwellings to be built by the State, but extend to tenements and non-detached houses. According to the Act, it is injust that those who have for years been living in such extremely badly maintained dwellings should continue to pay rent for them; and the Act takes them away from their owners, using the proceeds from them for the construction of new dwellings in accordance with the standards set for the construction of proper buildings.

The Act, because of its scope and content, is one of the fairest and most humane of the Revolution. It incorporates a series of measures calculated to solve all housing questions by eliminating the hoary and distressing problems of evictions and mortgages in which those were enmeshed who, without possessing sufficient capital, wished to have a roof over their heads in Cuba. The Act abolishes mortgages and provides that those in existence shall continue until they are completely paid off, but without the obligation to pay interest on them.

5. *Participation in cultural life*

A National Council for Culture was set up under legislation promulgated in 1961 and has been given a considerable budget to plan and direct the activities of the official cultural centres. It is the Government's purpose to pursue an intensive and extensive cultural policy which will have an impact on all sectors of the population and promote their interests through the cultural advancement of the working and peasant masses. The plans drawn up by the National Council and the recognition accorded to freedom of creative activities have contributed to mobilizing creative forces in music, the plastic arts, the theatre, dancing and folklore.

CONSTITUTIONAL AMENDMENT ACT

of 27 April 1962[1]

Art. 1. Article 84 of the Fundamental Law shall be amended to read as follows:

"*Art. 84.* The Department of Labour Justice, which shall have competence and jurisdiction to deal with disputes arising in connexion with labour relations and social security benefits, shall be the responsibility of the administrative or judicial organs specified by law."

Art. 2. Article 148 of the Fundamental Law is amended to read as follows:

"*Art. 148.* Justice is administered on behalf of the people and shall be dispensed free of charge throughout the national territory.

"Judges and law officers in the performance of their duties are independent and owe obedience to the law only."

Art. 3. This Act shall enter into force upon its publication in the *Gaceta Oficial* of the Republic.

[1] Published in *Gaceta Oficial*, No. 86, of 4 May 1962.

CYPRUS

NOTE[1]

I. LEGISLATION

1. By Law No. 3/62 the Criminal Code Law was amended so as to bring it into conformity with Article 7 of the Constitution which, in safeguarding the right to life, provides that murder is punishable by death only when it is premeditated.

2. By Law No. 15/62 provision was made regulating compulsory acquisition of property in conformity with Article 23 of the Constitution, which safeguards the right to property. Likewise, provision was made by Law No. 21/62 in respect of requisition of property.

3. By Law No. 31/62 provision was made regarding the machinery for tax-collection, including means of enforcement.

4. By Law No. 32/62 provision was made for the regulation and control in the public interest of certain supplies and services.

5. By Law No. 39/62 the European Convention on Human Rights was ratified.

6. By Law No. 40/62 certain matters relating to the practice of midwifery and nursing were regulated.

7. By Law No. 41/62 certain professional matters concerning architects and civil engineers were regulated.

8. By Law No. 49/62 certain matters relating to the control of imports were regulated.

9. By Law No. 50/62 the unauthorized taking of photographs or making of sketches or caricatures in relation to judicial proceedings was prohibited.

10. By Law No. 57/62 provision was made for the collective liability, in certain cases, of the inhabitants of a village in respect of damage caused to any of their co-villagers by unknown persons or by non-apprehended animals.

11. By Law No. 59/62 certain professional matters concerning chemists were regulated.

12. By Law No. 62/62 the use of telecommunications for the transmission of offensive, immoral, obscene or threatening texts or of false messages calculated to cause alarm or annoyance was prohibited.

13. By Law No. 67/62 provision was made in respect of estate-duty taxation.

14. By Law No. 72/62 certain matters relating to moneylenders were regulated.

15. By Law No. 76/62 certain professional matters concerning dentists were regulated.

16. By Law No. 89/62 provision was made in respect of immovable property taxation.

II. JUDICIAL DECISIONS[2]

A. Decisions of the Supreme Constitutional Court

1. *Interpretation of Legislation involving interference with Fundamental Rights and Liberties*

In the case of *Fina (Cyprus) Ltd and The Republic* (4 R.S.C.C. p. 26 at p. 33) it was held that, in case of doubt, legislation involving interference with Fundamental Rights and Liberties should be interpreted in favour of the said Rights and Liberties and that it would not be proper to give such legislation wider effect than what was, clearly and beyond doubt, warranted by its context.

2. *The Right to Liberty and Security of the Person*

(Article 11 of the Constitution)

In the case of *Kayttani and Makris* (3 R.S.C.C. p. 143 at p. 145) it was held that the wilful evasion of payment of his debt by a judgement-debtor amounted to "non-compliance with the lawful order of a court" in the sense of Article 11(2) and, therefore, provisions empowering a civil court to commit, in such a case, the judgment-debtor concerned to prison were not unconstitutional as being contrary to Article 11.

3. *Protection against Trial for an Offence after Previous Acquittal or Conviction for the Same Offence*

(Article 12(2) of the Constitution)

In the case of *The District Officer, Famagusta and Themistocli* (3 R.S.C.C. p. 47 at p. 49) it was held that a provision in the Criminal Procedure Law, to the effect that if a charge were to be withdrawn before an accused had pleaded to it the subsequent discharge of the accused should not operate as an acquittal, did not conflict with Article 12(2) because the said Article was not applicable to proceedings in which a plea had not even been taken.

4. *Protection against Laws providing Punishment Disproportionate to the Gravity of the Offence*

(Article 12(3) of the Constitution)

(i) In the cases of *The Morphou Gendarmerie and Englezos* (3 R.S.C.C. p. 7 at p. 9), *The District*

[1] Note furnished by the Government of Cyprus.

[2] For the constitutional provisions mentioned hereunder see *Yearbook on Human Rights for 1960*, pp. 74–83.

Officer, Nicosia and Palis (3 R.S.C.C. p. 27 at p. 29), *The Nicosia Police and Ahmed* (3 R.S.C.C. p. 50 at p. 52) and *The District Officer, Kyrenia and Salih* (3 R.S.C.C. p. 69 at p. 70) it was held that a number of penal provisions of a mandatory nature, existing since before the coming into operation of the Constitution and providing for the same fixed severe punishment to be invariably imposed in all cases of offences of a certain category, irrespective of the circumstances or merits of each particular case and notwithstanding the fact that in such category they were bound to arise cases where the said fixed punishment would be disproportionate to the gravity of the offence, thus depriving the trial court of all discretion to assess the proper punishment in each case, were unconstitutional as conflicting with Article 12(3).

(ii) In the case of *The Gendarmerie and Zavos* (4 R.S.C.C. p. 63 at p. 65) it was held that the forfeiture of unlawfully possessed antiquities did not amount to a "punishment" but was only a medium for ensuring that the antiquities in question would be restored to the State, to which they belonged, and consequently no question of violation of Article 12(3) could have arisen.

5. *Presumption of Innocence*

(Article 12(4) of the Constitution)

In the case of *The Gendarmerie and Zavos* (4 R.S.C.C. p. 63 at p. 65) it was held that to provide that a person, in whose *prima facie* unlawful possession antiquities had been found, should not be deemed to have committed an offence if such person satisfied the Court that he had acquired the said antiquities lawfully did not amount to the making of a provision aimed at defeating the presumption of innocence as such provision only made available to the person concerned a defence based on circumstances his own special knowledge.

6. *The Right to Fair Trial when Charged with an Offence*

(Article 12(5) of the Constitution)

In the case of *Haros and The Republic* (4. R.S.C.C. p. 39 at p. 44) it was held that the principles of natural justice, as embodied also in Article 12, should be adhered to in all cases of disciplinary control in the domain of public law, including police disciplinary proceedings.

7. *The Right to Leave permanently or temporarily the Territory of the Republic*

(Article 13(2) of the Constitution)

In the case of *Elia and The Republic* (3 R.S.C.C. p. 1 at p. 4) it was held that legislative provisions enabling passport facilities to be refused to a person, in the interests of the care and maintenance of his children under the age of sixteen years, were not in conflict with Article 13(2) which itself provided that the right safeguarded thereunder was subject to reasonable restrictions imposed by law.

8. *The Right to Property*

(Article 23 of the Constitution)

(i) In the case of *An application by Ali Ratip* (3 R.S.C.C. p. 102 at p. 104) it was held that though Article 23 safeguards the right to management of property, i.e. to acquire, own, possess, enjoy or dispose of property, such right was protected under Article 23 not *in abstracto* but subject to the rules of the civil law.

(ii) In the case of *The District Officer, Nicosia and Ioannides* (3 R.S.C.C. p. 107 at p. 110) it was held that the right to underground water, which was preserved for the Republic under Article 23, should be understood in a broad sense so as to comprise all matters relating to underground water including the right to control the means by which such underground water was to be utilized.

(iii) In the case of *Anastassiadou and The Municipal Commission, Nicosia* (3 R.S.C.C. p. 111 at p. 116) it was held that Article 23 could not, as a rule, affect restrictions or limitations of the right to property which were imposed before the coming into operation of the Constitution and continued in force thereafter.

(iv) In the case of *Elia and The Republic* (3 R.S.C.C. p. 1 at p. 4) it was held that a passport was not, by its very nature, an object of property in the sense of Article 23.

(v) In the case of *The Police and Hondrou* (3 R.S.C.C. p. 82 at p. 86) it was held that the provision in Article 23(3) to the effect that restrictions or limitations could be "imposed by law" on the right to property permitted the imposition of such restrictions or limitations only by means of legislation of the House of Representatives and not also by means of delegated legislation; this, however, did not prevent delegated legislation from prescribing the form and manner of, and from making other detailed provisions for, carrying into effect and applying, within the framework of the law concerned, a particular restriction or limitation imposed by a law of the House of Representatives; it was held, further, that restrictions imposed on the use of appliances involved in certain games of chance could be properly considered to be necessary in the interests of public morals and, therefore, Article 23(3), which itself permitted, *inter alia*, the imposition of restrictions in the interests of public morals, had not been contravened.

(vi) In the case of *Petrou and The Republic* (3 R.S.C.C. p. 78 at p. 80) it was held that legislative provisions making possible the restriction of the grazing of goats in particular villages were necessary for the protection of the rights of others and, therefore, Article 23(3), which itself permitted, *inter alia*, the imposition of restrictions for the protection of the rights of others, had not been contravened.

(vii) In the case of *The Police and Liveras* (3 R.S.C.C. p. 65 at p. 67) it was held that restrictions or limitations on the use and enjoyment of property resulting through the regulation of traffic in congested areas were necessary in the interests of public safety and for the protection of the rights of others and, therefore, Article 23(3), which itself

permitted, *inter alia*, the imposition of restrictions or limitations in the interests of public safety and for the protection of the rights of others, had not been contravened.

(viii) In the case of *The Police and Lanitis Bros. Ltd.* (3 R.S.C.C. p. 10 at p. 12) it was held that legislative provisions regulating and controlling the display of advertisements were restrictions or limitations necessary in the interest of "town and country planning" and, therefore, Article 23(3) which itself permitted, *inter alia*, the imposition of restrictions or limitations in the interests of "town and country planning", had not been contravened.

(ix) In the case of *Aspri and The Republic* (4 R.S.C.C. p. 57 at pp. 60 et seq.), it was held that the provisions of Article 23 requiring the enactment within a year after the coming into operation of the Constitution of legislation for compulsory acquisition and requisition of property were in the nature of directives and the enactment of such legislation after the lapse of the said period did not render it unconstitutional; it was held, further, that there was nothing to prevent the continued subsequent achievement, by means of a supervening compulsory acquisition of a property, of a purpose of public benefit originally pursued by means of a requisition of the same property and that the procedure for such compulsory acquisition might be set in motion at any time during the period of requisition, even simultaneously therewith, in order to ensure the promotion of the aforesaid purpose of public benefit by means of the requisition pending the completion of the procedure for compulsory acquisition; in this respect it was held, also, that the mere fact that the purpose for which a compulsory acquisition had been decided upon was being pursued *pro tempore* by means of a requisition could not reasonably be said to frustrate the right of the owner affected thereby to receive in cash and in advance compensation for the compulsory acquisition, as provided for under Article 23(4), because the ownership would continue to vest in such owner in the meantime, pending the requisition, until the procedure of compulsory acquisition had been completed and the relevant compensation had been paid.

8. *Freedom of Profession, Occupation, Trade or Business*

(Article 25 of the Constitution)

(i) In the case of *An application by Ali Ratip* (3 R.S.C.C. p. 102 at p. 105) it was held that Article 25 safeguarded a fundamental right against interference by the State, but such right ought to be understood as existing not *in abstracto* but in the sense in which it was regulated by provisions of the civil law relating to capacity of persons in certain matters, e.g. to the capacity of a prodigal.

(ii) In the case of *The Police and Liveras* (3 R.S.C.C. p. 65 at p. 67) it was held that a bye-law regulating traffic in congested areas could not be said to be relevant to the right safeguarded under Article 25, in so far as owners of property or traders affected by the application of such bye-law to any street were concerned, because Article 25 guarded only against direct interference with the right safeguarded thereunder and not against indirect interference as well; it was held, further, that in so far as the said bye-law involved restriction of the right, safeguarded under Article 25, of drivers or owners of public vehicles, such restriction was necessary in the interests of public safety for the protection of the rights and liberties of others and in the public interest and, therefore, Article 25, which itself permitted, *inter alia*, the imposition of restrictions imposed in the interests of public safety, for the protection of the rights and liberties of others and in the public interest, had not been contravened.

(iii) In the case of *The Police and Hondrou* (3 R.S.C.C. p. 82 at p. 86) it was held that the provision in Article 25(2) to the effect that restrictions could be "prescribed by law" in respect of the right safeguarded under Article 25 enabled the prescribing of such restrictions only by means of legislation of the House of Representatives and not also by means of delegated legislation; this, however, did not prevent delegated legislation from prescribing the form and manner of, and from making other detailed provisions for, carrying into effect and applying, within the framework of the law concerned, a particular restriction prescribed by a law of the House of Representatives; it was held, further, that restrictions imposed on trading in appliances involved in certain games of chance could be properly considered to be necessary in the interests of public morals and, therefore, Article 25(2) which itself permitted, *inter alia*, the imposition of restrictions in the interests of public morals, had not been contravened.

(iv) In the case of *The Police and Lanitis Bros Ltd.* (3 R.S.C.C. p. 10 at p. 12) it was held that an absolute prohibition of the display of advertisements, other than point-of-sale advertisements, in non-urban areas was necessary in the public interest for the sufficient protection of the scenery and amenities of the countryside and, therefore, Article 25(2) which itself permitted, *inter alia*, the imposition of restrictions in the public interest, had not been contravened.

(v) In the case of *Irfan and The Republic* (3 R.S.C.C. p. 39 at p. 42) it was held that regulations empowering the appropriate authorities to impose such restrictions on imports as might be necessary in the public interest were not unconstitutional inasmuch as such a course was permitted under Article 25(2); it was held, further, that in deciding what was "necessary" in the sense of Article 25(2) regard ought to be had to the particular circumstances prevailing at the relevant time.

(vi) In the case of *Petrou and The Republic* (3 R.S.C.C. p. 78 at p. 80) it was held that restrictions in relation to goats in particular villages were restrictions necessary in the public interest for the sake of protecting forests, fruit trees and vegetation against destruction by goats and, therefore, Article 25(2) which itself permitted, *inter alia*, the imposition of restrictions in the public interest, had not been contravened.

(vii) In the case of *The District Officer, Nicosia and Ioannides* (3 R.S.C.C. p. 107 at p. 109) it was held that Article 25 in safeguarding against inter-

ference the right to practice any profession or to carry on any occupation, trade or business did not exclude controls in respect of objects, such as water, which might be necessary for the exercise of such right; moreover, to the extent that legislation relating to wells could be said to regulate the practising of the profession or occupation of drilling, the restrictions imposed thereby were necessary in the public interest.

(viii) In the case of *The Nicosia Police and Georghiou* (4 R.S.C.C. p. 36 at p. 38) it was held that restrictions imposed on nightwork in bakeries, not being necessary either in the interests of the health of the eventual consumers of bread or in the interest of the health of the employees of bakeries, were contrary to Article 25 and, therefore, unconstitutional.

9. *Freedom to Contract*

(Article 26 of the Constitution)

In the case of *An application by Ali Ratip* (3 R.S.C.C. p. 102 at p. 105) it was held that Article 26 safeguarded a fundamental right against interference by the State, but such right ought to be understood as existing not *in abstracto* but in the sense in which it was regulated by provisions of the civil law relating to capacity of persons in certain matters, e.g. to the capacity of a prodigal to contract.

10. *Equality before the Law, the Administration and Justice*

(Article 28 of the Constitution)

(i) In the case of *Elia and The Republic* (3 R.S.C.C. p. 1 at p. 6) it was held that Article 28 excludes any discrimination, direct or indirect, on the ground of political or other convictions.

(ii) In the case of *Xinari and The Republic* (3 R.S.C.C. p. 98 at p. 101) it was held that the principle of equality includes the notion of equal pay for equal work in relation to public officers.

(iii) In the case of *The co-operative grocery of Vasilia Ltd and Ppirou* (4 R.S.C.C. p. 12 at p. 20) it was held that a differentiation, as regards procedure for determination, between co-operative disputes and other civil disputes was not unconstitutional as being contrary to Article 28, because it was not arbitrary but is was based on reasonable grounds connected with the special nature and functions of co-operative societies.

(iv) In the case of *Haros and The Republic* (4 R.S.C.C. p. 39 at p. 44) it was held that differentiations made in the police discipline regulations among various ranks of policemen did not contravene Article 28 because they were based on reasonable criteria.

11. *The Right to Trial by, and Access to, the Courts*

(Article 30(1)(2) of the Constitution)

(i) In the case of *An application by Ali Ratip* (3 R.S.C.C. p. 102 at p. 105) it was held that Article 30 safeguarded a fundamental right against interference by the State, but that such right ought to be understood as existing not *in abstracto* but in the sense in which it was regulated by provisions of the civil law relating to capacity of persons for certain matters, e.g. to the capacity of a prodigal to institute proceedings.

(ii) In the case of *Pelides and The Republic* (3 R.S.C.C. p. 13 at pp. 17 et. seq.), it was held that bodies or organs of an administrative nature entrusted with powers of administrative review were not contrary to Article 30, because they were not judicial committees or exceptional courts which were excluded by such Article. The same decision was reached in the case of *The co-operative Society of Vasilia Ltd and Ppirou* (4 R.S.C.C. p. 12 at p. 19) in respect of arbitration in co-operative disputes and in the case of *Haros and The Republic* (4 R.S.C.C. p. 39 at p. 44) in respect of police disciplinary organs.

(iii) In the case of *The co-operative Society of Vasilia Ltd and Ppirou* (4 R.S.C.C. p. 12 at p. 19) it wat held that the right safeguarded under Article 30 was such as could be waived by any person entitled to it in respect of any particular subject or class of subjects and, therefore, voluntary arbitration was not excluded by Article 30 as a substitute to the determination of a civil dispute by a civil court.

B. Decisions of the High Court of Justice

1. *No Punishment to be Imposed other than that which was expressly provided for by Law at the Time of the Commission of the Offence concerned*

(Article 12(1) of the Constitution)

In the case of *Christophides and The District Officer, Nicosia & Kyrenia* (Criminal Appeal 2468) it was held that the sentence should be set aside as, on a strict construction of the penalizing provision, under which it had been imposed the offence in question did not fall within the ambit of such provision on the date of the commission of such offence.

2. *The Right to Fair Trial when Charged with an Offence*

(Article 12(5) of the Constitution)

In the case of *Zacharia and The Republic* (Criminal Appeal 2458) it was observed that, though all reasonable latitude should be allowed in cross-examination of witnesses, the court of trial had a discretion in respect of its extent and duration and such discretion was to be exercised fairly and reasonably.

CZECHOSLOVAKIA

NOTE[1]

1. Decree No. 2/1962 of the *Collection of Laws on the Shift of Working-hours in 1962* and Decree No. 95/1962 of the *Collection of Laws on the Shift of Working hours in 1963.* Both decrees not only ensure more economic use of working hours but also enable working people to make full use of leisure days for their recreation.

2. Decree No. 7/1962 of the *Collection of Laws which gives effect to some provisions of the Compensation Act on Injuries and Occupational Diseases.* This decree gives a more detailed explanation of some provisions of the Act No. 150/1961 of the Collection of Laws. According to this Act, the enterprise, where the employee was employed at the time of his injury, is responsible for the damage caused by the injury and suffered by the employee in the performance of his work or in close connection therewith. The enterprise is obliged to compensate the damage even when the rules on security and health protection during work have been observed by this enterprise. The enterprise will be delivered from his responsibility completely if the employee, who suffered the injury, heedlessly violated rules on security and health protection during work, this violation being the only cause of the injury.

The enterprise refunds lost earnings and medical treatment expenses, and is obliged to employ the employee, who suffered injury, at his original post or at such post as is advantageous for him in respect of his health condition and where he can reach earnings as before his injury; the enterprise, until it fully meets its obligations, will compensate to the injured his lost earnings. The enterprise is also obliged to pay to the injured an adequate indemnification and smart-money.

The same is valid also for occupational diseases.

3. Decree No. 10/1962 of the *Collection of Laws by which the Housing Economy Act is applied.* The decree elaborates upon the provisions of Act No. 67/1956 of the Collection of Laws.

Living in healthy environments is the basic part of the living standard of the town and country population. The State cares for a just housing economy. Therefore allotment of flats is entrusted to Local National Committees which adopt the best available approach to the ensuring of housing economy in the light of local conditions and a knowledge of each citizen's situation. Flats of State construction are allotted to families with more children and to those having lower incomes and to employees whose moving near enterprises where they work is necessary for the maintenance of the enterprise's operation, and to employees of necessary services.

4. Decree No. 18/1962 of the *Collection of Laws appointing the rate of State contribution for the Co-operative Housing Construction started in 1962.* Pursuant to this decree, the State has contributed an average amount of 17,580 Kčs for each flat-unit of the Co-operative Housing Construction started in 1962.

5. Act No. 32/1962 of the *Collection of Laws on Social Insurance of Farmer-Members of the Unified Agricultural Co-operatives.* This Act draws social insurance of farmer-members of the Unified Agricultural Co-operatives near to social insurance of workers and other employed persons. Pursuant to the rules on preventive and medical treatment care, the State grants to farmer-members of the Unified Agricultural Co-operatives and their family members the unified preventive and medical treatment care in the same measure as to employed persons.

6. Decree No. 33/1962 of the *Collection of Laws by which the Act on Social Security of Farmer-Members of the Unified Agricultural Co-operatives is given effect.* This decree elaborates upon Act No. 32/1962 of the Collection of Laws.

7. Decree No. 34/1962 of the *Collection of Laws on Examination of Invalidity and Partial Invalidity for purposes of Rent Insurance.* This Decree is a provision for the execution of the above-mentioned Act No. 32/1962 of the Collection of Laws on Social Insurance of farmer-members of the Unified Agricultural Co-operatives, and of Act No. 55/1956 of the Collection of Laws on Social Insurance ensuring care for other citizens incapable of working of maintaining their subsistence. The decree determines the conditions from which invalidity and partial invalidity arises.

8. Decree No. 44/1962 of the *Collection of Laws amending and supplementing Medical Treatment Rules.* This decree extends free preventive and medical treatment care to farmer-members of the Unified Agricultural Co-operatives and their family members.

9. Governmental Decree No. 51/1962 of the *Collection of Laws on Enterprise Institutes.* Enterprise Institutes form a part of the Czechoslovak unified system of education which ensures to all citizens not only the right to education but, moreover, a real possibility to acquire education in an ever greater degree. The objective of these educational facilities is to train experts from among specially trained employees having a long practice,

[1] Note furnished by the Government of the Czechoslovak Socialist Republic.

which experts will perform functions of engineers. Because education is a matter concerning all society, economical organizations themselves may establish some schools and educational facilities, and cover partially or wholly the necessary expenses. Enterprise Institutes, however, do not offer university education. Those having finished their study at any Enterprise Institute and wishing to study at a university will be enabled to have their Institute study recognized as a part of the university study concerned.

Pedagogical Institutes are another part of the Czechoslovak unified educational system. These Institutes are a kind of university where teachers for Elementary Nine-Year-Schools are trained (see Governmental Ordinance No. 87/1962 of the *Collection of Laws on Pedagogical Institutes*).

DENMARK

ELECTORAL RIGHTS[1]

Taking effect with respect to the electoral registers of 1962, the Public Assistance Act No. 169 of 31 May 1961 brought an end to disfranchisement by reason of receipt of public assistance, Article 132, paragraph 3, repealed the disqualifications provided for by the Public Assistance Act 1933, as amended (see *Yearbook on Human Rights for 1953*, p. 63).

In the explanation with which the Minister for Social Affairs submitted the bill to Parliament, it was stated that according to modern conceptions the primary purpose of granting public assistance should be the rehabilitation of the recipient. Consequently, there was no compelling reason to deprive him of his political rights.

[1] Note furnished by Professor Max Sørensen, University of Aarhus, government-appointed correspondent of the *Yearbook on Human Rights*.

DOMINICAN REPUBLIC

CONSTITUTION VOTED AND PROCLAIMED BY THE COUNCIL OF STATE FUNCTIONING AS THE NATIONAL ASSEMBLY ON 16 SEPTEMBER 1962[1]

Art. 12. The following persons are Dominican nationals:

. . .

4. Naturalized persons. The law shall specify the requirements and procedure for naturalization.

Paragraph I. A Dominican national shall not be recognized as possessing any other nationality as long as he is residing in the territory of the Republic.

Paragraph II. A Dominican woman married to an alien may acquire the nationality of her husband.

. . .

Art. 14. Citizens have the following rights:

(1) The right to vote;

(2) Eligibility for elective office.

. . .

Art. 49. The Executive Power shall be exercised by the President of the Republic, who shall be elected every four years by direct vote and shall not be eligible for the next term of office.

Art. 50. The President of the Republic must fulfil the following conditions:

1. He must be Dominican by birth or origin;

2. He must have attained the age of thirty years;

3. He must be in full possession of civil and political rights.

Art. 51. A Vice-President of the Republic shall be elected at the same time, and in the same manner and for the same term of office as the President. The eligibility requirements for Vice-President shall be the same as for President.

. . .

Art. 61. Public administration shall be conducted through Secretariats of State established by law. Such Under-Secretariats of State as are considered necessary may also be established by law and shall function under the control and responsibility of the competent Secretary of State. A Secretary or Under-Secretary of State must be a Dominican national in full possession of civil and political rights and must have attained the age of twenty-five years.

Paragraph. A naturalized person shall not be appointed Secretary or Under-Secretary of State until five years after his naturalization.

. . .

Art. 65. A judge of the Supreme Court of Justice must fulfil the following conditions:

(1) He must be Dominican by birth or origin and over thirty years of age:

(2) He must be in full possession of civil and political rights;

(3) He must be a Licentiate or Doctor of Laws;

(4) He must have practised as a lawyer for eight years or have occupied for a like period the office of judge of a court of appeal, court of first instance or land court, or representative of the *Ministerio Público* before such courts. Periods of law practice and judicial office may be combined for the purposes of this provision.

. . .

Art. 69. A judge of an appeal court must fulfil the following conditions:

(1) He must be a Dominican national; (2) he must be in full possession of civil and political rights; (3) he must be a Licentiate or Doctor of Laws; (4) he must have practised as a lawyer for four years or have occupied for a like period the office of judge of first instance, or representative of the *Ministerio Público* before the courts of first instance. Periods of law practice and judicial office may be combined for the purposes of this provision.

. . .

Art. 77. Magistrates and assistant magistrates must be Dominican nationals in full possession of civil and political rights. They shall have the powers and must possess the qualifications prescribed by law.

. . .

Art. 87. All citizens shall be under a duty to vote, with the following exceptions:

1. Those who have lost their rights of citizenship by virtue of article 15 of this Constitution;

2. Members of the armed forces and the police.

. . .

[Apart from the articles quoted above, those provisions of the Constitution proclaimed on 29 December 1961 which were reproduced in the *Yearbook on Human Rights for 1955*, pp. 47–52, read together with the *Yearbook on Human Rights for 1960*, p. 94, and the *Yearbook on Human Rights for 1961*, p. 98, appear without change in the Constitution proclaimed on 16 September 1962. Due to the insertion of a new article 53, however, the former articles 53–114 have become articles 54–115 respectively.]

[1] Published in *Gaceta Oficial*, year LXXXIII, No. 8693, of 17 September 1962.

EL SALVADOR

CONSTITUTION OF 8 JANUARY 1962[1]

Title I

THE STATE AND ITS FORM OF GOVERNMENT

Art. 1. El Salvador is a sovereign State. Sovereignty is vested in the people and is limited to what is reasonable, just and useful to society.

Art. 2. The State shall guarantee to the inhabitants of the Republic the enjoyment of liberty, health, culture, economic welfare and social justice.

Art. 3. The Government is republican, democratic and representative.

. . .

Art. 6. All public power emanates from the people. The officials of the State are the representatives of the people and shall have no powers other than those expressly given to them by law.

. . .

Title II

SALVADORIANS AND ALIENS

Art. 12. The following shall be Salvadorians by birth:

(1) Persons born in the territory of El Salvador of a father or mother who is Salvadorian or a national of any of the Central American Republics, or of unknown parentage;

(2) The children of a Salvadorian father or mother, who are born abroad;

(3) The descendants of the children of aliens born in El Salvador who do not, within one year of attaining their majority, opt for the nationality of their parents;

(4) Nationals of the other States which constituted the Central American Federation who, having their domicile in El Salvador, declare before the competent authority their intention to become Salvadorians.

Art. 13. The following shall be Salvadorians by naturalization:

(1) The children of aliens, born in El Salvador, who within one year of attaining their majority declare before a competent authority that they opt for Salvadorian nationality;

(2) Spaniards and Spanish-Americans by birth, who prove before the competent authority good conduct and one year's residence in the country;

(3) Any other aliens who, in accordance with the law, prove their good conduct, five years' residence in the country, and the possession of a profession, occupation, or other honest way of earning their livelihood;

(4) Persons who for notable services rendered to the Republic are granted this status by the legislative power;

(5) An alien who, having resided for two years in the country, marries a Salvadorian woman, and an alien woman who in similar circumstances marries a Salvadorian man, provided that at the time of the marriage they opt for Salvadorian nationality; and aliens who, having married Salvadorians and having resided for two years in the country, apply for naturalization to a competent authority.

Persons who become naturalized must expressly renounce any other nationality.

The naturalization of minors shall be regulated by law.

Art. 14. Salvadorian nationality shall be lost by the voluntary acquisition of another nationality.

Salvadorians by birth who become naturalized in a foreign country shall recover their original status by applying to a competent authority and proving that they have resided in the country for two consecutive years after their return. However, if they become naturalized in any of the States which formed the Central American Federation, they shall recover their status of Salvadorians by birth by establishing their domicile in El Salvador and applying to the competent authority.

Art. 15. The status of Salvadorians and other Central Americans who adopt the nationality of any one of the States which formed part of the Central American Federation may be regulated by treaty, to permit them to retain their nationality of origin.

Art. 16. The status of naturalized Salvadorian shall be lost:

(1) By more than two consecutive years of residence in the country of origin or by more than five consecutive years of absence from the territory of the Republic, except in cases where permission has been granted in accordance with the law;

(2) By a final judgement, in the cases specified by law. A person who loses his nationality in this way may not recover it.

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Art. 18. From the moment of their entry into the territory of the Republic, aliens shall be strictly bound to respect its authorities and to comply with its laws, and shall acquire the right to their protection.

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[1] Proclaimed by Decree No. 6, published in *Diario Oficial* Vol. 194, No. 10 of 16 January 1962. Text furnished by the Government of El Salvador.

Art. 19. Neither Salvadorians nor aliens may in any case claim compensation from the Government for damages and injuries caused to their persons or property by factions. They may make such claims only against the officials or private persons responsible.

Art. 20. Aliens may not resort to diplomatic procedures except in cases of denial of justice and after the available legal remedies have been exhausted.

Denial of justice shall not be construed to mean a final judgement unfavourable to the claimant. Persons who violate this provision shall lose the right to reside in the country.

Art. 21. The cases and the manner in which aliens may be refused permission to enter or to stay in the national territory shall be established by law.

Aliens who directly or indirectly participate in the domestic politics of the country or who promulgate anarchical or undemocratic doctrines shall lose the right to reside in the country.

Art. 22. Aliens shall be governed by a special act.

Title III

CITIZENS AND THE ELECTORATE

Art. 23. All Salvadorians over eighteen years of age, without distinction as to sex, shall be citizens.

Art. 24. Save for the exceptions specified in this Constitution, it is a citizen's right and duty to vote.

The rights of the citizen are: the right to associate in order to form political parties in accordance with the law and to join those already in existence, the right to assume public office if qualified, and the other rights recognized by the laws.

The duties of the citizen are: the duty to comply and to ensure compliance with the Constitution of the Republic, and the duty to serve the State in accordance with the laws.

Art. 25. No minister of religion may belong to a political party or hold office by election of the people.

Art. 26. The rights of citizenship shall be suspended on the following grounds:

1. Formal warrant of arrest and custody;

2. Mental impairment;

3. Order of a court placing a person under a disability and appointing a guardian of his person and property;

4. Refusal, without good cause, to accept office, appointment to which is made by election of the people. In such case, suspension shall continue throughout the term for which the said office should have been held.

Art. 27. The rights of citizenship shall be lost:

1. By persons of notoriously vicious conduct;

2. By persons convicted of an offence;

3. By persons who buy or sell votes in elections;

4. By persons who sign statements, proclamations, or declarations of support for the purpose of promoting or advocating the re-election or continuance in office of the President of the Republic, or who employ direct means of achieving that purpose;

5. By officials, authorities and agents thereof who restrict the freedom of suffrage.

In such cases the rights of citizenship shall be recovered through an express declaration of rehabilitation issued by the competent authority.

Art. 28. The electorate is constituted by all citizens entitled to vote.

Art. 29. Voting shall be direct, equal and secret.

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Art. 33. Even if no notice of the elections has been issued, electoral-propaganda shall be allowed but not more than four months before the date established by law for the election of the President and Vice-President of the Republic, two months in the case of deputies, and one month in the case of members of municipal councils.

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Title IV

THE BRANCHES OF GOVERNMENT

Chapter I. — *The Legislature*

Art. 36. The legislative power is vested in a Legislative Assembly.

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Art. 41. To be elected deputy a person must be over twenty-five years of age, a Salvadorian by birth, and of acknowledged integrity and education; he must not have lost his rights of citizenship during the five years preceding the election and must have his place of origin or residence in the corresponding electoral district.

Art. 42. The following may not be deputies:

(1) The President of the Republic, the Ministers and Under-Secretaries of State, judges of the Supreme Court of Justice, officials of the electoral bodies, military officers in active service and, in general, officials who exercise governmental authority;

(2) Persons who have administered or managed public funds, until after their accounts have been audited;

(3) Contractors for public works or enterprises paid out of State or municipal funds, their sureties, and any others who as a result of such works or enterprises have pending claims in their own interest;

(4) Relatives of the President of the Republic within the fourth degree of consanguinity or second degree of affinity;

(5) Delinquent debtors to the public or municipal treasuries; and

(6) Persons who have contracts or concessions pending with the State for the exploitation of national resources or public services, and the representatives or agents of such persons or of foreign companies in the same position.

The incompatibility mentioned in paragraph (1) of this article shall apply to any person who occupied the indicated positions within the three months preceding the election.

Art. 43. Deputies in office may not hold paid public offices during the term for which they have been elected, except those the occupants of which are designated by the Assembly itself: Minister and Under-Secretary of State, diplomatic representatives, professors, and professionals in the social welfare services.

If they accept any of the offices referred to in the preceding section other than the last two, they shall cease to be deputies.

A deputy who resigns without good cause, deemed to be such by the Assembly, shall be disqualified from holding any other public office during the term for which he was elected.

Art. 44. Deputies shall represent the whole people and shall not be bound by any compulsory mandate. Their person shall be inviolable, and they shall not be held accountable at any time for the opinions they express or the votes they cast.

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Chapter II. — *The Executive Power*

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Art. 66. To be eligible for the office of President of the Republic a person must be a Salvadorian by birth, the child of a Salvadorian father or mother, a layman, over thirty years of age, and of acknowledged morality and education; and he must be in enjoyment of his rights of citizenship, and must have been so for the six years immediately preceding the election.

Art. 67. The following persons may not be President of the Republic:

(1) Relatives within the fourth degree of consanguinity or second degree of affinity of any persons who occupied that office during the term immediately preceding;

(2) Any person who was a Minister or Under-Secretary of State within the last year of the presidential term immediately preceding;

(3) Professional military men who are in active service or have been so in the six months immediately preceding the date of the election;

(4) A Vice-President or a nominee who, when lawfully called upon to occupy the Presidency during the term immediately preceding, refused to do so without good cause;

(5) The persons specified in article 42, paragraphs (2), (3), (5) and (6) of this Constitution.

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Chapter III. — *The Judicial Power*

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Art. 85. The administration of justice shall always be free of charge.

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Art. 96. The Supreme Court of Justice shall be the sole tribunal competent to make a general and mandatory determination that laws, decrees, or regulations are unconstitutional in form or substance, and it may do so on the application of any citizen.

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Title V

DEPARTMENT OF JUSTICE

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Art. 100. The Procurator General of the Poor shall:

(1) Ensure the defence of the person and interests of minors and other incapable persons;

(2) Give legal assistance to persons of limited means and represent them in judicial proceedings in the defence of their personal freedom and their rights as workers;

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Title IX

THE ECONOMIC SYSTEM

Art. 135. The economic system must be based essentially on principles of social justice such as to ensure all the inhabitants of the country an existence worthy of human dignity.

Art. 136. Economic freedom is guaranteed in so far as it is not inconsistent with the social interest.

The State shall encourage and protect private enterprise subject to the conditions necessary for increasing the national wealth and securing the benefits thereof to the greatest number of the country's inhabitants.

Art. 137. Private property as a social function is recognized and guaranteed.

Intellectual and artistic property is also recognized, for the period and in the manner established by law.

The subsoil belongs to the State, which may grant concessions for its exploitation.

Art. 138. Property may be expropriated on legally proven grounds of public utility or social interest and after payment of fair compensation. When property is expropriated because of need arising as a result of war or public disaster, or with a view to the supply of water or electric power or the construction of houses or roads, compensation need not be paid in advance.

When the sum to be paid as compensation for property expropriated in accordance with the preceding paragraph is such as to justify it, payment may be made in instalments, over a period not exceeding twenty years.

Bodies established with public funds may be nationalized without compensation.

Confiscation is prohibited, either as a penalty or on any other ground. Authorities contravening this rule shall at all times answer with their persons and property for the damage caused. Title to confiscated property shall not be acquired or lost through lapse of time.

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Art. 145. Economic associations which tend to increase the general wealth by means of better utilization of natural and human resources and to pro-

mote a fair distribution of the profits derived from their activities shall be encouraged and protected. The State, the municipalities and bodies of recognized public utility, as well as individuals, may participate in such associations.

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Art. 147. The State shall encourage the development of small farm ownership. It shall provide the small farmer with technical assistance, credits and other resources necessary for the better utilization of his land.

Art. 148. The construction of dwellings is declared to be a matter of public interest.

The State shall do all in its power to enable as many Salvadorian families as possible to own their homes. It shall encourage the owners of rural estates to provide healthy and adequate housing for their tenants and workers, and to that end shall make the necessary resources available to small landowners.

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Title X

PERSONAL RIGHTS

Art. 150. All persons are equal before the law. No restrictions based on differences of nationality, race, sex, or religion shall be placed on the enjoyment of civil rights.

No hereditary employment or privileges shall be recognized.

Art. 151. Every person in the Republic is free. No one who enters its territory shall be a slave, nor shall anyone who deals in slaves be a Salvadorian citizen. No person may be placed in servitude or subjected to conditions detrimental to the dignity of the person.

Art. 152. No one shall be obliged to do anything that the law does not command or to refrain from doing anything that the law does not prohibit.

Art. 153. El Salvador shall grant asylum to aliens desiring to reside in its territory, except in the cases provided for by municipal and international law. These exceptions shall not include persons persecuted solely for political reasons.

Nationals may not be extradited on any grounds; aliens may not be extradited for political offences, even if such offences may have led to the commission of offences under the ordinary law.

Art. 154. Every person is at liberty to enter, stay in and leave the territory of the Republic, subject to the restrictions established by law.

No one may be obliged to change his domicile or place of residence except by order of a judicial authority in the special cases and subject to the requirements established by law.

No Salvadorian may be expatriated or forbidden to enter the territory of the Republic or refused a passport for his return or other identity papers.

Art. 155. Save in cases of public disaster or as otherwise provided by law, no person may be compelled to work or render personal service without just compensation and without his full consent.

Art. 156. The law may not authorize any act or contract involving the loss or irrevocable sacrifice of human liberty or dignity. It may not authorize agreements in which banishment or exile is stipulated.

Art. 157. The free exercise of all religions, without any other restriction than that required by morals or public order, is guaranteed. No religious act shall serve as evidence of the civil status of a person.

No political propaganda based on religious considerations or appealing to the religious beliefs of the people may be made in any form by members of the clergy or by laymen. In places of worship, the laws of the State, the Government or individual public officials may not be criticized on the occasion of acts of worship or religious teaching.

Art. 158. Every person may freely express and disseminate his thoughts, provided that he does not offend against morality or harm the private life of any person. This right may be exercised without previous examination, censorship or financial guaranty; however, any person violating the laws in the exercise of this right shall answer for any offence so committed.

The propagation of anarchical and undemocratic doctrines is prohibited. In no case may a printing press or its accessories or any other physical facilities for the dissemination of thought be impounded as the instruments of an offence.

Public spectacles may be subject to censorship in accordance with the law.

Art. 159. Correspondence of all kinds is inviolable. Intercepted correspondence shall not be admissible as evidence and may not be used in any proceedings other than those for the payment of debts and bankruptcy.

Art. 160. The inhabitants of El Salvador have the right to associate and to assemble, peacefully and without arms, for any lawful purpose.

The establishment of religious orders and of monastic institutions of any type is prohibited.

The operations of international or alien political organizations, other than those seeking by democratic means to promote the achievement of Central American union or continental or world-wide co-operation on the basis of fraternity, are likewise prohibited.

Art. 161. The legal personality of the Catholic Church is recognized. Other churches may obtain recognition of their legal personality in accordance with the law.

Art. 162. Every person has the right to address written petitions in a respectful manner to the lawfully constituted authorities; and also the right to have such petitions acted upon and to be informed of the results thereof.

Art. 163. All the inhabitants of El Salvador have the right to protection in the preservation and defence of their lives, honour, liberty, work, property and possessions.

Compensation for injury of a moral nature shall be established in accordance with the law.

Art. 164. No one may be deprived of his life,

freedom, property or possessions without having first been heard and found guilty by a court in accordance with the law, nor may he be prosecuted twice for the same offence.

Everyone has the right to apply for a writ of habeas corpus before the Supreme Court of Justice, or Courts of Appeal not situated in the capital, when any authority or individual illegally restricts his freedom.

Art. 165. A person may be subjected to search or investigation only in order to prevent or inquire into offences or misdemeanours.

The domicile is inviolable. It may be entered forcibly, in the manner and in the circumstances provided by law, only in case of fire or similar occurrences, to investigate offences and take offenders into custody, or for health reasons.

Art. 166. No power, authority or official may issue an order for arrest or detention which is not in accordance with law, and such orders must always be in writing. When an offender is caught *in flagrante delicto* he may be arrested by any person in order to be handed over immediately to the competent authorities.

Arrest pending investigation shall not continue for more than three days, and the relevant tribunal must notify the arrested person of the reason for his arrest, receive his statement and order his provisional release or detention within the said time-limit.

Persons who, because of their anti-social, immoral or harmful activities, are dangerous characters or constitute a menace to society or to individuals may for social defence reasons be subjected to rehabilitative or re-educative security measures. Such measures must be strictly regulated by law and shall come under the jurisdiction of the judicial power.

Art. 167. The judicial power alone has the power to impose penalties. The administration may, however, punish any petty offences committed against the law, regulations or ordinances, by detention for a period not exceeding fifteen days or by a fine. If the latter is not paid, the time-limit of the detention may be extended, but shall not exceed thirty days.

Art. 168. Sentence of death may be imposed only for the offences of rebellion or desertion on the field of battle, treason and espionage, and for the following crimes — parricide, murder, robbery or arson if resulting in death.

Imprisonment for debt, life imprisonment, penalties entailing degradation, banishment and all forms of torture are forbidden.

The State shall establish penitentiaries to punish and educate offenders, to develop them in the habit of working, to effect their rehabilitation and to prevent further offences from being committed.

Art. 169. A person may be judged only in accordance with laws promulgated prior to the case in question, and by courts previously established by law.

Art. 170. The same judge may not act at different levels of the proceedings in the same case.

Art. 171. No power or authority may assume jurisdiction of any pending case or open any final judgement.

If judicial error is duly proved in a review of criminal proceedings, the State shall compensate, in accordance with the law, the victims of that error.

Art. 172. The laws may not have retroactive effect except in matters of public order, and in criminal matters when the new law is favourable to the offender.

Art. 173. Every person has the right to dispose freely of his property in conformity with the law. Property is transferable in the manner prescribed by law. Property may be freely disposed of and received by will.

Art. 174. The freedom to enter into contracts in conformity with the law is guaranteed.

No person having capacity freely to administer his property may be deprived of the right to settle his civil or commercial affairs by negotiation or arbitration. The cases in which persons not having capacity freely to administer their own property may do so and the requirements to be met shall be determined by the law.

Art. 175. In case of war, invasion of the national territory, rebellion, sedition, disaster, epidemic or other general calamity or serious disturbance of public order, the guarantees established in articles 154, 158, first paragraph, 159 and 160 of this Constitution may be suspended, except in the case of meetings or assemblies for cultural or industrial purposes. Such suspensions may affect all or part of the territory of the Republic, and shall be effected by decrees issued by the legislature or the executive, as the case may be.

The period during which the constitutional guarantees may be suspended shall not exceed thirty days. On the expiry of this period, the suspension may be extended for a further period of thirty days by a new decree, if the circumstances which gave rise to the suspension continue. If no such decree is issued, the suspended guarantees shall be restored automatically.

Art. 176. When the Legislative Assembly is in recess, the suspension of guarantees may be decreed by the Executive in the Council of Ministers. Such a decree shall be accompanied by a summons to the Assembly to meet within the following forty-eight hours to approve or reject the decree.

Art. 177. When the constitutional guarantees have been declared to be suspended, the military courts shall be competent to deal with the offences of treason, espionage, rebellion and sedition, and with other offences against the peace or independence of the State or against the law of nations.

Cases pending before the ordinary judicial authorities when the suspension of guarantees is decreed shall continue to be dealt with by those authorities.

When the constitutional guarantees are restored, the military courts shall retain jurisdiction over the cases pending before them.

Art. 178. When the circumstances which gave rise to the suspension of constitutional guarantees cease to exist, the Legislative Assembly shall re-

establish those guarantees; if the Assembly is in recess, the Executive shall decree their re-establishment.

Title XI

SOCIAL RIGHTS

Chapter I. — *The Family*

Art. 179. The family, as the fundamental basis of society, must be specially protected by the State, which shall promulgate the necessary laws and provisions for its improvement, to encourage marriage and to protect and assist mothers and children. Marriage is the legal basis of the family, and rests on the legal equality of the spouses.

The State shall protect the physical, mental and moral health of minors, and shall guarantee their right to education and assistance. Juvenile delinquency shall be made the subject of special legal provisions.

Art. 180. Children born in or out of wedlock and adopted children shall have equal rights to education and assistance, and to protection by their father.

No indication regarding the nature of filiation shall be given in the civil register, nor shall the civil status of the parents be shown on birth certificates.

The method of investigating paternity shall be determined by law.

Chapter II. — *Work and Social Security*

Art. 181. Work is a social duty, is protected by the State and is not considered an article of trade.

The State shall use all the resources at its disposal to provide work for the manual or intellectual worker, and to assure to him and to his family decent living conditions.

Appropriate provisions shall be prescribed to prevent and suppress vagrancy.

Art. 182. Work shall be regulated by a labour code which shall have as its principal aim the harmonization of relations between capital and labour, and shall be based on general principles directed towards the improvement of the living conditions of workers, especially in the following cases:

1. A worker shall receive equal pay for equal work done in the same undertaking or establishment and under similar conditions, regardless of sex, race, creed or nationality.

2. Every worker shall have the right to a minimum wage, which shall be fixed periodically. In fixing this wage, special attention shall be paid to the cost of living, the type of work, the various systems of remuneration and the separate areas of production. Such a wage must be sufficient to meet the normal material, moral and cultural needs of the worker's family.

A minimum daily wage must be paid for piecework and work done under contract or for a lump sum.

3. Wages and social benefits, in the amount fixed by law, shall be free from attachment and shall not be reduced by set-off or withheld, except to meet maintenance obligations. They may also be withheld to meet social security obligations, trade-union dues and taxes.

Worker's tools shall be free from attachment.

4. Wages must be paid in legal tender. Wages and social benefits shall constitute privileged debts in relation to other debts which may be outstanding against an employer.

5. Employers shall give their employees a bonus for every year of employment. The manner of determining the amount thereof in relation to wages shall be established by law.

6. A normal day of actual daytime work shall not exceed eight hours, and the work week shall not exceed forty-four hours.

The maximum hours of overtime for each category of work shall be prescribed by law.

The number of working hours in night work and in dangerous or unhealthful tasks shall be less than in the working day and shall be prescribed by law.

The restrictions on hours of work shall not apply in cases of emergency.

The law shall fix the duration of the rest periods that must be given during the working day when, in view of biological considerations, such rest periods are required by the pace of the work. The period of rest between consecutive working days shall also be prescribed by law.

Overtime and night work shall be remunerated at a higher rate.

7. Every worker shall have the right to one day of rest with pay for every week of work in the form prescribed by law.

Workers who do not have a day of rest on the days indicated above shall be entitled to extra pay for the work done on those days and to compensatory rest.

8. Workers shall have the right to paid leave on legal public holidays. The law shall decide the class of work to which this provision shall not apply, but in such cases workers shall have the right to special pay.

9. Every worker who has the required minimum of service to his credit for a given period shall be entitled to annual holidays with pay in the form laid down by law. Holidays may not be replaced by cash payments, an employee being under an obligation to take the holidays which his employer is obliged to grant to him.

10. Minors less than fourteen years of age and those who, having reached that age, are still subject to compulsory education as prescribed by law, may not be employed in any kind of work. Their employment may be authorized when it is considered indispensable for their own or their family's subsistence, provided that this does not prevent them from receiving the required minimum of compulsory education.

Minors less than sixteen years of age may not

work more than six hours daily or thirty-four hours weekly, whatever the type of work performed.

Minors less than eighteen years of age and women may not be employed in unhealthful or dangerous work. Night work by minors of less than eighteen years of age is also prohibited. The law shall determine the type of work to be considered dangerous or unhealthful.

11. An employer who dismisses a worker without just cause shall be obliged to indemnify him in accordance with the law.

Art. 183. A woman worker shall be entitled to paid leave before and after confinement and to retain her employment.

The obligation of employers to install and maintain crèches and nurseries for the children of women workers shall be governed by law.

Art. 184. Employers are required to pay compensation and to provide medical, pharmaceutical and other services as prescribed by law to any worker who sustains an industrial accident or suffers from an occupational disease.

Art. 185. The law shall determine which undertakings and establishments shall be obliged, in virtue of the special circumstances in which they operate, to provide workers and their families with adequate housing, schools, medical assistance and such other services and care as are necessary for their welfare.

Art. 186. Social security is a compulsory public service; its scope, extent and form shall be regulated by law.

Social security payments shall be made up of contributions from employers, workers and the State.

The State and employers shall be exempt from their statutory obligations towards the workers to the extent that such obligations are covered by the social security system.

Art. 187. Apprenticeship contracts shall be regulated by law with a view to ensuring that the apprentice receives training in a trade or a profession, proper treatment, fair remuneration and social security benefits and allowances.

Art. 188. Home workers shall be entitled to an officially established minimum wage, and to compensation for time lost owing to delay by the employer in ordering or receiving work or to the arbitrary or unjustified suspension of work. Home workers shall be given a legal status similar to that of other workers, the special features of their work being taken into account.

Art. 189. Agricultural and domestic workers shall be entitled to protection in respect of wages, hours of work, days of rest, holidays, compensation for dismissal and social benefits generally. The extent and nature of the rights aforementioned shall be determined in accordance with the conditions and special features of the work. Persons doing work of a domestic character in industrial, commercial, social and other similar undertakings shall be deemed to be manual workers and shall enjoy the rights accorded to such workers.

Art. 190. The conditions in which collective labour contracts and agreements may be concluded shall be regulated by law. The provisions of such contracts and agreements shall be applicable to all the workers in the undertakings which have signed them, even if they are not members of the contracting trade union, and also to workers entering the employment of such undertakings while the said contracts or agreements are in force. The procedure for standardizing the conditions of work in the various branches of economic activity on the basis of the provisions contained in the majority of collective labour contracts and agreements in force in each class of activity shall be established by law.

Art. 191. Employers, manual workers and office workers in private undertakings, and office workers and manual workers in autonomous or semi-autonomous public establishments, without distinction of nationality, sex, race, religion or political opinion, shall be entitled to associate freely in defence of their respective interests, and to form professional associations or trade unions.

Such organizations shall be entitled to legal personality and to due protection in the exercise of their functions. Their dissolution or suspension may be ordered only in the cases and with the formalities established by law.

The substantive and formal requirements for the constitution and functioning of professional and trade union organizations must not be such as to restrict freedom of association.

The members of trade union executive committees must be Salvadorian by birth; and during the time of their election and term of office they may not be dismissed, transferred or given less satisfactory conditions of work without good cause, previously recognized as such by the competent authority.

Art. 192. Workers have the right to strike and employers to impose a lock-out. The conditions and exercise of these rights shall be regulated by law.

Art. 193. A special labour jurisdiction is established. Proceedings in labour matters shall be so organized as to permit the speedy settlement of disputes.

The State is under an obligation to promote conciliation and arbitration as means for the peaceful settlement of collective labour disputes.

Art. 194. The conditions to be satisfied by workshops, factories and places of work shall be defined by law.

The State shall maintain a technical inspection service to ensure the faithful observance of the statutory provisions regarding labour, welfare and social insurance and security, to assess their results and to suggest any necessary reforms.

Art. 195. The rights secured to workers cannot be renounced, and the laws recognizing those rights shall be binding on and of benefit to all the inhabitants of the territory.

The enumeration of rights and benefits in this chapter shall not exclude other rights and benefits deriving from the principles of social justice.

Chapter III. — *Culture*

Art. 196. The preservation, encouragement and dissemination of culture is a primary aim and obligation of the State.

Education is an essential function of the State, which shall organize the educational system and set up the necessary institutions and services.

Art. 197. Education must provide for the full development of the personality of the pupils in order that they may make a constructive contribution to society; it must inculcate a respect for the rights and duties of man, combat all intolerance and hate, and encourage the ideal of unity of the Central American peoples.

There must be organization and continuity in all stages of education, which shall include the intellectual, moral, civic and physical aspects.

Art. 198. It shall be the right and the duty of all the inhabitants of the Republic to receive a basic education to enable them consciously and adequately to fulfil their role as workers, heads of families and citizens. Basic education shall include elementary education, and when provided by the State it shall be free.

Art. 199. The eradication of illiteracy is a social necessity. All inhabitants of the country shall contribute towards it in the manner prescribed by law.

Art. 200. Teaching in educational establishments shall be essentially democratic.

Private educational establishments shall be subject to regulation and inspection by the State.

The State may take exclusive charge of the training of teachers.

Art. 201. Educational establishments may not refuse to admit pupils because of the marital status of their parents or guardians, or because of social, racial or political differences.

Art. 202. A person who wishes to become a member of the teaching profession must prove that he is qualified in the manner prescribed by law.

In all public and private educational establishments, instruction in history, civics and the Constitution shall be given by teachers who are Salvadorian by birth.

Academic freedom is guaranteed.

Art. 203. The artistic, historical and archaeological riches of the country shall form part of the Salvadorian cultural treasure, which shall be protected by the State and shall be subject to special laws for its preservation.

Art. 204. The University of El Salvador is autonomous in teaching, administrative and economic matters, and must perform a social service. It shall be governed by statutes based upon a law which shall establish the general principles for its organization and functioning.

The State shall assist in protecting and increasing the assets of the University and shall include in the annual budget estimates allocations for the maintenance of the University.

Chapter IV. — *Public Health and Social Welfare*

Art. 205. The heatlh of the inhabitants of the Republic is a public asset. The State and individuals must ensure that it is preserved and restored.

Art. 206. The State shall give assistance free of charge to the indigent sick, and to the population in general when treatment is an effective method for preventing the spread of an infectious disease. In the latter case it shall be compulsory for everyone to undergo that treatment.

Art. 207. The public health services shall be essentially technical.

Careers in the health and hospital services shall be established for specialized personnel.

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Art. 209. The State shall undertake the support of indigent persons who by reason of their age or physical or mental incapacity are unable to work.

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Title XII

RESPONSIBILITY OF PUBLIC OFFICIALS

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Art. 215. Public officials who have knowledge of offences committed in connexion with their official duties by officials or staff members subordinate to them must notify the competent authorities as soon as possible so that those persons may be brought to trial, and if such notice is not given in due time the officials concerned will be considered guilty as accessories after the fact, and will incur the corresponding liability to punishment.

. . .

Art. 219. The violation, infringement or modification of constitutional provisions shall be specially punished by law; and the liabilities incurred by officials in such cases shall not be subject to amnesty, commutation, or pardon during the presidential term in which such offences were committed.

Title XIII

SCOPE, APPLICATION AND REFORM OF THE CONSTITUTION

Art. 220. The principles, rights and obligations established by this Constitution may not be modified by the laws regulating their exercise.

The Constitution shall prevail over all laws and regulations. The public interest shall have primacy over private interests.

Art. 221. Every person may apply for *amparo* to the Supreme Court of Justice in the case of violation of the rights granted to him by this Constitution.

. . .

Title XIV

ENTRY INTO FORCE

Art. 229. This Constitution shall come into force eight days after its publication in the *Diario Oficial.*

DECREE NO. 145 AMENDING THE CRIMINAL CODE AND THE CODE OF CRIMINAL PROCEDURE

of 20 September 1962[1]

Art. 2. The following section is to be inserted after section 3 of the aforesaid chapter II:

"Section 4

"*Anarchistic or Anti-Democratic Activities*

"*Art. 139-A.* Any person who, by any written or oral means, advocates, disseminates, teaches or propagates communist, anarchistic, anti-democratic or any other kind of totalitarian doctrines shall be punished by rigorous imprisonment *(presidio)* for a term of three to five years.

"A person shall be regarded as propagating or fostering the doctrines referred to in the preceding paragraph if he introduces, keeps, distributes or sells any printed or mimeographed material, tape recording, gramophone record or cinematograph film wittingly to be used for the dissemination of such doctrines.

"If, in addition, the offender was pursuing any of the purposes mentioned in article 126, the penalty shall be increased by one third.

"*Art. 139-B.* Any person who promotes, organizes, forms or directs any group pursuing the objectives referred to in the preceding article shall be punished by rigorous imprisonment for a term of four to seven years.

"*Art. 139-C.* Any person who enters into relations with foreign organizations or persons with the purpose of receiving instructions or assistance of any kind in organizing or disseminating the propaganda referred to in article 139-A shall be punished by rigorous imprisonment for a term of three to five years.

"*Art. 139-D.* Any person who takes advantage of his public status, of the power or authority inherent in his office or of his position as a member of the administrative or teaching staff of an educational or cultural centre or institution to advocate or foster the inculcation of the doctrines referred to in article 139-A shall be punished by rigorous imprisonment for a term of three to five years.

"*Art. 139-E.* Any person who provides or promises payment or facilities to promote or expedite the activities referred to in the preceding articles shall be punished by rigorous imprisonment for a term of four to seven years.

"*Art. 139-F.* A person shall be punished by imprisonment *(prisión mayor)* for a term of six months to two years if:

"(1) He knowingly but not materially co-operates in the performance of the acts of propagating or disseminating the doctrines referred to in this section;

"(2) He knowingly rents or provides a house or other premises for the conduct of such activities;

"(3) He prints, reproduces, distributes, paints, draws or affixes in a public or private place or building any piece of propaganda directed towards the objectives referred to in the preceding articles.

"*Art. 139-G.* Any person who is found to be in possession of printed or mimeographed material, a tape recording, gramophone record, cinematograph film or other object wittingly to be used for the propagation of the doctrines referred to in this section shall, unless he can prove himself to be innocent, be punished by imprisonment for a term of six months to one year.

"*Art. 139-H.* A person shall be regarded as engaging in anarchistic activities and shall be punished by rigorous imprisonment for a term of three to five years if:

"(1) He promotes, organizes, maintains or fosters a work stoppage or strike contrary to the relevant provisions of law and with the purpose of disturbing law and order or disrupting public services or services vital to the community;

"(2) He, with the purpose of disturbing the country's productive activities, impairing the national economy or disrupting a public service or a service vital to the community, incites to or engages in sabotage, destruction, paralysation, a work slowdown or any other act or omission having the same object;

". . .

[1] Published in *Diario Oficial*, No. 173, of 21 September 1962.

ETHIOPIA

LABOUR RELATIONS DECREE

Decree No. 49 of 1962[1]

SUMMARY

This decree was published in *Negarit Gazeta*, 21st Year, No. 18, of 5 September 1962, and entered into force on 11 October 1962.

Article 20 (*a*) of the decree reads:

"Employers may create and join employers' associations and employees may establish and join labour unions. Said organizations, when registered by the Minister, may engage in all lawful activities".

Articles 29 and 30 provide as follows:

"Article 29. — *Forbidden Soliciting Practices*

"No person shall:

"(*a*) use intimidation, threats or undue influence in an attempt to induce any other person to become, refrain from becoming or cease to be, a member of an employers' association or labour union;

"(*b*) except with the consent of the employer involved, in the name or on behalf of a labour union, convene employees during working hours or on the employers' premises to solicit them to join said labour union.

"Article 30. — *Discrimination by Employers*

"No employer shall:

"(*a*) discriminate between employees as to labour conditions on the ground of membership in a labour union or because of labour union activities;

"(*b*) employ or retain in employment members of labour unions in preference to non-members or *vice versa*;

"(*c*) terminate the employment of any person because of membership in a labour union;

"(*d*) belong to or seek to influence the formation of a labour union or interfere in any labour union activities;

"provided, however, that nothing contained in this Article 30 shall prevent an employer from suspending, dismissing, discharging or transferring any employee for good and sufficient cause".

Other provisions of the decree deal with the establishment, composition, powers and procedure of the Labour Relations Board, the registration and scope of activities of employers' associations and labour unions, and collective bargaining.

The English text of the decree and a French translation have been published by the International Labour Office as *Legislative Series*, 1962 — Eth. 1.

[1] The Government of Ethiopia has communicated the information that this text was replaced by Proclamation No. 210 of 1963, which incorporates the decree of 1962 subject to certain amendments which do not affect the provisions quoted above.

FEDERAL REPUBLIC OF GERMANY

THE PROTECTION OF HUMAN RIGHTS IN 1962

A SURVEY OF LEGISLATION, JUDICIAL DECISIONS AND INTERNATIONAL AGREEMENTS[1]

CONTENTS

1. PROTECTION OF HUMAN DIGNITY

(Universal Declaration of Human Rights, preamble and article 1)

From the constitutionally guaranteed basic right of man to respect for his dignity (article 1, paragraph 1, of the Basic Law) and to the free development of his personality (article 2, paragraph 1, of the Basic Law), the courts have deduced a general right of the individual. The Federal Court of Justice has ruled that where this right is infringed the aggrieved person is entitled under the law of property rights to damages for both material and immaterial injury. The doubts expressed by some writers concerning this right to damages even for immaterial injury deduced by the courts from the principle of human dignity have been shared by the *Land* High Courts at Hamburg (9 May 1962, *NJW* 1962, p. 2062) and Karlsruhe (5 July 1962, *NJW* 1962, p. 2062).

The *Land* High Court at Hamburg ruled (1 March 1962, *NJW* 1962, p. 2062) that — since it was desirable to prevent any commercialization of the notion of reputation — cash damages could not be awarded for a trivial immaterial injury to a person's rights as an individual. While agreeing that the defendant's description of the plaintiff as a "dilettante without a trade" was offensive, the court did not consider that the nature and gravity of the injury warranted the payment of damages for personal suffering.

2. THE PRINCIPLE OF EQUAL TREATMENT

(Universal Declaration articles 2 and 7)

The basic right to equal treatment set forth in article 3 of the Basic Law, like all the basic rights referred to in article 1, paragraph 3, of the Basic Law, is binding not only on the executive and the judiciary, but also on the legislature. The extent to which the judiciary is justified in reviewing the observance of the principle of equality by the legislator is, of course, problematic.

The Federal Administrative Court (12 February 1962, *NJW* 1962, p. 1456) concurred in the earlier decisions of the Federal Constitutional Court (cf. report for 1961, decision of 9 May 1961, *BVerfGE* 12, p. 326) to the effect that the principle of equality must not be used to narrow down the area of discretion conceded to the legislator by the Basic Law. According to the Federal Constitutional Court's ruling the principle of equality is infringed only by an abuse of legislative discretion so great as to brand a measure as manifestly arbitrary. In keeping

[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 Bundesverwaltungsgericht* (Decisions of the Federal Administrative Court)
DÖV	*Die Öffentliche Verwaltung* (Public Administration)
DVBl	*Deutsches Verwaltungsblatt* (German Journal of Administration)
NJW	*Neue Juristische Wochenschrift*
SaBl	*Sammelblatt für Rechtsvorschriften des Bundes und der Länder* (Collected Statutes of the Federation and the *Länder*)

with this rule, the Federal Administrative Court upheld the clause in the Federal Employees Act under which the widow of a male civil servant always receives a survivor's pension (article 123) while the widower of a woman civil servant does not receive such a pension unless he is in want (article 132). The court held that this discriminatory provision was not based on the difference between the sexes — which would have been inadmissible — but on the difference which normally existed between husband and wife in the matter of providing subsistence.

A decision by the Federal Labour Court (18 December 1962, *NJW* 1963, p. 605) shows that the legislator is not rigidly bound by the principle of equality. The court ruled that, in the case of an administrative act of giving to — as opposed to taking from — the individual, no violence was done to constitutional precepts if strictly equal treatment was not accorded in exceptional cases. That was true, however, only where the preferential treatment was restricted to atypical circumstances and was an unintentional consequence of a constitutionally valid law. From this standpoint, the court found nothing objectionable in the provision of article 152 of the Federal Employees Act under which a married woman civil servant, unlike a male civil servant, is entitled to an indemnity upon resigning from the service. The intention of the clause in question was to offer an indemnity to persons leaving the civil service because of their family obligations. The fact that this necessarily standardized provision might, in exceptional cases, benefit others resigning for different reasons was immaterial.

The principle of equality is of particular importance in tax legislation. The Federal Constitutional Court, in a fundamental decision (24 January 1962, *BVerfGE 13*, p. 331), imposed upon the legislator much stricter rules than have hitherto been applied for the observance of the principle of equality. Joint-stock companies are subject to business tax, the amount payable being based on operating profits. Under article 8 (6) of the Business Tax Act, as amended on 30 April 1952 (*BGBl* I, p. 270), salaries paid to persons employed in a business are to be added to its taxable earnings, in computing the business tax, if such persons, independently or together with members of their families, hold more than one quarter of the shares in the enterprise. The effect of including the salaries of persons employed in a business who are substantial shareholders in it is to impose a higher business tax on "private" joint-stock companies — not, it is true, by comparison with one-man businesses and partnerships, but in relation to "public" joint-stock companies.

Whereas the regular past practice of the Federal Constitutional Court had been to approach each individual case from the standpoint of whether the statutory provision was manifestly unobjective and therefore arbitrary, it now reversed the burden of proof: unequal treatment as between private and public joint-stock companies in the assessment of business tax required special justification. The court came to the conclusion that from the standpoint of equity no clear objective grounds could be found for the exceptional provision relating to the salaries of substantial shareholders. It therefore declared article 8 (6) of the Business Tax Act void as incompatible with the constitutional precept of equality.

The starting-point for the Federal Constitutional Court's decision was a comparison between two specific types of enterprise, the private and the public joint-stock company; the court refrained from drawing one-man businesses and partnerships, which are differently constituted under civil law, into the comparison. The court took the view that the legislator had himself proceeded from the same basis of comparison, since it followed for tax purposes the classification of companies under civil law. The legislator could not, by enacting the special rule embodied in article 8 (6) of the Business Tax Act, deviate at a crucial point, without adequate justification, from the civil-law system he had employed, and thus from the objective legality which he himself had established. The significance of this decision lies in the fact that it allows the legislator very little latitude in selecting the criteria to be applied.

In another decision of the same date (*BVerfGE 13*, p. 290), the Federal Constitutional Court declared void a further provision of the Business Tax Act. For the purpose of assessing an enterprise for business tax, salary paid to the spouse of the owner, if he or she is employed in the business, is to be added to the operational profits (article 8 (5) of the Business Tax Act, as amended on 21 December 1954, *BGBl* 1954 I, p. 473). As a result, the owner is liable to more tax if he employs his wife rather than someone else. The court ruled that the disadvantage imposed by article 8 (5) of the Business Tax Act offended against both the protection of marriage and the family afforded by article 6 of the Basic Law and the principle of fair taxation. There was no valid ground for refusing to recognize, for tax purposes, a genuine contract of employment between spouses in a business enterprise. Consequently, an employment relationship of that kind must not, because of special features of a non-business nature, be accorded less favourable treatment in tax legislation than comparable employment relationships between other individuals. In yet another decision dated 24 January 1962 (*BVerfGE 13*, p. 318), the Federal Constitutional Court confirmed this opinion and reversed a contrary ruling, dated 16 February 1960, of the Federal Finance Court.

The Federal Finance Court (13 December 1962, *NJW* 1963, p. 684) considered the question what constituted a fair turnover tax system. Its decision is of particular importance in view of the Federal Government's intention to reform the turnover tax. The complainant asserted that the cumulative effect of the turnover tax on all phases of operation led to the concentration of industry and placed the single-phase business at a disadvantage *vis-à-vis* multi-phase businesses. The Finance Court pointed out that tax laws even more than others, because of the great variety of forms of economic activity they had to encompass, could not provide for every detail but must confine themselves to covering typical cases. If the tax system resulted in minor

disadvantage to individual branches of industry, then the legislator was entitled to disregard the fact. The concentration-promoting effect of the current cumulative taxation and the possibility of imposing a greater burden on single-phase businesses did not appear to be matters so substantial as to compel the legislator to abolish the existing turnover tax system and replace it by an added-value turnover tax. In any event, it would be Utopian to expect an added-value tax to be any more effective in genuinely equalizing the burden on all businesses.

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 admissible "only on the basis of a formal law". A defendant who had been sentenced to two weeks' imprisonment for drunken driving under article 71 of the Traffic Licensing Ordinance pleaded before the Federal Constitutional Court that in violation of article 104 of the Basic Law he had been penalized on the basis not of a formal law but merely of an ordinance. Pending its final judgement on this constitutional complaint, the Federal Constitutional Court issued an interlocutory order (13 February 1962, *NJW* 1962, p. 443). The execution of a sentence of imprisonment imposed in violation of constitutional rights, the court pointed out, would cause severe and irreparable injury and would shake the public's confidence in the judicial process. In the light of article 104 of the Basic Law, there were serious doubts as to the constitutionality of article 71 of the Traffic Licensing Ordinance. In the public interest, therefore, the Federal Constitutional Court considered it vitally important that the execution of the sentence should be suspended pending a decision as to its constitutionality. The *Land* High Court of Bavaria having ruled (31 January 1962, *NJW* 1962, p. 453) that deprivation of liberty was admissible under article 104 of the Basic Law if, though the penalty was prescribed in an ordinance, the latter was based broadly on powers granted under a formal law, the Federal Constitutional Court declared the provision in question void (3 July 1962, *NJW* 1962, p. 1339). The court held that the certainty of the law and the freedom of the individual protected by article 104 of the Basic Law required the legislator to state what was to be punishable in a formal law and with adequate clarity. The constituent elements of the offence could then be specified in an ordinance.

As a result of the Federal Constitutional Court's retroactive annulment of article 71 of the Traffic Licensing Ordinance, many judgements in traffic cases were deprived of their legal basis. Where the sentence of imprisonment had not yet been executed, the courts retried the cases under article 21 of the Road Traffic Act, a formal law which was already in existence but had until then been overshadowed by the Traffic Licensing Ordinance (cf. *Land* High Court at Bremen, 15 October 1962, *NJW* 1962, p. 2169; *Land* High Court at Nuremberg, 16 October 1962, *NJW* 1962, p. 2264).

As mentioned in the 1961 report, the Family Code Amendment Act of 11 August 1961 (*BGBl* 1961 I, p. 1221), which came into force on 1 January 1962, provides that a guardian may not commit either an adult or a minor ward to an institution without the authorization of the guardianship court. The *Land* High Court at Düsseldorf ruled (2 November 1962, *NJW* 1963, p. 397) that such authorization was also required for the committal of a ward to a voluntary educational institution if — as in the case of committal to a closed home — this involved deprivation of liberty.

Mentally deranged, feeble-minded and chronically ill persons may in principle be committed to medical institutions only by judicial decision. New regulations on the subject were promulgated in Bremen by an Act of 16 October 1962 (*SaBl* 1962, p. 1637).

4. THE RIGHT TO PHYSICAL INTEGRITY

(Universal Declaration, articles 3 and 5)

By Act dated 22 May 1962 (*SaBl* 1962, p. 804), *Land* North Rhine-Westphalia introduced new regulations for the use of direct force in the exercise of public authority. In particular, the Act specifies precisely in what circumstances and to what extent firearms may be used, thus introducing permissively a guarded abridgement of the fundamental right to life and to physical inviolability set forth in article 2 of the Basic Law. A Bavarian Act of 26 October 1962 (*SaBl* 1962, p. 1687), which amends the Act of 16 October 1954 concerning the duties and powers of the police in Bavaria as regards the use of firearms, contains provisions essentially similar to those adopted in North Rhine-Westphalia.

In its decision of 18 January 1962 (*NJW* 1962, p. 1053), the Federal Court of Justice made it clear that the prison authorities have strict responsibilities as regards the health of prisoners. The court ruled that as there was considerable danger of infection when a prisoner suffering from tuberculosis was lodged in a small common cell with other prisoners, no one should be allowed to share a cell unless there was no serious possibility of his contracting active tuberculosis. Should the prison authorities fail in their official duty in this respect, any resulting impairment of health entitled the victim to damages, however minor the negligence involved.

5. JUDICIAL AND ADMINISTRATIVE GUARANTEES OF DUE PROCESS

(Universal Declaration, articles 8 and 10)

Following the entry into force on 1 July 1962 of the Judiciary Act of 8 September 1961, (*BGBl* 1961 I, p. 1665), mentioned in the 1961 report, several of the *Länder* enacted new regulations to govern the legal status of their *Land* judiciaries (Hesse Judiciary Act of 19 October 1962, *SaBl* 1962, p. 1641; Rhineland-Palatinate Judiciary Act of 29 October 1962, *ibid.*, p. 1670; Lower Saxony Judiciary Act of 14 December 1962, *SaBl* 1963, p. 26). In compliance with an obligation imposed on the *Länder* by the federal legislator, these Acts provide, *inter alia*, for the establishment of professional tribunals.

In its decision of 9 May 1962. (*NJW* 1962, p. 1611), the Federal Constitutional Court considered the question of the independence of the judiciary, a principle laid down in the Basic Law and guaranteed by the Judiciary Act of 8 September 1961. The second sentence of article 11, paragraph 1, of the Baden-Württemberg Municipal Courts Act of 7 March 1960 (cf. 1960 report), provides that the appointment of a municipal judge who is also an official or employee of the municipality is terminated if he leaves the municipal service. The Federal Constitutional Court declared this clause unconstitutional. To couple the loss of judicial office with separation from the municipal service offered the executive, for no cogent reason, an opportunity to influence the termination of a judge's appointment without the interposition of any court. That jeopardized the personal independence of the judge.

Under article 111 of the Federal Notaries Act an ordinary court, not the administrative court, is empowered to review the decision of the administrative authorities on whether an applicant should be refused appointment as a trainee notary. The Federal Court of Justice ruled (5 November 1962, *NJW* 1963, p. 446) that this did not infringe the right to appear before one's lawful judge, guaranteed in article 101 of the Basic Law. While it was, of course, the intention of the Basic Law that a special administrative jurisdiction should exist side by side with the ordinary jurisdiction, the administrative courts were nevertheless not constitutionally vested with a monopoly to rule upon all questions of public law. On the contrary, the legislator had the power to allocate public-law disputes, as required, to the ordinary courts.

Under article 86 of the Bavarian Constitution, which conforms in this respect to article 101 of the Basic Law, no one may be removed from the jurisdiction of his lawful judge. The Bavarian Constitutional Court held (26 February 1962, *NJW* 1962, p. 790) that this basic right was not infringed where a judge made an error in accepting or disclaiming jurisdiction. The basic right in question provided protection only against arbitrary perversions of jurisdiction based on irrelevant considerations.

The question when a bench of judges is regularly constituted has engaged the attention of the courts repeatedly in recent years. The Senior Division of the Federal Court of Justice decided (19 June 1962, *BGHZ* 37, p. 210) that a division of a *Land* High Court was not presided over in due form unless its resident participated sufficiently in the work of the division to exercise a guiding influence over its decisions. That meant that he must preside in person in at least 75 per cent of all the cases before the division.

The Bavarian Constitutional Court received a constitutional complaint against a decision rendered almost three years previously. Though there is no statutory time-limit for filling a constitutional complaint, the Court (10 January 1962, *NJW* 1962, p. 339) declared the complaint inadmissible as too late. The general principle of law that the right to bring suit could be barred by lapse of time, a principle essential in the interest of the certainty and tranquillity of the law, applied to constitutional proceedings as to others. Where a person's conduct over a lengthy period of time justified the assumption that he would not avail himself of his right to file a constitutional complaint, the right was forfeited.

Under article 19, paragraph 4, of the Basic Law, any person whose rights are infringed by public authority has the right of recourse to the courts. A controversial question is whether this constitutional guarantee of judicial remedy extends to the rejection of a petition for clemency. The Administrative Court at Düsseldorf having answered this question in the affirmative, the Federal Administrative Court had occasion to consider the matter (8 March 1962, *BVerwGE* 14, p. 73). In an *obiter dictum* on the occasion of an earlier decision, the Federal Administrative Court had agreed with the majority of authorities and judges that the exercise of clemency was extraneous to the legal order (*BVerwGE* 4, p. 298). In its decision of 8 March 1962, however, the court ruled that the Prime Minister, to whom the prerogative of mercy belonged, was bound by the constitution and the laws in the exercise of *all* his official powers, including that of exercising clemency. Consequently, he was answerable for his administrative conduct both politically and legally. Despite this, the court held that neither the civil nor the administrative courts had jurisdiction to review the exercise of the prerogative of mercy. That prerogative, vested in the Prime Minister under the Constitution of *Land* North Rhine-Westphalia, was exercised by him not as an administrative authority but as a constitutional organ. When he acted in that capacity, he could be lawfully called to account only through the institution of impeachment proceedings by the *Landtag* before the *Land* Constitutional Court. The terms of article 19 of the Basic Law did not empower the civil or administrative courts to interfere in the constitutional structure of the federation or the *Länder* at the instance of an individual. Thus, any review by the administrative or civil courts of a decision concerning clemency was an act of wrongful interference in matters in which the power of judicial review was reserved to the Constitutional Court, on the application of the *Landtag* as the elected body representative of the people.

The importance of the fundamental right to a lawful hearing set forth in article 103 of the Basic Law as a guarantee of due process and respect the dignity of the person in judicial proceedings has been constantly emphasized in the judgements of the Federal Constitutional Court and the Federal Court of Justice. The right to a lawful hearing was once again the subject of a number of judicial decisions in 1962.

The Bavarian Constitutional Court has taken the view that the right to a lawful hearing includes the right of the parties to make not only factual, but also legal, statements to the court. In a decision of 15 May 1962 (*DÖV* 1962, p. 746), the Constitutional Court reviewed the question whether the principle of lawful hearing required a court to communicate statements made by one of the parties to the other for comment, if such statements contained only legal arguments. The court ruled that this was obligatory only in the case of legal argu-

ments submitted by a party which might cause a change in previous views of the court known to the other party. It was a corollary of the right to a lawful hearing that the court must advise the party in good time of the possibility that it might depart from its own precedents.

The right to lawful hearing belongs not to witnesses or informants, but only to persons who are parties or quasi-parties to the proceedings. The Bavarian Constitutional Court ruled (2 February 1962, *DÖV* 1962, p. 742) that, in proceedings to determine whether legal aid should be granted, the opponent of the poor person was not an outsider to be heard only as an informant. On the contrary, as his relationship to the poor person was one of tension and thus analogous to that of a party to the proceedings, he was entitled to a lawful hearing.

The Federal Social Court held (18 January 1962, *NJW* 1962, p. 837) that the right to a lawful hearing was infringed if the court failed to take into consideration the contents of written submissions by the plaintiff where the latter, despite the court's request, had not provided copies of those submissions for parties to the proceedings.

6. DUE PROCESS IN CRIMINAL PROCEEDINGS

(Universal Declaration, articles 10 and 11)

The principle of a lawful hearing is of particular importance in criminal law. During the year under review, the body of judicial decisions concerning this basic right was expanded by several new rulings.

A *Land* court had given its ruling on a complaint *(Beschwerde)* without allowing the accused sufficient time to present his arguments. A peremptory complaint *(sofortige Beschwerde)* having then been lodged, the *Land* High Court at Bremen held (28 September 1962, *NJW* 1963, p. 1321) that the *Strafkammer* (penal chamber of the *Land* court) had infringed the right to a lawful hearing. Despite this breach of the fundamental right to a lawful hearing, the peremptory complaint could not be entertained, since the Code of Criminal Procedure did not provide for this form of recourse against the decision of a *Strafkammer* on a complaint. However, a review of the decision, which though wrongfully rendered was formally valid, was possible through the means of *restitutio in integrum*, which the *Land* court must allow on the representation of the accused.

Unlike the *Land* High Court at Düsseldorf in its decision mentioned in the 1961 report (*NJW* 1961, p. 1734), the *Land* High Court at Celle took the view (11 October 1962, *NJW* 1963, p. 1320) that the right to a lawful hearing embraced the right to a hearing in reasonable time. A reasonable time, however, could not be judged by whether or not the accused could remember the act with which he was charged. As the Schleswig *Land* High Court agreed in a similar case (1 August 1962, *NJW* 1963, p. 455), any loss of recollection was to be taken into account in evaluating the evidence.

The Bavarian Constitutional Court held (22 January 1962, *NJW* 1962, p. 531) that it did not follow from the principle of a lawful hearing that in private prosecution proceedings the parties were entitled to be present when the court heard evidence prior to deciding whether the case should go to trial. Before proceedings were closed, however, the private prosecutor must be given an opportunity to make a statement. The Constitutional Court further ruled that the fundamental right to a lawful hearing did not oblige the court to go into all matters adduced by the parties or to take an explicit stand on all applications to produce evidence. It must, however, hear and take into consideration the arguments of the parties.

Under article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which became directly binding domestic law in the Federal Republic of Germany under an Act of 7 August 1952 (*BGBl* 1952 II, p. 685), every accused person is entitled to a fair and public hearing. The *Land* High Court at Bremen was called upon to decide (16 May 1962, *NJW* 1962, p. 1735) whether this right was abridged by article 412 of the Code of Criminal Procedure. Under this clause, any objection by a defendant against a punishment order issued without hearing evidence is rejected if he fails without sufficient cause to attend the trial proceedings or to be represented by counsel. The *Land* High Court ruled that this was not a breach of article 6 of the Convention, since the defendant could obtain a public hearing merely by appearing or arranging to be represented at the trial. The Convention required nothing more than that such an opportunity should be provided.

A defendant charged with endangering the State was convicted by the *Land* Court at Düsseldorf on information supplied by a secret agent. Although for security reasons the agent was not allowed by his superiors to testify before the court, the latter circumvented this prohibition by taking evidence instead from the police officers who had themselves interrogated the agent out of court. An appeal, supported by many noted legal authorities, was lodged on the ground that such "indirect examination" of a witness was a breach of the obligation to grant a lawful hearing. As the secret agent had not appeared in court, and his character and motives thus remained unknown, the accused had been unable to comment in detail on the credibility of the evidence against him. The Federal Court of Justice (1 August 1962, *BGHSt* 17, p. 382) upheld the action of the *Land* Court, ruling that the accused had had full opportunity to express his views concerning any possible doubts cast by the informant's anonymity on the probative value of his testimony. Nothing more was needed to satisfy the right to a lawful hearing. The court must combat the particular dangers to the determination of the truth which resulted from anonymity by most carefully scrutinizing the secret agent's testimony, as reproduced by the interrogating officers.

The Federal Court of Justice also ruled that the *Land* Court proceedings had not violated the European Convention for the Protection of Human Rights and Fundamental Freedoms. The fact that evidence had been given by the interrogating officers instead of the secret agent had not infringed

the accused's right guaranteed in article 6 (3) of the Convention, "to examine. . . witnesses against him". The "witnesses against him" meant not the anonymous informant, but the interrogating officers, with respect to whom the defendant's right of examination had not been abridged.

Under article 92 of the Basic Law, judicial authority is vested in the judges. The Federal Constitutional Court (3 July 1962, *NJW* 1962, p. 1495) interpreted this constitutional precept as implying that judges must as a general rule be personally independent, as holders of permanent, full-time, established posts — who may not, under article 97 of the Basic Law, be transferred or dismissed. The court held that an auxiliary judge, whose personal independence was not thus secured, could be allowed to collaborate in the judicial process only by way of exception and for compelling reasons. While the inclusion of one auxiliary judge in a bench was generally unobjectionable, the collaboration of more than one auxiliary judge must normally exceed the constitutional limits. Decisions in which auxiliary judges had collaborated without compelling reasons were unconstitutional in that they infringed the right to remain within the jurisdiction of one's lawful judge guaranteed in article 101 of the Basic Law.

The *Land* High Court at Nuremberg held (11 December 1962, *NJW* 1963, p. 502) that it was an offence against article 101 of the Basic Law for the public prosecutor to list the names of the accused in a special order in the indictment so as to assure that a certain case went before a division of the court whose calendar was less heavily burdened. Where the case-load was not evenly distributed among divisions, it was for the president of the court, not the public prosecutor, to remedy the situation.

The Federal Court of Justice had occasion to rule (28 September 1962, *BGHSt* 18, p. 51) on the conditions in which blind judges may serve on a bench. The participation of a blind judge, it held, was not inadmissible in principle. If, however, in a trial a sketch of the scene of the offence was used, the court was not generally speaking properly constituted if one of the judges was blind.

The Federal Court of Justice took the view (19 January 1962, *NJW* 1962, p. 748) that political utterances by a judge outside the trial proceedings in so far as they bore no direct relation to the proceedings and could be understood as resulting solely from his participation in political life, did not constitute a reason for challenging the judge on the ground of possible prejudice. Similarly, a generally tenable legal opinion expressed by a judge at an earlier stage in the proceedings, or any change in that opinion resulting from the examination of the case incumbent upon him as a judge, provided no ground for a challenge.

Under article 136a of the Code of Criminal Procedure, the freedom of decision of an accused person may not be impaired by maltreatment, deceit, torture, and so forth; as the Federal Court of Justice pointed out (*BGHSt* 15, p. 187), this provision is an embodiment of the principle that the accused must be treated as a morally responsible, autonomous personality. The Federal Court of Justice (13 July 1962, *BGHSt* 17, p. 364) regarded as torture and accordingly impermissible a threat by the police to confront the accused with the corpse of his son, whom he had killed, if he refused to tell them how he had committed the act. The confession obtained through this threat must be disregarded by the court.

The Federal Court of Justice (17 November 1962, *BGHSt* 18, p. 136) considered the question of the prohibition of analogy in criminal law. Although the application of legislative provisions by analogy was not entirely barred in criminal law, the principle that justice in criminal cases must be administered strictly in accordance with the law — *nulla poena sine lege* — set forth in article 103 of the Basic Law and in article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms nevertheless prohibited the use of analogy to make good omissions in the law, where the purpose was to establish the fact of an offence or to secure the imposition of a more severe penalty. In deference to the basic right of freedom of the individual, in particular, the certainty of the law took precedence over material justice. Consequently, it was inadmissible to impose any penalty not expressly provided by law. It followed from the principle of the rule of law that this prohibition of analogy extended also to security measures and other accessory procedures not of a penal nature, such as the confiscation and rendering harmless of articles.

7. PROTECTION AGAINST INTERFERENCE WITH PRIVACY

(Universal Declaration, articles 6 and 12)

The Federal Court of Justice (3 July 1962, *NJW* 1962, p. 1873) took exception to a statement made in a lower court judgement that the accused, in committing an offence against the security of the State, had not scrupled to assume the guise of a "true" Christian. The Federal Court of Justice pointed out that the question whether a person was a "true" Christian or a mere hypocrite depended on considerations which were not for the courts to judge.

The Federal Court of Justice (5 January 1962, *NJW* 1962, p. 1004) characterized as a grave infringement of personal rights the inclusion in a documentary film on capital punishment of the picture of a person who had no connexion with the murder cases referred to in the film.

Under article 22 of the Artistic Copyright Act, pictures may be disseminated only with the consent of the person portrayed. The protection thus afforded is not unrestricted, however, in that pictures within the domain of contemporary history may be published even without consent (article 23 of the Artistic Copyright Act). Thus, the right to one's own picture — a component of the general right of personality guaranteed in article 2 of the Basic Law — is decisively affected by the courts' decisions on what constitutes contemporary history.

The *Land* High Court at Munich held (15 November 1962, *NJW* 1963, p. 658) that not everyone

charged with an offence was within the domain of contemporary history. It was true that the Press made a practice of reporting even unimportant cases, but it did so not so much to satisfy the interest of the public in being kept informed as to ensure that vigilance could be exercised over the judicial process through the publicity given to trials. A person involved in criminal proceedings certainly belonged to contemporary history if the case, because of its subject-matter or the personality of the accused, was of more than routine interest. In such cases, there was a public interest in the picture of the accused, justified by a genuine need for information.

8. PROTECTION OF REFUGEES

(Universal Declaration, article 14)

Under German law, persons who meet the requirements of article 1 of the Geneva Convention relating to the Status of Refugees, 1951, are recognized as alien refugees. In that connexion, the Convention refers only to events occurring before 1 January 1951. The Federal Administrative Court (29 June 1962, *NJW* 1962, p. 2267) held that for the purposes of the Convention "events" meant not only specific individual acts of persecution but also any political changes leading to persecution at a later date. The Communist accession to power in Yugoslavia having occurred before 1 January 1951, the Court recognized as a refugee a Yugoslav fugitive who had become liable to punishment in his own country after 1951 for refusing on religious grounds to perform military service. While not every conviction for refusal to perform military service constituted persecution within the meaning of the Geneva Convention, it did so in cases where the refugee could not, on reasonable consideration of all the circumstances, be expected to remain in his own country.

9. THE RIGHT TO A NATIONALITY

(Universal Declaration, article 15)

Under the Nationality Act of 1913, a legitimate child acquires German nationality by birth only if the father is a German national. This provision, which makes the status of the father the sole test, was ruled unconstitutional by the Federal Administrative Court (21 December 1962, *BVerwGE* 15, p. 226). It followed from the precept of equal treatment for men and women set forth in article 3 of the Basic Law that the nationality of legitimate children must be determined by reference to the mother as well as to the father. It was conceivable that the principle of equality might justifiably be abridged through the application of such general principles of nationality law as, for instance, the avoidance of dual nationality; but the legitimate child of a stateless father and a German mother must acquire German nationality by birth. This conformed both to the internationally recognized principle that statelessness should be avoided wherever possible and to German constitutional law, which, under article 16 of the Basic Law, prohibited deprival of German citizenship against the will of the person affected. The Federal Administrative Court did not simply come to the negative conclusion that the legislator had omitted to adjust article 4 of the Nationality Act to the Basic Law; rather, it applied the principle of the equal treatment of men and women directly, ruling that a legitimate child acquired German nationality from his mother if he would otherwise be stateless.

10. THE RIGHT TO MARRY; PROTECTION OF THE FAMILY

(Universal Declaration, article 16)

Officers of the police stand-by force, who are housed in barracks, sign a statement on recruitment confirming their knowledge of the rule that they may not marry during their period of training except with departmental approval, which is granted only in quite exceptionally urgent cases. The act of marrying without the requisite permission is deemed to constitute irrevocable notice of resignation.

The Federal Administrative Court (22 February 1962, *BVerwGE* 14, p. 21) had to determine whether an officer of the stand-by force might be refused permission, under this regulation, to marry his pregnant *fiancé*. Unlike the Federal Labour Court (*BAGE* 4, p. 274), the Federal Administrative Court that the celibacy clause was not an invasion of the dignity of man, guaranteed in article 1 of the Basic Law. The regulation was accepted by the officer of his own free will, and did not prevent him from marrying but simply made it more difficult for him to do so, in view of the threatened termination of his appointment. By imposing this impediment, however, the regulation violated the terms of article 6 of the Basic Law, which places marriage and the family under the special protection of the State. This provision did not apply only to existing marriages; it also guaranteed the right to marry and to found a family. The Federal Administrative Court went on to point out that article 6 of the Basic Law must, however, be read in conjunction with article 2 of the Basic Law, which protected the right to the free development of the personality. The protected right to the development of the personality included the right to accept of one's own free will, as an autonomous individual, an impediment to the right to marry. Weighing the interests involved, the court struck a balance between the conflicting fundamental rights. The right to act as an autonomous individual took precedence in cases where the self-imposed obligation was seen to be absolutely essential owing to special exigences of the service. However, even if the celibacy clause was absolutely essential to the service, and was thus covered by article 2 of the Basic Law, the right to marry guaranteed in article 6 of the Basic Law took precedence in a case where the self-imposed obligation would mean not only a temporary prohibition of marriage but also the birth of an expected child out of wedlock. The court therefore ruled that refusal of permission to marry in the case before it was unconstitutional.

Single persons over sixty years of age are granted an exemption of a certain amount in their assessments for income tax, whereas a husband and

wife over sixty who are assessed separately are not entitled to this relief. The Federal Constitutional Court ruled (3 April 1962, *NJW* 1962, p. 1243) that this differential treatment was not a form of arbitrary discrimination against married persons incompatible with article 6 of the Basic Law.

The inconsiderable old-age relief granted was appropriate compensation for the well-established fact that the living expenses of single persons increased in old age — which was not generally the case with married persons sharing a home.

In this connexion, attention is again drawn to the tax decisions of the Federal Constitutional Court of 24 January 1962, reported in section 2 above.

Following the entry into force on 1 January 1962 of the Family Code Amendment Act of 11 August 1961 (*BGBl* 1961 I, p. 1221), there were a number of rulings on the question when divorce is permissible under the more stringent provisions of the revised article 48 of the Marriage Act (Federal Court of Justice, 9 February 1962, *BGHZ* 36, p. 357; 21 March 1962, *NJW* 1962, p. 1294; 21 December 1962, *NJW* 1963, p. 1350).

The Federal Administrative Court ruled (31 August 1962, *BVerwGE* 15, p. 26) that the community of the mother with her illegitimate child came under the protection of the family guaranteed in article 6 of the Basic Law. On the other hand, the father of an illegitimate child, even where he was actually living with the mother, was not a member of the family community. Under article 1589 (2) of the Civil Code, the father of an illegitimate child was not legally related to him, and he could therefore at any time terminate the *de facto* community with the child's mother without thereby incurring any legal consequences.

Under article 1708 of the Civil Code as amended by the Family Code Amendment Act, the father must contribute to the maintenance of an illegitimate child up to the age of eighteen years, instead of sixteen as previously, in an amount appropriate to the mother's station in life. The *Land* Court at Aachen decided (24 August 1962, *NJW* 1962, p. 1965) that a maintenance allowance of DM 80 monthly was an appropriate amount for illegitimate children of mothers in the humblest circumstances.

11. PROTECTION OF PROPERTY

(Universal Declaration, article 17)

The Companies Reorganization Act of 1956 (*BGBl* 1956 I, p. 844) allows a majority shareholder owning more than three-fourths of the capital stock of a joint-stock company to reorganize it into a new company from which the outvoted minority shareholders are excluded. The minority shareholders are entitled to reasonable compensation. In its decision in the Feldmühle case (7 August 1962, *NJW* 1962, p. 1667), the Federal Constitutional Court had to determine whether such a reorganization by the majority shareholder, which existinguished the rights of the minority shareholders in the company, violated article 14 of the Basic Law, under which property is guaranteed.

The court, having established that a share in a company, being property acquired under the law relating to companies, enjoyed the protection of article 14 of the Basic Law, went into the question whether reorganization by the majority shareholder constituted expropriation and decided that since expropriation always emanated from the State, a measure of reorganization decided upon by a company's general meeting in conformity with statutory powers and altering the private-law relations between shareholders was not expropriation.

Article 14, paragraph 1, of the Basic Law proceeds, in its second sentence, to define more closely the constitutional guarantee of property by expressly reserving to the legislator the task of determining the content and limits of property. In so doing — the Federal Constitutional Court stressed — the legislator must bear in mind the Basic Law's fundamental decision in favour of private property as also the other constitutional precepts, particularly the principle of equality, the basic right to the free development of personality, and the principles of the rule of law and social justice.

Despite considerable misgivings, the court decided that in promulgating the Companies Reorganization Act the legislator had not exceeded the bounds of his constitutional prerogative of determining the content of property. A share in a company represented not only a property right but also a membership right. The legislator must be left free to select either aspect as the essential criterion for his decision. Thus, it resulted from the complex character of a share that the continued existence of the property which it embodied enjoyed no absolute safeguard against decisions by the majority shareholder. Moreover, the majority holding of more than three fourths of the capital stock required by the legislator before reorganization could take place was not manifestly out of proportion to the severity of the encroachment.

The Federal Administrative Court had to rule (22 June 1962, *BVerwGE* 15, p. 1) on the question whether the requisitioning of a piece of land for the construction of an embankment constituted expropriation. The court held that the answer depended on the physical location of the property. Thus, a waterside property, which by reason of its location was liable from the outset to requisitioning for embankment works, was encumbered as it were by nature, and no additional burden was imposed on its owner through the materialization of this latent encumbrance. The case was not one of expropriation, which was permissible only against compensation, but of limitation of property rights, which was not compensable.

In Bremen, a new Waterways Act (*SaBl* 1962, p. 549) regulating questions of compensation in detail came into force on 24 March 1962.

While the Federal Administrative Court, as has been shown, bases itself on the gravity of the encroachment, the Federal Court of Justice has constantly held that the decisive criterion for defining expropriation is the question whether a *special* sacrifice is imposed on an individual or a limited

category of persons. If an encroachment on property affects the community at large, it is not expropriation but a limitation of property rights.

The Federal Court of Justice ruled (15 March 1962, *NJW* 1962, p. 1439) that a special sacrifice had been imposed in a case in which timber purchased from woodlands in an area used for military exercises, and stored there in the first instance, had been destroyed in a forest fire caused by firing practice.

The Federal Court of Justice attempted (8 November 1962, *NJW* 1963, p. 1492) to establish guide-lines for calculating compensation. Under article 14, paragraph 3, of the Basic Law, this compensation is to be determined upon just consideration of the public interest and of the interests of the persons affected. Accordingly — the court ruled — the purpose of compensation was to recompense the individual for the special sacrifice which he made to the general public in submitting, for reasons of the common good, to the breach of the guarantee of property represented by the act of expropriation. Compensation must give the person affected a genuine *quid pro quo*, which must be so calculated as to enable him to acquire an article of equal value. That meant that he must be paid the normal market price of the article expropriated.

The court applied these general considerations to the case before it, which concerned the expropriation of a piece of land. Where there was a possibility that a property used as agricultural land might later be wanted for building, its market price might be higher than the market price of agricultural land as such. The price obtainable in the real-estate market was the decisive factor, even if it was still uncertain whether the land would be wanted for building. On the other hand, no account was to be taken of a purely speculative price paid without regard to any objective evidence of future building use.

Closely related to compensation for expropriation is the question of "sacrifice" claims, the purpose of which is to compensate individuals for special sacrifices, not relating to property, imposed on them in the public interest.

A eugenics court had issued a sterilization order in 1940 in the mistaken belief that the statutory conditions for such action existed. The Federal Court of Justice, in a decision (19 February 1962, *BGHZ* 36, p. 380) which has not escaped severe criticism in the literature, rejected a claim by the victim for payment of "sacrifice" compensation. The Court recognized that the wrongful invasion of his physical integrity had imposed a sacrifice on the claimant. Nevertheless, since the sterilization order had been made by a court, this sacrifice was not a special one affecting the claimant in a discriminatory manner. Not the claimant alone, but any citizen, had to submit to a final court order, in the interest of the tranquillity of the law, even if the order was objectively incorrect.

12. FREEDOM OF CONSCIENCE AND RELIGION: FREEDOM OF RELIGIOUS PRACTICE

(Universal Declaration, article 18)

The Federal Administrative Court (11 May 1962, *BVerwGE* 14, p. 146) had occasion to deal with the basic right, laid down in article 4, paragraph 3, of the Basic Law, of conscientious objection to military service. So that abuses of this basic right may be avoided, the objector is required to satisfy the authorities of the genuineness of his reasons which, the court recognized, might prove difficult in many cases. Even if the conscientious decision was the outcome of rational reflection, it was still a psychical process which could be only imperfectly explained. Concerned not to vitiate the basic right by making impossible demands for proof, the Federal Administrative Court falls back, whenever a conclusive explanation is not forthcoming, on the general credibility of the person liable to military service in order to determine whether the conscientious decision which he claims to have made is authentic.

The Federal Court of Justice held (24 October 1962, *NJW* 1963, p. 761) that the right of a married person to join a religious denomination other than that to which both spouses had previously adhered flowed from the freedom of faith and conscience and the freedom to practise religion without interference protected by article 4 of the Basic Law. This basic right was not operative *vis-à-vis* the State alone; it also guaranteed freedom of religion as between individuals. This did not mean, however, that every act performed in the name of a religious faith was legitimate and morally justified. The intention of the Basic Law had been to protect, not free religious activities of any kind, but only such as had evolved among contemporary civilized nations on the basis of certain fundamental moral notions which were common to them all. Viewed from the standpoint of this limitation of the basic right to freedom of religion, which derived from the hierarchy of values as a whole, a married person's action in joining Jehovah's Witnesses — an intolerant sect — might constitute a grave matrimonial lapse and a ground for divorce.

The Federal Administrative Court (9 November 1962, *BVerwGE* 15, p. 134) also had to deal with a case involving the Jehovah's Witnesses. The court acknowledged that the basic right to freedom of religion included the right to champion one's own religious convictions and to win new adherents for them; however, it was an abuse of this right for a master craftsman to take advantage of the dependent status — resulting from their apprenticeship — of his apprentices of minor age in order to try to induce them to join his faith. He was to be deprived of his permit to keep apprentices.

13. THE RIGHT TO THE FREE EXPRESSION OF OPINION: FREEDOM OF INFORMATION

(Universal Declaration, article 19)

The Federal Constitutional Court ruled (18 December 1962, *NJW* 1963, p. 147) that, given the right to free expression of opinion which is funda-

mental to the libertarian and democratic legal order and is proclaimed in article 5 of the Basic Law, a balance must be struck between the exigencies of a free Press and those of the prosecution of offenders in any law-enforcement measures affecting the domain of the Press protected by this right. Consequently, the book-keeper of a publishing house might not be detained for questioning, simply on the basis of the rules of criminal procedure, in order to compel him to make a statement concerning the affairs of the publishing house. The test to be applied was whether such a measure was permissible in the light of the freedom of the Press.

Under article 5, paragraph 2, of the Basic Law, the basic right to freedom of opinion and of the Press is guaranteed within the limits of the general laws. Among the general laws, which are not directed against the expression of opinion as such but are designed to protect a legal right meriting protection without regard to any specific opinion, are the penal laws. In the process of limiting this basic right, however, the penal laws themselves retain its imprint. Taking into account these principles developed by the Federal Constitutional Court (*BVerfGE* 7, p. 208), the Federal Court of Justice decided (*BGHST* 17, p. 38) that a criminal court order prohibiting a journalist from practising his profession, imposed in accordance with the strict requirements of article 42.1 of the Criminal Code, was lawful.

The *Land* High Court at Munich (28 February 1962, *NJW* 1963, p. 493), applying the Federal Constitutional Court's fundamental decision of 25 January 1961 (*BVerfGE* 12, p. 133; cf. 1961 report), upheld the action of a newspaper with political party connexions in replying to a polemic press attack on a candidate for election to the *Bundestag* with a statement which, although stronger than was absolutely necessary, was nevertheless commensurate with the acrimony of the attack. The court, expanding upon the decision of the Federal Constitutional Court, explained that the right to make a public "rejoinder" was not available to the attacked candidate alone. The purpose of the reply was not simply to defend the impugned personal reputation, but at the same time to contribute to the formation of public opinion, a matter of vital importance to democracy.

The *Land* High Court at Hamburg rules (15 February 1962), *NJW* 1962, p. 917) that a call for an economic boycott made on lawful grounds was protected by the right to the free expression of opinion. Since, however, the war of opinion must be waged with intellectual weapons, to pursue it by methods of economic coercion, taking advantage of a monopolistic situation, was incompatible with the basic right set out in article 5 of the Basic Law.

The *Land* High Court at Hamburg held (19 April 1962, *NJW* 1962, p. 1633) that the basic right to freedom of information guaranteed to everyone under article 5 of the Basic Law was not extinguished when a person came under the special restraint of the penal system. It did, however, become subject to limitations based on the exigencies of the system. Thus, it was constitutionally lawful to prohibit persons detained for investigation from having their own radio receivers.

The *Land* High Court at Frankfurt (12 November 1962, *NJW* 1963, p. 112) considered the question of the film industry's Voluntary Control Board, organized under private law, which approves films for juveniles under an administrative agreement. Under article 5 of the Basic Law film censorship, which was still permitted under the Weimar Constitution of 1919, is not allowed. The court pointed out that the notion of censorship implied more than merely official examination and approval; rather, it affected any exertion of influence on public opinion, in so far as a possible contribution to the process of forming public opinion was withheld or made available in a different form through the intervention of an authority. In that sense, the activities of the film industry's Control Board constituted censorship, but being based on voluntary acquiescence they were nevertheless admissible.

14. THE SUFFRAGE AND THE RIGHT OF SELF-DETERMINATION

(Universal Declaration, article 21)

The Federal Constitutional Court, having already established in 1957 (*BVerfGE* 7, p. 99) that publicly owned radio stations must grant broadcasting time for election propaganda to *all* parties participating in *Land* elections within the reception area of the station concerned, took up (30 May 1962, *NJW* 1962, p. 1493) the question whether, and to what extent, radio stations might differentiate between the parties with respect to the amount of time allocated.

The court pointed out that in a living democracy the right to participate in the formation of the political will found expression, not only in the voting at the polls, but also in activities aimed at influencing the formation of political opinion. As in the case of the suffrage, so also in the preliminary process of forming the political will, the principle of equality was to be regarded as peremptory. This applied especially to the allocation of broadcasting time for election propaganda, which, given the decisive importance of radio to the electoral campaigns of the political parties, was indissolubly related to the balloting. Accordingly, the touchstone which the Federal Constitutional Court applied to the question of differentiation in the allocation of broadcasting time for election propaganda was the principle, valid for the whole electoral process, that the political parties must be given equal chances of electoral success. The court considered that one particularly important reason why a radio station might, within limits, allocate different amounts of broadcasting time according to the size of the parties, thus imposing a limitation on the principle of strict equality of chances, was that such a graduation of broadcasting time indicated to the voters that the parties did not all have the same influence. The fact that this hindered the formation of insignificant splinter parties enhanced the unifying function of the election.

The Hesse State Court (13 July 1962, *DÖV* 1962, p. 785) had to deal with a series of objections

to federal electoral legislation. The court took the view that, since such legislation had to take account of all the principles pertinent to the suffrage, not every one of those principles could be applied in full. In the interest of a workable system of parliamentary government, the constitutional principles must be subjected to certain limitations. While the legislator must respect the constitutional requirements in general, it rested with him to shape the laws in which the right to vote was given detailed expression. Judged from this standpoint the fact, for instance, that candidates for election were selected at party conventions from which non-members of the parties were excluded did not infringe the electoral principles of the Hesse Constitution.

North Rhine-Westphalia and Hesse amended their *Landtag* Election Acts (by an Act of 13 February 1962, *SaBl* 1962, p. 309, and an Act of 4 July 1962, *SaBl* 1962, p. 1251, respectively). Bremen has now joined most of the federal *Länder* in introducing postal voting for *Landtag* elections (Ordinance of 4 December 1962, *SaBl* 1963, p. 83).

15. THE RIGHT TO THE FREE CHOICE AND EXERCISE OF A PROFESSION OR OCCUPATION

(Universal Declaration, article 23)

In a criminal case, the Federal Court of Justice barred from the defence an attorney who had participated in an action by a third party, on behalf of the accused, against the court which had pronounced judgement. The Federal Constitutional Court (19 December 1962, *DVBl* 1963, p. 291) overruled this bar, which was based on a principle of customary law, as violating the freedom of profession guaranteed in article 12 of the Basic Law. Where the exercise of an occupation or profession was regulated by legislation, as was permitted under the second sentence of article 12, paragraph 1, of the Basic Law, the conflicting interests of the individual and the public must be weighed one against the other. No excessive burden must be placed upon the individual. Since the exclusion of the attorney from the defence did not bear a reasonable relation to the stated cause, it violated the constitutional prohibition of excess.

Under the Shops Closing Act of 1956 (*BGBl* 1956 I, p. 875), automatic vending machines which form part of the business of a shop may be operated at any hour without restriction, whereas machines installed independently may be operated only during shop hours.

This provision, which was intended primarily to protect small shops against competition from vending machines, was ruled unconstitutional by the Federal Constitutional Court (21 February 1962, *NJW* 1962, p. 579). Since vending machines were economic only if operated around the clock, this provision of the Act was an unduly severe, and therefore inadmissible, encroachment on the basic right to the free exercise of a profession or occupation.

Article 232 of the 1959 Federal Ordinance on Attorneys provided that the Saar legislation under which no one might be admitted as an attorney unless he had completed his judicial preparatory service *(Vorbereitungsdienst)* in the Saar was to remain in force until 1964.

The Federal Court of Justice (16 July 1962, *NJW* 1962, p. 2008) had occasion to review this encroachment on the basic right to the free choice of one's place of work. The court noted that the provision in question represented an objective restriction on the choice of his place of work for anyone who had not performed the lengthy period of preparatory service in the Saar. An objective restriction on a person's choice of his place of work, as on his exercise of a profession, was permissible only if it was necessary for the protection of an essential community interest. The court, after weighing the severity of the encroachment on the basic right, in terms of its duration and the extent of its territorial application, against the necessity of easing the reincorporation of the Saar into the Federal Republic by means of transitional legislation, came to the conclusion that in the light of the special circumstances of the Saar such a temporary restriction of the right to the free choice of a place of work did not overstep the limit of what was tolerable, and was compatible with article 12 of the Basic Law.

Whereas the admission to practice of pharmacists or panel doctors may not be subjected to a "need" test (*BVerfGE* 7, p. 377; *BVerfGE* 11, p. 30), the Federal Court of Justice ruled (28 May 1962, *NJW* 1962, p. 1914) that the practice of appointing only as many notaries as were needed for the proper functioning of the courts was lawful. Notaries, who performed official duties, exercised a state-regulated profession, and, while in principle such professions like others enjoyed the protection of article 12 of the Basic Law, they might nevertheless be subjected to special rules barring free access to them as incompatible with the public interest.

The Federal Administrative Court decided (27 February 1962, *DÖV* 1962, p. 385) that the statutory ban on night baking was constitutional. The ban restricted the exercise of an occupation not in order to protect competitors — which would be inadmissible — but for reasons of labour welfare. Since the prohibition of night baking also appeared expedient on reasonable grounds of public interest, this restriction imposed on the exercise of an occupation did not exceed the bounds set by article 12 of the Basic Law.

16. THE PROTECTION OF RIGHTS IN LABOUR LEGISLATION

(Universal Declaration, articles 23, 24 and 25)

A decision meriting particular attention was one in which the Federal Labour Court (29 June 1962, *NJW* 1962, p. 1981) went into the implications for private-law labour relations of the fundamental right to the free choice of a place of work (article 12 of the Basic Law) and to the free development of the personality. Unlike the Federal Constitutional Court, which regards the effect of the basic rights on the private sphere as only an indicrect one,

finding expression in the implementation of the general clauses, the Labour Court proceeded from the premise that the basic right to freedom of profession or occupation, at least, was not purely a defensive right *vis-à-vis* the State, but that it also directly affected the legal relations of citizens with each other. Because of its special importance, freedom of profession or occupation must be considered a matter of public policy, and even private-law contracts must not be contrary to public policy. In view of the prominent place it occupied in the constitutional order, the basic right to freedom of profession or occupation also took precedence over freedom of contract — an element of the basic right to the free development of the personality. The freedom of parties to an employment contract to incorporate in the contract restrictions on a change in the place of work was circumscribed by the terms of article 12 of the Basic Law. The court ruled that a clause in a contract restricting the employee's right to resign, and in particular making the exercise of that right subject to the payment of a sum of money, was compatible with article 12 of the Basic Law if, in the light of all the circumstances of the specific case, the employee could in good faith be required to agree to it and if, from the standpoint of a reasonable observer, it served a legitimate and unexceptionable interest of the employer.

The Federal Labour Court also decided (4 May 1962, *NJW* 1962, p. 1459) that the principle of freedom of contract took precedence over the labour-law principle of equal treatment. The employee could agree, particularly where wages were concerned, to inequality of treatment to his own disadvantage.

17. STATE CARE FOR PERSONS IN NEED OF ASSISTANCE

(Universal Declaration, articles 22 and 23)

The Federal Social Assistance Act of 1961 (*BGBl* 1961 I, p. 815), which codifies the law relating to public welfare, formerly dispersed in several statutes, came into force on 1 June 1962. The Federal Administrative Court (*BVerwGE* 1, p. 159), proceeding on the basis of positive precedent, had already deduced from the spirit of the Basic Law and in particular from the basic right to human dignity that a person in need did not receive assistance only in the interests of public order and as an act of grace, but had a legal claim to it. This claim deduced by the courts from previous judicial decisions was codified in the Federal Social Assistance Act as follows: "All persons shall be entitled to social assistance to the extent provided in this Act" (article 4). The purpose of the Act, which endeavours to increase the self-reliance of persons in need of assistance, is to enable the recipient of assistance to lead a life in keeping with human dignity (article 1).

The Bavarian Constitutional Court ruled (16 July 1962, *DÖV* 1962, p. 822) that the principle laid down in article 20 of the Basic Law, that the Federal Republic is a social State, obliged the State to pursue social activities and to prevent individual groups from being economically repressed or severely disadvantaged. This, however, must not lead to a social perfectionism which would ignore the constitutionally guaranteed rights and freedoms and cripple private initiative.

18. THE RIGHT TO EDUCATION

(Universal Declaration, article 26)

In the Saar, the Private Schools Act of 30 January 1962 (*SaBl* 1962, p. 289) established new regulations governing the legal status of private schools, which require State approval and are under State supervision.

The Youth Welfare Amendment Act of 11 August 1961 (*BGBl* 1961 I, p. 1191; cf. 1961 report) came into force on 1 July 1962. On the question of the status of the Youth Department, the Higher Administrative Court at Münster ruled (20 March 1962, *DÖV* 1962, p. 552) that the Department was the focal point of all youth welfare work. Nevertheless, it must operate in such a way that the autonomy of the voluntary youth services was preserved; consequently, it had no right of supervision over youth associations.

19. PROTECTION OF INDUSTRIAL RIGHTS

(Universal Declaration, article 27)

The courts are striving to find appropriate solutions to the new copyright problems created by television. The Federal Court of Justice held (27 February 1962, *BGHZ* 37, p. 1) that each individual television picture, as a product created by a process similar to photography, enjoyed copyright protection. This applied even to "live" transmissions, i.e., to unplanned pictures which were exposed to the human eye for the first time when they appeared on the screen of a television set. While spoken reports of current events and miscellaneous news of a factual nature might be reproduced without restriction, no such freedom existed in the case of pictorial reports of similar content.

The same court held (18 December 1962, *NJW* 1963, p. 651) that the author's consent was required for the public reproduction of a theatrical work or television play in an inn or restaurant through the medium of a television set.

Under article 11 of the Literary Copyright Act, the author of a spoken work has the exclusive right to present it in public so long as it has not been published. The Federal Court of Justice took the view that a work could not be said to have been published unless it had been issued in a multiple printing available to the public. Where that had not been done, the broadcasting of a spoken work did not constitute publication within the meaning of article 11 of the Literary Copyright Act.

20. INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF HUMAN RIGHTS

(Universal Declaration, article 28)

By an Act of 24 September 1962 (*BGBl* 1962 II, p. 1429), the *Bundestag* approved the ILO Convention concerning the Minimum Age for Admission

to Employment as Fishermen of 19 June 1959. The ILO Convention concerning Discrimination in respect of Employment and Occupation of 25 June 1958 came into force for the Federal Republic of Germany on 15 July 1962 (*BGBl* 1962 II, p. 819).

Lastly, two cultural conventions concluded by the Federal Republic of Germany came into force — that with the Netherlands on 21 April 1962 (*BGBl* 1962 II, p. 497) and that with Pakistan on 30 December 1962 (*BGBl* 1963 II, p. 43).

FINLAND

NOTE[1]

I. LEGISLATION

1. Act No. 134 on Pension Rights of Employees in Short Term Jobs, of 9 February 1962 (*Suomen Asetuskokoelma*, hereinafter referred to as *AsK* — Official Gazette of Finland — No. 134/62), supplements Act No. 395 on the Pension Rights of Employees, of 8 July 1961 (*AsK* No. 395/61), summarized in the *Yearbook on Human Rights for 1961*. Together these Acts constitute a pension system which covers almost all employees. The pensions are either old age or disability pensions and are designed to supplement any other pension to which the employee is entitled.

The cost of this system is paid by the employers who, together with various pension institutes, are responsible for its management.

2. Act No. 218 on the Regulation of Leaseholds in Cities and Country Towns, of 9 March 1962 (*AsK* No. 218/62) is aimed at the protection of tenants who have leaseholds on houses in cities or country towns where they live permanently, provided that the house is used as their residence. Where this Act applies, the period of tenancy is of fifty years or more from the date determined by administrators in accordance with the procedure laid down in this Act. The lease is inheritable and can be transmitted to another person without the consent of the landlord.

When the lease terminates and is not extended as provided by the Act, the landlord is obliged to pay a redemption price to the tenant for his house and other permanent buildings covered by the leasehold. The redemption price is determined by the executors in a special evaluation process.

If the tenant wishes to extend the lease and the landlord does not so wish, the tenant has the option to purchase the property for a specified amount determined by the administrators, in accordance with current price levels, unless a price is agreed upon by the tenant and the landlord. If the tenant has small means, the State may advance him the money, to be repaid in annual installments of six per cent, of which three per cent covers the interest and the rest is used for the amortization of the capital.

3. Decree No. 268 on Libraries, of 30 March 1962 (*AsK* No. 268/62) aims at satisfying the interest in reading. It regulates the functions and administration of communal libraries.

This Decree divided libraries into local or regional ones. Local libraries are divided into two categories: main, and branch libraries. The task of main libraries is to acquire and to keep in depository such amount of Finnish and foreign literature from various fields as circumstances require; to lend books to the inhabitants of the commune and to such educational institutions, clubs and associations as belong to the commune; to maintain a reference library with facilities for reading; to guide the inhabitants of the commune in using the library and, as far as possible, to arrange presentations of literature and to give study guidance; and to provide branch libraries with books to be lent to their users and, if possible, with audiovisual equipment.

The task of branch libraries is to satisfy local needs on a smaller scale. The regional libraries will function as centres for local libraries, lending them books and acquiring and keeping in depository as complete as possible a collection of books concerning their region or closely related to it. Furthermore, the regional libraries are to arrange at least once a year conferences for librarians and acquaint them with their collections and catalogues.

Libraries of hospitals and welfare institutions are to lend books to patients and arrange presentations of literature.

The general administration and supervision of the libraries is vested in the Board of Education and its Inspectors are appointed by the Council of State.

4. Act No. 420 on Mediation of Labour Disputes of 27 July 1962 (*AsK* No. 420/62) regulates the procedure to be followed in the settlement of collective bargaining disputes. In order to further the possibilities for mediation, a new office of State Mediator has been established. A number of District Mediators will also be appointed.

5. Act No. 593, of 7 December 1962, amending article 2 of the Language Act No. 148, of 1 June 1922 (*AsK* No. 593/62).

There exists in Finland a Swedish speaking minority group comprising 7.4 per cent of the population. For historical reasons the Swedish language has been given status of a national language together with Finnish. The right of citizens to use their mother tongue, whether Finnish or Swedish, before courts and administrative authorities and to obtain from them documents in these languages is guaranteed by the Constitution. More detailed provisions concerning both these language groups are incorporated in the above-mentioned Language Act.

[1] Note prepared by Mr. Voitto Saario, Judge of the Court of Appeal, Helsinki, government-appointed correspondent of the *Yearbook on Human Rights*.

Article 2 of this Act was amended in order further to safeguard the rights of linguistic minorities in local communities. According to this article, as amended, a municipal or rural commune shall be considered officially bilingual, if the number of the linguistic minority group is ten per cent or more of the total population in that commune or at least five thousand. The purpose of this provision is to maintain the bilingual status in cities, including the capital, where the proportion of Finnish speaking people is rapidly growing. It also provides that in the case of self-governing districts which comprise several municipal or rural communes all communes will be regarded as bilingual if one is found to be so.

II. INTERNATIONAL AGREEMENTS

1. Decree No. 522, of 28 September 1962, brings into force the Convention on the Recovery Abroad of Maintenance signed in New York on 20 June 1956 (*AsK* No. 522/62). The Ministry of Foreign Affairs is designated to discharge the duties mentioned in article 7, paragraph (a), of the Constitution.

2. Act No. 702, of 21 December 1962, contains provisions concerning the approval and implementation of the Convention between Finland, Denmark, Iceland, Norway and Sweden on the Recovery of Maintenance, signed in Oslo on 23 March 1962 (*AsK* No. 702/62).

GABON

ACT NO. 88/61, TO ESTABLISH THE LABOUR CODE OF THE GABON REPUBLIC

of 4 January 1962

SUMMARY

The text of this Act appears in *Journal officiel de la République Gabonaise*, No. 5, Extraordinary, of 1 March 1962. It applies to all workers, irrespective of sex or nationality.

Section 2 of the Act reads as follows:

"2. Forced or compulsory labour is absolutely forbidden.

"The term 'forced or compulsory labour' means any labour or service demanded of an individual under threat of any penalty, being a labour or service which the said individual has not freely offered to perform.

"The term 'forced labour' shall not apply to obligations arising out of civilian labour service or to any work or service required in the case of *force majeure* such as war, calamity, threatened catastrophe, natural disaster, epidemic or any other circumstances capable of endangering or actually endangering the life of others or normal conditions of existence of the entire population or any part thereof."

The following sections are among the provisions of the Code relating to trade union rights:

"3. Trade unions shall have as their sole object the study and defence of economic, industrial, commercial and agricultural interests.

"4. Persons carrying on the same trade, similar crafts or allied trades associated in the preparation of specific products, or the same profession, or carrying on their occupation or trade in the same administrative district, shall be free to form a trade union. Every worker or employer shall be free to join a trade union selected by him within his own trade, profession or region.

. . .

"7. Married women carrying on a trade or profession may, without the authorisation of the husband, join trade unions and participate in their management or direction subject to the conditions given in the preceding section.

"8. Minors over 16 years of age may join the trade unions unless the father, mother or guardian objects.

. . .

"10. Any member of a trade union may withdraw at any time notwithstanding any clause to the contrary, subject to the right of the trade union to demand the contribution in respect of the six months following withdrawal from membership."

Other provisions of the Code concern individual contracts of employment, apprenticeship, collective labour agreements, wages, hours of work, night work, employment of women and children weekly rest, leave, travelling expenses, health and safety, medical services, labour inspection, staff representation and labour disputes.

The text of the Act and an English translation thereof have been published by the International Labour Office as *Legislative Series* 1962-Gab. 1.

GHANA

PUBLIC ORDER ACT, 1961

ACT NO. 58 OF 1961, ASSENTED TO ON 29 MAY 1961[1]

Part II

PUBLIC MEETINGS AND PROCESSIONS

6. Any person who desires to hold or form any meeting or procession in a public place shall first apply to a police officer not below the rank of Assistant Superintendent of Police, or other authorised public officer for permission to do so; and if such officer is satisfied that the meeting is not likely to cause a breach of the peace, he may issue a permit authorising the meeting or procession and may in such permit prescribe any special conditions, limitations or restrictions to be observed with respect thereto.

7. Where a police officer not below the rank of Inspector of Police, or other authorised public officer, is satisfied that it is necessary in the interest of the public order or the preservation of the peace, he may —

(*a*) Impose restrictions on the use of music, drumming and other instruments or apparatus in connection with meetings and processions in public places;

(*b*) Direct the conduct of meetings and processions referred to in paragraph (*a*);

(*c*) Prescribe —

(i) The route by which and the time at which the procession may pass; and also

(ii) The place and the time at which the meeting may be held.

8. Any police officer not below the rank of Inspector or other authorised public officer, may stop and cause to be dispersed any meetings or processions in any public place —

(*a*) Which is held or formed in contravention of section 6 of this Act; or

(*b*) In connection with which any contravention of any order duly issued under section 7 of this Act is taking or has taken place; or

(*c*) In connection with which any breach of the peace has taken or is taking place or is considered by the officer as likely to take place.

. . .

10. (1) This Part applies to such places as the Minister may, by executive instrument, appoint.

(2) Any place to which the Public Meetings and Procession Regulations, 1954 (L.N.415) applied immediately before the commencement of this Act shall be deemed to have been appointed by instrument under this section.

Part III

CURFEWS

11. (1) If the Minister is satisfied that it is necessary in the interests of public order or the maintenance of the public peace, he may, by executive instrument, impose a curfew in such places as may be specified in the instrument.

(2) Where a curfew is imposed by an instrument made under subsection (1) no person shall be out of doors between such hours as may be prescribed in the instrument except under the authority of a written permit granted by such person or persons as may be specified in the instrument.

(3) An instrument imposing a curfew may exempt from its operation such persons or classes of persons as may be specified therein.

(4) An instrument imposing a curfew may authorise any person specified therein to suspend at his absolute discretion the operation in any specified area or part thereof, of the curfew, and similarly to terminate the suspension and restore the curfew.

. . .

[1] Text printed by the Government Printing Department, Accra.

GREECE

NOTE[1]

1. *Abolition of the preventive measure of prior authorization*

During the armed conflict with the communist guerrillas (1946–1949), the State adopted a number of emergency measures, by means of laws or constitutional resolutions of the Fourth Revisionist Chamber, the duration and application of which were made contingent upon the duration of the communist rebellion, under special clauses inserted in them for that specific purpose.

The effect of these provisions was maintained after the entry into force of the new Constitution (1 January 1952), as a result of the constitutional resolution passed on 16/29 April 1952 by the Chamber which had approved the Constitution.

This series of constitutional resolutions included Constitutional Resolution LB of 22/22 October 1947, which added articles 29 and 30, relative to the press, to constitutional resolution C of 18/18 June 1946 concerning "emergency measures with respect to public order and security".

Under article 29 of constitutional resolution C, the publication of a newspaper or periodical was allowed after it had been authorized by the Under-Secretary of State attached to the Office of the Prime Minister acting in consultation with a Committee composed of the Permanent Under-Secretary for Press and Information, the State Counsel of the Athens Appeal Court, a senior officer of the General Staff of the Army, and the President of the Union of Athens Newspaper Editors. The validity of the article was made contingent upon the duration of the communist rebellion.

Under article 30 of constitutional resolution C, the publication and distribution of any printed matter, with the exception of newspapers and periodicals published in accordance with the law, was subject to written authorization by the local police. It is to be noted that the effect of that article was not made contingent upon the duration of the communist rebellion.

These preventive measures regarding the Press were perfectly justified during the disturbed period through which our country passed during and just after the communist rebellion.

With the complete restoration of order, and economic and political stability, the Government decided that there was no need to retain such emergency measures, and that the constitutional resolutions and laws whose validity was linked with the duration of the communist rebellion should be abrogated. There was accordingly passed legislative decree No. 4234 of 23/30 July 1962 "governing matters affecting the security of the nation"; under this instrument, the emergency measures mentioned therein were terminated and others were restricted, only the essential defence measures against communism and the Communist Party (outlawed with the agreement of all parties except the extreme Left) being maintained.

Article 1, paragraph 1, of the aforesaid legislative decree provides as follows:

"Upon publication of this decree, the following provisions shall be repealed: *(a)* the provisions of laws in force whose application, under a special clause contained therein, is made contingent upon the duration of the rebellion, *(b)* article 30 of constitutional resolution C/1946, as introduced by constitutional resolution LB/1947."

This provision resulted in the abrogation of article 29 of constitutional resolution C, whose validity had been made to coincide with the duration of the rebellion, and of article 30 of the same constitutional resolution, whose abrogation was explicitly ordered.

Consequent upon the abrogation of articles 29 and 30 of constitutional resolution C, freedom of the Press in Greece is now governed exclusively by section 14 of the Constitution. (See *Yearbook on Human Rights for 1951*, p. 116.)

2. *Act No. 4223/1962, "on the resettlement of refugees coming within the competence of the United Nations and other categories of refugees"* (Government Gazette *No. 21/62*)

This Act provides for the resettlement, from the point of view of housing, the practice of a trade, and any other form of assistance, in accordance with legislative decree No. 3989/59 and on the basis of programmes prepared by the Ministry of Social Welfare, of refugee families in Greece coming within the competence of the United Nations High Commissioner for Refugees and having been recognized as doing so by the representative of the said High Commissioner in Greece.

3. *Act No. 4227/1962, "on day nurseries"* (Government Gazette *No. 49/62*)

Measures are taken under this Act to improve conditions in day nurseries, particularly from the standpoint of the psychosomatic development of infants, in accordance with modern principles of child care.

[1] Note communicated by the Greek Government.

4. *Legislative decree No. 4241/1962, "ratifying the Agreement between the Greek Government, the World Health Organization and the United Nations Children's Fund, etc."* (Government Gazette *No. 139/62*).

This decree ratifies, *inter alia*, the agreement of 25 November between the Greek Government, on the one hand, and the World Health Organization and the United Nations Children's Fund, on the other hand, to promote general mother and child welfare through the preparation of a general public health programme covering medical care, disease prevention and health education.

5. *Legislative decree No. 4254/1962, "ratifying the Universal Copyright Convention and Protocols 1, 2 and 3 annexed thereto"* (Government Gazette *No. 166/62*)

This decree ratifies the Universal Copyright Convention signed at Geneva on 6 September 1952. This convention, additional to those already in force, ensures the protection of, respect for and development of literature, the sciences and the arts, thus increasing international understanding.

6. *Legislative decree No. 4258/1962, "ratifying the International Convention for the Safety of Life at Sea, signed at London, and some further provisions relating to the transport of emigrants"* (Government Gazette *No. 183/62*)

This decree on the one hand ratifies the International Convention for the Safety of Life at Sea, signed at London on 17 June 1960, by means of provisions, adapted to modern shipbuilding and sea transport requirements, laying down the indispensable requirements for the safety of seafarers, and, on the other hand, deals with matters relating to the inspection of ships transporting Greek emigrants from Greek ports, to ensure that such emigrants enjoy standards of accommodation, hygiene and feeding, and general living conditions as will facilitate their psychological preparation for their change of environment.

7. *Legislative decree No. 4259/1962, "ratifying the Conventions between Greece and Germany on Social Insurance and Unemployment Insurance"* (Government Gazette *No. 184/62*)

This decree ratifies the conventions between the Kingdom of Greece and the Federal Republic of Germany, on Social Insurance and Unemployment Insurance concluded at Bonn on 25 April 1961 and 31 May 1961 respectively. The object of these conventions is to ensure that employed persons of Greek nationality who are employed in the Federal Republic of Germany enjoy insurance conditions and coverage (with respect to insurance against illness, disablement, old age and death, industrial accidents and unemployment, maternity insurance and family allowances) identical with those enjoyed by German employed persons, and vice versa. Similarly, the social insurance rights of employed persons who are nationals of either of the contracting States are guaranteed, in whichever State they are employed.

8. *Legislative decree No. 4264/1962, "supplementing provisions relating to the protection of literary and artistic works"* (Government Gazette *No. 187/62*)

This decree provides, *inter alia*, that Greek nationals have the right to request the application in their favour of the provisions of the International Convention revising the Berne Convention for the Protection of Literary and Artistic Works, signed at Brussels on 26 June 1948 and ratified by Greece under Act No. 3565/1956, wherever those provisions are more favourable than those of Greek law on the protection of literary and artistic works.

9. *Legislative decree No. 4271/1962, "ratifying the Cultural Convention between Greece and India"* (Government Gazette *No. 188/62*)

This decree ratifies the Cultural Convention between Greece and India, signed at Athens on 22 June 1961, to strengthen the bonds of friendship between the contracting countries by exchanges of representatives and missions in the scientific and artistic fields, exchanges of teachers, research workers, authors, and students, by the reciprocal grant of scholarships, by mutual visits and participation in scientific, artistic and sports congresses, by the exchange of every kind of scientific and educational material, etc.

10. *Legislative decree No. 4277/1962, "concerning retirement pensions for doctors on the staff of the Institute of Social Insurance and some other categories of workers"* (Government Gazette *No. 191/62*)

This decree gives doctors on the permanent staff of the Institute of Social Insurance the right to a pension on superannuation or on retirement for reasons of physical or mental incapacity. It also provides for the granting of a pension to members of the family of a deceased doctor. Similar arrangements are provided for lawyers and engineers employed as salaried members of the staff of the Institute of Social Insurance. The wider objective of this legislative measure was the abolition of the unequal treatment with respect to retirement pensions previously accorded to persons employed by social insurance bodies, in line with the already initiated policy of placing persons employed by public corporations on the same footing as persons employed by the State.

11. *Legislative decree No. 4282/1962, "extending the validity of Royal Decree No. 27/2 of May 1957 'on the freezing of rents, etc.'"* (Government Gazette *No. 218/62*)

This decree provides for the extension of the validity of the rent freeze, as it exists today, until the end of December 1963, so as to permit its provisions to be amended, supplemented or rescinded up to that date, while fixing a new time-limit for the exercise of the owner's right of personal occupation.

This extension was considered indispensable as the Government had reached the conclusion that the time was not yet ripe for the immediate and complete abolition of the rent freeze, in view of the fact that the social need to protect the poorest classes still existed, necessitating the maintenance in force of the present restrictions regarding property.

GUATEMALA

DECREE NO. 1,560: LAW ON THE REDUCTION OF SENTENCES THROUGH LABOUR

Entered into force on 15 December 1962[1]

Art. 1. — Final sentences involving the loss of liberty may be reduced by means of education and paid work, provided that the term of the sentence is not less than two years and that the prisoner has an average degree of adaptability according to the classification of the Institute of Criminology.

The adaptability classification shall not be final and may be revised if there is a change in the prisoner's personal qualifications. In such cases, the reduction shall be calculated from the date of the revised classification.

Art. 2. — Persons sentenced to terms of less than two years and persons classified as not easily adaptable shall be entitled to education and paid work but shall not be eligible for a reduction of their sentences.

Art. 3. — If a person who has benefited under this Act commits another offence before the expiry of a period equal to the remitted part of his sentence, calculated from the date of his release, he shall not be entitled again to remission but shall be entitled to education and paid work.

Art. 4. — For each day of education plus one day of work a prisoner shall be entitled to one day's reduction of his sentence.

For unselfish acts, acts of heroism or any other demonstration of significant humanitarianism, a prisoner shall be entitled to an additional reduction which shall be determined by the President of the Judiciary on the recommendation of the Central Prisons Board.

The following shall be exempt from the education requirement and shall be entitled to qualify for a reduction of sentence through labour alone:

(a) Persons who have completed their primary education; and

(b) Persons over 40 years of age who can read and write.

Persons over 40 but under 60 years of age shall be entitled to qualify by learning only to read and write. Persons over 60 years of age shall be entitled to qualify by working only, even if they have no education at all. Persons who do not know how to speak Spanish must begin learning it under a special plan.

Special programmes shall be set up for educating prisoners, so far as possible in conformity with the official plans for primary education. Regulations to be established shall determine the procedure for checking whether attendance at school has been sufficiently beneficial, and whether the work done has been sufficiently satisfactory, to qualify for a reduction of sentence.

Art. 5. — Prisoners performing labour to secure a reduction of their sentences shall receive the remuneration determined by the Central Board; such remuneration shall in no case be less than the minimum paid by the respective commissions appointed by the Ministry of Labour and Social Welfare for the type of work done.

Remuneration shall be broken down as follows:

(*a*) Thirty-five per cent of the remuneration shall be paid to the prisoner upon his release, as a security fund against the commission of any new offence;

(*b*) Fifty per cent of the remuneration shall be paid to the prisoner's wife and children, or if he has none, to such other members of his family, dependent upon him, as he shall designate; if no such persons exist, this portion shall be added to his quota in the security fund;

(*c*) Fifteen per cent of the remuneration shall be paid directly to the prisoner for his personal use; and

(*d*) In the case of unmarried prisoners, an effort should be made to organize this break-down so as to leave a larger amount in reserve; in the case of married prisoners, the entire amount specified in paragraph (*a*) may be paid to the members of the prisoner's family in accordance with the law.

The aforesaid percentages may be modified, as necessary and convenient, in accordance with the general provisions of the Central Higher Board or the Departmental Boards to be designated.

Art. 6. — If a prisoner commits any of the following offences, the privileges acquired under this Act up to the date on which the offence was committed shall be forfeited as specified:

(1) *Forfeiture of all privileges*

(*a*) A grave offence committed within the establishment or place of work;

(*b*) Vicious habits repeated after three warnings.

(2) *Forfeiture of half the privileges*

(*a*) A minor offence committed at the places referred to in sub-paragraph (*a*) of the preceding paragraph;

[1] Text published in *Diario Oficial* of 29 November 1962 and furnished by the Government of Guatemala.

(*b*) Escape or attempted escape; and

(*c*) Serious misconduct (infracción) committed at the aforesaid places.

If the misconduct is of a minor nature, the amount of time to be forfeited shall be left to the discretion of the competent authority.

. . .

Art. 8. — Income so earned shall be at the exclusive disposal of the Higher Board and the Departmental Boards, which shall in all cases allocate it as provided for in the preceding article.

They shall in no case be paid into the national treasury.

Art. 9. — Every prisoner shall, during such time as he is entitled to benefit from the labour privilege, be affiliated with the Guatemalan Social Security Institute (IGSS), contributions to which shall be paid in the same manner as is provided by law for workers who are at liberty.

Art. 10. — A Central Prisons Board, consisting of the members listed below, is hereby established:

(*a*) The Director of the Institute of Criminology;

(*b*) The Inspector-General of Prisons;

(*c*) A representative of the Ministry of Labour;

(*d*) A representative of the Ministry of Education;

(*e*) The Head Chaplain of the Prison Welfare Branch.

For each member an alternate shall be appointed by the authority entitled to appoint the member.

Delegations of this Board shall be established at the departmental prisons; the Central Board shall be responsible for their organization and functioning.

The Board shall perform, *inter alia*, the following functions:

(1) Determine the type of work to which each prisoner is to be assigned;

(2) Supervise the work to determine whether it is effective and entitles the prisoner to the reductions provided for under this Act;

(3) Endeavour to secure appropriate compensation for the products of prison work, which shall in no case be at a rate lower than that paid to workers who are at liberty;

(4) Supervise the distribution of the wages paid for prison work; and

(5) Decide whether misconduct (infracción) is of a serious or less serious nature and determine the appropriate amount of benefit to be forfeited, where the latter is not specified. This decision shall be without prejudice to any sanctions which may be imposed on the prisoner by the administration of the establishment.

Art. 11. — A member of the Higher Board or the Departmental Board appointed for the purpose shall supervise the funds received and shall establish rules, in accordance with the regulations for *pro rata* distribution of the total income.

Art. 12. — The State shall give such preference in the execution of State services and projects which are compatible with the attitudes of the prisoners, as will ensure timely and effective implementation of this Act. Similarly, the Ministry of the Interior and Justice shall seek to interest private enterprises in concluding individual and collective employment contracts at the various penal centres and prisons.

Art. 13. — The State shall promote the establishment of penal farms in order to improve the employment qualifications and skill in farming techniques of prisoners. Similar measures shall be taken in the fields of handicrafts and industrial manufacturing. Workers shall in every case receive the wages to which they are entitled under the provisions of the appropriate regulations.

Art. 14. — The application of the benefits provided under the present articles shall be without prejudice to the opportunities for conditional release referred to in Congressional Decree No. 1484 and other earlier Acts which benefit persons confined in the nation's prisons.

For this purpose, two months before the completion of the term required to be served in order to gain entitlement to benefits under congressional decree No. 1484, the Central Prisons Board shall recommend to the Institute of Criminology the conditional release of the prisoner. If following a mental and physical examination of the prisoner, the Institute is of the opinion that he may be so released, it shall transmit the recommendation to the President of the Judiciary for his decision, to be rendered in conformity with the said decree. Calculations shall be made in accordance with the system of remission of sentences through labour in the case of those who are serving sentences under that system.

Art. 15. — The President of the Judiciary shall have the exclusive right to apply this Act, *ex officio*, or at the request of the Central Board, in accordance with the prior decision of the Institute of Criminology in each case.

. . .

HAITI

NOTE[1]

I. Constitutional Developments

Strictly speaking, there were no constitutional developments during the year under review. It may be appropriate, however, to mention here, despite its restrictive character, the legislative decree of 15 September 1962, suspending the constitutional safeguards laid down in the Constitutions of December 1957 and granting full powers to the Head of the Executive for a period of six months with a view to the adoption of all economic and financial measures necessary for the efficient operation of State organs, semi-independent agencies and public services in general, the stabilization of public finances, economic recovery and the protection of the interests of the nation (*Moniteur*, No. 83, of 17 September 1962).

II. Legislative Developments

1. Act of 16 May 1962 replacing the Rural Code of 1864 by a new Code adapted to present conditions and protecting the rights of the peasant (*Moniteur*, Nos. 51 and 52, of 28 and 31 May 1962).

2. Act of 25 July 1962 laying down the procedure for obtaining a health card and specifying the agency in the Department of Labour and Social Welfare competent to issue such cards (*Moniteur*, No. 73, of 13 August 1962).

3. Act of 13 August 1962 amending certain provisions of Chapter VI of Act No. 5 of the François Duvalier Labour Code which experience had shown to be ineffective or insufficient to ensure equitable protection of the interests of all parties to labour disputes (*Moniteur*, No. 78, of 30 August 1962).

4. Decree of 19 November 1962 amending article 20 and rescinding section 7 of article 22 of the Act of 6 October 1961 on the functions of the Haitian Social Welfare and Research Institute (*Moniteur*, No. 109, of 22 November 1962).

III. International Agreements

1. Convention concerning the Rights of Association and Combination of Agricultural Workers, adopted at Geneva on 25 October 1951, which was approved and ratified by a legislative decree of 9 March 1962 (*Moniteur*, No. 26a, of 12 March 1962).

2. Convention concerning Discrimination in respect of Employment and Occupation, adopted at Geneva on 4 June 1958, which was approved and ratified by a legislative decree of 9 March 1962 (*Moniteur*, No. 26a, of 12 March 1962).

3. Convention concerning Freedom of Association and Protection of the Right to Organize, adopted at San Francisco on 17 June 1948, which was approved and ratified by a legislative decree of 9 March 1962 (*Moniteur*, No. 26a, of 12 March 1962).

[1] Note furnished by Dr. Clovis Kernisan, Dean of the Faculty of Law at the University of Port-au-Prince, government-appointed correspondent of the *Yearbook on Human Rights*.

HONDURAS

AGRARIAN REFORM LAW

LEGISLATIVE DECREE NO. 2 OF 29 SEPTEMBER 1962[1]

SUMMARY

The purpose of this law is to replace the systems of large estates [latifundia] and small holdings [minifundia] by an equitable system of land ownership, tenure and operation, based on the fair distribution of the land in areas of economically profitable size, satisfactory organization of credit and full assistance to agricultural producers. In this manner, the Honduran people in general and the rural population in particular are to be incorporated into the economic, social and political development of the nation.

In addition to the revenue obtained from the sale of land, funds to carry out the Agrarian Reform programme will be derived principally from annual appropriations of the state budget, loans and bond issues.

The State may expropriate privately-owned land upon which the social function of land ownership is not fulfilled, and land on which the social function is fulfilled may be expropriated for causes of public interest and necessity or of social interest. Failure to comply with article 7 (*a*) — (*d*) is to render land subject to expropriation. Article 7 of the law states:

"The social function of the private ownership of land is hereby recognized. Every landowner shall be required:

"(*a*) To cultivate his property directly or to supervise and take financial responsibility for its cultivivation, except in the special cases of indirect exploitation referred to in this Law;

"(*b*) To operate efficiently the total area of land belonging to him except for forest reserves established for each holding by the General Directorate of Natural Resources;

"(*c*) To comply faithfully with enactments relating to hired agricultural labour and other agricultural labour relations;

"(*d*) To comply strictly with tax legislation relating to real property;

"(*e*) To comply with health legislation and to co-operate in agricultural development programmes carried out by the appropriate authorities in the region in which the holding is located;

"(*f*) To enter the rural property in the National Agrarian Cadaster; and

"(*g*) To co-operate in the preservation of natural resources."

The National Agrarian Institute is to be responsible for the application of this Law and is to rely on the advice of a National Agrarian Council composed of five landowners and three alternates, appointed by the President of the Republic.

State lands ejido lands[2] under specified conditions and privately owned land not considered immune from expropriation under this Law are to be at the disposition of the Institute. With certain exceptions, the following land and property shall be immune from expropriation: (*a*) a maximum of 50 hectares of exploited irrigated land, or the equivalent thereof in other categories of land; (*b*) bounded land used for stock-raising where the owner possesses one head of cattle or five heads of smaller livestock per two hectares, or when it is cultivated for any kind of fodder; (*c*) any category of land exploited in accordance with the social function of land ownership; (*d*) except as they are considered indispensable for the operation of expropriated land, buildings, constructions and industrial or commercial installations of private agriculture enterprises; (*e*) land bordering on population centres, in an area sufficient to allow their demographic expansion in accordance with studies carried out in each case by the Institute, and land set aside for the common use of the inhabitants; and (*f*) areas subject to reafforestation operations, national parks and forests, forest reserves and protective zones, river beds, lakes and lagoons. Usually, holdings of an area equal to or less than five hectares shall be considered indivisible. Pending any act of expropriation, privately owned uncultivated, idle or poorly farmed land is to become subject, two years after the entry into force of this Law, to an annual progressive tax.

Where the land is privately owned, the Institute is to acquire it for valuable consideration in agreement with the owner, or failing this, by expropriation. Expropriation of land for agrarian purposes must be made for a cash payment, the amount of which is to be decided by experts, of whom one shall be named by the Institute and another by the owner and, in case of a disagreement, the decision is to be made by a third named by the Office of the Comptroller-General of the Republic.

[1] Published in *La Gaceta* No. 17,843, of 5 December 1962. English and French translations have been published in *Food and Agricultural Legislation*, 1962, vol. XII, No. 1, of the United Nations Food and Agriculture Organization.

[2] Land held in common by the inhabitants of the community.

Any member of the rural population is to be eligible to receive the grant of a parcel of land who: (1) is Honduran by birth; if male, over 16 years of age if single, or of any age if married; if female, single or a widow with a dependent family; (2) has agricultural work as his regular occupation; (3) does not possess, in his own name or with right to acquisition, land of an area equal to or greater than the unit of grant; and (4) does not possess private capital in industry or trade in excess of 1,000 lempiras, or agricultural capital in excess of 2,000 lempiras.

Granting of land must observe the following priority: (*a*) rural population members currently cultivating land in the agricultural development zones planned by the Institute, as tenants, sharecroppers under various systems, settlers or squatters, or under any other form of indirect exploitation, whatever their age and marital status; those who have been evicted from the land being granted and Honduran farmers possessing land of an area less than the units established for the respective zones, to the extent necessary to attain the size of such units; (*b*) owners of minifundios which have been expropriated; (*c*) female members of the rural population with dependent families; (*d*) male members of the rural population with dependent families; (In the above two cases preference is to be granted to persons having the greatest number of dependents.) (*e*) members of the rural population without families and land, not under 16 nor over 60 years of age, younger persons being preferred; (*f*) Honduran graduates from agricultural or veterinary schools, grange schools, and other similar institutions; and (*g*) single Honduran males over 16 years of age, not having agriculture or animal husbandry as their regular occupation, but desiring to exercise one of these occupations.

Generally, the area of the unit of grant shall not be less than 10 hectares nor more than 20 hectares of irrigated land, or the equivalent thereof in land of other categories. Usually, lands shall be awarded tax exempt, for valuable consideration which ordinarily shall be payable in not less than ten nor more than twenty years with no down payment required. The holder of the parcel shall be required to pay punctually the annual instalments; cultivate or operate it efficiently each year; comply with ordinances of the Institute with respect to the erection of his dwelling and as regards contributions of labour or money to works of collective benefit in the new agrarian centre; reside peacefully and morally within the community; and send his children to the nearest school for primary education. The instalment periods and regulated interest on the price of the parcel shall begin one year after the beneficiary has taken possession thereof.

The law deals also with the operation of new agrarian centres, farm credit service, technical and social assistance, marketing of agricultural products, agricultural contracts, tenancy contracts, farm-industry contracts, zoning and conservation of natural resources, and water and irrigation works.

HUNGARY

NOTE[1]

1. Legislative Decree No. 8 of 1962, on Criminal Procedure

The framing of Act V of 1961 on the Code of Criminal Procedure made it necessary to amend the relevant statutory rules. Advance in the construction of socialism calls for better safeguards of socialist legality. The basic principles laid down in the legislative decree have already taken solid shape in socialist legislation. Such principles are: guarantee of personal liberty, right of defence, free balancing of evidence, assurance of publicity and guarantee of the use of the mother tongue. These provide safeguards for the detection of crimes and for a just application of the penal law, while promoting the prevention of crimes and a decline in the number of criminal cases. The legislative decree extends the rights of the defence, follows the principles of humanitarianism by providing for minors left without the necessary care and guarantees strict legality in criminal proceedings, taking into account the interests of the broadest strata of society.

Extracts from the legislative decree follow:

Art. 3. (1) Criminal proceedings may be instituted in accordance with the law, and only against a person under reasonable suspicion.

(2) No one shall be deprived of his personal liberty, except in cases and ways stipulated by law.

(3) Those authorities which are empowered by law to inflict a penalty of imprisonment or restriction of personal liberty shall be careful not to apply any unlawful measures affecting personal liberty; and, should such measures be applied, they shall take immediate steps to revoke them.

Art. 6. (1) The authorities proceeding in criminal cases shall not be subject to formal rules of evidence, or to any specific means of accepting evidence, but shall be free to use any evidence that may be conclusive in a case.

(2) The confession of the defendant shall not, in itself, render other evidence unnecessary.

Art. 7. (1) The authorities proceeding in criminal cases are required to ensure the defendant the freedom to defend himself in the way stipulated by law.

(2) Counsel for the defence may take action on behalf of the defendant at any stage of the proceedings. The defendant shall be entitled to choose an attorney immediately upon the institution of proceedings against him.

Art. 10. (1) Court trials shall be held in public.

(2) If necessary for the preservation of state secrets or official secrets, or for moral reasons, the court may at any time, and by a duly motivated decision, order the public excluded from all or part of the trial. In such case, however, the court may permit certain officials to attend the trial.

(3) The pronouncement of a judgement shall normally take place in public.

Art. 11. Court proceedings shall be conducted in Hungarian. No one shall be at a disadvantage on account of his ignorance of Hungarian. Any person having no command of Hungarian may use his mother tongue for speaking and for writing purposes throughout the proceedings.

Art. 120. (1) Detention under remand may be ordered only in case when:

(a) The defendant caught *in flagrante delicto* cannot be identified;

(b) The defendant has escaped or is hiding from the authorities, or because of the severity of the punishment imposed for the crime with which he is charged, or for any other reason, it is to be feared that he may escape or go into hiding;

(c) There is good reason to believe that the defendant, if left at liberty, would prevent, or render difficult, the ascertaining of the facts of the crime;

(d) The defendant has committed another crime during the proceedings, or it is to be feared that, while at liberty, he would commit the act which he had attempted, or commit another crime;

(e) Leaving the defendant at liberty, in view of the nature of the crime, would disturb public peace and security.

(2) Detention under remand is permissible only in cases of crimes for which the law decrees a penalty of imprisonment.

(3) In cases where criminal proceedings are possible only upon a civil action, detention under remand shall not be ordered until the civil action has been completed.

Art. 121. (1) Decision to order, maintain and terminate detention under remand shall be made during the investigation by the public prosecutor or, with the latter's approval by the investigating authorities after court arraignment.

(2) If, by a decision made during the preliminary hearing, the court returns a case for further investigation, the public prosecutor is called upon to decide on detention under remand.

(3) Detention under remand and its maintenance shall be ordered by a written decision. This shall indicate the identity of the defendant, the reason for the proceedings and the reason for ordering detention under remand or its maintenance.

[1] Note furnished by the Government of Hungary.

(4) Detention under remand of any person in the employ of a state organ, social organization or cooperative, or of any member of a co-operative, shall be communicated without delay to the head of the respective organ. The relative designated by the person held in detention under remand shall also be immediately notified.

Art. 122. (1) If the person held in detention under remand has left a minor without the necessary care, the child shall be given in charge of one of its relatives or another appropriate person or institution, after the hearing has been held.

(2) If the person remanded in custody has property or a home which needs care, such action shall be taken as may be necessary to supply such care.

(3) The action taken in accordance with paragraphs 1 and 2 of this Article shall be communicated to the defendant and the guardianship authority shall be informed of the action taken in accordance with paragraph 1.

Art. 123. (1) Detention under remand, as ordered or approved by the public prosecutor, shall continue until the preliminary hearing, but no longer than one month. If justified by the extreme complexity of the case, the county or municipal attorney general may extend the period of detention for a further two monhs.

(2) After the expiration of the three-month period, detention under remand may only be maintained by order of the chief public prosecutor.

Art. 124. (1) If at the time of arraignment the defendant is held in detention under remand, the court shall decide at a preliminary hearing, held within fifteen days, whether to continue or to terminate such detention.

(2) If detention under remand is ordered before the final decision of the court of first instance, or maintained according to paragraph 1 of this Article, it may continue until the pronouncement of the final decision by that court, and if the public prosecutor, the defendant or the attorney reserve the right to appeal against it within three days, it may continue until the appeal is made.

Art. 125. (1) Until the defendant is taken into the custody of the public prosecutor, detention under remand shall be effected by the investigating authorities that have ordered it; otherwise it is up to the public prosecutor to effect detention under remand.

(2) The person remanded in custody shall be, if possible, kept isolated from others under detention, but in any case he must not be kept together with others who committed the same crime.

(3) Correspondence of defendants remanded in custody, and their communications with others shall be controlled. The defendant may freely communicate with his attorney. If, however, it is feared that such communication may in any way jeopardize successful proceedings, communication with the attorney shall also be controlled.

Art. 126. (1) The authorities shall ensure detention under remand to be of the shortest possible duration, by concluding the investigation as soon as possible.

(2) Detention shall be terminated upon the conclusion of investigations, or when the cause for detention no longer exists, or in case the maximum detention time has expired.

(3) The public prosecutor shall be notified immediately upon the court's termination of detention under remand.

Art. 127. Instead of imposing detention under remand, the authority empowered to do so may, with good reason, forbid the defendant to leave his residence without permission. Such decision must be made in writing, be reasoned and be signed by the defendant. If the defendant does not comply with this prohibition he may be remanded in custody. The defendant shall be informed of this consequence at the time of the imposing of the prohibition.

Art. 128. (1) A defendant who is likely to be ordered to undergo a compulsory cure may be detained by the public prosecutor and assigned to a special health institute on a temporary basis.

(2) A person detained under remand, who must undergo a temporary compulsory cure, shall be ordered to do so by the public prosecutor without being set free.

(3) If the public prosecutor terminates detention under remand on grounds of insanity, becoming apparent after the perpetration of the crime, he shall make arrangements for placing the defendant in an institution for the mentally disturbed or shall have him treated at home without setting him free.

(4) The rules governing the duration and enforcement of detention under remand shall apply equally in cases in which compulsory cure of a temporary nature is required.

Art. 151. Search of a home or other premises is permitted in cases where there is good reason to assume that this may assist in the apprehension of a criminal in the finding of clues or finding some material proof of the crime.

Art. 152. (1) In order that a search of premises may be made, the investigating authority must issue a writ to be served on the person concerned before such search may commence.

(2) Such writ may be dispensed with: *(a)* if there is danger in delaying a search; *(b)* if the person caught *in flagrante delicto* has escaped, or if his detention under remand has been ordered; *(c)* if a search of premises is necessary in order to prevent a crime.

Art. 153. (1) The accused and any other person of whom it can be assumed with good reason that he is concealing on his person an object constituting evidence, may be searched, by an order of the investigating authority.

(2) Before the search is begun, the person concerned must be requested to produce the desired object.

(3) The search of a person shall take place in the presence of two witnesses, representing the authorities.

Art. 154. (1) Seizure, search of a house and search of a person shall be carried out in a considerate

manner and care must be taken that during the enforcement of these measures such circumstances of private life as do not concern the case should not be made public, and that such measures should, if possible be enforced in the daytime.

(2) Care must be taken in follwing such procedure, to avoid causing injury to the person concerned.

(3) The record of seizure, house search or personal search must indicate whether the object required as evidence was produced voluntarily, or whether it was found during investigation; it shall also indicate where and under what circumstances the required object was found.

(4) Search of a person must be performed in the presence of persons of the same sex as the one concerned.

(5) If criminal proceedings are permissible only upon a civil action, seizure, house search or personal search shall not be made until civil action has been taken.

Art. 287. (1) If the defendant has been ordered to undergo a compulsory cure, the court of first instance shall re-examine the case three months before the expiration of one year, following the beginning of the compulsory cure, and if the compulsory cure is found no longer necessary, it shall be terminated. This procedure shall be repeated each year, until the compulsory cure can be terminated.

(2) Any court having jurisdiction over the territory where the defendant is undergoing compulsory cure, if it has equal authority to the court of first instance, shall be competent to terminate compulsory cure, if so suggested by the public prosecutor.

(3) In addition to the case referred to in paragraph 1 of this Article, compulsory cure shall be also terminated if, upon the suggestion of the public prosecutor, at the request of the person undergoing the compulsory cure or at the request of his spouse, his legal representative or his attorney, or as the result of a procedure instituted upon the suggestion of the head of the health institute, the court finds the compulsory cure no longer necessary.

(4) Upon ordering release from the health institute, the court may also rule that the compulsory cure shall be continued at home under a doctor's care. The provisions of paragraphs 1 and 3 of this Article shall apply equally in the case of compulsory medical treatment at home.

(5) Decisions on terminating compulsory cure and relating to paragraph 4 of this Article shall be taken by the court during the trial. During the trial hearing, the public prosecutor and the counsel for the defence shall be heard and also, in some circumstances, the defendant subjected to compulsory cure. If justified by the circumstances of the case, the court may order that the psychiatrist who had treated the defendant should be heard.

2. Legislative Decree No. 26 of 1962, regulating Certain Questions concerning Labour Relations

The Government of the Hungarian People's Republic considers it a matter of primary importance to create proper working conditions for women, in order that they should be free to exercise the duties of motherhood. Prior to the enactment of this legislative decree, women were entitled to twelve weeks of maternity leave.

Extracts from the legislative decree follow:

Art. 1. Article 97 of Legislative Decree No. 7 of 1951, on the Labour Code, as amended by Legislative Decree No. 25 of 1953, shall be superseded by the following provisions:

"(1) Pregnant women or women in labour shall be entitled to twenty weeks maternity leave. In cases of complicated delivery, the maternity leave may be prolonged, upon the doctor's advice, by another four weeks.

"(2) Four weeks of the maternity leave shall be granted before confinement. At her request, however, the working woman shall be permitted to take her whole maternity leave following the childbirth if, in the doctor's opinion, working prior to confinement will not imperil her health.

"(3) Allowances for the period of maternity leave shall be paid in accordance with social insurance provisions.

"(4) The rules governing the granting of maternity leave shall be established by the Minister of Labour in concert with the Minister of Health and the National Council of Trade Unions."

Art. 2. Paragraph 4 of article 98 of the Labour Code shall be superseded by the following provision:

"(4) At the request of the working woman, the manager of the enterprise in which she is employed shall grant her, after the expiration of the maternity leave, leave without pay for the purpose of nursing her child, until the child reaches three years of age."

3. Legislative Decree No. 27 of 1962, modifying Legislative Decree No. 39 of 1955, on the Health Insurance of Working People

The Presidential Council of Hungary, by issuing this Legislative decree, has made it possible for working people to receive free hospital treatment, without time limit. The extension of free hospital treatment is a contribution toward the betterment of standards of living.

Extracts from the legislative decree follow:

Art. 1. Paragraphs 1 and 2 of Article 9 of Legislative Decree No. 39, of 1955 shall be superseded by the following provisions:

"(1) Working people in need of hospital treatment shall be entitled to such treatment within the framework of health insurance, without time limit.

"(2) Dependants of working people shall be entitled to ninety days of free hospital treatment during every calendar year, within the framework of health insurance."

Art. 2. Working people receiving disability pensions or allowances, as well as seasonal workers employed in the industry, shall be entitled to sick pay in accordance with general provisions; in this respect article 12 of Legislative Decree No. 39 of 1955 has become void.

4. Order in Council No. 46/1962 (xii. 24), modifying Certain labour regulations

The following are extracts from this order:

Art. 1. A provision forbidding the termination of employment of the following, shall be added to article 37 of Order in Council No. 53/1953 (XI. 28), on the Application of Labour Code:

"(*i*) Working women who have taken leave without pay for the purpose of nursing their child; for the period of the leave without pay and for the following fifteen days;

"(*j*) The worker who has signed a work contract, with the permission of the competent organs, with an international organization abroad, a foreign governmental or other institution, or while fulfilling an interstate agreement; during the period for which he contracted and for the fifteen days following."

5. Order in Council No. 48/1962 (xii. 24) amending Order in Council No. 67/1958 (xii. 24) on the Social Insurance Pension of Working People

The following are extracts from the Order:

Art. 1. Article 46 of Order in Council No. 67/1958 (XII. 24) shall be superseded by the following provisions:

"(1) If the old-age or disability pensions taken as a basis for computing widows' pensions amount to a maximum of Ft. 500 to Ft. 1,000 per month, the widows' pensions shall be 20 per cent higher than the amount established according to Article 32 of the Pension Act, but shall be no more than Fr. 500 a month. The widows' pensions must not, however, amount to less than Ft. 350 a month.

"(2) If the old-age or disability pensions taken as a basis for computing the widows' pensions are less than Ft. 500 a month, they shall be 20 per cent higher than the amount established according to Article 32 of the Pension Act, but shall be no less than Ft. 150."

6. Order in Council No. 25/1962 (vii. 14) adding to Certain Regulations concerning Working People's Leave and Average Earnings

Several Orders in Council regulate assistance to the blind in Hungary, in order to create the best possible living conditions for them. This endeavour underlies the statute providing for additional leave.

Article 1 of the Order provides:

Art. 1. Article 85 of Order in Council No. 53/1953 (XI. 28) shall have the following paragraph added:

"(3) Blind workers are entitled to six days of additional leave of absence."

7. Legislative Decree No. 18 of 1962, on Measures against Alcoholics

Excessive consumption of alcohol, intemperance and habitual drinking are harmful to health and to society, and are inconsistent with socialist morality. Further repression of alcoholism calls for effective social and governmental measures. Accordingly, the Presidential Council of the Hungarian People's Republic has adopted regulations against alcoholics, with special regard to the increased protection of the children of alcoholic parents.

Article 6 of the legislative decree provides:

"*Art. 6.* The court may rule that a maximum of 50 per cent net wages or allowances of any person who, owing to his drinking habits, does not comply with his obligation to support his child, should be paid to his spouse, or to the person who takes care of the child."

8. Legislative Decree No. 24 of 1962 on the Social Benches

Considering the improvement of the moral conceptions of the working people and the experiences of the existing social benches, the Presidential Council of the Hungarian People's Republic has further developed the social jurisdiction. The social benches are elective organs of the workers. Their task is to train working people to behave in a conscious and disciplined manner and to protect social property. This Legislative decree provides that the wages of any worker who neglects to support his family, should be controlled so as to ensure the subsistence of his family.

Article 21 (*c*) of the legislative decree provides:

Art. 21. The social bench may take the following measures:

. . .

(*c*) It may rule, upon request, that part of the wages or allowances of any worker who neglects to support his family, should be paid to one of his dependants or to the person who takes care of his child. At least half the amount of the wages or allowances left after deductions for other purposes, should, at any rate, be paid to the worker.

9. Order in Council No. 9/1962 (iii. 25), on the Abolishment of Registration and Tuition Fees in Establishments of Secondary Education

The Hungarian national economy demands from the secondary schools a growing number of educated specialists. The Government spares no material effort to ensure unhampered progress in learning and teaching. It is the aim of this Order in Council to do away with every possible obstacle which may hamper educational activities.

Article 1 of the order provides:

Art. 1. The obligation to pay registration and tuition fees in establishments of secondary education shall be abolished as from the school year 1962/63 (1 September 1962).

INDIA

DEVELOPMENT OF HUMAN RIGHTS IN 1961–1962[1]

I. CONSTITUTION

The Constitution (Thirteenth Amendment) Act, 1962, seeks to give effect to an agreement reached by the Government of India with the leaders of the Naga peoples.

Convention under which the Naga Hills-Tuensang Area (Nagaland), which is a tribal area within the State of Assam, would be made a separate State within the Indian Union. As the agreement contained certain features peculiar to the new State, the Constitution had to be amended and under this amendment it is provided *inter alia*, that:

"(*g*) No Act of Parliament affecting the religious or social practices of the Nagas or their customary law and procedure or the administration of civil and criminal justice involving decisions according to Naga customary law and ownership and transfer of land and its resources shall apply to Nagaland unless the Legislative Assembly of Nagaland so decides."

II. LEGISLATION

A. *Political and Personal Rights*

For the purpose of curbing communal and separatist tendencies, the *Representation of the People (Amendment) Act, 1961* (Act No. 40 of 1961) amended the Representation of the People Act, 1951, by adding to the list of corrupt practices at elections the promotion of feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste or community or language. Such acts were also made election offences and any person found guilty of such corrupt practices or election offences would be disqualified from voting or from being a member of any legislature for a period of six years from the date of his being so found guilty.

In order to check fissiparous communal and separatist tendencies based on grounds of religion, caste, language or community, the *Indian Penal Code (Amendment) Act, 1961* (Act No. 41 of 1961) provides in specific terms that it shall be an offence for any person to promote or attempt to promote feelings of enmity or hatred between different religious, racial or language groups or castes or communities. It also makes it an offence for any person to do any act which is prejudicial to the maintenance of harmony between religious, racial or language groups or castes or communities and which is likely to disturb public tranquillity.

Certain developments in the regions adjoining the borders of India and in other parts of the country likely to jeopardize the security of India and its frontiers necessitated the passing of the *Criminal Law (Amendment) Act, 1961* (Act No. 23 of 1961), under which it will be an offence for any person to question in any manner the territorial integrity or frontiers of India in a manner prejudicial to the interests of the safety or security of India. This Act also empowers the Government to declare any area adjoining the frontiers of India to be a notified area and when such a notification is issued it will be an offence for any person to make, publish or circulate in the notified area any statement prejudicial to the maintenance of public order or of essential supplies and services in that area or to the safety or security of India. The entry of any person into the notified area would also be regulated by the issue of permits.

One of the directive principles of state policy under the Constitution is that the State must take steps to organize village panchayats with such powers and authority as may be necessary to enable them to function as units of self-government. In pursuance of this principle and in conformity with India's age-old tradition, a programme of community development on a nation-wide scale was launched as early as 1952 to tackle problems of rural life. Since that date (including the period under review) legislation has been and is still being undertaken for an intensive and co-ordinated programme of democratic decentralization. The object of such legislation is to introduce a three-tier system of rural administration. The gram panchayat [the cabinet of village elders elected by the adult citizens of the village] will be the chief executive authority in charge of village affairs. A panchayat samiti at the block level (that is to say, for a group of villages with a population of 60 to 70 thousand and covering an area of 150 to 200 square miles) will take full responsibility for administering all developmental work within the territorial jurisdiction of the block and will assist the gram panchayats in the formulation and execution of plans. It will consist of the presidents of the gram panchayats in the block or alternatively of members elected by an electoral college consisting of the members of the panchayats in the block. The zila parishad at the district level consists of representatives of panchayat samitis, the members of the State Legislature and of Parliament residing in the district and representatives of a few other organizations like co-operative societies which form an integral part of the life in the district. This body will in the main supervize the work of the gram panchayats and the panchayat samitis.

[1] Information furnished by Shri G. R. Rajagopaul, Special Secretary and Member, Law Commission, New Delhi, government-appointed correspondent of the *Yearbook on Human Rights*.

B. *Emergency Legislation Affecting Personal Freedom*

In view of the emergency created by the Chinese aggression, the President, by a Proclamation dated 26 October 1962 issued under article 352 of the Constitution, declared that a grave emergency exists whereby the security of India is threatened by external aggression. This was followed by several emergency measures, the most important of which are the following:

(i) The Foreigners Law (Application and Amendment) Act, 1962 (Act No. 42 of 1962), which empowers the Government to deal with any person not of Indian origin who was by birth a citizen or subject of any country at wat with, or committing external aggression against, India or of any other country assisting the country at war with, or committing such aggression against, India, but who may have subsequently acquired Indian citizenship in the same manner as a foreigner, and to take action for his arrest and detention under the Foreigners Act, 1946, wherever necessary.

(ii) The Defence of India Act, 1962 (Act No. 51 of 1962), which authorizes the issue of rules on several specified topics for securing the defence of India and civil defence, the public safety, the maintenance of public order, the efficient conduct of military operations or for maintaining supplies and services essential to the life of the community. Special Tribunals may be constituted for the trial of offences under the Act. This is essentially an emergency measure common in times of war necessitating the imposition of several restrictions on the rights of individuals.

The Constitution of India envisages the suspension of the right of an individual during an emergency to move the superior courts for the enforcement of the fundamental rights guaranteed to him by the Constitution and an order issued under article 359 of the Constitution declares that the right of any person to move any court for the enforcement of the rights conferred by article 14 (Equality before law); article 21 (Due procedure) and article 22 (Protection against arrest and detention) shall remain suspended during the period the proclamation of emergency is in force if such person has been deprived of any such rights under the Defence of India Act, 1962 or any rule or order made thereunder. The Constitution itself, by article 358, provides for the suspension of the rights conferred by article 19 (Freedom of speech and expression, right to hold property, etc.) in respect of any law made during the period of the emergency, but any such law will automatically cease to have effect on the expiry of the emergency except as respects things done or omitted to be done before the expiry.

C. *Extradition*

The Extradition Act, 1962 (Act No. 34 of 1962) seeks to consolidate all the earlier laws on the subject. A fugitive criminal shall not be surrendered to the foreign country asking for his surrender if the offence for which his surrender is sought is of a political character. No fugitive criminal shall be surrendered until after the expiration of fifteen days from the date of his being committed to prison by a magistrate in India so that sufficient time is available to him to have recourse to any legal remedy, if he so desires.

D. *Social and Economic Rights*

Article 45 of the Constitution lays down that the States shall endeavour to provide within a period of ten years from the commencement of the Constitution for free and compulsory education for all children until they complete the age of fourteen years. In pursuance of this directive principle of state policy, most of the States have passed laws for free and compulsory education, such as the *Andhra Pradesh Primary Education Act, 1961* (Andhra Pradesh Act 11 of 1961).

The Maternity Benefit Act, 1961 (Act No. 53 of 1961) regulates the employment of women in factories, mines and plantations for certain periods before and after child birth and provides for maternity and other benefits, including lighter work during pregnancy, maternity leave, payment of maternity benefit in advance and nursing breaks.

For improving the living conditions of labour employed in the iron ore mining industry, the *Iron Ore Mines Labour Welfare Cess Act, 1961* (Act No. 58 of 1961) provides for the creation of a welfare fund out of a special cess to be levied on all iron ore produced, to be utilized for defraying the cost of measures directed towards the improvement of public health, sanitation, water supply, education facilities, housing, transport of workers and the like.

The Apprentices Act, 1961 (Act No. 52 of 1961) aims at regulating the training of apprentices in industries by utilizing fully the facilities available for such training in accordance with programmes and standards of syllabi drawn up by expert bodies. It lays down that a person to be an apprentice must not be less than fourteen years of age and must possess the prescribed standard of education and physical fitness. It contains detailed provisions regarding the execution of contracts of apprenticeship, the period and nature of training, the obligations of employers, apprentices and other connected matters.

The Dowry Prohibition Act, 1961 (Act No. 28 of 1961), which is an important measure of social reform, seeks to tackle the evil practice of giving and taking dowry by way of consideration for marriage by rendering the persons taking or giving it or demanding it punishable. The expression "dowry" does not include presents given during marriages out of pure love and affection. The Act further provides that if in spite of its provision any dowry is, in fact, given or taken, it shall ensure for the benefit of the wife.

III. JUDICIAL DECISIONS

1. *Freedom from Discrimination; Equality Before the Law*

Observing that the question of waiver can have no application where there is a contravention of the fundamental rights guaranteed by the Constitution and that a defence on the ground of waiver

cannot be raised in such circumstances, the Orissa High Court in *Bhaskar Moharana* v. *Arjun Moharana and others* (I.L.R. 1962, Cutt. 203, 16 February 1962) refused to uphold the validity of a law in so far as it gave recognition to a customary law of succession to a village office under the State, like that of the blacksmith, solely on the ground of descent. Such a law contravenes article 16 (2) of the Constitution.

In *Raja Jagannath Baksh Singh* v. *The State of Uttar Pradesh and another* (1962 (II) S.C.A. 679, 4 April 1962), the Supreme Court observed that: "A taxing statute can be held to contravene article 14 [on equality before the law] if it purports to impose on the same class of property similarly situated an incidence of taxation which leads to obvious inequality . . ."

2. *Security of Person*

The Suppression of Immoral Traffic in Women and Girls Act, 1956, does not render prostitution *per se* a criminal offence but seeks to inhibit or abolish commercial vice, namely, the traffic in women and girls for the purpose of prostitution as an organized means of living. In the case of *Ratanmala and another* (A.I.R. 1962 Mad. 31, 11 January 1961) the Madras High Court observed that a prostitute is as much entitled as any other woman to the observance of her personal modesty and to the protection of her person for instance with regard to such offences as indecent assault or rape.

3. *Freedom from Slavery and Servitude*

Article 23 of the Constitution prohibits *begar* and other forms of forced labour. In *Kadar* v. *Muthukoya Thangal* (A.I.R. 1962 Kerala 138, 17 July 1961) the plaintiff had put the defendant's family in possession and enjoyment of certain coconut trees on condition that the defendant's family rendered certain personal service called "Nadapu", that is to say, of ferrying the plaintiff's boat from the island where the coconut trees were situated to the mainland free of remuneration. Failure to render such personal services entailed penal consequences under a law in force. The Kerala High Court refused to enforce the personal service on the ground that it amounted in the circumstances to forced labour. In the course of its judgement, the Court referred to similar provisions in the Constitutions of other countries and also to article 4 of the United Nations Declaration of Human Rights.

4. *Right to Counsel*

In the case of *Saiyad Afjal Hussain and others* v. *The State* (A.I.R. 1962 Rajasthan 216, 16 January 1962) the facts were the following: the employees of the Indian Government in essential services had put forward certain demands; these not having been met, they gave notice to go on strike on a certain date. In order that the strike might not impede the essential services and the normal life of the community, an ordinance was promulgated by the President. The charge against the petitioners in this case was that on a certain day at about midnight they instigated other railway employees to take part in a strike which was illegal and punishable under the ordinance. They were arrested by the police and remained in their custody till a challan was submitted against them before the sub-divisional magistrate on 1 July 1962, at about 6 p.m. at his residence. The sub-divisional magistrate came to the court from his house, held te trial which began at 7 p.m. and ended at 8.30 p.m. in the conviction of the petitioners. The Rajasthan High Court criticised the whole proceeding in this case as follows:

"Trial of criminal cases by the court should, as a rule, be held during the court hours so that the accused persons may have opportunity to avail of legal assistance. Any departure from this rule is highly objectionable and can be justified only on exceptional grounds. Expeditious disposal of criminal cases may be commendable but the commencement of a trial at night and hurrying through it when it was not possible for the accused to communicate with any lawyer or to procure legal assistance for their defence in any instance cannot be countenanced".

In this connexion the court referred to article 22 of the Constitution, which gives every person who is arrested the right to consult and to be defended by a legal practitioner of his choice.

5. *Property Rights*

The right to hold property conferred by article 19 (1) (f) of the Constitution is not an absolute right but can be subjected to reasonable restrictions in the interests of the general public. In the case of *Jyoti Pershad* v. *Administrator for the Union Territory of Delhi* (1962) (2 S.C.R. 125, 21 April 1961) the petitioner had after prolonged litigation and having fulfilled all the conditions of the Delhi Rent Control Act obtained decrees of ejectment against his tenants. In the meantime, the Slum Areas (Improvement and Clearance) Act, 1956 came into force and the petitioner in accordance with that Act applied to the competent authority for permission to execute the decrees, which was refused on the ground of hardship to the tenants and the human aspect of the case. The Slum Areas Act was challenged before the Supreme Court, *inter alia*, on the ground that it imposed unreasonable restrictions on the petitioner's right to hold property. The Supreme Court rejected the contention and in doing so observed that all criteria for determining the degree of restriction on the right to hold property which would be considered reasonable were by no means static, but must obviously vary from age to age and should be related to the adjustments necessary to solve the problems which communities faced from time to time. If law failed to take account of unusual situations of pressing urgency and of the social urges generated by evolving patterns of thought, and social consciousness, it would have failed in the very purpose of its existence. Where the legislature enacted laws, the tests of "reasonableness", had to be viewed in the context of the issues which faced the legislature. In the construction of such laws and particularly in judging of their validity the courts had to approach the problem from the point of view of furthering the social interest which it was the purpose of the legislation to promote, for the courts

were not functioning *in vacuo*, but as parts of a society trying, by enacted law, to solve its problems and achieve social concord and peaceful adjustment and thus furthering the moral and material progress of the community as a whole.

6. *Religious Freedom*

Articles 25 and 26 of the Constitution embody the principles of the religious toleration that has been the characteristic feature of Indian civilization from the start of history. Besides, they serve to emphasise the secular nature of Indian democracy which the founding fathers considered should be the very basis of the Constitution. With these observations the Supreme Court in *Sardar Syedna Taher Saifuddin Saheb* v. *State of Bombay* (A.I.R. 1962 S.C. 853, 9 January 1962) held that the Bombay Prevention of Excommunication Act, 1949, in so far as it destroyed the right of the head of the Dawoodi Bohra Community of excommunicating any member thereof on religious grounds was violative of article 26 *(b)* which guarantees to every religious denomination the right to manage its own affairs in matters of religion.

7. *Freedom of Expression and of Assembly*

Under the Newspapers (Price and Page) Act, 1956, an order was made providing that where the price charged for a daily newspaper was any of the prices set out in the order the total number of pages of all issues of that paper published during six days in a week shall not exceed the maximum number of pages shown against that price. There were other provisions in the order in respect of weeklies, weekly editions of daily newspapers and so on. The Act also purported to regulate the allocation of space to advertisements. The object of the Act and the order was to secure to newspapers full freedom of expression by preventing unfair competition. While the Constitution does not mention freedom of the press separately, there is no doubt that it is included in the freedom of speech and expression guaranteed by article 19 of the Constitution. The Supreme Court in *Sakal Papers (P) Ltd. and others* v. *Union of India* (A.I.R. 1962 S.C. 305, 25 September 1961) observed that the fixation of maximum price for the number of pages which a newspaper is entitled to publish is obviously not for ensuring a reasonable price to the buyers of the newspapers but for expressly cutting down the circulation of some newspapers by making the prices unattractively high for a class of its readers. A newspaper which has a right to publish any number of pages for carrying its news and views will be restrained from doing so except on the conditions that it raises the selling price as provided in the order. Again, the Act, in so far as it permits the allocation of space to advertisements, affects freedom of circulation because, if the area for advertisements is curtailed, the prices of the newspapers will be forced up. All these restraints constitute directly infringement of the freedom of speech and expression and the Act and the order were therefore struck down by the Supreme Court as unconstitutional.

A rule which said that no government servant shall participate in any demonstration in connexion with any matter pertaining to his conditions of service was struck down as unconstitutional by the Supreme Court in *Kameshwar Prasad and others* v. *State of Bihar* (A.I.R. 1962 S.C. 1166, 22 February 1962) as it was violative of the right of freedom of speech and expression and the right to assemble peaceably guaranteed to the citizen (which expression cannot obviously exclude a government servant) by article 19 (1) *(a)* and *(b)* of the Constitution. A demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect a form of speech or expression. A demonstration may take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. In the opinion of the Supreme Court, the vice of this rule consisted in that it laid down a ban on every type of demonstration — be the same however innocent and however incapable of causing a breach of the public tranquillity — and did not confine itself to those forms of demonstrations which might lead to that result. In the latter event the rule could perhaps have been saved.

IRAN

LAND REFORM LAW

LEGISLATIVE DECREE OF 15 JANUARY 1962, AS AMENDED BY LEGISLATIVE DECREE OF 17 JANUARY 1963, APPROVED BY NATIONAL REFERENDUM ON 26 JANUARY 1963

SUMMARY[1]

This Act as amended provides that, subject to certain exceptions, no person may own agricultural land greater than one village or its equivalent. Any surplus owned by one person is to be either distributed by him to his tenants or expropriated by the Government in return for payment in ten annual installments. Any appeals by owners against the assessment of the value of their property being expropriated are to be decided upon by a commission consisting of the Prime Minister, the Ministers of Agriculture, Justice and Finance and three agricultural experts selected by the Council of Ministers. The land purchased is to be distributed to heads of families in accordance with the following order of priority:

(*a*) Small tenant farmers engaging in agriculture on the land of the villages affected and resident therein;

(*b*) Sharecroppers engaged in agriculture in the villages;

(*c*) Farm labourers resident in the villages; and

(*d*) Persons desiring to engage in agriculture.

Distribution is to be free, but subject to certain conditions concerning the proper use of the land.

[1] Published in the *Official Journal* on 20 January 1962. Summary based upon the text of the Act furnished by Professor A. Matine-Daftary, President of the Iranian Association for the United Nations, government-appointed correspondent of the *Yearbook on Human Rights*.

IRAQ

NOTE[1]

In 1962, the following laws and regulations relating to human rights were promulgated:

1. Law No. 5 of 1962 on Civil Defence.
2. Law No. 11 of 1962 on Juveniles.
3. Law No. 17 of 1962 amending the Agrarian Reform Law, No. 30 of 1958.
4. Law No. 18 of 1962 containing the second amendment to the Pension Fund Law.
5. Law No. 21 of 1962 amending Law No. 38 of 1941 on the Construction of Dwellings for Labourers.
6. Law No. 24 of 1962 ratifying I.L.O. Convention No. 30 concerning Hours of Work (Commerce and Offices) of 1930.
7. Law No. 25 of 1962 ratifying I.L.O. Convention No. 26 concerning Minimum Wage — Fixing Machinery of 1928.
8. Law No. 34 of 1962 on the Founding of Associations relating to Foreigners.
9. Law No. 48 of 1962 ratifying I.L.O. Convention No. 115 and Recommendation No. 114 of 1960 concerning the Protection of Workers against Ionizing Radiation.
10. Law No. 54 of 1962 on Housing.
11. Law No. 59 of 1962 ratifying I.L.O. Convention No. 98 of 1949 concerning the Right to Organize and to Bargain Collectively.
12. Law No. 60 of 1962 ratifying I.L.O. Convention No. 29 of 1930 and Recommendations Nos. 35 and 36 concerning Forced Labour.
13. Regulation No. 11 of 1962 on the Practice of Sanitary Professions.
14. Regulation No. 17 of 1962 amending the Regulation on the Sale of Workers' Dwellings.
15. Regulation No. 21 of 1962 on Search and Rescue.
16. Regulation No. 23 of 1962 on Reformatory Schools.
17. Regulation No. 7 of 1962 on the Appropriation of Arasat[2] to Junior Members of the Army, Junior Officials, Employees and Pensioners.
18. Regulation No. 30 of 1962 on the Recovery of the Price of Land distributed to Peasants.

[1] List of laws and regulations furnished by the Government of Iraq.

[2] Arasat = government land.

LAW No. 11 OF 1962 ON JUVENILES

Made on 3 March 1962 and entered into force on 17 March 1962[1]

Chapter 1

DEFINITIONS AND ORGANIZATION

Art. 1. — Unless there is a provision or indication in this Law to the contrary, the following words and expressions shall have the meanings put opposite them:

Juvenile: A male or female who has completed his or her seventh year of age but has not completed his or her eighteenth year of age. There are two categories of juveniles:

(1) *Child:* One who has completed his or her seventh year of age but has not completed his or her fifteenth year;

(2) *Youth:* A male or female who has completed his or her fifteenth year but has not completed his or her eighteenth year of age.

. . .

Bureau of Social Service: A committee appointed by the Minister of Justice in Baghdad or in other places. It shall consist of one physician specialist in mental diseases, a specialist in psycho-analysis or in general psychology and a sufficient number of probation officers and clerks to ensure its performance of the duties entrusted to it by the provisions of this Law. The Minister of Justice shall appoint a director of office for this committee who shall undertake the administration and the proper working of the office.

. . .

Reformative Institutions: Institutions for boys and others for girls which are established by the Ministry of Social Affairs and over which the court has the right of supervision. They are divided into four types:

. . .

(2) *Reformatory School:* A place where the juvenile is detained for the term which has been decided by the court's judgment.

[1] Published in *Waqayi' al-Iraqiya*, No. 654, of 17 March 1962. English text based upon that published in *The Weekly Gazette of the Republic of Iraq*, No. 49, of 5 December 1962.

(3) *Boys' Training School:* A place set for the imprisonment of the juvenile for the term prescribed by the judgment.

(4) *Hostel:* The place provided for the care of the juvenile in accordance with the provisions of this Law.

Custodian: A person appointed by the court to take care of the juvenile and to see that he maintains good conduct and behaviour, under the condition prescribed in the court's judgment.

Guardian: A father, mother, grandfather, natural guardian or any person to whose care the juvenile is given by a decision or judgment of a competent authority. By guardianship is meant caretaking.

Chapter II

Investigation and Hearing

Art. 2. — No legal proceedings shall be taken against a juvenile who has not completed his seventh year of age at the time the offence is committed.

Art. 3. — Unless there is a provision in this Law to the contrary, the investigation and prosecution of the juvenile shall be performed in accordance with the Code of Criminal Procedure.

Art. 4. — The judge of investigation and the judicial investigator shall perform an investigation of each offence committed by the juvenile.

Art. 5. — (1) A juvenile shall not be placed in detention for any contravention or misdemeanour unless such detention is required for performing an investigation or examination or when it is impossible to obtain a surety for the juvenile. (2) When it is decided to place the juvenile in detention, he shall be placed in an observation centre. In places where no observation centre exists, precaution must be taken so that the juvenile shall not mix with grown-up people.

. . .

Art. 10. — (1) If a juvenile is accused of having committed a crime and the judge of investigation finds that the evidence against him is sufficient to send him for trial in the juvenile court, he shall send him to the Bureau of Social Service. (2) If a juvenile is accused of having committed a misdemeanour and the judge of investigation finds that the evidence against him is sufficient to send him for trial in the juvenile court, but that the state of the juvenile and the circumstances of the case necessitate an investigation, he shall send the juvenile to the Bureau of Social Service for investigation and making a report concerning him.

Art. 11. — The Bureau of Social Service shall perform an investigation of the juvenile as regards his physical and mental conditions; it may either ask a social case-worker to study the environment of the juvenile by investigating his home, his place of work or his school or be satisfied with the report of the probation officer. The Bureau may seek the advice of any specialist and may ask other Government organizations for help in performing the investigation. The Bureau may ask the court to place the juvenile under observation and may, for this purpose, seek the help of the Departments attached to the Ministry of Health.

Art. 12. — (1) If the judge of investigation is satisfied that the evidence against the juvenile is sufficient, he shall send him to the juvenile court for trial. (2) If there is no juvenile court in the administrative unit, the judge of investigation may send the juvenile accused of having committed a contravention or misdemeanour the punishment of which does not exceed an imprisonment of one year, to the criminal court in that unit. (3) The criminal court, in the case referred to above, shall observe, in the trial of the juvenile, the provisions of article 18 and shall, when imposing a fine, apply the provisions of article 26.

Art. 13. — If both a juvenile and an adult are accused of having committed an offence, the judge of investigation shall separate the cases and send each to the competent court.

Art. 14. — If a juvenile is accused of having committed more than one offence, he may be brought to trial for all the offences in one case in which one judgment is issued; provided that the court shall take into consideration the offence involving the heaviest punishment and shall issue the sentence with regard to this offence only.

Art. 15. — When a juvenile is brought to trial before the court, it shall, before the hearing is started, explain to him in simple language the offence of which he is accused and ask him whether he admits his guilt or not and then start the hearing.

Art. 17. — If the juvenile admits his guilt and the court is satisfied that he understands very clearly the consequences of such admission, it shall ask him whether he wishes to explain the circumstances which impelled him to commit the offence.

Art. 18. — (1) The hearing of the case shall be held in closed session and no one, other than members of the court, the officials thereof and the interested parties, shall be admitted except with the permission of the court. Representatives of the press may, by a special decision issued by the court, be admitted to the hearing but no one shall be allowed to publish the name of the juvenile, his abode, school, photograph or anything that may point to his identity except with the written permission of the court. (2) Anyone who contravenes the provisions of para. (1) of this article shall be punished by the competent criminal court with imprisonment for a term not exceeding 30 days or with a fine not exceeding 30 Dinars, or with both.

. . .

Art. 21. — The right to defend the juvenile shall be granted to his parents or a relative or his friend or any person who represents either a social or charitable institution or any trustworthy person; and the court thereupon shall accept him as soon as he expresses his wish to do so without the need for submitting a written power of attorney. The court, however, may refuse to grant such rights, provided that it sets down the grounds for such a refusal in the record.

. . .

Art. 24. — Decisions and judgments of the juvenile court shall be subject to revision by the Court of Cassation.

Chapter III

PROCEDURE AND PUNISHMENTS

Art. 25. — The court shall, when determining the criminal liability of the juvenile and prescribing the punishment, take into consideration the degree of mental and moral maturity of the juvenile and his ability to distinguish the nature of his illegal act.

Art. 26. — The court may give the juvenile and his guardian, if there is any, a reprimand when he commits a contravention, even though it has been committed for the second time and it may impose a fine, though the punishment for such a contravention is simple imprisonment.

Art. 27. — If a child has committed a misdemeanour the court shall, instead of imposing the penalty of imprisonment prescribed by law for that offence, decide: (1) to hand over the child to a custodian against a money guarantee assessed by the court the custodian shall undertake to be responsible for the child's behaviour during a period of not less than one year and not more than five years from the date of the issue of the judgment; the money guarantee shall lapse when the juvenile completes his eighteenth year of age. If there is a default on the guarantee, the custodian shall pay to the juvenile court in accordance with the Code of Criminal Procedure in a separate suit, the whole or part of the money guaranteed; the juvenile shall, then, be handed over to another custodian and if no custodian is willing to give the required guarantee or if he withdraws after giving such guarantee, the court may apply the provisions of paras. 2 and 3 of this Article; (2) or put him under probation; (3) or commit him to a reformatory school for a period of not more than one year.

Art. 28. — If a youth has committed a misdemeanour, the court shall, instead of imposing the penalty of imprisonment prescribed by law for that offence, decide: (1) to hand over the youth to a custodian in accordance with the provisions of para. 1 of article 27; (2) or put him under probation; (3) or commit him to a reformatory school for a period of not more than two years; (4) or put him in the Boys' Training School for a period of not more than one year.

Art. 29. — The court may, when it decides to hand over the juvenile to a custodian, order that in addition to this he shall be put under probation for a period of one year.

Art. 30. — If the court is satisfied, from the report of the Bureau of Social Service, or the social caseworker or from the proceedings of the suit, that it is in the interest of the juvenile who has committed, for the first time, a misdemeanour which is not punishable with a fine, to impose a fine, it may replace the sentence of imprisonment with a suitable fine.

. . .

Art. 32. — If a child has committed a crime, the court, instead of imposing the punishment of simple imprisonment or penal servitude prescribed by Law for that offence, shall: (1) put him under probation if the crime is punishable with imprisonment for a period not exceeding seven years; (2) or commit him to the reformatory school for a period not exceeding five years; if the crime is punishable by death or penal servitude for life, the committing shall be for five years.

Art. 33. — (1) If a youth has committed a crime punishable with imprisonment for a period of not more than seven years, the court may: (*a*) put him under probation; (*b*) Commit him to a reformatory school for a period of not more than three years. (2) If the crime is punishable with imprisonment for a period of more than seven years or with penal servitude, the court, instead of imposing the imprisonment or penal servitude, shall; (*a*) commit him to a reformatory school for a period of not more than five years; (*b*) or put him in the Boys' Training School for a period of not more than five years. (3) If the crime is punishable with death or penal servitude for life, the court instead of imposing such penalty, shall put him in the Boys' Training School for a period of not less than five years and not more than fifteen years.

Art. 34. — The term prescribed for committal in the reformatory school shall not be less than six months.

. . .

Chapter IV

PROBATION

Art. 36. — (1) If the court is satisfied that the evidence against the juvenile is sufficient to prove his guilt, it may issue an order to place him under probation. Before it does so, however, it shall take into account the nature of the offence, the character of the juvenile, the previous offences committed by him, his environment, his physical and mental condition and everything related to the juvenile or offence. The court shall explain to the juvenile, in simple language, the consequences of such an order and that if he does not observe its provisions or conditions in any manner whatsoever or if he commits another offence, he shall be liable to cancellation of the order of probation and to conviction for the same offence; if the youth expresses his consent to observe the order of probation, he shall give an undertaking to this effect; otherwise the court shall continue its proceedings in accordance with the provisions of this law. However, as regards the child, there is no need to obtain such consent. (2) The order of probation shall be issued without need for the court to go into the matter of convicting the juvenile. (3) The period for probation shall not be less than one year and not more than three years.

Art. 37. — An order for placing a juvenile under probation may not be issued more than twice.

Art. 38. — If a juvenile is convicted for a crime or misdemeanour which he has committed while the order of probation is in force, the court may cancel the order of probation and convict the juvenile for the offence for which he was placed under probation.

Art. 39. — If the court learns that the juvenile placed under probation has contravened its conditions, it may warn him in writing to observe these conditions and if he continues his contravention, it may summon him and in case the contravention is

proved, it may decide: (1) to impose a fine not exceeding ten Dinars on the juvenile; (2) or cancel the order of probation and convict him for the offence.

. . .

Chapter V

CONDITIONAL RELEASE

Art. 48. — (*a*) If a juvenile, who has been committed to a Reformatory School or put in the Boys' Training School, finishes two-thirds of the period of his punishment, which should not be less than 4 months, the court may, on the application of the juvenile, his guardian or custodian and on the grounds of a report submitted by the person responsible in the reformative institution, release the juvenile if two conditions are fulfilled: (1) that he has behaved well in the institution. (2) that he is expected to behave well outside it. (*b*) The order for release shall require that the juvenile should behave well during the period of conditional release which shall not be less than one year and not more than five years. The court may, during this period, put the juvenile under probation or impose on him certain conditions, i.e. to reside in a certain place, perform certain things or to refrain from doing certain things.

Art. 50. — If the juvenile behaves well until the conditional period expires, he shall be released unconditionally.

. . .

IRELAND

NOTE[1]

The Social Welfare (Miscellaneous Provisions) Act, 1962, made provision for increases in the rates of the principal social insurance benefits as from January 1963. Increases in the rates of contributory old-age, widows' and orphans' pensions became effective on 4 January and in the rates of disability and unemployment benefits and maternity allowance from 7 January. The Act also contained provision for increases in most assistance payments as from August 1962.

Prior to the passing of the *Criminal Justice (Legal Aid) Act, 1962*, the only cases in which free legal aid was provided were murder cases and that was done not by virtue of any special legislation but as a practice of long standing under which the judge assigned a solicitor and counsel for the defence of the accused, the cost being borne by the State. This Act provides that in the district court free legal aid will be provided for accused persons of insufficient means if the court considers that such aid is essential in the interests of justice by reason of the gravity of the charge or of exceptional circumstances. Provision is also made for the granting of free legal aid to a person of insufficient means who is returned for trial for an indictable offence. In murder cases an accused person of insufficient means is entitled to free legal aid as of right. The expenses of legal aid are paid out of moneys provided by the Oireachtas.

The Geneva Conventions Act, 1962, enables effect to be given, so far as Ireland is concerned, to certain provisions of the conventions done at Geneva in 1949 relative to the amelioration of the condition of the wounded and sick in armed forces in the field, the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea, the treatment of prisoners of war and the protection of civilian persons in time of war. The Act prescribes penalties for grave and minor breaches of the conventions committed by any person, whatever his nationality, in the State.

The law relating to coroners and coroners' inquests was consolidated and amended by the *Coroners Act, 1962*. A new provision is that every medical practitioner, registrar of deaths or funeral undertaker and every occupier of a house or mobile dwelling, and every person in charge of any institution or premises, in which a deceased person was residing at the time of his death who has reason to believe that the deceased person died, either directly or indirectly, as a result of violence or misadventure or by unfair means or as a result of negligence or misconduct or malpractice on the part of others, or from any cause other than natural illness or disease for which he had been treated by a registered medical practitioner within one month before his death, must, under penalty, immediately notify the coroner or the Gárda Siochána of the facts and circumstances relating to the death. An old provision re-enacted in this Act gives jurisdiction to a coroner to inquire into the finding of treasure trove.

The Housing (Loans and Grants) Act, 1962, amended, consolidated and simplified the existing law relating to the making of grants for private housing. State grants for new houses are preserved at pre-existing levels but the graded system of supplementary grants for such houses is discontinued, leaving housing authorities to decide the type of supplementary grant scheme most suited to local circumstances within specified maximum limits of income and valuation. The Act introduced a new scheme of grants to bodies approved by the Minister for Local Government providing housing for elderly persons. There is also provisions for the payment of a new type of grant, designed to encourage experimentation in the production of low cost housing.

[1] Note furnished by the Government of Ireland.

ISRAEL

HUMAN RIGHTS IN ISRAEL IN 1962[1]

I. LEGISLATION

1. The profession of land valuers was granted autonomy in disciplinary matters and with regard to the admission of new members.[2] Land valuers admitted under the Law (including those licensed under the old mandatory law which is now repealed), enjoy a monopoly to furnish courts of justice with land valuations.[3] Disciplinary jurisdiction over land valuers is vested in a Council, composed of five members appointed by the Government and four elected by the land valuers' associations;[4] a land valuer may not be found guilty of unprofessional conduct unless he was first given notice of the charge against him and suitable opportunity to defend himself.[5] An appeal from the decisions of the Council lies to the Supreme Court,[6] and no such decision may be published until and unless confirmed on appeal, or where no appeal was lodged in time.[7] Rules for the professional conduct of land valuers may be made by the Minister of Justice after consultation with the Council.[8]

2. The criminal law relating to prostitution was amended, and penalties substantially increased.[9] As under the former law, prostitutes themselves are not liable to punishment except for solicitation in public places;[10] but the new law redefines the offences of procuration for purposes of prostitution, to cover not only living on the earnings of a prostitute, but also receiving any part of such earnings; and a man living with a prostitute or in whose company a prostitute is habitually seen, is presumed to live on her earnings, until he proves the contrary;[11] and procuration now comprises also any inducement or counselling, and the administration of any drug or liquor, violence or threats, towards a woman to prostitute herself.[12] While all procuration offences are now felonies punishable with five years' imprisonment, still severer punishments are provided where the offence is committed by the husband, father, stepfather, guardian, employer, teacher, physician or nurse of the prostitute or where she is below eighteen years of age.[12] In order to prove that the offence of procuration was committed, it is not now necessary to prove more than a single act of illicit intercourse; where it is proved that the procuration resulted in professional prostitution or was so intended, the penalty is increased.[13] The keeping and managing of brothels are also now made felonies punishable with five years' imprisonment.[14] The new law also specifically provides that the prostitute herself shall not be deemed to be an accessory to the offence of procuration, and where she is the wife or the daughter of the procurer, she is nevertheless competent and compellable to testify against him.[15] It is made a specific offence to counsel or incite a woman not to testify in any proceedings under the law, with increased penalties where threats, violence, drugs or alcohol are used or fraud is practiced on her.[16] The punishments provided for in the Law are maximum punishments, but the courts may not — unlike in all other cases except murder — give only suspended prison sentences.[17]

3. The Air Transport Law, 5722–1962,[18] gives statutory effect in Israel to the provisions of the Warsaw Convention of 1929 on International Air Transport and the Hague Protocol of 1955 amending the same.

4. The major opus of legislation in 1962 was the Legal Capacity and Guardianship Law, 5722–1962,[19] which is another chapter in the future civil code, for the time being enacted piecemeal. While many of the fundamentals of personal law were hitherto governed by the laws of the various religious communities applicable in matters of "personal status",[20] the secular and residuary law was that laid down in

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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] Land Valuers Law, 5722–1962, passed on 11 April 1962 (*Sefer Ha-Hukim* 369 p. 72).

[3] Section 9, *ibid.*

[4] Section 2, *ibid.*

[5] Section 13, *ibid.*

[6] Sections 14 and 15, *ibid.*

[7] Sections 15 and 16, *ibid.*

[8] Section 12, *ibid.*

[9] Penal Law Revision (Prostitution Offences) Law, 5722–1962, passed on 14 May 1962 (*Sefer Ha-Hukim* 370, p. 78).

[10] Section 167, Criminal Code Ordinance, 1936 (Palestine).

[11] Section 1, Panel Law Revision (Prostitution Offences) Law, 5722–1962.

[12] Section 2, *ibid.*

[13] Section 3, *ibid.*

[14] Section 5, *ibid.*

[15] Section 8, *ibid.*

[16] Section 9, *ibid.*

[17] Section 10, *ibid.* This provision has recently been interpreted by the Supreme Court not to deprive the courts of their competence to place an offender on probation, instead of sending him to prison — probation not being "a suspended prison sentence" excluded by the law.

[18] Passed 25 June 1962 (*Sefer Ha-Hukim* 374, p. 90).

[19] Passed 7 August 1962 (*Sefer Ha-Hukim* 380, p. 120).

[20] Article 51, Palestine Order-in-Council, 1922.

the Mejelle which is a codification of Muslim law.[1] These provisions have now been replaced by a uniform and modern code.

Every person has legal capacity, in regard both to rights and to duties, from the completion of his birth until his death;[2] such legal capacity entails the capacity to perform legal acts, unless the latter capacity is restricted by operation of law or by the judgement of a competent court.[3] The age of majority is fixed at eighteen;[4] certain legal acts of minors require for their validity the consent or the ratification, express or implied, of a guardian or of the court.[5] A person whom the court adjudicated legally incapacitated, because of a mental disease or any intellectual defect which renders him incapable to look after his affairs, is in the same legal position as a minor.[6]

Parents are the natural guardians of their minor children.[7] Guardianship comprises the duty and the right to care for the child and provide for him, for his education, studies, training and work, as well as to administer his property; and the guardian is entitled to the custody of the minor and authorised to represent him.[8] The minor is under a legal obligation (to which, however, no sanction is attached) to honour his father and his mother and obey them in all matters pertaining to their guardianship,[9] and the parents are under a legal obligation to conduct themselves in all matters pertaining to their guardianship "as devoted parents would conduct themselves in the circumstances".[10] As guardians, parents are under the obligation to act in mutual consent; the consent of one parent to the acts of the other may be express or implied, *a priori* or *post factum*, general or for particular acts or purposes; and until the contrary is proved, parents are presumed to have acted in concurrence with each other.[11] There is an exception to the rule requiring mutual consent where the act to be performed does not suffer delay.[11] Failing consent between the parents, they may apply to the court for directions, and the court may either give the directions itself or appoint a referee to do so.[12] For monetary transactions between the minor and his parents, for disposition of the minor's real property, for gratuitous disposition of any other property, and for guarantees and pledges on the minor's behalf, the previous consent of the court is required,[13] but *bona fide* purchasers or contractors are protected from any voidability resulting from the failure to obtain the consent of the court.[14] The liability of parents for damages caused to the minor or his property by their negligent or otherwise tortious conduct is limited to cases where they acted in bad faith and had not the best interests of the minor at their hearts.[15] The income of a minor who lives in his parents' house may not be drawn upon for the expenses of the household, except by permission of the court which may be granted only where the court is satisfied that the minor and his family would not otherwise be able to subsist.[16] Where parents live in separation, either before or after divorce, they may agree with each other as to who of them shall have the custody of the minor and who of them shall exercise any other rights, and perform any duties, pertaining to the guardianship; any such agreement requires the approval of the court.[17] Where no such agreement was reached, or where any such agreement has not been implemented, the court may determine the division of the rights and duties of guardianship among the parents, provided always that children below the age of six years shall not, except in compelling circumstances, be taken away from their mother.[18] A parent who is incapacitated or incapable to act as guardian, or against whom steps have been taken under the Youth (Treatment and Supervision) Law, 5720–1960,[19] or who is wasting the minor's property or endangering it, may, by order of the court, be deprived of all or some of his rights and powers as guardian; the same applies to a father who is not married to the mother of the minor and does not recognize him as his child.[20] In the event of the death of either parent, the surviving parent is the guardian; but in this case as well as in the cases of the guardianship of a parent being restricted by order of the court, the court may appoint an additional guardian, provided that no such appointment shall be made unless on good cause shown and for the better welfare of the minor, and until the parent has been given opportunity to be heard.[21]

The provisions of the law do not affect the right of a person to make a gift or bequest to a minor on condition that it should be administered for him otherwise than by his natural guardians;[22] nor do they affect the parent's obligations under the Family Law Revision (Maintenance) Law, 5719–1959.[23]

Where both parents have died, the court may appoint a guardian for the minor.[24] The provisions applying to the appointment, and to the rights and

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[1] Enacted in the Ottoman Empire between 1870 and 1877. For particulars, consult S.S. Onar in: *Law in the Middle East*, Vol. 1 (1955) pp. 292–296.

[2] Section 1, Legal Capacity and Guardianship Law, 5722–1962.

[3] Section 2, *ibid.*

[4] Section 3, *ibid.*

[5] Sections 4–7, *ibid.*

[6] Sections 8–10, *ibid.*

[7] Section 14, *ibid.*

[8] Section 15, *ibid.*

[9] Section 16, *ibid.*

[10] Section 17, *ibid.*

[11] Section 18, *ibid.*

[12] Section 19, *ibid.*

[13] Section 20, *ibid.*

[14] Section 21, *ibid.*

[15] Section 22, *ibid.*

[16] Section 23, *ibid.*

[17] Section 24, *ibid.*

[18] Section 25, *ibid.*

[19] See *Yearbook on Human Rights for 1960*, p. 193.

[20] Sections 26–28, Legal Capacity and Guardianship Law, 5722–1962.

[21] Sections 28–30, *ibid.*

[22] Section 31, *ibid.*

[23] Section 32, *ibid*, See *Yearbook on Human Rights for 1959*, p. 173.

[24] Section 33, *ibid.*

duties, of such guardian, apply also to guardians over incapacitated persons as well as over the property of unidentified or unborn persons.[1] A guardian may be an individual, a corporation, or the Administrator-General; his appointment requires his previous consent.[2] The guardian must be chosen by the court according to his suitability considering the best interests of the ward, and where the ward is capable of forming and expressing an opinion, he must first be given an opportunity to be heard.[3] Where the rights and duties of a guardian are not otherwise determined by the court in any particular case, they are co-extensive with those of natural guardians.[4] The appointment as guardian does not impose any liability to maintain the ward out of the guardian's property.[5] The guardian is under obligation to act in all matters pertaining to the guardianship, as a devoted man of affairs would act in the circumstances,[6] and wherever possible, he should first consult with the ward.[7] The ward is under obligation to comply with the directions of the guardian within the sphere of his competence.[8] The guardian may at any time apply for directions of the court; such directions to the guardian may also be applied for by the Attorney-General or any person who has an interest in the subject-matter.[9] Where several guardians have been appointed, the court may order whether they are to act jointly or in what manner the rights and duties pertaining to the guardianship are to be divided among them; failing any such order, the guardians must act jointly and in mutual consent, or, failing such consent, according to the directions of the court, except in matters which do not suffer delay; they are jointly and severally responsible to the ward; and when a vacancy occurs, they may continue to act, but must forthwith inform the court.[10] Legal guardians, like natural guardians, require the previous approval by the court of certain dispositions of the ward's property[11] and may not represent the ward in any transaction to which they themselves or members of their family are a party or in which they have a personal interest.[12] The law contains detailed provisions as to investments permitted to be made by guardians, accounts and inventories to be rendered by them, securities to be given by them for the due performance of their duties, expenses permitted to be incurred by them, and the procedure for their resignation, removal and discharge.[13] A guardian is entitled to such remuneration out of the ward's property as the court may fix.[14] He is liable to indemnify the ward for any damage caused to him or his property, unless the court exempts him from such liability by reason of his having acted in good faith and having the best interests of the ward at heart.[15] *Bona fide* purchasers and contractors are protected, even where a guardian acted in excess of his authority or where he had not been duly appointed.[16] A self-appointed guardian, who in fact acts as such without being in law entitled to do so, is responsible towards the ward as if he had been duly appointed.[17]

Interim measures necessary for the welfare of a minor or incapacitated person or for the preservation of his property may at all times be taken by the court or such person as the court may authorize.[18] Any proceedings in matters of guardianship may be held *in camera*, and the court may prohibit any publication in connection therewith.[19] The Attorney-General and his representatives, as well as social welfare officers, may be heard in all such proceedings, either by summons of the court or on their own initiative,[20] and the court may also hear any members of the family of the minor or of the incapacitated person.[21] Any order of the court in guardianship matters is subject to change and rescission with the change of circumstances,[22] and is subject to appeal.[23]

The law further, contains provisions as to conflicts of laws, the jurisdiction of civil and religious courts, and the continuation in force of appointments of guardians made before its commencement.[24]

5. Following the recurrence of accidents in public gatherings and assemblies, a law was passed to better ensure the personal safety of participants in such gatherings.[25] The law applies to assemblies open to the general public, in places where safety measures are not prescribed under any other law;[26] and it empowers the Minister of Interior to make regulations for the provision of first aid, fire extinguishing apparatus, supervisory personnel, and other measures to secure the safety of the persons assembled.[27] Where such regulations have not been complied with, a superior police officer may prohibit the assembly or disperse it.[28] In respect of any place in which a maximum number of admissible persons has been fixed under the regulations, a superior police officer may refuse admission to any assembly in

[1] Section 33, *ibid.*
[2] Sections 34 and 37, *ibid.*
[3] Sections 35 and 36, *ibid.*
[4] Sections 15, 38 and 39, *ibid.*
[5] Section 40, *ibid.*
[6] Section 41, *ibid.*
[7] Section 42, *ibid.*
[8] Section 43, *ibid.*
[9] Section 44, *ibid.*
[10] Sections 45 and 46, *ibid.*
[11] Sections 20 and 47, *ibid.*
[12] Section 48, *ibid.*
[13] Sections 50–56, 58–63, *ibid.*
[14] Section 56, *ibid.*
[15] Section 57, *ibid.*
[16] Sections 49 and 66, *ibid.*
[17] Section 67, *ibid.*
[18] Section 68, *ibid.*
[19] Section 73, *ibid.*
[20] Sections 69–71, *ibid.*
[21] Section 72, *ibid.*
[22] Section 74, *ibid.*
[23] Section 75, *ibid.*
[24] Sections 76–81, *ibid.*
[25] Public Places Safety Law, 5723–1962, passed 17 December, 1962 (*Sefer Ha-Hukim* 381 p. 2).
[26] Section 1, *ibid.* One such other law is, for example, the Public Entertainment Ordinance, 1935, applying to theatres, cinemas, concert-halls, etc.
[27] Section 2, *ibid.*
[28] Section 8, *ibid.*

such place in excess of such maximum number.[1] For these purposes, the superior police officer may call to his aid any policeman and any person in charge of the assembly or of the place;[2] and any person disobeying or obstructing him, is guilty of an offence,[3] as are all persons who do not comply with the safety regulations.[4] The burden of proving that a particular assembly is not open to the general public is on the organizers of the assembly or the occupier of the place where the assembly is held.[5]

6. The law regarding the safety of workmen in factories, enacted by the British Mandatory as the Factories Ordinance, 1946, has been renamed as the Labour Safety Ordinance, and thoroughly amended.[6] The main provision added by the new Law prohibits the opening and maintaining of a factory or workshop, where any person is employed, without notice to the Inspector of Labour at least ten days in advance; and where the Inspector is not satisfied that all safety provisions of the law have been duly complied with, he may apply to the court for a closing order.[7] The penalties for contravening the provisions of the Law have been substantially increased, most offences being made continuous and carrying fines for every day of continuing the offence.[8]

7. The Evidence Law Revision (Protection of Children) Law, 5715–1955,[9] was amended to enable the court, either of its own motion or on application by the youth interrogator, to discontinue the taking of the evidence of a child, although such evidence had started to be taken with the leave of the youth interrogator.[10] It had happened time and again that a youth interrogator had allowed a child to be examined as a witness in court, thinking that no harm would result to the child; but when the child testified in court, it became evident to the court or to the youth interrogator that the best interests of the child required his examination to be discontinued. A court had ruled that the youth interrogator was not competent to withdraw his leave, once given, to the child's examination in court; hence the amending Law to remove this lacuna.

8. The Contempt of Courts Ordinance[11] provides that a person may be compelled, by fine or imprisonment, to comply with an order of a court: neither the amount of the fine nor the period of the imprisonment are limited, and the law was that a person could be kept in prison indefinitely until he obeyed the order of the court. The law has now been altered to the effect that the Attorney-General or his representative must bring the case of any such prisoner to the attention of the court which made the order of imprisonment, at such intervals as he may think fit, but not less than at least once in every six months; and the court may, after having heard the prisoner and any other interested party, confirm and continue the order of imprisonment, change it, attach conditions to it, revoke it, or give any other direction it may see fit.[12]

II. JUDICIAL DECISIONS

1. *Public Tenders — Irregularities — Discrimination. In the Supreme Court Sitting as High Court of Justice.*[13] *Beth Ariza Rehovot Ltd.* v. *Minister of Agriculture* et al. *8 January, 1962*

The Ministry of Agriculture maintains an agricultural experimental laboratory, which issued a public tender for certain packing and marketing contracts. Two offers were received, one from the petitioners. The other offer was accepted, as it had erroneously been supposed to be the cheaper of the two. When the error was detected, the petitioners applied to have their offer accepted, but were refused on the ground that their competitors had already been awarded the contract. On a petition to the High Court for an order of *mandamus* against the respondents,

HELD, the High Court would interfere whenever a public body exercised its functions — whether statutory or not — in a discriminatory manner.

Per Berinson, J.: ". . . As far as contractors are concerned, the public tender gives them the opportunity to obtain the contract by free competition under conditions of full equality. . . A government authority, such as the respondents, is under obligation to carry out its functions and conduct its negotiations and relationships without any prejudices, bias, or preferences, and to treat everybody justly and fairly, and accord equal opportunities to all. . .. The reasons adduced before us for preferring the other contractors to the petitioners, are spurious and unfounded, even if we assume that the respondents acted in good faith. Being satisfied that their discrimination in favour of the other contractors could not be justified by any objective consideration on the merits of the case, we will interfere in order to have the mischief remedied. It must be made clear to every public officer that this court will not keep silent in the face of any preferential treatment being given, without good reason, to one citizen as compared with the other; and in every case of unjustified discrimination, the aggrieved citizen has a right to a speedy and effective remedy from this court. . .."

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[1] Section 9, *ibid.*

[2] Section 10, *ibid.*

[3] Section 13, *ibid.*

[4] Sections 12, 14, 15 *ibid.*

[5] Section 17, *ibid.*

[6] Factories Ordinance (Amendment) Law, 5723–1962, passed 24 December 1962 (*Sefer Ha-Hukim* 382, p. 6).

[7] Section 18, *ibid.*

[8] Sections 20, 22, *ibid.*

[9] See *Yearbook on Human Rights for 1955*, p. 136.

[10] Evidence Law Revision (Protection of Children) (Amendment No. 2) Law, 5723–1962, passed 24 December 1962 (*Sefer Ha-Hukim* 382 p. 9).

[11] Cap. 23 of the Laws of Palestine.

[12] Contempt of Courts Ordinance (Amendment No. 2) Law, 5723–1962, passed 24 December 1962 (*Sefer Ha-Hukim* 382 p. 10).

[13] Judgement reported in 16 *Piskei-Din* 20.

2. *Restraint of Trade — Public Policy — Monopolies. In the Supreme Court sitting as Court of Civil Appeals.*[1] *Yahad Cooperative Meat Transport Workers Ltd.* v. *Shimansky. 5 October, 1962*

The appellant was a cooperative society of slaughterhouse and meat transport workers, which held a virtual monopoly for all the work within the slaughterhouse and the transport of slaughtered meat into town. The respondent had been a member of the appellant society, but was expelled therefrom. He continued to engage in slaughterhouse and meat transport work, in defiance of a rule of the appellant society to the effect that no past member may engage in such work within five years from the date of his resignation or expulsion. The application of the appellant society for an injunction prohibiting the respondent from engaging in such work was refused. On appeal,

HELD, confirmed.

Per Landau, J.: ". . . The point of departure for inquiring into the validity of rules or stipulations restraining the freedom of trade, is article 46 of the Ottoman Code of Civil Procedure, under which contracts and undertakings which violate public morals or the general order, are void. In the interpretation of this provision, we are not bound by the English precedents in respect of restraint of trade.... In the Israeli precedents, the principle of freedom of trade was asserted and reasserted in connection with restrictions which the authorities imposed under various licensing laws; but I think there is no difference in principle, whether the source of the restriction is any executive act, or the act of a corporation or of individuals.. . . There was evidence before the court that a rule similar to that under consideration here, is to be found in the rules of about two hundred cooperative societies, and the argument was that there can be no better proof than this that the rule is reasonable. It appears, however, that this rule is inserted as a matter of routine, and not as a result of deliberations within the various societies; and, in any case, the question as to whether any such rule comes within, or violates, "the general order", is for the court to decide, and a rule is not necessarily compatible with the *ordre public* for the reason only that it is widespread and well-established.. . . If we look at the matter only from the point of view of the relationship among the members of the society, I think that there may be as much to be said for the validity of the rule as against it. But from the point of view of public interests, I have no doubt that this rule ought to be invalidated. The purpose of the rule is to prevent any member who wants to leave the society and engage in his trade on his own, from doing so; and its effect, therefore, is to strengthen the monopolistic objects of the society and to keep its monopoly in full force and vigour. It has often been laid down by this Court that a monopoly is not to be allowed, unless authorized by law; and while this court was concerned only with monopolies created by executive acts, in one respect at least there is no difference between those and the monopolies created by private contracts or rules, namely, that both are detrimental to the public in that they impair the freedom of competition and thus contribute to an increase in prices and to a depreciation in the quality of goods or services.. . . I do not say that every monopoly or restrictive covenant for the prevention of competition is *ipso facto* a violation of the *ordre public*. . . . But the detriment to the public caused by a monopoly like that in issue here, is obvious enough: the prevention of competition and the resulting increase in the prices of a popular and vital foodstuff like meat, is a matter of public concern, in which any, however legitimate, private interest must give way to the overriding interest of the public. . . ."

3. *Female labour — Pregnancy — Dismissal — Retroactive Permit. In the Supreme Court Sitting as Court of Civil Appeals.*[2] *Cohen* v. *Zerzavsky. 28 December 1962*

Under the Women Labour Law, 5714–1954, an employer may not dismiss a woman employee who is pregnant, unless permitted to do so by or on behalf of the Minister of Labour, and no such permit may be given where the dismissal was connected with the pregnancy.

The respondent had dismissed the appellant who had been in his employment for several years. At the time of the dismissal, the appellant was in the early months of pregnancy, but the respondent did not know of the pregnancy. When, some time after the dismissal, the appellant maintained that the dismissal was invalid owing to her pregnancy, the respondent applied to the Minister of Labour for a permit, but the permit was granted only after the present proceedings for arrears of wages had been instituted by the appellant.

The courts below held that the dismissal was valid, as the respondent had not then known of the appellant's state of pregnancy; and inasmuch as the law made it also a criminal offence to dismiss a woman employee during her pregnancy without the requisite permit, the intention of the Legislature must have been to prohibit the dismissal of pregnant employees only where the employer knew that they were pregnant. There was not, therefore, any need for the Minister's permit in this case; but had there be any need, the permit would not have been recognized as valid, as the Minister cannot be taken to have been vested with any power to issue retroactive permits *ex post facto*.

On appeal by the woman employee,

HELD, (1) the dismissal of a pregnant employee is invalid, whether or not the employer knew of her pregnancy. The prohibition to dismiss pregnant employees is not limited to the last months of the pregnancy, where the state of the woman is manifest, but extends even to the first month of the pregnancy, though normally a woman would not disclose her state, to her employer or at all. But while the dismissal during pregnancy, when the employer had no knowledge of the state of the woman, was ineffective to determine her employment, the employer was not criminally responsible therefore, as he had no *mens rea*.

[1] Judgement reported in 16 *Piskei-Din* 2341.

[2] Judgement reported in 16 *Piskei-Din* 2753.

(2) The fact that the prohibition of the law extends to dismissals even where the employer had no knowledge of the woman's pregnancy necessarily implies the authority of the Minister to grant permits with retroactive effect, as otherwise the invalidity of the dismissal would be irremediable. The prohibition of the law was not an absolute one, but subject to exceptions in the discretion of the Minister; and this discretion vests in him also in those cases in which the woman's pregnancy was disclosed only after the dismissal. The permit granted by the Minister in the present case validated the dismissal retroactively, and therefore the appeal was dismissed. The Court strongly criticized the Minister, however, for having delayed the permit for an unreasonably long period, and expressed regret that it had no power to order the costs of the protracted proceedings to be borne by the State.

4. *Rights of Women — Reputed marriages — Common law widows. In the Supreme Court sitting as Court of Civil Appeals.*[1] *The State of Israel* v. *Pessler. 29 January 1962*

Under the Civil Service (Pensions) Law, 5715–1955,[2] the "widow" of a civil servant entitled to a pension, is defined to include a woman "who was generally reputed as his wife and was living with him at the time of his death".

The respondent was found, by the court below, to have been generally reputed as the wife of a deceased civil servant, although she was legally married to another man, and to have been living with him at the time of his death and for about ten years prior thereto. The court below awarded her the widow's pension. On appeal by the State, it was argued that only a woman who was not at the same time married to another man can be "generally reputed" as the wife of the deceased.

HELD, confirmed.

Per Cohn, J.: ". . . In granting certain rights to a woman who is generally reputed to be the wife of a person, the Legislature did not purport to impose on her the status of marriage, or to change the status of married or unmarried woman which attaches to her according to the personal law applicable to her.[3] There is nothing in the Civil Service (Pensions) Law, or in any of the other laws conferring rights on women because of their being generally reputed as wives, to warrant the conclusion that by the conferment of such rights they acquire, or are presumed to possess, any particular marital status which gives rise to rights and duties quite apart from those particular benefits; it is those particular benefits only which are conferred on them, and in order to be entitled to them, they have to prove no status, but only the facts of repute and cohabitation. . . .

The Legislature is taking care of public order and public welfare by providing for the registration of marriages on the one hand and the prohibition of secret and polygamous and children's marriages on the other hand; but it is no offence under the law to cohabit without being married to each other. Rather than interpret the law in the light of moral concepts, however lofty they may be, the intention of the Legislature is to be sought in elementary concepts of natural decency and fairness. The woman who has given a man her love and comfort, her labour and care, and who has shared with him his sufferings and misfortunes — is not to be deprived of the various social benefits coming to her on his death, for the reason only that she cannot produce a certificate of marriage. The Legislature confers these social benefits on her not because she was legally married, but because she lost her actual or potential provider and because she has, as against this provider, by her devotion to and her care for him, acquired rights which the State sees fit to recognize and to implement. . . . The rights of a woman who performed all the functions and duties of a wife, although not legally married, ought, indeed, to be no less than those of a woman who did the same in performance of her marital duties; and it ought not to matter for what reason she was not legally married — be it for the reason that her former husband refuses to divorce her, or that there is any other legal impediment to her marrying, or that she does not wish to be married. . . . Her claim to those social benefits arises not from marriage, but independently from, and irrespective of, marriage. . . ."

5. *Education — Right to free education — Local authorities. In the Supreme Court sitting as High Court of Justice.*[4] *Ashkenazi (an infant)* v. *Gan Yavne Local Council. 24 June 1962*

The respondent local council refused to accept the infant petitioner as a pupil in a primary school for the reason that the petitioner was not ordinarily resident within the jurisdiction of the local council. Under the Compulsory Education Law, 5709–1949, every child is entitled to free education in an official school, such official schools to be maintained jointly by the State and by the local authority where the school is situated; and the local authority is responsible for free education in an official school to be given to children "residing" within its jurisdiction.

It appeared that the social welfare authorities had brought the infant petitioner to a family living within the jurisdiction of the respondent council, with a view to that family becoming the foster-parents of the petitioner after a certain period of probation. On application for an order of mandamus against the respondent council.

HELD, the petitioner was "residing" within the jurisdiction, and therefore entitled to free education at an official school of the respondent council.

Per Berinson, J.: ". . . The duty owed by the local authority under the law is a duty to the infant, and not to his parents. The residence of the infant's parents or legal guardians is entirely irrelevant for

[1] Judgement reported in 16 *Piskei-Din* 102.

[2] See *Yearbook on Human Rights for 1955*, p. 138.

[3] For Israeli citizens, the personal law applicable is the law of their religious community; for foreigners, their national law.

[4] Judgement reported in 16 *Piskei-Din* 1306.

the purposes of this law. Even the duty of the parents to register their children for compulsory education, has to be performed at the place of the children's, and not the parents', residence. The object of the law is to provide for the education of children, and it is obvious that this object can be achieved only at the place where the children actually reside, and not at the place where their parents or guardians reside.. . ."

6. *Freedom of Information — Films and Newsreels — Censorship. In the Supreme Court Sitting as High Court of Justice.*[1] *Israel Film Studios Ltd.* v. *Films Inspection Board. 10 December 1962*

The respondent board has statutory power to grant, in its discretion, or withhold, authority for the exhibition of any film or any part thereof.[2] The board refused to permit the exhibition of a newsreel showing the abortive attempts of the police to execute the eviction order of a competent court, and the resulting violence on the part of some police officers against people who obstructed them.

On application for an order of mandamus to show cause why the exhibition of the newsreel should not be authorized.

HELD order made absolute, and the decision of the respondent board quashed.

Per Landau, J.: ". . . The reason given by the respondent board for banning this newsreel is that it violates the good taste, does not truthfully reflect the problem as a whole, and is therefore calculated to mislead the public.. . . I have considered these reasons very carefully, and find that they cannot be upheld. I have duly warned myself first that we cannot substitute our own discretion for that of the board; it is the board only in which the discretion is vested by law. . . . But where an executive organ has erred in respect of the subject-matter it is entitled to consider in exercising its statutory discretion, this Court will interfere; and I hold that there have been such errors in the present case.

As for the good taste, there is, to my mind, a difference between a film which is pure fiction and a newsreel which photographs real events. While there might be cases in which excessive violence or pornography might violate the good taste and serve the board as justification for withholding the exhibition permit for a film of fiction, no question of taste, good or bad, can arise in respect of the reporting, and exhibiting photographs, of actual happenings; the taste of real life is not always good. Even where actual happenings are photographed, there might be exceptional cases where the photographs are so obscene as not to be fit for exhibition; but there is no suggestion of any obscenity in the newsreel which is in issue here. . . .

The main reason which prompted the board to decide as it did, appears to me to be the impression created in the mind of the onlooker, as if the police arbitrarily and unjustifiably attacked peaceful citizens and forcefully dragged them from their homes. . . These pictures might make people furious, and without some explanation — which the newsreel does not provide — might raise sympathy for lawbreakers and incite to violence against the police.. . . I am far from underrating the dangers involved, but the question is whether this is a consideration sufficient to warrant the banning of this newsreel, which is showing an event which has, unfortunately, actually taken place. I think that in this respect, too, the board failed to take into account the special character of a newsreel, namely, to supply the public with news. The petitioners are a commercial corporation, and they are not to be expected to confine their news supply to items of educational value, nor are they under any obligation to present any particular event from all possible angles and viewpoints. A photographer cannot be at several places at the same time; it is in the nature of things that he catches a picture here and there, and catches all he can; and if his photographs are shown without falsifications, just as they were taken on the spot, the newsreel will be all that the public can legitimately expect; and no explanations and informations are required from the appellants.. . .

It is the citizen's right to spread and to obtain information of what is happening.. . . This right is intimately connected with the freedom of speech and expression; they all belong in the same category of fundamental rights which are not laid down in any written law, but which flow directly from the character of our State as a democracy under the rule of law. There is a long established practice in this Court, not only to recognize and enforce these fundamental rights, but to see to it that they are recognized and enforced by all the agencies of government.. . .[3] A government that claims the power to determine what is good for the citizen to know, will soon end by determining what is permissible for the citizen to think; and there is no greater incompatibility than that with true democracy. In the Universal Declaration of Human Rights of the United Nations, the freedom to obtain information is but a subdivision of the freedoms of thought and expression; and the right to obtain information was recognized by the greatest American judges as flowing from, may even being identical with, the right of free speech guaranteed by the First Amendment to the Constitution of the United States.. . .[4]

Where the public has reason to believe that actual happenings are not reported and shown as they happened, but are censored and curtailed by government agencies, the danger is that such happenings will be inflated and exaggerated by all sorts of uncontrollable rumours. There is no sense in playing the ostrich in these matters; and no social evil will be remedied by concealing it from the public, instead of attacking it openly and fighting it by means of public education towards better enlightenment."

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[1] Judgement reported in 16 *Piskei-Din* 2407.

[2] Cinematograph Films Ordinance, cap. 16 of the Laws of Palestine.

[3] See: *Kol Haam* v. *Minister of Interior*, *Yearbook on Human Rights for 1953*, p. 151.

[4] *Grosjean* v. *American Press Co.* (1936) 56 S.C.444; *U.S.* v. *Associated Press* (1943), 52 F. Suppl. 362.

7. *Freedom of Religious Worship — Discrimination — Local Authorities. In the Supreme Court Sitting as High Court of Justice.*[1] *Peretz* et al. v. *Kfar Shmaryahu Local Council. 7 November 1962.*

The petitioners applied to the respondent council to let them one of the assembly-halls belonging to the council, for the purpose of conducting their community prayers. The respondent council refused, for the reasons that the Jewish religious services conducted in the synagogue were sufficient to meet the requirements of all Jewish sections of the population of the village; that representations had been made to the council, protesting against services being conducted by the petitioners on the ground that such services would violate the religious feelings and convictions of the majority of the inhabitants; and that it was the duty and the policy of the respondent council to safeguard the unity and prevent strife in the public and religious life of the community. It was further argued that the respondent council was under no legal obligation to let its hall to anybody, and that the petitioners had not, therefore, any *locus standi* in the courts.

On the return to an order *nisi* to show cause why the respondent council should not be compelled to let the hall to the petitioners for their religious services,

HELD, order made absolute.

(1) The question whether the synagogue services would meet also the religious requirements of the petitioners, was not one for the respondent council, but for the petitioners, to decide. The fact that they desired to conduct separate services, was sufficient *prima facie* evidence that the synagogue services do not satisfy their requirements.

(2) The protests and objections raised by the established religious authorities, as if it were on behalf of the majority of the inhabitants, were irrelevant; firstly, because the discretion in the matters had to be exercised by the respondent council, and not by anybody else, and the established religious authorities could have no say in the matter; secondly, because it was precisely because of the petitioners representing a religious minority that the respondent council was under an obligation to cater to their needs; and thirdly, if feelings and sentiments are violated, there was no reason why the feelings of the petitioners should be allowed to be, and those of others be prevented from being, violated.

(3) The policy of the respondent council to bring about unity and avoid strife was to be commended; but the pursuit of that policy could not justify any deviation from the law and any excess of legal powers. Freedom of religious cult is one of the inalienable and fundamental rights guaranteed to every citizen of Israel in the Declaration of Independence; and though the right is not laid down in any written law, it flows from the principles of democracy and the rule of law on which the State is founded. The very assertion and promise of religious freedom to all, implies the acceptance of splitting the population into as many religious sects and faiths as they may desire; if one insists on uniformity, one has virtually abandoned freedom of religion.

(4) The respondent council had admitted that its assembly-halls were at the disposal of the inhabitants, at a nominal rent, for the purpose of any lawful gathering. In the circumstances, the council cannot be heard to discriminate against applicants only because the purpose of their assembly, however lawful, was not to the council's taste. Moreover, the respondent council was holding the property for public and communal purposes and was authorized by law to do so; and the Court would interfere where a local council administered or disposed of its property in an unlawful or discriminatory manner.

8. *Retroactive legislation — Extraterritorial offences — General principles of international law — Personal prejudice of judges. In the Supreme Court Sitting as Court of Criminal Appeals.*[2] *Eichmann* v. *Attorney-General, 29 May 1962*

The appellant was convicted of mass murders under the Punishment of Nazis and Nazi Collaborators Law, 5711–1951, and sentenced to death.[3] He argued, on appeal, that his conviction was unlawful for each of the following reasons:

(1) That the law under which he was convicted was passed many years after the commission of the acts alleged to constitute the offences, and by a State which was not in existence at the time of the commission of such acts;

(2) That the said acts had been committed outside Israel and hence were not subject to the jurisdiction of Israeli courts;

(3) That he had been brought into the jurisdiction by unlawful means; and

(4) That Israeli judges must be biassed and prejudiced against him and hence were disqualified from trying him.

HELD, conviction and sentence confirmed.

(1) The offences of which the appellant was convicted were not new offences created by the Punishment of Nazis and Nazi Collaborators Law, 5711–1951; they had been criminal offences, both under Israeli (Palestine) law and under the laws of all civilized nations, long before the 1951 law had been enacted. The new law did not purport to render punishable as a criminal offence what had hitherto been a lawful act; and the *ratio* underlying the prohibition of retroactive criminal legislation was that no person ought to be punished for any act which was lawful at the time it was committed. The acts committed by the appellant were, by any civilized legal standard, manifestly unlawful at the time they were committed.

(2) The jurisdiction of the Israeli courts was determined solely by Israeli law. The 1951 law vested jurisdiction in the Israeli courts to try any person charged with murder committed in Nazi occupied territory against persecuted people (as there defined).

[1] Judgement reported in 16 *Piskei-Din* 2101.

[2] Judgement reported in 16 *Piskei-Din* 2033.

[3] The death penalty for murder was abolished in 1954: See *Yearbook on Human Rights for 1954*, p. 161. It was retained for offences of genocide, for offences of murder under the Punishment of Nazis and Nazi Collaborators Law, 5711–1951, and for treason committed during hostilities; See *Yearbook on Human Rights for 1957*, p. 149.

Nor was the assumption of jurisdiction by Israeli courts under Israeli law in respect of such offences, even though committed abroad, contrary to any principle of international law.

(3) Under English common law (which, in the absence of any statute to the contrary, is applicable as residuary law in Israel), it was irrelevant, for purposes of criminal jurisdiction, by what means the accused person had been brought into court and within the jurisdiction. His actual physical presence sufficed to vest the court with jurisdiction over him.

(4) *Per Curiam:* "It is quite true that no judge ceases to be a human being just by sitting on the bench. But he is in law bound to suppress all emotions and sentiments and conquer all weaknesses. Every grave and heinous crime, be it murder or rape or treason, naturally arouses emotional reactions — and so does the Nazi holocaust. But as soon as he sits in judgement, a conscientious judge knows to free himself from such emotions and exclude from his consideration and consciousness everything except the evidence lawfully brought before him. The judges have, in this case, fulfilled this arduous duty of theirs from beginning to end."

9. *Pardon — Power to impose conditions — Commutation of sentences. In the Supreme Court sitting as Court of Review.*[1] *Attorney-General* v. *Metana. 23 February 1962*

The respondent had been granted a pardon by the President of the State. A condition had been attached to the pardon to the effect that, if the respondent should commit another offence, the pardon would be automatically annulled, and the respondent would have to undergo the punishment remitted, in addition to any punishment imposed on him for the new offence. On conviction of another offence, the district court ordered the respondent to first serve the term of imprisonment which had been remitted, and thereafter to serve a further term of imprisonment in respect of the second offence. On appeal, the Supreme Court held[2] that the President's power of pardon did not include a power to impose conditions, and the court had had no jurisdiction to order the imprisonment of the respondent in execution of any such condition contained in the President's pardon. The Attorney-General applied for a review, by a full Supreme Court, of the constitutional issues involved.

HELD, The President's power to grant pardons and remit sentences included the power to do so on conditions, and the judgement of the District Court should be restored.

Per Agranat, J.: ". . . The power to grant pardons and remit sentences, vested in the President by virtue of Section 6 of the Transition Law, 5709–1949, is actually borrowed from, and co-extensive with, the prerogative of mercy vested in the crown under the law of England. As Blackstone wrote, 'a pardon may also be conditional, that is, the King may extend his mercy upon what terms he pleases, and may annex to his bounty a condition, either precedent or subsequent, on the performance whereof the validity of the pardon will depend; and this by the common law' . . .[3] The American law is the same: 'Since the greater includes the less, a general power to grant pardons carries with it, as incidental thereto, the right to impose conditions limiting operation of such pardon'. . . ."[4]

Per Cohn, J.: ". . .The question as to what is, in any given case, a reduction of a sentence, must be left to the discretion of the pardoning authority. For one offender, a large fine is a severer sentence than a short period of imprisonment; for another, one day's imprisonment may be severer than a fine of thousands of pounds. There are some who think that life imprisonment is severer punishment than death; some are prepared to pay any amount of fine, if their driving licence is not taken away from them. . .. The rule is that the President acts on a petition, either of the offender himself, or of his friends or relatives, or — as also happens — of the authorities; and like in early canon law, the pardoning authority exercises its discretion only in favour of *volentes et petentes.* The petitioner who asks for mercy, in whatever form and under whatever conditions it may be given to him, thereby accepts the act of pardon or remission, in such form and under such conditions, as a reduction of his sentence. . . Apprehensions have been voiced that such wide powers of pardon could appear as if interfering with the exclusive jurisdiction of the criminal courts to impose, and determine the measure of, punishments. I could understand such apprehensions, if the power of pardon were in the hands of the Executive, or even of the Legislature: the separation of the three powers might then be said to be endangered. But the President is above the three powers. In his person, he represents the State as such — the same State in whose name and under whose mandate the courts exercise their jurisdiction. There is a difference of title, but not a difference of substance, between the judges in England who are the King's judges, and the judges in Israel who are the State's judges; and as the King of England reserved to himself, from times immemorial, the right to amend harsh results of adjudication by acts of mercy, so does the State of Israel reserve to itself, by its President, that same right. Not only does the power of pardon not transgress the jurisdiction of the courts, but it is its necessary supplement; the wider and more comprehensive the power of pardon, the better and more secure and effective will be the sentencing activity of the courts. . . The remissibility of a punishment is, already in view of Bentham,[5] an ingredient required to render the punishment just and effective. . . It is not only that judges are human, and liable to err, and that especially in matters of the liberty of the citizen any possible mistake or exaggeration must be corrigible, if not by legal process, then at least by an act of mercy — but the main task of the courts is to administer the law, and the law cannot take account, in fixing either maximum or minimum punishments, of individual merits or concerns; nor can the courts have regard to any

[1] Judgement reported in 16 *Piskei-Din* 430.

[2] Judgement reported in 14 *Piskei-Din* 970 (1960).

[3] Blackstone's *Commentaries on the Laws of England,* vol. 4, p. 458.

[4] *American Jurisprudence,* vol. 39, pp. 558–560.

[5] Bentham, *Principles of Morals and Legislation,* chap. 15, para. 25.

circumstances arising after they have pronounced their final judgement. . .. The power of mercy of the President is, thus, practically unlimited; and a petitioner who had asked for and obtained such mercy, cannot afterwards be heard to say that the President exceeded his powers by making his order conditional. . .."

10. *Release on bail — Bail before and after conviction. In the Supreme Court Sitting as Court of Criminal Appeals.*[1] *Cohen* v. *Attorney-General. 19 January, 1962*

The appellant was convicted of an offence and sentenced to five years' imprisonment. He had lodged an appeal against conviction and sentence. Pending the appeal, he asked to be released on bail.

HELD, refused.

Per Agranat, J.: ". . . The fact that the appellant had been released on bail throughout all the time the proceedings against him were pending in the court below, and that there had been no complaint in respect of his conduct during that time, is irrelevant for present purposes. The rule is that before conviction a man is presumed to be innocent, and unless there is an immediate and reasonable threat to public security if he is let free, he is entitled as of right to be released on bail. But this presumption of innocence is no longer available to him after conviction; though he attacks the conviction on appeal, the presumption is that he was rightly convicted, so long as the conviction is not set aside. Taking into account, then, the gravity of the offences of which the appellant was convicted, and without inquiring into the question as to what are the prospects of his pending appeal, the only course open to me is to refuse his application for bail."

11. *Presumption of innocence — "Past criminal record" — Verdict of grand jury — Ministerial discretion. In the Supreme Court sitting as High Court of Justice.*[2] *Gold* v. *Minister of Interior. 29 August, 1962*

The petitioner had applied to the respondent for a permit to stay in Israel as a permanent resident. Under the applicable law,[3] the respondent could not withhold the permit applied for, unless he was satisfied that the petitioner had a "past criminal record" and was likely to endanger public peace. The respondent refused the permit, having received evidence to the effect that a Grand Jury in the United States had indicted the petitioner of a large number of grave offences, and that the petitioner had "jumped" bail and come to Israel, on a passport obtained by fraud, before his trial on those charges.

On the return to an order *nisi* to show cause why the permit should not be granted to the petitioner,

HELD, Order discharged.

Per Sussman, J.: ". . . For the purposes of this law, a man who has a past criminal record is a man who has committed at least one criminal offence. The additional requirement that he must be likely to endanger public peace indicates that the offence may not be a petty one, such as a traffic contravention; the criminal behaviour must be such, in nature and gravity, as to justify the closing of the country's gates before the offender. The offences with which the petitioner is charged are very grave indeed. It is true they have not been proved by the judgement of any court, but in my opinion they need not be so proved; it is sufficient if, from the evidence before him, the respondent may conclude that there exists proof which would *prima facie* support the charges and there was ample proof of that before the respondent. . .. The rule that a man is presumed to be innocent until proven guilty, does not operate to prevent an administrative agency from satisfying itself that that man has a criminal record. . .. The determination by such administrative agency, for the purposes within its competence, does not amount to a conviction, and the presumption of innocence is and remains available to the accused person before the courts. As the determination of such 'criminal record' is by law vested in the administrative agency, which has no power to hear witnesses and try cases, it follows that such determination need not be judicial, and the evidence produced need not be conclusive; what is required is that the agency should satisfy itself, as any reasonable man would, that its applicant was a criminal, in the popular sense of the word. . .. The duty of the respondent to close the country's gates to criminal elements, is no smaller nor less important than his duty to open the gates to desirable immigrants. Were he to admit this petitioner, and it turns out that the charges against him are well-founded, he would have violated his duty to exclude criminals from immigration. But having refused him admission, and it then turns out that the charges against him were unfounded, the petition can always be renewed. Therefore the respondent exercised his discretion reasonably and lawfully, and I see no reason to interfere. . .."

Per Landau, J.: ". . . There can be no doubt that the petitioner committed a criminal offence when he obtained from the American authorities a second passport on the strength of his false declaration that his first passport had been lost. It was with his original, first passport that he succeeded in coming to Israel after the second passport had been taken away from him. All this clearly appears from the statement that the petitioner himself gave to a police officer in Israel. Even apart from the charges pending against him abroad, this was sufficient to satisfy the respondent that the petitioner had a criminal record. . .."

Per Cohn, J. (dissenting): ". . . I agree that a 'criminal record' for the purposes of this law need not in every case be a formal record of judicial convictions and sentences. A man could admit he had a criminal record — and that would be quite sufficient for the purpose; or where under fiscal laws offences may be compounded, there could be a criminal record without formal conviction. On the other hand, there might be formal convictions by competent courts which would not prove any 'criminal record'; where, for instance, a man is convicted abroad of an offence which is not an offence under our laws; or where he was convicted without fair trial or due process of law. But every

[1] Judgement reported in 16 *Piskei-Din* 534.

[2] Judgement reported in 16 *Piskei-Din* 1846.

[3] Law of Return, 5710–1950.

'criminal record' presupposes the commission of a criminal act, and the commission of such an act must be lawfully proved. The verdict of the Grand Jury, the indictment, the declaration on oath of the investigation officer, prove that proceedings are pending against the petitioner; they prove that these proceedings have been lawfully initiated; they prove that the prosecution is prepared to prove its case against the petitioner. One thing they do not and cannot prove, and that is, that the petitioner has actually committed these acts. No criminal act may be attributed to any person until and unless a competent court has found it to be proved against him. States in which the executive, and not the judiciary, determine who is and who is not a criminal, have nothing to do with the rule of law. It is one of the fundamental human rights, recognized in every state under the rule of law, that every criminal charge is to be heard and tried in a fair and public trial, and until found proved by a competent court, it does not prove anything against the person so charged, who is presumed innocent (articles 10 and 11 of the Universal Declaration of Human Rights). This presumption protects the accused person not only from being punished before being convicted; it protects him also from any violation of his name and reputation, and from any infringement of his civil and personal rights. Like most other fundamental human rights, this presumption is calculated to protect the individual not so much as against the courts of justice, but rather as against administrative agencies — for the courts can normally be trusted to differentiate between accusation and proof, charge and conviction, whereas administrative agencies are apt to draw premature conclusions, as the present case clearly demonstrates; by attributing to the petitioner a "criminal record", the respondent not only infringed on his right to stay in this country, but he also *ipso facto* injured his name and reputation, as if his criminal record had duly been established by the process of a competent court, while in truth the petitioner was never tried and never convicted. I would make the order absolute."

12. *Speedy Trial — Delay in Preliminary Proceedings — Irregularities. In the Supreme Court sitting as High Court of Justice.*[1] *Graziani* v. *Attorney-General. 19 September 1962*

Under Rules of Court made by the Minister of Justice, a preliminary enquiry into a criminal charge must be held within sixty days from the day the accused person lodged an application for such enquiry. The petitioner lodged an application, and when sixty days had expired without the enquiry having been held, he applied for an order of *habeas corpus* to be released and discharged.

HELD, petition dismissed. The non-observance, by the judge appointed to hold the enquiry, of the terms laid down in the rules did not confer any right on the accused person, except perhaps to an order of *mandamus* against the judge to hold the enquiry forthwith. The rule fixing the sixty-days-limit is addressed to the judge; and failing any sanction provided by the rules for the non-observance of such time-limits fixed in them, the court will not impose any such sanction, as otherwise it would usurp legislative functions which the law reserved to the rule-making authority. As the rule-making authority had seen fit not to attach any sanction to the non-observance of such time-limit, the reasonable interpretation to be given to this rule is that while the judge is expected and required to observe it, its non-observation will not affect the validity of the proceedings and the liability of the accused person to be duly tried. Even if a judge not only delays, but altogether neglects, the holding of the preliminary enquiry, there was nothing in the law to prevent the prosecuting authority from starting the proceedings *de novo;* in which case the accused would be entitled to apply afresh for a preliminary enquiry to be held, but would not be entitled to claim that he had been placed in double jeopardy, because as yet no indictment would have been found against him.

[1] Judgement reported in 16 *Piskei-Din* 1999.

ITALY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS IN 1962[1]

I. LEGISLATION

Act No. 1634 of 25 November 1962 (*Gazzetta Ufficiale* No. 311, of 6 December 1962), making *Amendments to the provisions of the Penal Code concerning rigorous imprisonment for life and conditional release*, is part of that trend in the Italian legal system which seeks in particular to transform the penalty of imprisonment from something in theory retributive and in practice afflictive into a conception the essential aim of which is re-education. The death penalty having been abolished again — it was abolished once in 1889 by the Zanardelli Penal Code and then re-established by the Fascist régime — and commuted to rigorous imprisonment for life imprisonment by Lieutenancy Legislative Decree No. 224 of 10 August 1944, there arose, with the entry into force of the Constitution, the problem of the constitutionality of such imprisonment.

Article 27 of the Constitution, in addition to declaring that the death penalty is admissible only in the cases covered by wartime military laws, provides that "Penalties may not entail treatment which is inhumane and they should aim at the re-education of the person sentenced". This rule is fully in accord with the principle established by article 5 of the Universal Declaration of Human Rights. Supported by a large number of authorities on Italian criminal law who regard the maintenance of the penalty of rigorous imprisonment for life as incompatible with the constitutional provision, the legislator considered the reformative principle affirmed in the Constitution from two aspects: a negative aspect, since it stated that no penalty whatever might entail treatment which was inhuman; and a positive aspect, since it affirmed that the penalty should perform the function of re-education. From the first point of view, the penalty of rigorous imprisonment for life, which involves total deprivation of liberty and is of a duration exceeding that dictated by the requirements of protection, certainly amounts to inhumane treatment; from the second, rather than giving an impetus towards moral improvement, it carried within itself a germ which can kill the sense of social responsibility or impel a man towards a resignation comparable to hopeless brutalization.[2]

The aforesaid Act introduces three important amendments: the first, which relates to article 22 of the Penal Code, allows even the convict sentenced to rigorous imprisonment for life to work outside the prison, with no restriction as to time; the second, relating to article 72 of the Penal Code, reduces the period of solitary confinement during the day in the case of two concurrent life sentences or of a life sentence combined with a sentence of imprisonment for more than five years; the third and most important innovation, which relates to article 176 of the Penal Code extends to the life prisoner the opportunity to benefit from conditional release, provided that he has served twenty-eight years of the sentence and his behaviour provides clear evidence of repentance. This last amendment led to the adaptation, where appropriate, of article 177 of the Penal Code; the period of time laid down in the last paragraph of that article was fixed at five years from the date of provisional release for the life prisoner. In that way, the life prisoner who has shown that he is deserving is granted a complete return to life in society.[3]

A "transitory provision" (article 3 of the Act), provides that a person who was sentenced to rigorous imprisonment for life prior to the re-establishment of the unspecified mitigating circumstances referred to in article 2 of Decree No. 288 of 14 September 1944 may be granted conditional release after he has actually served at least twenty-five years of the sentence.

Important changes in the school regulations — from pre-primary school to university — were introduced by two acts which, as indicated below, were subsequently supplemented by others; the purpose of these acts was to make the regulations more adapted to the country's domestic and international requirements, on the basis of articles 33 and 34 of the Constitution which are in accord with the principles proclaimed in article 26 of the Universal Declaration.

In view of the complexity of the texts of these two acts, only the most important and novel aspects will be mentioned here.

Act No. 1073 of 24 July 1962 (*Gazzetta Ufficiale* No. 199, of 8 August 1962) *laying down measures for the development of the schools in the three-year period 1962 to 1965* efficiently compresses into a three-year period the principal items of reform con-

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[1] Note prepared by Dr. Maria Vismara, Director of Studies and Publications of the Italian Association for the United Nations, Chief Editor of *La Comunità internazionale*, a publication of that association, and government-appointed correspondent of the *Yearbook on Human Rights*.

[2] See Report of the Second Committee of the Senate, III Legislature, No. 2158-A.

[3] As the Rapporteur himself affirms (see report cited), this Act is only one step towards the solution of the important problem of the penalty system in its many aspects. In the draft reform of the Penal Code — now under study — the commitment of the State to facilitate the re-education and moral recovery of the offender is evident.

templated in the "ten-year plan for the schools" drawn up in 1959, which some amending acts had already begun to put into effect. One of the principles on which Act No. 1073 is based is that of promoting the development of the State schools and decreasing the budgetary allocations for private schools. The application of that principle is felt mainly in the field of the pre-primary schools, where the educational initiative was formerly taken almost entirely by local institutions or individuals.

The first part of the Act concerns school buildings (articles 1 to 30): the financial and administrative measures provided for are designed to give impetus to the construction of buildings for schools at all levels in both large and small communities, to meet the urgent needs created by the growth of the population. The Act provides, *inter alia*, for increased funds for the construction of State pre-primary schools (article 14), in accordance with the above-mentioned principle, and makes a new provision for the building of other pre-primary schools, involving some decrease in grants-in-aid (article 15). The second part (articles 31 to 39) provides measures for the development of particular educational establishments and an increase in scholarships and aid to universities: allocations are provided under the appropriate section of the Ministry of Education budget for the establishment and operation of state pre-primary schools, while the grants to private pre-primary schools are considerably lower than in the past (article 31). Other allocations of funds are provided: for the establishment of special schools for the mentally and physically handicapped and for social rehabilitation, and special classes in the complementary schools; for an increase in special classes in the primary and intermediate schools and for the necessary public health and teaching assistance, for systematic measures to ensure school attendance and for special teacher training (article 32). Furthermore, in view of the desirability from the educational and economic viewpoints, of concentrating students instead of increasing the number of small schools and separate sections, the provision for the transportation of complementary and primary school students from neighbouring localities to a State school or a recognized school (private school authorized to grant diplomas recognized by the State) is increased by 50 per cent (article 34).

The provision of textbooks, including those for the blind, free of charge to pupils in State or recognized primary schools is entirely new (article 35). The provision for the granting of scholarships to enable gifted or deserving students in straitened family circumstances to complete their studies in State or recognized secondary and art schools have also been increased. The scholarships are awarded on the basis of provincial examinations (article 38). New allocations are provided for to increase university assistance (grants and scholarships); a small proportion of this aid being also made available to foreign students or graduates of not more than two years' standing.

The third part (articles 40 to 52) provides, *inter alia*, for the following: additional technical and scientific facilities (work-rooms, laboratories, offices, auxiliary audio-television equipment, libraries) for technical and vocational institutes, other secondary and art schools and primary schools (audio-television equipment and libraries) (article 40); additional teaching and scientific equipment for university institutes, astronomical and geophysical observatories, etc.; an increase in State grants to universities and to university training institutes (article 42), to academies and colleges of art and music (article 44), as well as tax concessions for the universities, observatories, etc. The number of university chairs is increased (120 additional regular professorial posts for each of the 1963–64 and 1964–65 academic years) (article 50), and 600 new regular assistant lecturerships are provided for in each of the three academic years from 1962 to 1965 (article 51).

Lastly, a basic innovation of the Act is the establishment of a Fact-Finding Commission (articles 54 to 56) composed of sixteen members of Parliament and fifteen experts, to make a general survey with the following objectives: "(1) to determine the lines along which State education should develop in relation to the school-age population and to the needs of Italian society (in the areas of secondary, artistic and university education and scientific research) from the point of view of economic development and social progress, and with regard also to the intensification and extension of international relations and to Italy's participation in European Community organizations; (2) to determine the financial needs of Italian schools and the changes in regulations necessary for their development (article 56)." The Act also indicates the various aspects of State education in Italy which the Commission should consider thoroughly "for the purpose of determining the present status of the State and private schools, in order to facilitate its participation in the general development of education and the formulation of the laws on parity. . . ."

On the basis of the Commission's findings and of the observations of the Education Council and the National Economic and Labour Council thereon, the Minister for Education will have to submit to Parliament, by 31 December 1963, a report on the status of education in Italy, accompanied by proposed guide-lines for a school development plan covering several years. The draft legislation required is to be submitted by 30 June 1964.

By Act No. 1859 of 31 December 1962 (*Gazzetta Ufficiale* No. 27, of 30 January 1963) on the *Establishment and regulation of public intermediate schools*, a profound change is made in the first phase of secondary education, thereby implementing article 34 of the Constitution[1] which, in turn, is in accord with article 26 (1) of the Universal Declaration.

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[1] *Constitution, art. 34*: "The schools are open to all. Primary education, which is given for at least eight years, is compulsory and free. Gifted and deserving students are entitled, even if they have no means, to attend higher educational institutions. The Republic shall give effect to this right by providing scholarships, family grants and other assistance, which shall be given on a competitive basis."

The eight years of schooling are divided as follows: primary school from six to ten years of age; lower secondary school from eleven to thirteen years of age.

The Act effects two important changes: the transformation of the various intermediate schools into a single type of compulsory school, and the provision of schooling at this level free of charge. On the basis of the previous school regulations, while the "lower intermediate schools" properly so-called, which then gave access to the upper intermediate schools, were located mainly in the larger centres, the small towns — where the least prosperous or poorest class predominated — generally had only "vocational training schools" and other secondary schools, the graduates of which could not subsequently enter higher educational establishments. This gave rise throughout the country to widespread *de facto* discrimination in the educational study opportunities and hence in the career opportunities open to children of the various social classes. Moreover, none of the lower intermediate schools were free. As stated in the introduction to the "Curricula for the State intermediate schools" (*Gazzetta Ufficiale* No. 124, of 11 May 1963, Regular Supplement No. 1), this new school "is in accord with the democratic principle of raising the level of the educational and attainment level of all citizens and of the entire Italian people, and thereby increasing their capacity for participating in and contributing to the values of culture and civilization."

Article 1 defines the purpose and the term of the new school as follows: "In implementation of article 34 of the Constitution, compulsory education subsequent to primary education shall be provided free of charge in the intermediate schools, which shall have a three-year term and shall constitute the first phase of the secondary school. The intermediate school shall seek to promote the training of the individual and the citizen according to the principles laid down in the Constitution and shall help to guide youth in its choice of a career." The curriculum (article 2) provides, in addition to the compulsory subjects, for optional subjects such as applied technology and music education which are compulsory only in the first year and optional in the two succeeding years, or Latin, which becomes a separate and optional subject in the third year while in the first two years elementary Latin is taught as part of the Italian course. This is done — as stated in the above-mentioned Introduction — in order that the intermediate school may perform not only an informative but also a guidance function: "in fact, by promoting the maturing of the individual students through tuition in various subjects, including optional ones, it clarifies and develops their inclinations and interests and enables all students to discover their particular bent, with a view to later scholastic and vocational choices. . ."

Article 4 provides that admission to and attendance at intermediate school will be free. According to article 6, the intermediate school certificate gives access to all secondary schools and institutes, graduates of which may then enter the universities. Parents are responsible for compliance with the school attendance requirement (article 8); they may also give the compulsory instruction themselves, provided that they demonstrate the capacity to furnish it and report each year to the competent school authority. Article 9 provides "facilities for compliance with the school attendance requirement" for students whose families have limited means: the *Patronati scolastici* are authorized to make grants, to distribute free of charge textbooks, teaching materials, light meals and other necessary supplies and to organize free transportation for students when compulsory intermediate schools have not been established in the localities where they reside. Intermediate schools will be established (article 10) in all communes with a population of more then 3,000 inhabitants and in any other area where they are deemed necessary. Provision is also made for the establisment in the intermediate schools of "supplementary classes" (article 11) for students who require special instruction or who have failed the examination for a certificate and "special classes" (article 12) for scholastically backward students.

Starting on 1 October 1963, the intermediate schools already in existence, the secondary vocational training schools and any other first-cycle secondary schools will be designated intermediate schools in accordance with the new regulations (article 16).

The two Acts referred to below govern certain labour relations in accord with the spirit of article 23 (1) of the Universal Declaration, which calls for "just and favourable conditions of work" for everyone.

Act No. 230 of 18 April 1962 (*Gazzetta Ufficiale* No. 125, of 17 May 1962) concerning the *Rules governing fixed-term employment contracts* forms part of the legislative policy which the Parliament and the Government have been pursuing for years with the aim of guaranteeing the "security of human dignity and freedom, the essential human rights and the common good of the Italian people". The objective of this Act is to regulate an important class of employment contracts — in widespread use in Italy — by making the permissibility and lawfulness of a fixed-term contract dependent on an "objective justification" based on intrinsic factors which are intimately connected with the character of the occupation or with the actual independent, short-term duration of the work to be performed.[1] The Act also meets the twofold requirement of reducing the insecurity of fixed-term workers and of enhancing, within the enterprise, the status of the workers, who often are in an inferior position as compared with their entrepreneurial counterpart.

Article 1 provides that "The contract of employment shall be deemed to be for an indefinite term" except in those cases where the setting of a term to its duration is permitted, namely: "(*a*) when this is made necessary by the special nature of the work arising from its seasonal character; (*b*) when the worker is employed to take the place of an absent worker who retains the right to the job. . .; (*c*) when the worker is employed to perform work or a service of an extraordinary or occasional character for a definite and predetermined time; (*d*) in the case of manufacturing by consecutive stages calling for specialized skills different from

[1] See the report of the Tenth Committee of the Senate on the corresponding draft law (Senate, III legislature, No. 1775-A).

those normally used. . .; (*e*) in the case of contracts of artists and technicians in the entertainment field. The setting of a term shall have no effect if it is not based on a written document". It is provided that the work referred to under (*a*) will be defined subsequently by a decree of the President of the Republic. According to article 2, "the duration of a fixed-term contract may, exceptionally and with the worker's consent, be extended not more than once and for a period not exceeding the duration of the initial contract, where such extension is necessitated by accidental and unforeseeable requirements and involves the same work. . ." Fixed-term contracts of employment are also allowed in the case of administrative and technical managers, provided that they are for a term not exceeding five years (article 4).

Article 5 regulates the conditions of employment of workers under fixed-term contracts: "A worker with a fixed-term contract is entitled to the holidays and Christmas bonus, additional month's wages and all other benefits provided in the undertaking for workers governed by indefinite term contracts, in proportion to the time he has worked, provided this is not objectively incompatible with the nature of the fixed-term contract. At the expiration of the contract the worker shall be given a termination allowance proportionate to the duration of the contract and similar to the retirement indemnity provided for by collective contracts." In the event of non-compliance with the provisions of article 5, the employer is subject to a fine of 5,000 to 100,000 lire for each worker with respect to whom there has been non-compliance (article 7).

This Act does not apply to the employment relations between agricultural employers and wage earners, which are regulated by Act No. 533 of 15 August 1949 and subsequent amendments (article 6). Article 2097 of the Civil Code is abrogated (article 9).

Act No. 1544 of 23 October 1962 (*Gazzetta Ufficiale* No. 288, of 13 November 1962) provides for a *Reduction of the hours of work of mine workers.* As is well known, the problem of the reduction of the work-week, in Italy as elsewhere, is currently a matter of great concern. However, in the case of this class of workers, the legislator was moved by a single and paramount consideration: the need to safeguard the physical safety of the miner. Under article 1 of this Act "the maximum regular work schedule may not exceed forty hours per week of actual work for all workers who work underground in mines or are engaged in the extraction of minerals excluding methane mine, petroleum and stone workers and cave and peat bog workers, the total weekly salary remaining the same. More favourable terms established by collective employment contracts or trades union agreements shall remain in force." The procedure for giving effect to this Act may be established through agreements between the employers' organizations and trades union associations of the sector concerned. In the event of failure to reach an agreement, the procedure shall be laid down by a decree of the President of the Republic (article 3).

II. TREATIES AND CONVENTIONS RELATING TO HUMAN RIGHTS, WHICH WERE MADE OPERATIVE IN ITALY IN 1962

Agreement between Finland and Italy concerning the exchange of student employees, signed at Helsinki on 18 February 1961. Made effective in Italy by Presidential Decree No. 1547, of 23 October 1961 (*Gazzetta Ufficiale* No. 37, of 10 February 1962).

International Labour Convention No. 71 concerning seafarers' pensions, adopted at Seattle on 28 June 1946. Made effective in Italy, by Presidential Decree No. 1548 of 23 October 1961 (*Gazzetta Ufficiale* No. 37, of 10 February 1962).

International Labour Convention No. 114 concerning fishermen's articles of agreement, adopted at Geneva on 19 June 1959. Made effective in Italy by Presidential Decree No. 1549, of 23 October 1961 (*Gazzetta Ufficiale* No. 37, of 10 February 1962).

International Labour Convention No. 108 concerning seafarers' national identity documents, adopted at Geneva on 13 May 1958. Made effective in Italy by Presidential Decree No. 1600, of 23 October 1961 (*Gazzetta Ufficiale* No. 57, of 3 March 1962).

Convention relating to the status of stateless persons, adopted in New York on 28 September 1954. Ratified and made effective in Italy by Act No. 306, of 1 February 1962 (*Gazzetta Ufficiale* No. 142, of 7 June 1962).

International Labour Convention No. 106 concerning weekly rest in commerce and offices, adopted at Geneva on 26 June 1957. Made effective in Italy by Presidential Decree No. 1660 of 23 October 1961 (*Gazzetta Ufficiale* No. 76 of 23 March 1962).

Convention between Italy and Argentina on social insurance, signed at Buenos Aires on 12 April 1961. Ratified and made effective in Italy by Act No. 1759 of 3 December 1962 (*Gazzetta Ufficiale* No. 8, of 10 January 1963).

III. JUDICIAL DECISIONS

By Decision No. 69, of 7 June 1962, the Constitutional Court definitely affirmed the *freedom not to belong to an association* proclaimed by article 20 (2) of the Universal Declaration.

In the civil action brought by Mr. P. V. against the Italian Federation for Hunting, an organ of the Italian National Olympic Committee, the conciliator judge of Onano, on application of the defence, submitted to the court by an order of 15 December 1961 the question of the constitutional character of article 8, third paragraph, and article 91, sole paragraph, of Consolidated Text No. 1016, of 5 June 1939, concerning game protection and hunting. The first of these two provisions required any applicant for the issue or renewal of a hunting licence to produce "the voucher of a membership card in the Hunters' Branch at the place where the applicant resides and a receipt for the subscription payable to the Olympic Committee." The second required the payment of the subscription to the Committee, including accident insurance, and direct payment to the Branch at the place where the applicant resided of the membership fee in the Branch

of the Italian Federation for Hunting. The order was based on the contention, *inter alia*, that the provisions objected to infringed "the principle of freedom of association laid down in article 18 of the Constitution". In the proceedings before the court both parties entered an appearance, and the President of the Council of Ministers, representing the State, intervened.

The court, having expressed certain considerations and denied some preliminary objections, declared that the question of constitutionality which it was called upon to resolve was "whether or not the requirement that every hunter should become a member of the Federation involves a violation of the freedom of association affirmed by article 18 of the Constitution."[1] It would seem — the decision stated — that this article proclaims only the freedom of citizens to associate for the attainment of lawful purposes, and that consequently such freedom does not exclude the power of the State to oblige persons belonging to a given category to join an association, whenever this is necessary or even merely advisable in the public interest. "Nevertheless, the court holds that the constitutional provision under discussion must be construed in the historical context of its origin, which brings into consideration not only the so-called 'positive' aspect of the freedom but also the other 'negative' side, which in effect amounts to the freedom not to join an association; this aspect must have been regarded by the Constituent Assembly as no less essential than the other, after an era in which the legislative policy of a totalitarian régime had sought to place associations within the framework of governmental organization and under the control of the State, requiring citizens to become members of this or that association. . . ."

The court declared, however, that it did not mean by this that the State was prohibited in all cases from establishing public bodies in the form of associations for the achievement and defence of public aims — bodies which might have the advantage, *inter alia*, of making those concerned participate in the existence, functioning and control of the activity organized. It might, on the contrary, be asserted that, while the limitations on freedom of association were well defined by article 18 of the Constitution, "freedom not to join an association is subject to greater limitations which are not specifically identified by the Constitution." Assuming that a definition of these limitations was outside the scope of the immediate Court proceedings, the decision went on to state: "It may, however, be affirmed that freedom not to join an association must be held to have been violated whenever compelling the members of a group or category to join an association of their peers infringes a right of freedom or a constitutionally guaranteed principle; or whenever the public aim which is said to be pursued is obviously arbitrary, specious and contrived and consequently the limitation which is thus placed on that freedom, defined as we have just now seen, is arbitrary, specious and contrived."

Turning next from these general considerations to the case under consideration, and having reviewed the history of Italian hunting legislation (from Act No. 1420, of 24 June 1923 to the present), the Court concluded, in essence, that with the decentralization of the offices of the Ministry of Agriculture and Forestry established by Presidential Decree No. 987, of 10 June 1955, the greater part of the State's functions in the matter of hunting were transferred to the provincial administrations and to the provincial committees which took over almost entirely the public responsibilities of the Federation for Hunting and the supervision of all the phases and forms of hunting. From a comparison of the tasks assigned to the provincial administrations and to the provincial committees (Presidential Decree No. 985, of 10 June 1955, art. 38) with those assigned to the Federation for Hunting (Consolidated Text No. 1016, of 5 June 1939, art. 86), it would appear that the Federation's functions were either already performed by the provincial bodies or merely auxiliary to those of the latter, or must now be held to have terminated or, lastly, were of such a nature in the case of a public institution or association as to create doubts as to their constitutionality. In fact, the Federation for Hunting, "far from providing supervision of hunting, confined itself in substance to 'incorporating' hunters compulsorily and to presiding over their activities, in clear violation, therefore, of article 18 of the Constitution."

Accordingly, the court declared the provisions of article 8, third paragraph, and article 91, last paragraph of Consolidated Text No. 1016, of 5 June 1939, unconstitutional with reference to article 18 of the Constitution.

By Decision No. 30, of 27 March 1962, the Constitutional Court handed down a ruling concerning *personal freedom* in relation to article 13 of the Constitution,[2] which was in accord with the spirit of article 3 of the Universal Declaration.

The question raised by the court of Busto Arsizio in its order of 12 February 1960 referred to the following point: whether that part of article 4 of the Consolidated Text on Public Security which provided that the police authorities might order a person to submit to an identification examination without the safeguards provided by article 13 of the Constitution was lawful. According to the court's established approach to the interpretation of article 13 of the Constitution, this article does not refer to any limitation whatever on personal freedom, but to those limitations which violate the traditional principle of *habeas corpus;* however, the safeguard of *habeas corpus* should not be construed only in terms of physical coercion of the person, but also in terms of the diminution of moral freedom when

[1] Constitution, art. 18: "Citizens have the right to associate freely, without authorization, for any purposes not prohibited to individuals by criminal law. Any secret associations or bodies pursuing, even indirectly, political aims by means of organizations of a military character are prohibited."

[2] Constitution, art. 13: "Personal freedom is inviolable. No form of detention, inspection or personal search or any other restriction whatsoever on personal freedom shall be allowed, except on an order from the judicial authorities accompanied by a statement of reasons and then only in the cases and according to the forms specified by law..."

such diminution implies a total subjection of the person to the power of another. Accordingly, the problem which the Court had to resolve was the following: whether the carrying out of an identification examination involved such a physical or moral subjection of a person to the power of the police authorities as to constitute a restriction on personal freedom comparable to arrest.

The Court then distinguished two kinds of examination: (*a*) descriptive, photographic and anthropometric tests which sometimes require complicated investigations that may affect the physical or moral freedom of the person, such as those necessitating blood samples or complex psychological or psychiatric examinations, or those examinations calling for verification which can diminish the moral freedom of the person, such as those tests which have to be carried out on a part of the body not normally exposed to the view of others, especially when this entails disrespect for the privacy or modesty of the person; (*b*) external descriptive, photographic and anthropometric tests, as well as finger-printing, which do not involve a lessening of personal freedom, although a momentary physical immobility of the person is required for description purposes or for measurement of the aspects of parts normally exposed to the view of others. The court concluded that, while the external tests were a form of duty imposed on certain individuals in given circumstances specified by law with a view to the prevention of crime, examinations which subjected a person to substantial physical or moral restrictions on freedom, comparable to arrest, were to be included among the inspections covered by article 13 of the Constitution (and therefore prohibited).

For these reasons the Constitutional Court declared unconstitutional in relation to article 13 of the Constitution that part of article 4 of the Consolidated Text on Public Security which provides for identification examinations involving personal inspections within the meaning of the constitutional provision.

The principles of *equality of all before the law*, *the right to equal protection of the law* without any discrimination, and *the right to an effective remedy* proclaimed by articles 7 and 8 of the Universal Declaration and affirmed by article 3 and article 24, first paragraph, of the Constitution, were reaffirmed by the Constitutional Court by its decision No. 1, of 23 January 1962.

The decision was in respect of three combined questions, submitted by orders of the Courts of Aquila and Venice and the Court of Appeal of Ancona respectively, involving the constitutionality — in relation to articles 3, 24 and 28 of the Constitution — of Legislative Decree No. 313, of 6 February 1936 (converted into Act No. 1126, of 28 May 1936, and Lieutenancy Decree No. 1558, of 21 October 1915, abrogated by Act No. 114, of 6 March 1950) concerning the benefits to be allowed to civilian and military employees of the State administration in respect of illness, injuries or death resulting from their service. The question of constitutionality was raised by the plaintiffs in the course of the three civil proceedings: the first two were brought against the State Railway Administration by the relatives of State Railway employees who had died in service (railway accidents), and the third was brought against the Ministry of Defence — Army Branch — by a conscript who had been wounded by a bullet fired by another recruit during an army exercise.

The State Railway Administration and the Ministry for Defence (Army Branch) appeared before the court, being represented and defended by the State Advocate's Office.

The provisions, the constitutionality of which was challenged, were in force when the aforesaid accidents took place but, as stated above, had been abrogated in 1950. However, the court, recalling its precedents, reaffirmed that the abrogation of a law did not bar consideration of the question of its constitutionality. According to the contested provisions (in particular, article 1 of the Legislative Decree of 1936), the rights arising from disability or death in service of State employees, giving rise to claims against the State, were limited to the benefits provided for in the provisions governing the employment relationship, thus excluding compensation for any greater damage they might suffer. In short, the employee was given only the right to apply for retirement benefits through the administrative channel. If these benefits were denied on the ground that the damage did not occur in service, the employee could bring an action in tort; but if the retirement benefits were denied for any other reason, or if the permanent disability was not such as to require a termination of employment, or in other special cases, the employee would receive nothing. Moreover, there was no provision for an action for damages against the State by any other person who, not included, as a rightful claimant in the provisions governing the employment or retirement relationship, had suffered damage as a consequence of the same events. In short, as stated in the Venice court's order of referral, the contested provisions amounted to "a restriction of the liability of the State for unlawful acts attributable to it".

The State Advocate's Office, following a substantially identical line of defence in the three cases, contended — in summary — that the contested provisions rested on the internal structure of the State organization and on the relations between the State and its own employees, regulated by the public employees' statute, while article 28 of the Constitution governed the relations between the State, acting through its own employees, and third persons. The plaintiffs contended, on the contrary, that article 28 did not permit any special regulation of the matter in relation to the State, inasmuch as the article itself affirmed the obligation to provide full compensation for damage in proportion to the amount of damage sustained.

Faced with these opposing theses, the court declared that it was sufficient, in the matter before it, to determine whether the contested laws "adopted a system amounting to the exclusion of any liability" of the State, and concluded that they did, stating that "the system adopted by those laws in some cases, excludes any compensation, and in others offers benefits which may represent merely a sem-

blance of compensation. Under these circumstances," the decision continues, "it is clear that. . . however broad, hypothetically, the sphere in which the legislator may regulate relations between the State and its employees even as to the effects of liability towards them, we may not disregard the fact that a law which, like the one now under consideration, adopts regulations more or less obviously barring all such liability would be contrary to the fundamental precept of article 28 of the Constitution." Those comments made it unnecessary to consider the contested laws in relation to the other constitutional provisions mentioned in the orders of referral. However, the court considered that a comparison with article 3 would be useful. "That a disparity in treatment exists is certain and clear: these laws create a grave inequality between the private victim of a culpable act and the State employee who is the victim of the same act. Nor is this an occasion for the application of the principle, consistently applied in the court's decisions, that disparity of treatment is justified whenever the legislator, in its discretion, determines that a different situation requires special regulation. From the provisions under consideration it is evident that the legislator does not wish to establish special regulations to cover a special situation, but wishes to deprive one category of citizens of those rights which, when the State incurs liability, belong to all others. Moreover it wishes to do so, fundamentally, for reasons of economy and to protect the interests of the State, as also appears from the preparatory proceedings for the conversion of the 1936 Decree into an Act."

For these reasons the Court declared unconstitutional with reference to articles 3 and 28 of the Constitution Lieutenancy Decree No. 1558 of 21 October 1915 and Royal Legislative Decree No. 313, of 6 February 1936, converted into Act No. 1126, of 28 May 1936.

Decision No. 76, handed down by the Constitutional Court on 22 June 1962, confirmed the *worker's right to a weekly rest*, explicitly provided in article 36 (3) of the Constitution and implicitly proclaimed by article 24 of the Universal Declaration.

Article 1 of Act No. 370, of 22 February 1934, respecting the Sunday and weekly rest, after stating in the first paragraph that persons working for another are entitled to a rest period of twenty-four consecutive hours every week, lists in the second paragraph a number of categories to which it states the Act shall not apply. Included in these categories as number 6 are "persons engaged in the care of migratory herds", who thus were excluded from the right to weekly rest. This exclusion was confirmed by article 8 of the same Act, according to which, not only Act No. 370, but even the collective rules governing the weekly rest period for other agricultural workers were inapplicable to this category.

The case in question concerned a "person engaged in the care of migratory herds" who, discharged by his employer, had cited the latter before the *pretore* of Rome, asking that he should be sentenced to pay, *inter alia*, compensation in lieu of remuneration for work performed on Sundays. The *pretore* had cited this particular demand as the reason for his order, in which he raised *ex officio* the question of the constitutional character of article 1, second paragraph, No. 6, of the said Act No. 370 in relation to article 36, third paragraph, of the Constitution.

The court, after stating that article 36, paragraph 3, of the Constitution "recognizes that the worker has a perfect and unwaivable personal right to a weekly rest period and constitutionally guarantees it", declared that "article 1, second paragraph, No. 6, of Act No. 370 of 22 February 1934 is unconstitutional . . . in relation to article 36, third paragraph, of the Constitution." In its decision, the Court affirmed furthermore that the declared unconstitutionality of the provision in question "does not mean that, in view of the special characteristics of the relationship, the weekly rest period for persons engaged in the care of migratory herds may not be regulated in a manner different from that provided in the said Act No. 370 of 1934, always provided that it is in accordance with article 36, paragraph 3, of the Constitution."

DEVELOPMENTS CONCERNING FREEDOM OF INFORMATION[1]

1. Under Act No. 165, of 21 April 1962, on the censorship of films and theatrical presentations, the exhibition of films and the export of Italian films are subject to the grant of permission by the Ministry of Tourism and Entertainment, which decides after hearing the opinion, which shall be binding, of a special Commission. The term of office of this Commission which was established by a decree of the said ministry is two years.

The opinion of the Commission (which is divided into sections for the purpose of its deliberations) consists of two elements: firstly, it must ascertain whether the film may be exhibited or whether it presents as a whole or in any individual scenes or sequences anything offensive to public decency (in that case the opinion will be negative); secondly, it must determine whether the film may be seen by minors under fourteen or eighteen years of age respectively, having regard to the degree to which young persons in their years of growth are particularly impressionable and to the requirements of their moral welfare. If the Commission decides to give a favourable opinion it can limit its procedure to an affirmative reply, but if its opinion is negative it must state its grounds. If permission or authorization for exhibition to minors is refused an appeal may be lodged within twenty days from communication of the decision, with a second commission constituted by a joint meeting of two sections of the first commission, which did not take part in the first deliberation.

The applicant may appeal against the decision of the second commission to the Council of State

[1] Information provided by the Government of Italy.

acting in its judicial capacity, which will decide according to the merits of the case.

Theatrical performances constitute a separate category in that, except for reviews and musical comedies, they do not require permission; a special commission merely decides whether minors under eighteen years of age may be admitted.

The provisions relating to films are applied to public performance of theatrical works in the form of reviews or musical comedies in which music and dancing predominate.

Up to the present time the rules governing the so-called censorship of cinematographic and theatrical performance represent specific applications of article 21 of the Constitution (which is explicitly invoked in article 6, paragraph 2 of the Act), which, as is known, makes public morality the only objective limitation to freedom of expression. It should be noted that, with regard to the system of appeals, the Act in question embodies the principles of Italian administrative justice.

2. There had been some doubt whether article 656 of the Penal Code — under which it is a criminal offence to publish or disseminate false, exaggerated or tendentious news likely to disturb public peace and order — was compatible with article 21 of the Constitution. The publication and dissemination of deliberately false news is not covered by any constitutional guarantee inasmuch as it does not constitute an expression of opinion by the person publishing or disseminating it. At the same time the Constitution contains no provisions which would in derogation of article 21, permit the ordinary legislator to prohibit and punish, through the custodian of public peace and order, false or exaggerated expressions of opinion, merely because they do not conform to objective reality or, still less, to prohibit or punish tendentious expressions of opinion — that is, expressions which while conforming to reality, are published solely with a view to exciting public alarm.

This doubt was resolved by the Constitutional Court in its judgement No. 19 of 16 March 1962 confirming the constitutionality of the article.

The judgement states that public order is a feature inherent in the Italian constitutional system, and its maintenance, in the sense of preserving the juridical structures of social coexistence, established by laws from every danger and threat, is an imminent purpose of the constitutional system. If disturbance of public order means any threat by illegal means capable of causing such disturbance, then legislative provisions designed to prevent and repress such disturbances obviously cannot be deemed to be at variance with the Constitution. Hence, even freedom of expression is circumscribed by the need to prevent or to put an end to disturbances of public order. Consequently, the court concluded that there was no conflict between article 21 of the Constitution and article 656 of the Penal Code (which provides that the publication of news which distorts the truth is an offence if it is likely to disturb public order); it becomes even more obvious that there is no conflict if it is considered that the likelihood of a disturbance of public order is left to be determined by the judge, who makes that determination on the basis of strict objective criteria, bearing in mind the actual circumstances of the case.

3. The Court of Cassation, in its judgement No. 518, of 15 January 1962, described the notion of "publication for the purposes of the Press Act" which, it stated, "consists in the action by which material reproduced by printing or other physical or chemical means is removed from the editorial offices and made available to a relatively wide circle."

IVORY COAST

ACT No. 60-366, OF 14 NOVEMBER 1960, ESTABLISHING A CODE OF CRIMINAL PROCEDURE[1]

Amended by Act No. 62-231 of 29 June 1962[2]

Introductory Title

PROSECUTION AND CIVIL ACTION

Art. 1. — Prosecution with a view to the application of criminal penalties shall be instituted and carried on by the judicial officers or officials upon whom the responsibility for prosecution is conferred by statute.

Prosecution may also be instituted by the injured party in the manner prescribed by this Code.

Art. 2. — A civil action with a view to securing compensation for the damage caused by a crime, correctional offence or petty offence may be brought by anyone who has personally suffered damage directly caused by the offence.

Except for the cases mentioned in article 6, third paragraph, withdrawal of the civil action shall neither stay nor suspend the prosecution.

. . .

Art. 6. — Prosecution with a view to the application of criminal penalties shall be extinguished by the death of the defendant, limitation of time, amnesty, repeal of a criminal law, and *res judicata*.

If proceedings resulting in conviction, however, have disclosed forgery in the decision declaring the prosecution extinguished, the prosecution may be renewed; the limitation of time must then be regarded as suspended from the day on which the decision became absolute until the day on which the person guilty of the forgery or the use of forged documents was convicted.

Prosecution may, moreover, be extinguished by agreement between the parties where there is an express statutory provision to that effect; it may likewise be extinguished in the case of withdrawal of a complaint, where the complaint is a condition precedent to the institution of proceedings.

Art. 7. — In the case of a crime, prosecution shall be barred after ten full years have elapsed since the day on which the crime was committed, if no act of judicial inquiry or prosecution has been taken in the interim.

If such an act has been taken in that interval, prosecution shall be barred only after ten full years have elapsed since the last act was taken. This rule shall apply even with respect to persons who were not involved in that act of judicial inquiry or prosecution.

Art. 8. — In the case of a correctional offence, the period of limitation for prosecution shall be three full years; that period shall run in accordance with the stipulations set out in the foregoing article.

Art. 9. — In the case of a petty offence, the period of limitation for prosecution shall be one full year; that period shall run in accordance with the stipulations set out in article 7.

Art. 10. — A civil action may not be commenced after the period of limitation for prosecution has expired.

Where there has been an absolute decision on the prosecution and a criminal conviction has been handed down, a civil action, commenced within the time-limits set out in the foregoing articles shall be barred in thirty years.

A civil action shall be subject in all other respects to the rules laid down in the Civil Code.

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 of articles 378 of the Criminal Code.

. . .

Title II

INVESTIGATION

Chapter I

Flagrante delicto *Crimes and Offences*

Art. 53. — 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 taken part in the crime or offence.

[1] Text published in the *Journal officiel de la République de Côte d'Ivoire*, Special Number, Third Year, No. 12, of 24 February 1961.

[2] Published in the *Journal officiel*, Fourth Year, No. 36, of 26 July 1962.

Any crime or correctional offence which, although not committed in the circumstances specified in the foregoing paragraph, was committed in a house the head of which requests the procureur de la République or an officer of the criminal police to establish the facts shall be treated as a *flagrante delicto* crime or offence.

Any correctional offence punishable by imprisonment, for which on the basis of an unofficial investigation a preliminary examination does not appear to be required because of the admissions of the accused or the existence of sufficient evidence, shall also be subject to the procedure applicable to *flagrante delicto* crimes and offences.

. . .

Art. 56. — If the nature of the crime is such that proof thereof may be obtained by the seizure of 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 criminal acts, the officer of the criminal police shall go forthwith to the dwelling-place of such persons and make a search, of which he shall draw up a report.

Only he and the persons specified in article 57 and those whose assistance he may ask in application of article 60 shall have the right to examine the papers or documents before seizing them.

It shall be his duty, however, to see to it first that all necessary steps are taken to ensure that professional secrecy 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 57.

The officer of the criminal police shall, with the consent of the procureur de la République, retain possession only of such seized objects and documents as are useful in establishing the truth.

Art. 57. — Subject to the provision of the foregoing article concerning respect for professional secrecy and the rights of the defence, the operations provided for in that article shall be carried out in the presence of the person at whose dwelling-place the search is made.

If that is impossible, it shall be the duty of the officer of the criminal police to invite him to appoint a representative of his choice, failing which the officer of the criminal police shall select two witnesses — not persons under his administrative authority — whom he shall call upon to assist him.

The report of these operations, drawn up as prescribed in article 65, shall be signed by the persons specified in this article; if they refuse to sign, it shall be so stated in the report.

Art. 58. — Any communication or disclosure without the authorization of the accused person 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 50,000 to 600,000 francs and by imprisonment for three months to three years.

Art. 59. — Unless requested by a person in the house or unless an exception is provided by law, searches and entry of premises may not begin before 4 a.m. or after 9 p.m.

Art. 60. — 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.

They may not refuse to accede to this request of the judicial officials or of the officers of the criminal police on pain of a fine of 6,000 to 12,000 francs.

Art. 61. — The officer of the criminal police may forbid any person to leave the place where the offence was committed until he has concluded his operations.

Any person whose identity it appears necessary to establish during judicial investigation must, at the request of the officer of the criminal police, cooperate in the operations required for that purpose.

Any infringement of the provisions of the foregoing paragraphs shall be punishable by a penalty which may not exceed ten days' imprisonment and a fine of 36,000 francs.

Art. 62. — The officer of the criminal police may summon and hear all persons who may be able to furnish information on the facts.

It shall be the duty of the persons summoned by him to appear and give evidence. If they do not comply with this obligation, notice of this fact shall be given to the procureur de la République, who may order the police to bring them in.

The officer of the criminal police shall draw up a written record of their statements. The persons who give evidence shall read the record themselves, may have their observations entered in it, and shall sign it. If they state that they cannot 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, it shall be so stated therein.

Art. 63. — If, for the purposes of the investigation, the officer of the criminal police considers it necessary to hold one or more of the persons mentioned in articles 61 and 62 at his disposal, he may not hold them for more than forty-eight hours.

If there is substantial and consistent evidence which is likely to result in the bringing of charges against a person, the officer of the criminal police must bring him before the procureur de la République and may not hold him at his disposal for more than forty-eight hours.

The time-limit laid down in the foregoing paragraph may be extended by a further period of forty-eight hours on authorization from the procureur de la République or the examining judge.

The provisions of the last paragraph of article 64 shall be applicable.

The officer of the criminal police shall advise the person under surveillance of this right.

Art. 64. — The procureur de la République may, if he considers it necessary, even on the application of a member of the family of the person under surveillance, choose a medical officer who shall examine the latter at any time within the time-limits set out in article 63.

After forty-eight hours, the medical examination cannot be denied if the detained person requests it.

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Art. 72. — In the case of a *flagrante delicto* crime or offence punishable by the penalty of imprisonment, any person is entitled to apprehend the perpetrator and to conduct him to the nearest officer of the criminal police.

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Chapter II
Preliminary Investigation

. . .

Art. 76. — If, for the purposes of the investigation, the officer of the criminal police considers it necessary to hold at his disposal one or more persons against whom evidence of guilt exists, he may not hold them for more than forty-eight hours.

The procureur de la République may grant permission to extend the period of surveillance for another forty-eight hours.

Title III
EXAMINING AUTHORITIES

Chapter I
Examining Judge: Examining Authorities of First Instance

Section 1. — *General Provisions*

Art. 77. — The preliminary examination shall be mandatory for a crime. In the absence of special provisions, it shall be optional for a correctional offence.

Art. 78. [As amended by Act No. 62-231, of 29 June 1962] — Even if he has taken action in the case of a *flagrante delicto* crime or correctional offence, the examining judge may hold a preliminary examination only on an application from the procureur de la République.

The provisions of the foregoing paragraph shall not apply to judges of sections of courts who, within their competence, undertake a preliminary examination, either of their own motion and by virtue of their own authority, or on the application of the competent procureur de la République, or on the complaint of a civil claimant.

The application may be made against persons named or not named.

The examining judge shall have the authority to prefer charges against any person who took part as principal or accomplice in the acts which are brought to his attention.

When acts, not mentioned in the application, are brought to the knowledge of the examining judge, he shall forthwith submit the complaints or the reports in which they are recorded to the procureur de la République.

In the case of a complaint lodged by a civil claimant, the procedure set out in article 86 shall be followed.

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Section 2. — *Complaint of the Civil Claimant and its Effects*

Art. 85. — Any person who claims to have been injured by a crime or a correctional offence may become a civil claimant by lodging a complaint with the competent examining judge.

. . .

Art. 87. — A person may lodge a civil complaint at any time during the examination.

The admissibility of a civil complaint may, in all cases, be contested by the ministère public, by the accused person, or by another civil claimant.

The examining judge shall decide the matter by an order after the file has been submitted to the ministère public.

. . .

Section 4. — *Hearing of Witnesses*

Art. 101. — The examining judge shall order, by a summons served by a bailiff or by a police officer, any persons whose testimony he considers to be useful to appear before him. A copy of this summons shall be delivered to them.

Witnesses may also be summoned by ordinary letter, by registered letter or through the administrative channel; they may also appear voluntarily.

Art. 102. They shall be heard separately by the examining judge attended by his registrar, the accused person not being present; a report of their statements shall be drawn up.

The examining judge may call on the services of an interpreter who is at least twenty-one years of age and who is not a witness. The interpreter, if he is not under oath, shall take an oath to interpret the testimony faithfully.

. . .

Section 5. — *Interrogation and Confrontation*

Art. 112. — At the first appearance of the accused person, the examining judge shall verify his identity, shall inform him of the acts he is alleged to have committed, and shall receive his statements. If the charge is not dropped, the judge shall advise the accused person of his right to select a counsel from among the advocates enrolled in the bar of the Ivory Coast; if the counsel agrees to serve, he may take up temporary residence in the area where the examination is conducted.

A properly constituted civil claimant shall also have the right to the assistance of counsel from the time of his first hearing.

At the first appearance of the accused person, the judge shall caution him that he must inform the judge of all changes of address; the accused person must, when necessary, establish an address for service within the area of the jurisdiction of the court.

Art. 113. — An accused person under detention may communicate freely with his counsel imme-

diately after his first appearance before the examining judge.

The examining judge shall have the right to order a prohibition on communication for a period of ten days. He may renew this prohibition, but only for a further period of ten days. Such action shall be reported to the procureur général.

The prohibition on communication shall in no case apply to the accused person's counsel.

Art. 114. — At any time during the examination, the accused person and the civil claimant may inform the examining judge of the name of the counsel selected by them; if they appoint several counsel, they must indicate to which one of them invitations and notices should be addressed.

Art. 115. — Unless they expressly waive their rights in that respect, the accused person and the civil claimant may be heard or confronted only if their respective counsel are present or have been duly invited to attend.

Counsel shall be invited to attend by a written communication at least two days before the interrogation.

The records of the proceedings must be placed at the disposal of counsel for the accused person at least twenty-four hours before each interrogation. They must also be placed at the disposal of counsel for the civil claimant at least twenty-four hours before the latter is heard.

The formalities specified in this article shall be required only when counsel resides or reside in the area where the examination is conducted.

Art. 116. — If urgency exists, however, either because a witness or person jointly accused is in critical condition or because certain existing evidence is about to disappear, the examining judge may undertake interrogations and confrontations without observing the formalities specified in the foregoing article.

. . .

Section 6. — *Warrants and their Execution*

Art. 120. — The examining judge may issue a summons to appear, a warrant to compel attendance, an order for committal to prison or a warrant of arrest, as the case requires.

The purpose of the summons to appear is to serve notice on an accused person that he is required to come before a judge at the date and hour stated in the summons.

The warrant to compel attendance is an order issued by the judge directing the police to bring the accused person before him immediately.

The order for committal to prison is an order issued by the judge directing the chief warden of the place of detention to receive and detain the accused person. Where notice of the order has previously been given to the accused person, the order also permits a search for him or his transfer.

The warrant of arrest is an order directing the police to find the accused person and to take him to the place of detention indicated in the warrant, where he will be received and detained.

. . .

Art. 124. — An accused person to whom a summons to appear has been issued shall be interrogated forthwith by the examining judge.

An accused person arrested by virtue of a warrant to compel attendance shall be interrogated in the same conditions; however, if the interrogation cannot take place immediately, the accused person shall be taken to a place of detention, where he may not be held for more than forty-eight hours.

At the expiration of that period, he shall automatically be brought by the chief warden, before the procureur de la République, who shall request the examining judge, or failing him the president of the court or a judge designated by the latter, to conduct the interrogation forthwith, failing which the accused person shall be set free.

Art. 125. — Any accused person arrested by virtue of a warrant to compel attendance, who has been held in a place of detention for more than forty-eight hours without being interrogated, shall be deemed to be arbitrarily detained.

Any judicial officer or official who has ordered or knowingly permitted such arbitrary detention shall be liable to the penalties set out in articles 119 and 120 of the Criminal Code.

Art. 126. — If an accused person sought by virtue of a warrant to compel attendance is found outside the area of jurisdiction of the court in which the warrant was issued, he shall be brought before the procureur de la République or the section judge of the place of the arrest.

Art. 127. — The procureur de la République or the section judge shall interrogate him on his identity, receive his statements, and ask him whether he agrees to be transferred or whether he prefers the warrant to compel attendance to remain in effect while he awaits, in the place where he is, the decision of the examining judge in charge of the case. If the accused person declares that he is opposed to the transfer, he shall be taken to a place of detention and the competent examining judge shall be notified forthwith. The report of that appearance, including a complete description of the accused person, shall be forwarded without delay to that judicial officer.

The report must mention that the accused person has been advised that he is free not to make a statement.

Art. 128. — An accused person who refuses to comply with a warrant to compel attendance or who, after having declared that he is prepared to comply, attempts to escape must be restrained by force.

The person bearing the warrant to compel attendance shall in that case make use of the police of the nearest place. The latter are under an obligation to comply with the order contained in this warrant.

Art. 129. — The examining judge in charge of the case shall decide, immediately after the receipt of these documents, whether there is reasonable ground for ordering the transfer.

Art. 130. — If an accused person against whom a warrant to compel attendance has been issued cannot be found, this warrant shall be submitted to the mayor or to one of his deputies, or to the police

commissioner or to the head of the administrative district or to an officer of the criminal police of the place where he resides.

The mayor, the deputy, the police commissioner, the head of the administrative district or the officer of the criminal police shall affix his signature to the warrant, which shall be returned to the judicial officer who issued it with a report that the search was unsuccessful.

Art. 131. — If an accused person has fled or if he resides outside the territory of the Republic, the examining judge, after consulting the procureur de la République, may issue a warrant for his arrest, if the act charged entails a penalty of correctional imprisonment or a more serious penalty.

Art. 132. — An accused person apprehended by virtue of a warrant of arrest shall be taken forthwith to the place of detention indicated in the warrant, subject to the provisions of article 133, second paragraph.

The chief warden shall deliver to the officer responsible for executing the warrant a paper acknowledging that the accused person has been handed over.

Art. 133. [As amended by Act No. 62-231, of 29 June 1962] — The accused person shall be interrogated within forty-eight hours of his incarceration. If the interrogation has not taken place by the end of that period, the provisions of articles 124 (third paragraph) and 125 shall apply.

If an accused person is arrested outside the area of jurisdiction of the examining judge who issued the warrant, he shall be brought forthwith before the procureur de la République or the section judge of the place of the arrest, who shall receive his statements.

The procureur de la République or the section judge shall immediately inform the judicial officer who issued the warrant and shall apply for a transfer. If the transfer cannot be effected immediately, the procureur de la République or the section judge shall so report to the judge who issued the warrant.

In the case referred to in the second paragraph of this article, the accused person may be brought directly before the judge issuing the warrant, if, because of the means of communication, this is clearly the most expeditious procedure.

Art. 134. — The officer responsible for executing a warrant of arrest may not enter the dwelling-place of a citizen before 4 a.m. or after 9 p.m.

He may be accompanied by a force sufficient to ensure that the accused person cannot evade the law. Such force shall be levied in the place nearest to that in which the warrant of arrest is to be executed, and is under an obligation to comply with the orders contained in the warrant.

If the accused person cannot be apprehended, notice of the warrant of arrest shall be given at his last place of residence and a report of the search shall be drawn up.

This report shall be drawn up in the presence of the two nearest neighbours of the accused person that the bearer of the warrant of arrest is able to find. They shall sign it or, if they cannot write or do not wish to sign, mention shall be made of that fact and of the questions that were directed to them.

The bearer of the warrant of arrest shall then have his report countersigned by the mayor or one of his deputies or the police commissioner or the head of the administrative district or an officer of the criminal police and shall leave a copy of it with him.

The warrant of arrest and the report shall then be forwarded to the judge who issued the warrant.

Art. 135. — The examining judge may issue an order for committal to prison only after an interrogation and only if the offence entails a penalty of correctional imprisonment or a more serious penalty.

The officer responsible for the execution of the order for committal to prison shall hand over the accused person to the chief warden of the place of detention, who shall deliver to him a paper acknowledging that the accused person has been handed over.

. . .

Section 7. — *Detention pending Trial*

Art. 137. — Detention pending trial is an exceptional measure. When an order is made for such detention, the following rules must be observed.

Art. 138. — In correctional cases, where the maximum penalty provided for by the law is less than six months' imprisonment, an accused person domiciled in the Ivory Coast may not be detained for more than five days after his first appearance before the examining judge unless he has been previously convicted of a crime or sentenced to a term of imprisonment exceeding three months, without suspension of sentence, for a correctional offence under ordinary law.

Art. 139. — Except in the cases provided for in the foregoing article, detention pending trial may not exceed four months. At the end of that period, if continued detention appears necessary, the examining judge may extend it by means of an order containing a statement of reasons, issued upon an application, similarly specifying reasons, by the procureur de la République. The period of each such extension shall not exceed four months.

Art. 140. — In all cases, where it is not granted as of right, provisional release may be ordered *ex officio* by the examining judge with the concurrence of the procureur de la République, provided that the accused person undertakes to appear immediately at all proceedings when he is summoned thereto, and to keep the examining judge informed of all his movements.

The procureur de la République may also request provisional release at any time. The examining judge shall rule on such requests within five days from the date thereof.

Art. 141. — An accused person or his counsel may at any time make an application for provisional release to the examining judge, subject to the obligations provided for in the foregoing paragraph.

In courts of first instance, the examining judge must immediately transmit the file to the procureur

de la République so that he may prepare his statement. At the same time, he shall give notice in writing to the civil claimant, who may submit observations.

The examining judge shall rule on the application, by means of an order containing a statement of reasons, no later than five days after the transmission of the file to the procureur de la République.

Where a civil claimant is a party to the action, the examining judge may not issue the order until forty-eight hours after the notice has been given to this claimant.

Should the examining judge not rule within the time-limit laid down in the third paragraph, the accused person may submit his application directly to the arraignment chamber, which, on the basis of the written conclusions of the procureur général, accompanied by a statement of reasons, shall rule on the matter within fifteen days of receipt of the application in the registry of the arraignment chamber, failing which the accused person shall be granted provisional release, unless examinations have been ordered with respect to his application. The procureur de la République shall also have the right to bring the matter before the arraignment chamber in the same conditions.

Art. 142. — Any accused person or defendant may also apply for provisional release at any stage or level of the proceedings.

Where the proceeding is before a criminal court, that court shall rule on the application for provisional release; before the transfer of a proceeding to the Assize Court and in the interval between terms of the Assize Court, this authority shall be vested in the arraignment chamber.

In the case of an appeal on points of law, until the Court of Cassation has rendered its decision, the court which last considered the case on its merits shall rule on the application for provisional release. If an appeal on points of law has been made against a decision of the Assize Court, the arraignment chamber shall rule on the matter of detention.

Where there has been a decision that a court lacks jurisdiction and generally wherever no court has the case before it, the arraignment chamber shall consider applications for release.

Wherever an accused person or defendant who is an alien is left at liberty or granted provisional release, the competent court alone may assign a place of residence which he must not leave without permission until a finding is made that no action should follow or an absolute decision is rendered on pain of the penalties laid down in article 45 of the Criminal Code.

The necessary measures for the application of the foregoing paragraph, including the supervision of the prescribed residence and the issuance of temporary authorizations [to leave], shall be established by an order of the Minister for Justice and Keeper of the Seals.

Art. 143. — Where a criminal court is called upon to rule in the cases mentioned in the foregoing article, the parties and their counsel shall be invited to attend by a written communication. Decision shall be rendered after the ministère public and the parties or their counsel have been heard.

Art. 144. — Prior to release with or without security, the applicant must by means of a document deposited with the registry of the place of detention, establish an address for service, in the area in which the examination is being conducted if he is an accused person, and in the area in which the court dealing with the merits of the case sits if he is a defendant awaiting trial. The chief of this institution shall give notice of that declaration to the competent authority.

After provisional release has been granted, the examining judge or the criminal court which has the case before it may issue another warrant if the accused person does not appear when invited to do so or if new or serious circumstances render his detention necessary.

While there is a decision that a court lacks jurisdiction, the arraignment chamber shall have the same right, until the case comes before the competent court.

Where the arraignment chamber has reversed an order of the examining judge, and has granted provisional release, that judge may issue another warrant only if the arraignment chamber, on the basis of the written application of the ministère public, has withdrawn its decision.

Art. 145. — Provisional release, in all cases in which it is not accorded as of right, may be made subject to the deposit of security.

This security shall guarantee: (1) the presence of the accused person at all the proceedings and for the execution of judgement; (2) payment, in the following order, of:

(*a*) Costs advanced by a civil claimant;

(*b*) Costs of the prosecution;

(*c*) Fines;

(*d*) Restitution and damages.

The decision granting provisional release shall determine the amount allocated to each of the two parts of the security.

. . .

Art. 150. [As amended by Act No. 62-231, of 29 June 1962] — A defendant who has been released provisionally or who was never detained during the examination must submit to detention at least one day before the hearing.

The provisions of the foregoing paragraph shall not act as a bar, in appropriate cases, to the execution by the ministère public of the writ of *capias* provided for in article 215.

Nevertheless, defendants who reside in the area where the Assize Court sits shall be exempted from this measure.

Section 13. — *Resumption of the Proceedings on the Basis of New Evidence of Guilt*

Art. 188. — The defendant with respect to whom the examining judge has found that no action should follow may not thereafter be prosecuted for the same act, unless new evidence of his guilt arises.

Art. 189. — Statements of witnesses, documents and records which it was not possible to submit to the examining judge and which are nevertheless of a kind either to strengthen evidence found too weak, or to give fresh interpretations of the facts useful in establishing the truth, shall be deemed to be new evidence of guilt.

Art. 190. — The ministère public alone shall have the authority to decide whether there is reasonable ground for applying for the reopening of the proceedings on the basis of new evidence of guilt.

Chapter II

The Arraignment Chamber: Examining Authorities of Second Instance

Section 1. — *General Provisions*

Art. 194. — The procureur général shall prepare the case for trial within forty-eight hours of the receipt of the documents in a matter of detention pending trial and within ten days in all other matters; he shall submit it, with his conclusions, to the arraignment chamber.

. . .

Art. 206. — The arraignment chamber shall examine the proceedings that are submitted to it with a view to determining whether they are in order.

If it finds a ground of invalidity, it shall declare null and void the act which is not in order and, if necessary, all or part of the subsequent proceedings.

. . .

Art. 211. — It shall consider whether there is sufficient evidence of guilt of the accused person.

Art. 212. — If the arraignment chamber considers that the acts do not constitute a crime, a correctional offence or a petty offence, or if the perpetrator is unknown, or if there is not sufficient evidence of the guilt of the accused person, it shall find that no action should follow.

The accused persons held in preventive detention shall be set fee.

In its decision finding that no action should follow, the arraignment chamber shall rule on the restitution of seized objects; it shall retain competence to rule on such restitution, if necessary, after that decision has been rendered.

Art. 213. — If the arraignment chamber considers that the acts 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.

In the case of proceedings which are transferred to the Correctional Court, if the offence is punishable by imprisonment, and subject to the provisions of article 138, a defendant who has been arrested shall remain in custody.

In the case of proceedings which are transferred to the Police Court, the defendant shall be set free.

Art. 214. — If the acts with which an accused person is charged constitute a violation classified by law as a crime, the arraignment chamber shall commit him for trial by the Assize Court.

It may also refer related offences to his court.

If the arraignment chamber feels that there is reasonable ground for imposing a correctional penalty only, because of extenuating circumstances or an excuse, it may, by means of a decision accompanied by a statement of reasons and on the recommendation of the ministère public, commit the defendant for trial by the Correctional Court. This Court, to which the defendant is thus committed, may not refuse to exercise jurisdiction in matters concerning the application of a correctional penalty.

. . .

Book II

Criminal courts

Title I

ASSIZE COURT

Chapter I

Jurisdiction of the Assize Court

Art. 231. — The Assize Court shall have all the jurisdiction necessary to judge persons committed to it for trial by court decisions.

It may not take cognizance of any other charge.

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Chapter IV

Proceedings in Preparation for the Assize Sessions

Section 1. — *Mandatory acts*

Art. 268. — Notice of the decision to commit for trial shall be given to the defendant.

He shall be supplied with a copy thereof.

This notice must be served on the defendant himself, if he is held in custody. If he is not, it shall be given in the manner laid down in title IV of this book.

Art. 269. — As soon as the decision to commit for trial has been rendered, the defendant, if he is held in custody, shall be transferred to a place of detention in the area in which the assizes are held.

. . .

Art. 273. — The president shall question the defendant regarding his identity and shall verify that he has received notice of the decision to commit for trial.

Art. 274. — The defendant shall then be invited to select a counsel to assist in his defence.

If the defendant does not select a counsel, the president or the judicial officer acting in his stead shall appoint one *ex officio*.

This appointment shall be cancelled if the defendant subsequently selects a counsel.

Art. 275. — Counsel may be selected or appointed only from among advocates enrolled in a bar.

Advocates who are enrolled in a foreign bar may be appointed only if there is a reciprocity agreement between the Republic of the Ivory Coast and their country of origin.

As an exceptional measure, however, the president may authorize the defendant to choose one of his relatives or friends as counsel.

. . .

Chapter VI
The Trial

Section 1. — *General Provisions*

Art. 306. The trial shall be public, unless a public hearing is prejudicial to law and order or public morals. In that event, the court shall so declare by a decision rendered in open court.

Nevertheless, the president may forbid all or some minors access to the court room.

When the trial has been ordered closed, the order shall apply to the pronouncing of decisions on the contested motions referred to in article 316.

The decision on the merits must always be pronounced in open court.

. . .

Art. 308. — As soon as a hearing is opened, the use of sound recording or broadcasting equipment, television or motion picture cameras, or photographic equipment shall be prohibited on pain of a fine of 36,000 to 9 million francs, which may be imposed in the conditions laid down in title VIII of book IV.

. . .

Art. 316. — All contested motions shall be determined by the court, after hearing the ministère public and the parties or their counsel.

These decisions may not prejudge matters of substance.

An appeal on matters of law may be taken from them only at the same time as from the decision on the substance.

Section 2. — *Appearance of the Defendant*

Art. 317. — At a hearing, the presence of a counsel for the defendant shall be mandatory.

If the counsel selected or appointed in accordance with article 274 does not appear, the president shall appoint one *ex officio*.

Art. 318. — The defendant shall make his appearance unrestrained and only accompanied by guards to prevent him from escaping.

Art. 319. — If a defendant refuses to appear, he shall be summoned in the name of the law by a bailiff, directed by the president to do so, who shall be attended by the police. The bailiff shall draw up a report of the summons and of the defendant's reply.

Art. 320. — If the defendant does not comply with the summons, the president may order him to be brought by force before the court; he may also, after the report recording his resistance is read out at the hearing, order that, notwithstanding his absence, the trial shall continue.

After each hearing, the registrar of the Assize Court shall read the record of the trial to the defendant who has not appeared, and the defendant shall be served with a copy of the conclusions of the ministère public and of the decisions rendered by the court, which shall all be deemed to have been issued in his presence.

Art. 321. — If any person present at a hearing disturbs the proceedings in any manner whatsoever, the president shall order him out of the court room.

If, during the execution of that measure, he resists the order or causes a disturbance, he shall forthwith be placed under an order for committal to prison, judged and punished by imprisonment for a term of two months to two years, without prejudice to the penalties set out in the Criminal Code for persons guilty of contempt of court.

On the order of the president, he shall then be compelled by the police to leave the hearing.

Art. 322. — If the proceedings are disturbed by the defendant himself, the provisions of article 321 shall be applied to him.

Where he is ejected from the court room, the defendant shall be held at the disposal of the court by the police, until the end of the trial; after each hearing, the procedure set out in article 320, second paragraph, shall be followed.

Section 3. — *The Production and Discussion of the Evidence*

Art. 323. — Where the defendant's counsel is not enrolled in a bar, the president shall inform him that he may not say anything that goes against his conscience or is failing in the respect due to the law and that he must express himself with decency and moderation.

. . .

Art. 328. — The president shall interrogate the defendant and shall take down his statements. It shall be his duty not to express an opinion concerning the guilt of the defendant.

. . .

Art. 344. — Where the defendant or one or more of the witnesses do not speak French well enough or it is necessary to translate a document submitted at the trial, the president shall, of his own motion, appoint an interpreter who is at least twenty-one years of age, and shall administer to him an oath to perform his duties faithfully.

The ministère public, the defendant and the civil claimant may challenge the interpreter, giving reasons therefor. The court shall rule on that challenge. Its decision shall not be subject to appeal.

Even if the defendant or the ministère public consents thereto, the interpreter may not be selected from among judges who are members of the court, the jurors, the registrar conducting the hearing, parties or witnesses.

Art. 345. — If the defendant is deaf-mute and cannot write, the president, of his own motion, shall appoint as interpreter the person who is most accustomed to conversing with him.

The same shall be done with respect to a deaf-mute witness.

The other provisions of the foregoing article shall be applicable.

Where a deaf-mute can write, the registrar shall write down the questions or remarks that are made to him; they shall be transmitted to the defendant or to the witness, who shall give his replies or statements in writing. The whole shall be read out by the registrar.

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Chapter VII
Judgement

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Section 2. — *Decision on the Prosecution*

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Art. 355. — If the defendant is exonerated or acquitted, he shall immediately be set free, unless he is detained on another charge.

Art. 356. — No one, having once been legally acquitted, may be detained or charged again in respect of the same acts, even under a different classification.

Art. 357. — Where in the course of the trial evidence against the defendant relating to other acts is brought to light, and where the ministère public has made reservations with a view to prosecution, the president shall order that the defendant, once acquitted, shall be brought by the police forthwith before the procureur de la République of the place where the Assize Court sits, and the procureur must immediately apply for the opening of an examination.

Art. 358. — If it appears from the trial that the act is subject to a legal classification other than that given in the decision to commit for trial, the Court shall rule on the new classification.

Art. 359. — After rendering the decision, the president, if appropriate, shall inform the defendant of the fact that he is entitled to appeal on questions of law and of the time-limit within which the appeal must be lodged.

Title II
JUDGEMENT OF CORRECTIONAL OFFENCES

Chapter I
Correctional Court

. . .

Section 3. — *Public Hearings and the Policing of the Proceedings*

Art. 390. — Hearings shall be public.

Nevertheless, the court, by a judgement rendered in open court in which it finds that a public hearing will be prejudicial to law and order or public morals, may direct that the trial shall be held *in camera.*

. . .

The judgement on the merits must always be pronounced in open court.

. . .

Art. 393. — As soon as a hearing is opened the use of sound-recording or broadcasting equipment, television or motion picture cameras, or photographic equipment shall be prohibited on pain of a fine of 36,000 to 9 million francs, which may be imposed in the conditions laid down in title VIII of book IV.

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Section 4. — *The Trial*

First paragraph: Appearance of the Defendant

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Art. 408. — The defendant who appears shall have the right to assistance by an advocate.

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Assistance by an advocate shall be mandatory when the defendant suffers from an infirmity which may jeopardize his defence or when he may incur the penalty of rigorous imprisonment.

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Chapter II
The Appeal Court in Correctional Cases

Section 1. — *Exercise of the Right of Appeal*

Art. 487. — Appeals may be taken against judgements rendered in correctional cases.

. . .

Chapter VI
Appeals against Judgements of the Police Courts

Art. 539. — Where a judgement imposes a penalty of imprisonment or a fine of more than 6,000 francs, the right to appeal shall be vested in the defendant, [a person] liable for another who cannot be held liable under the criminal law and the procureur de la République. Where damages have been allowed, the right to appeal shall be vested in the defendant and in a person liable for another who cannot be held liable under the criminal law.

This right shall in all cases be vested in the civil claimant, with respect to his civil interests only.

In cases prosecuted at the request of the Water and Forest Administration, all parties shall always be entitled to appeal regardless of the nature and severity of the sentences.

The procureur général may appeal from all judgements rendered in police court cases.

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BOOK III
Special appeals

Title I
APPEAL ON POINTS OF LAW

Chapter I
Decisions Subject to Appeal and Conditions of Appeal on Matters of Law

Art. 561. — The decisions of the arraignment chamber and the decisions and judgements rendered in the last instance in criminal, correctional and police court cases may be annulled, if the law has been violated, by an appeal on points of law taken by the ministère public or by the injured party, in accordance with the distinctions hereinafter established.

The appeal shall be taken to the Court of Cassation.

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Title II
APPLICATIONS FOR REVIEW ON POINTS OF FACT

Art. 592. — Application may be made for review of a ruling delivered by any court whatsoever for the benefit of any person recognized as the perpetrator of a crime or correctional offence:

1. Where, after a conviction for homicide, documents are presented which furnish sufficient evi-

dence that the alleged victim of the homicide is alive;

2. Where, after a conviction for a crime or correctional offence, another defendant has been convicted by another decision or judgement for the same act and where, the two convictions being irreconcilable, the fact that they are contradictory is proof of the innocence of one of the two convicted persons;

3. Where one of the witnesses who testified was, after the conviction, prosecuted for and convicted of perjury against the defendant; the witness so convicted may not testify at the new trial;

4. Where, after a conviction, an act is done or disclosed, or documents unknown during the trial are presented, of a kind to establish the innocence of the convicted person.

Art. 593. [As amended by Act No. 62-231, of 29 June 1962] — The right to apply for review shall, in the first three cases, be vested in:

1. The Minister for Justice;

2. The convicted person or, if he is under a disability, his legal representative;

3. After the death or declaration of absence of the convicted person, his spouse, his children, his parents, his universal legatees or partial legatees, and those who have been expressly authorized by him.

The matter shall be brought before the Supreme Court by the Minister for Justice.

In the fourth case, the right to apply for review shall be vested only in the Minister for Justice, who shall make his decision after all necessary investigations and examinations have been carried out on his orders and after he has received the opinion of a commission composed of three members of his Office.

. . .

Art. 596. — The decision establishing the innocence of the convicted person may, on his application, allow him damages for the injury inflicted on him by the conviction.

If the victim of the judicial error is deceased, the right to apply for damages shall be vested, on the same conditions, in his spouse, his ascendants and descendants.

It shall not be vested in relatives further removed, unless they prove that they have suffered material injury as a result of the conviction.

. . .

If the applicant so requests, the decision or judgement of review establishing the innocence of the convicted person shall be posted in the town in which the conviction took place, in the commune of the place where the crime or correctional offence was committed, in the commune of the place where the applicants for review are domiciled and of the place where the victim of the judicial error was last domiciled, if he is deceased; on the same conditions, an order shall be issued for the insertion of the decision or judgement in the *Journal officiel* and for its publication, in abbreviated form, in a newspaper selected by the court which rendered the decision.

The costs of the publicity provided for above shall be borne by the Treasury.

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BOOK V
Enforcement proceedings

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Title II
DETENTION

Chapter I
Enforcement of Detention pending Trial

Art. 673. — Accused persons and defendants subject to detention pending trial shall undergo it in a place of detention.

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Art. 676. — All means of communication and all facilities consistent with the requirements of prison discipline and security shall be afforded to accused persons and defendants for the exercise of their defence.

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Title III
CONDITIONAL RELEASE

Art. 689. — Convicted persons having to serve one or more sentences involving deprivation of liberty may be granted conditional release if they have given sufficient evidence of good conduct and offer substantial indications of social rehabilitation.

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Title IX
REHABILITATION OF PRISONERS

Art. 738. Any person sentenced by a court of the Ivory Coast to a criminal or correctional penalty may be rehabilitated in his rights.

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Title X
JUVENILE DELINQUENCY

Chapter I
General Provisions

Art. 756. — Minors who are eighteen years of age, who are charged with a violation classified as a crime or a correctional offence shall not be brought before the ordinary criminal courts and may be tried only by children's courts or assize courts for minors.

Art. 757. — The children's court and the assize court for minors shall, according to the case, order such measures of protection, assistance, supervision and education as seem appropriate.

They may, however, with respect to a minor over thirteen years of age, where the circumstances and the delinquent's personality seem to them to require it, impose a criminal sentence in accordance with the provisions of articles 779 and 786.

In the cases provided for in the preceding paragraph, imprisonment shall be served in conditions established by decree.

Art. 758. — The children's court and the assize court for minors may decide with respect to minors

over sixteen years of age that there is no ground for maintaning the extenuating excuse of minority.

That decision may be taken only by an order specifying the reasons therefor.

Art. 759. — Jurisdiction shall be vested in the children's court or the assize court for minors of the place where the offence was committed, the place where the minor or his parents or guardian reside, the place where the minor was found or the place to which he was assigned either provisionally or permanently.

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Chapter V

Children's Court

. . .

Art. 782. . . .

The publication in books, the press, radio, cinema or in any manner whatever of the record of trials before the children's courts shall be prohibited. The publication by the same methods of any test or any illustration concerning the identity or personality of juvenile delinquents shall also be prohibited. Violations of these provisions shall be punished by a fine of 36,000 francs to 3 million francs.

. . .

JAMAICA[1]

NOTE[2]

1. During the period under consideration, apart from the Human Rights provisions in the Jamaica Constitution (1962),[3] there were no constitutional amendments, legislation, general governmental decrees, administrative orders, or important Court decisions relating to Human Rights as defined in the Universal Declaration of Human Rights.

Constitutional Provisions

2. Sections 13–24 of the Constitution indicate the extent to which Human Rights have been safeguarded. Human rights are protected by the following institutions, all of which were brought into existence before 6 August, 1962.

The Judiciary

3. Under the Law of the land *every person* within the state has access to the courts in the event of his rights (fundamental or otherwise) being infringed.

The Judiciary is independent. That is to say, the functions of the Judiciary are not only separate and apart from the legislature and the Executive, but, also, the Judiciary arrives at its decisions impartial of political, executive or other considerations.

The Director of Public Prosecutions

4. Under the Constitution there has been established a Director of Public Prosecutions whose office is a public one. The Director of Public Prosecutions has, *inter alia*, power to institute and undertake criminal proceedings against any person in respect of any offence against the law of Jamaica, before any court other than a court martial.

Like the Judiciary, the Director of Public Prosecutions functions independently; his powers are vested in him to the exclusion of any other person or authority.

Service Commissions

5. Three Service Commissions have been established under the Constitution:

(i) The Judicial Service Commission;

(ii) The Public Service Commission; and

(iii) The Police Service Commission.

Principally, the commissions respectively deal with recruitments and transfers to, and promotions within, the service concerned.

The members of all these commissions are appointed by the Governor-General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition. However, once a commission has been duly constituted, it functions independently.

[1] Jamaica became an independent State on 6 August 1962.

[2] Note furnished by the Government of Jamaica.

[3] Extracts appear on pp. 150 to 158.

CONSTITUTION OF JAMAICA[1]

Chapter II
CITIZENSHIP

3. — (1) Every person who, having been born in the former Colony of Jamaica, is on the fifth day of August 1962 a citizen of the United Kingdom and Colonies shall become a citizen of Jamaica on the sixth day of August 1962.

(2) Every person who, having been born outside the former Colony of Jamaica, is on the fifth day of August 1962 a citizen of the United Kingdom and Colonies shall, if his father becomes or would but for his death have become a citizen of Jamaica in accordance with the provisions of subsection (1) of this section, become a citizen of Jamaica on the sixth day of August 1962.

4. — (1) Any woman who, on the fifth day of August 1962 is or had been married to a person: (*a*) who becomes a citizen of Jamaica by virtue of section 3 of this Constitution; or (*b*) who, having died before the sixth day of August 1962 would, but for his death, have become a citizen of Jamaica by virtue of that section, shall be entitled, upon making application in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Jamaica.

(2) Any person who, on the fifth day of August 1962 is a citizen of the United Kingdom and Colonies: (*a*) having become such a citizen under the British Nationality Act, 1948 (a) by virtue of his having been naturalised in the former Colony of Jamaica as a British subject, before that Act came into force; or (*b*) having become such a citizen by virtue of his having been naturalised or registered in the former Colony of Jamaica under that Act, shall be entitled, upon making application before

[1] Published as the second schedule to the Jamaica (Constitution) Order in Council 1962, *Statutory Instruments* 1962, No. 1550, by H.M.S.O. The extracts here reproduced entered into force on 6 August 1962.

the sixth day of August 1964 in such manner as may be prescribed, to be registered as a citizen of Jamaica:

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.

(3) Any woman who on the fifth day of August 1962 is or has been married to a person who subsequently becomes a citizen of Jamaica by registration under subsection (2) of this section shall be entitled, upon making application in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Jamaica.

5. Every person born in Jamaica after the fifth day of August 1962 shall become a citizen of Jamaica at the date of his birth:

Provided that a person shall not become a citizen of Jamaica by virtue of this section if at the time of his birth: (*a*) his father possesses such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Her Majesty in right of Her Government in Jamaica and neither of his parents is a citizen of Jamaica; or (*b*) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

6. A person born outside Jamaica after the fifth day of August 1962 shall become a citizen of Jamaica at the date of his birth if at that date his father is a citizen of Jamaica otherwise than by virtue of this section or subsection (2) of section 3 of this Constitution.

7. Any woman who, after the fifth day of August 1962, marries a person who is or becomes a citizen of Jamaica shall be entitled, upon making application in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Jamaica.

8. — (1) If the Governor-General is satisfied that any citizen of Jamaica has at any time after the fifth day of August 1962 acquired by registration, naturalisation or other voluntary and formal act (other than marriage) the citizenship of any country other than Jamaica, the Governor-General may by order deprive that person of his citizenship.

(2) If the Governor-General is satisfied that any citizen of Jamaica has at any time after the fifth day of August 1962 voluntarily claimed and exercised in a country other than Jamaica any rights available to him under the law of that country, being rights accorded exclusively to its citizens, the Governor-General may by order deprive that person of his citizenship.

9. — (1) Every person who under this Constitution or any Act of Parliament is a citizen of Jamaica or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act, 1948 or who continues to be a British subject under section 2 of that Act shall by virtue of that status have the status of a Commonwealth citizen.

(3) Save as may be otherwise provided by Parliament, the countries to which this section applies are the United Kingdom and Colonies, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana, the Federation of Malaya, the Federation of Nigeria, the Republic of Cyprus, Sierra Leone, Tanganyika, the Federation of Rhodesia and Nyasaland and the State of Singapore.

. . .

11. Parliament may make provision: (*a*) for the acquisition of citizenship of Jamaica by persons who do not become citizens of Jamaica by virtue of the provisions of this Chapter; (*b*) for depriving of his citizenship of Jamaica any person who is a citizen of Jamaica otherwise than by virtue of section 3 or section 5 or section 6 of this Constitution; or (*c*) for the renunciation by any person of his citizenship of Jamaica.

12. — (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 (a); "foreign country" means a country (other than the Republic of Ireland) that is not part of the Commonwealth; "prescribed" means prescribed by or under any Act of Parliament.

(2) Any reference in this Chapter to the father of a person shall, in relation to a person born out of wedlock, be construed as a reference to the mother of that person.

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

(4) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of 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 sixth day of August 1962 and the birth occurred after the fifth day of August 1962 the national status that the father would have had if he had died on the sixth day of August 1962 shall be deemed to be his national status at the time of his death.

Chapter III

FUNDAMENTAL RIGHTS AND FREEDOMS

13. Whereas every person in Jamaica 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, the enjoyment of

property and the protection of the law; (*b*) freedom of conscience, of expression and of peaceful 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.

14. — (1) No person shall intentionally be deprived 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 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 lawfully to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.

15. — (1) No person shall be deprived of his personal liberty save as may in any of the following cases be authorised by law: (*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 Jamaica or elsewhere, in respect of a criminal offence of which he has been convicted; or (*c*) in execution of an order of the Supreme Court 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 Jamaica, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Jamaica 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 Jamaica 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 Jamaica 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 — (*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 delay before a court; and if any person arrested or detained upon reasonable suspicion of his having committed or being about to commit a criminal offence is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that 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 authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency.

(6) 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 Jamaica from among the persons entitled to practise or to be admitted to practise in Jamaica as barristers 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.

16. — (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 Jamaica, the right to reside in any part of Jamaica, the right to enter Jamaica and immunity from expulsion from Jamaica.

(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 or public health; or (*b*) for the imposition of restrictions on the movement or residence within Jamaica of any person who is not a citizen thereof or the exclusion or expulsion from Jamaica 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 Jamaica; or (*d*) for the imposition of restrictions upon the movement or residence within Jamaica of public officers, police officers or members of a defence force; or (*e*) for the removal of a person from Jamaica to be tried outside Jamaica for a criminal offence or to undergo imprisonment outside Jamaica 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 Jamaica from among the persons entitled to practise or to be admitted to practise in Jamaica as barristers 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.

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

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment which was lawful in Jamaica immediately before the appointed day.

18. — (1) No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except by or under the provisions of a law that: (*a*) prescribes the principles on which and the manner in which compensation therefor is to be determined and given; and (*b*) secures to any person claiming an interest in or right over such property a right of access to a court for the purpose of —

(i) Establishing such interest or right (if any);

(ii) Determing the amount of such compensation (if any) to which he is entitled; and

(iii) Enforcing his right to any such 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*) upon the attempted removal of the property in question out of or into Jamaica in contravention of any law; (*d*) by way of the taking of a sample for the purposes of any law; (*e*) where the property consists of an animal upon its being found trespassing or straying; (*f*) as an incident of a lease, tenancy, licence, mortgage, charge, bill of sale, pledge or contract; (*g*) 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; (*h*) in the execution of judgements or orders of courts; (*i*) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants; (*j*) in consequence of any law with respect to the limitation of actions; (*k*) 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 so far as it provides for the orderly marketing or production or growth or extraction of any agricultural product or mineral or any article or thing prepared for market or manufactured therefor or for the reasonable restriction of the use of any property in the interests of safeguarding the interests of others or the protection of tenants, licensees or others having rights in or over such property.

(4) 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 for public purposes by any law and in which no monies have been invested other than monies provided by Parliament or by the Legislature of the former Colony of Jamaica.

(5) In this section "compensation" means the consideration to be given to a person for any interest or right which he may have in or over property which has been compulsorily taken possession of or compulsorily acquired as prescribed and determined in accordance with the provisions of the law by or under which the property has been compulsorily taken possession of or compulsorily acquired.

19. — (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, public revenue, town and country planning or the development and utilisation of any property in such a manner as to promote the public benefit; or (*b*) to enable any body corporate established by any law for public purposes or any department of the Government of Jamaica 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 preventing or detecting crime; or (*d*) for the purpose of protecting the rights or freedoms of other persons.

20. — (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 imparial; 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.

(4) Nothing in subsection (3) of this section shall prevent any court or any authority such as is mentioned in that subsection from excluding from the proceedings persons other than the parties thereto and their legal representatives: (*a*) in interlocutory civil proceedings; or (*b*) in appeal proceedings under any law relating to income tax; or (*c*) to such extent as the court or other authority —

(i) May consider necessary or expedient in circumstances where publicity would prejudice the interest of justice; or

(ii) May be empowered or required by law to do so 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.

(5) 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.

(6) Every person who is charged with a criminal offence: (*a*) shall be informed as soon as reasonably practicable, in a language which he understands, 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 of witnesses, subject to the payment of their reasonable expenses, and carry out the examination of such 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 English language.

(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 authorises 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 authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency.

(10) In paragraph (*c*) and (*d*) of subsection (6) of this section "legal representative" means a barrister entitled to practise as such in Jamaica or, except in relation to proceedings before a court in which a solicitor has no right of audience, a solicitor who is so entitled.

21. — (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 parent or 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 or a religious body or denomination other than his own.

(3) The constitution of a religious body or denomination shall not be altered except with the consent of the governing authority of that body or denomination.

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

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

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

22. — (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 and other means of communication.

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

(*a*) 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, 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 or other means of communication, public exhibitions or public entertainments; or

(*b*) which imposes restrictions upon public officers, police officers or upon members of a defence force.

23. — (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully 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, police officers or upon members of a defence force.

24. — (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, 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*) with respect to persons who are not citizens of Jamaica; or (*b*) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; or (*c*) for authorising the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency; or (*d*) for the imposition of taxation or appropriation of revenue by the Government of Jamaica or any local authority or body for local purposes.

(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, police officer or as a member of a defence force or for the service of a

local government authority or a body corporate established by any law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (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 16, 19, 21, 22 and 23 of this Constitution, being such a restriction as is authorised by paragraph (*a*) of subsection (3) of section 16, subsection (2) of section 19, subsection (6) of section 21, subsection (2) of section 22 or subsection (2) of section 23, 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.

25. — (1) Subject to the provisions of subsection (4) of this section, if any person alleges that any of the provisions of sections 14 to 24 (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 to hear and determine any application made by any person in pursuance of subsection (1) of this section 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 the said sections 14 to 24 (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) Any person aggrieved by any determination of the Supreme Court under this section may appeal therefrom to the Court of Appeal.

(4) Parliament may make provision, or may authorise 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 authorise 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.

26. — (1) In this Chapter, save where the context otherwise requires, the following expressions have the following meanings respectively, that is to say, "contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly; "court" means any court of law in Jamaica other than a court constituted by or under service law and —

(i) In section 14, section 15, section 16, subsections (3), (4), (6), (8) (but not the proviso thereto) and (10) of section 20 and subsection (8) of section 24 of this Constitution includes, in relation to an offence against service law, a court so constituted; and

(ii) In section 15 and subsection (8) of section 24 of this Constitution includes, in relation to an offence against service law, an officer of a defence force, or the Police Service Commission or any person or authority to whom the disciplinary powers of that Commission have been lawfully delegated;

"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 the law regulating the discipline of a defence force or of police officers.

(2) References in sections 14, 15, 16 and 18 of this Constitution to a "criminal offence" shall be construed as including references to an offence against service law and such references in subsections (5) to (9) (inclusive) of section 20 of this Constitution shall, in relation to proceedings before a court constituted by or under service law, be similarly construed.

(3) Nothing done by or under the authority of the law of any country other than Jamaica to a member of an armed force raised under that law and lawfully present in Jamaica shall be held to be in contravention of this Chapter.

(4) In this Chapter "period of public emergency" means any period during which: (*a*) Jamaica is engaged in any war; or (*b*) there is in force a Proclamation by the Governor-General declaring that a state of public emergency exists: or (*c*) there is in force a resolution of each House supported by the votes of a majority of all the members of that House declaring that democratic institutions in Jamaica are threatened by subversion.

(5) A Proclamation made by the Governor-General shall not be effective for the purposes of subsection (4) of this section unless it is declared therein that the Governor-General is satisfied: (*a*) that a public emergency has arisen as a result of the imminence of a state of war between Jamaica and a foreign State or as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence, outbreak of infectious disease or other calamity whether similar to the foregoing or not; or (*b*) that action has been taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services essential to life.

(6) A Proclamation made by the Governor-General for the purposes of and in accordance with this section: (*a*) shall, unless previously revoked, remain in force for one month or for such

longer period, not exceeding twelve months, as the House of Representatives may determine by a resolution supported by the votes of a majority of all the members of the House; (*b*) may be extended from time to time by a resolution passed in like manner as is prescribed in paragraph (*a*) of this subsection for further periods, not exceeding in respect of each such extension a period of twelve months; and (*c*) may be revoked at any time by a resolution supported by the votes of a majority of all the members of the House of Representatives.

(7) A resolution passed by a House for the purposes of subsection (4) of this section may be revoked at any time by a resolution of that House supported by the votes of a majority of all the members thereof.

(8) Nothing contained in any law in force immediately before the appointed day shall be held to be inconsistent with any of the provisions of this Chapter; and nothing done under the authority of any such law shall be held to be done in contravention of any of these provisions.

. . .

CHAPTER V
PARLIAMENT

Part I
COMPOSITION OF PARLIAMENT

34. There shall be a Parliament of Jamaica which shall consist of Her Majesty, a Senate and a House of Representatives.

. . .

37. — (1) Subject to the provisions of subsection (2) of this section, a person shall be qualified to be registered as an elector for elections to the House of Representatives if, and shall not be so qualified unless, he is: (*a*) a citizen of Jamaica resident in Jamaica at the date of registration; or (*b*) a Commonwealth citizen (other than a citizen of Jamaica) who is resident in Jamaica at the date of registration and who has been so resident for at least twelve months immediately preceding that date, and has attained the prescribed age.

(2) No person shall be qualified to be registered as an elector for elections to the House of Representatives who: (*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) of or 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 is suspended: or (*b*) is disqualified for such registration by or under any law for the time being in force in Jamaica because he has been convicted of any offence connected with the election of members of the House of Representatives or of any local authority or body for local purposes; or (*c*) is, under any law for the time being in force in Jamaica, certified to be insane or otherwise adjudged to be of unsound mind or detained as a criminal lunatic; or (*d*) is disqualified for such registration by any law for the time being in force in Jamaica by reason of his holding, or acting in, any office the functions of which involve responsibility for, or in connection with, the election in the constituency in which such person would otherwise be entitled to vote.

(3) In this section, "the prescribed age" means — (*a*) the age of twenty-one years; or (*b*) such other age being less than the age of twenty-one years but not less than the age of eighteen years that may from time to time be prescribed by a special Act; and "a special Act" means an Act of Parliament the Bill for which has been passed by both Houses and at the final vote thereon in each House has been supported by the votes of a majority of all the members of that House.

(4) A special Act may be repealed or amended by another special Act and in no other manner

. . .

39. Subject to the provisions of section 40 of this Constitution, any person, who at the date of his appointment or nomination for election: (*a*) is a Commonwealth citizen of the age of twenty-one years or upwards; and (*b*) has been ordinarily resident in Jamaica for the immediately preceding twelve months, shall be qualified to be . . . elected as a member of the House of Representatives and no other person shall be so qualified.

40. (1) No person shall be qualified for election as a member of the House of Representatives who: (*a*) is a member of the Senate; (*b*) is disqualified for election by any law for the time being in force in Jamaica by reason of his holding, or acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any election, or any responsibility for the compilation or revision of any electoral register.

(2) No person shall be qualified to be . . . elected as a member of the House of Representatives who: (*a*) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign Power or State; (*b*) holds or is acting in any public office or the office of Judge of the Supreme Court or Judge of the Court of Appeal or, save as is otherwise provided by Parliament, is a member of a defence force; (*c*) is a party to, or a partner in a firm or a director or manager of a company which to this knowledge is a party to, any contract with the Government of Jamaica for or on account of the public service and has not —

. . .

(ii) In the case of election as a member of the House of Representatives, by publishing a notice in the *Gazette* within one month before the day of election,

previously disclosed the nature of such contract and his interest or the interest of such firm or company therein; (*d*) subject to the provisions of subsection (3) of this section, 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) of or 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 is suspended; (*e*) has been adjudged or otherwise declared bank-

rupt under any law in force in any part of the Commonwealth and has not been discharged; (*f*) is, under any law for the time being in force in Jamaica, certified to be insane or otherwise adjudged to be of unsound mind or detained as a criminal lunatic; or (*g*) is disqualified for membership of the House of Representatives by or under any law for the time being in force in Jamaica because he has been convicted of any offence connected with the election of members of that House or of any local authority or body for local purposes.

(3) For the purposes of paragraph (*d*) of subsection (2) of this section, (*a*) where a person is serving two or more sentences of imprisonment that are required to be served consecutively he shall, throughout the whole time during which he so serves, be regarded as serving a sentence of or exceeding six months if (but not unless) any one of those sentences amounts to or exceeds that term; 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.

JAPAN

NOTE[1]

I. LEGISLATION

1. *Act on the Free Distribution of Text Books in Compulsory Schools (Act No. 60, of 31 March 1962)*

This Act provides for the free distribution of text books in compulsory primary and secondary schools, the cost to be borne by the State. In 1962 its provisions were applied to the first grades in elementary schools. Previously text books had been bought by the students, except those of limited means.

2. *Act on the Control of Air Pollution through Soot and Smoke (Act No. 146, of 2 June 1962)*

Air pollution became a serious problem in Japan after World War II due to rapid industrial expansion. Local legislation enacted in some areas of the country to prevent further air pollution proved insufficient because air pollution extends over wide areas and because the measures taken interfered with the promotion of industry. Accordingly, the above-mentioned Act was enacted to solve the problem on a country-wide basis. It aims against pollution, in areas designated by Cabinet Order, through soot, dust, ash and sulphuric acid fumes, including the gas, soot and smoke emitted by factories and heating apparatus in buildings. Governors in the designated areas are keeping watch on air pollution in order to protect the people, improving equipment for the removal of soot and smoke from the air and promoting the study of soot and smoke prevention techniques.

3. *Act on the Procedure in Administrative Litigation (Act No. 139, of 16 May 1962)*

With the coming into force in 1947 of the Constitution of Japan, the Administrative Court was abolished and administrative litigation was henceforth dealt with by ordinary courts. However the procedural law for administrative litigation had only been amended through the addition/of a few provisions (not provided for in the Code of Civil Procedure) to the Act on Special Regulations concerning the Procedure in Administrative Litigation, enacted in 1948. There was therefore a lack of uniformity between the provision for administrative litigation and other administrative laws and ordinances, hindering the protection of rights and the administration of justice. This Act was promulgated to establish uniformity between the various types of administrative litigation, as follows:

(*a*) It abolished the necessity of appeal to administrative branches, as a prerequisite to filing suit in other courts.

(*b*) It established uniformity in various kinds of litigation and clarified the limitations applied to litigation.

(*c*) It abolished the system of exclusive jurisdiction and replaced it by one of general and special jurisdictions.

(*d*) It established the time limit for bringing an action before a court as three months from the date of the administrative ruling. Previously it had varied according to the type of case.

(*e*) The responsibility of the Prime Minister for enforcing rulings suspending the execution of administrative rulings was made clear.

4. *Act on the Examination of Complaints in Administrative Matters (Act No. 160, of 15 September 1962)*

This Act was promulgated in order to improve the system of complaints made against certain administrative actions. Hitherto provisions for making complaints under the Administrative Appeal Act and similar legislation limited greatly the reasons for making such complaints as well as the period of time in which complaints could be made. These defects have now been removed in the interest of protecting the rights and interests of the people.

II. JUDICIAL DECISIONS

Property Rights

In a judgement (No. (A) 2961, 1955) rendered on 28 November 1962, the Supreme Court held that Article 118, paragraph 1 of the Customs Law, in so far as it provided for confiscation of property belonging to a person other than the person evading customs duty, was unconstitutional. The Court stated that the provision denied the owner of the property a chance to give explanation or to defend himself. Nor did any provision of the Code of Criminal Procedure or other laws or ordinances provide for such a procedure. Such confiscation was therefore contrary to the provisions of articles 29 and 31 of the Constitution which provide respectively "The right to own or to hold property is inviolable" and "No person shall be deprived of his life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law."

[1] Note furnished by Mr. Tatsuo Inagawa, Director, Civil Liberties Bureau, government-appointed correspondent to the *Yearbook on Human Rights*.

III. OTHER EVENTS

1. *Outline of conditions and activities under the system of Civil Liberties Commissioners*

The number of Civil Liberties Commissioners has increased by 331 during 1962, amounting by the end of the year to 8,807, 836 of them women. The Commissioners are assigned to towns and cities throughout the country, where they make efforts to carry out their mission of protecting human rights in their respective communities. The General Meeting of the All Japan Federation of Civil Liberties Commissioners for 1962 was held in Sapporo City on 22 September.

2. *Human Rights Week*

The week from 4 December to 10 December was designated the Fourteenth Human Rights Week, during which various events took place for the publicizing of human rights.

3. *System of Legal Aid*

The cases dealt with by the Legal Aid Association are still increasing. During 1962, 1557 applications were made for aid (including cases carried over from the previous year), and aid was decided on in 489 cases. A 10,000,000 yen subsidy for legal aid was contributed by the National Treasury.

4. *Trend of Cases in Human Rights*

In 1962 cases of infringement of human rights by public officials decreased. There was however an increase in cases of public nuisance due to great industrial expansion. For this reason, the abovementioned Act on air pollution control was promulgated.

JORDAN

NOTE[1]

I. HUMAN RIGHTS FROM THE CO-OPERATIVE STANDPOINT

The Co-operative Societies Act, No. 17 of 1956, regulation No. 1 of 1957 concerning Co-operative Societies, regulation No. 42 of 1959 concerning Housing Co-operatives and regulation No. 47 of 1963 concerning the Co-operative Institute are imbued with the spirit of the Universal Declaration of Human Rights and, at the same time, make those rights the subject of governmental and popular implementation. For the principles of co-operation spring first and foremost from the endowment of the people with all their human rights, giving them an adequate appreciation of freedom in labour, education, religious observance and life, in a manner that safeguards the interests and rights of the individual and of society and guarantees them to the greatest possible extent.

The Act and the regulations derive from the spirit of the co-operative movement — that popular democratic movement in which the various kinds of co-operative societies are organized and membership in which is voluntary and open to all, regardless of colour, religion or creed, since all are equal in rights and duties; no one rules another and all work collectively under co-operative law and the rules of their societies to serve their social and economic level. The co-operative movement is a humanitarian movement imbued with the spirit of fraternity, devotion and solidarity and based on the principles and laws of co-operation. There are 590 co-operative societies of various kinds in Jordan, with 35,500 members operating under the Co-operative Societies Act and the different Regulations.

The Act and the Regulations issued in connexion with it, the by-laws of the co-operative societies and the governing principles of co-operation guarantee the rights of members. These rights are set out below.

1. *Membership is open to All*

Article 4 of the Co-operative Societies Act, No. 17 of 1956, states that every society shall consist of not less than seven persons; other co-operative societies may be admitted to membership, as may other bodies with the agreement of the President. Under article 14 of the Act, concerning conditions of membership, the following persons may be admitted to membership in a registered co-operative: (*a*) any person over 18 years of age, except minor heirs; (*b*) any registered co-operative society.

This is in addition to the requirement that the co-operative member must be of reputable character and good conduct.

2. *Participation in the Society's Share Capital*

Every member of a co-operative may participate in his society's share capital to the extent that he desires, provided that his share does not exceed one-fifth of the capital. This is stipulated in article 29 of the Act, which states that no member may own more than one-fifth of the co-operative's capital.

3. *Interest on Capital and Dividends*

Regulation No. 1 of 1957 concerning co-operative societies fixed the maximum interest on capital at 6 per cent and also dealt with the proportions in which dividends are to be distributed. Article 21 of the Regulation reads as follows:

"1. A registered co-operative society may pay interest on its shares, provided that this does not exceed 6 per cent and that dividends are not distributed to members on the basis of the shares they own.

"2. Dividends may be distributed to members from the annual net surplus in proportion to the member's wage or participation in the society".

It is clear from the terms of this article that a member is entitled to receive interest on his shares up to the ceiling of 6 per cent fixed by the Regulation, the object of this being to remove any possibility of exploitation in the receipt of large profits. Likewise, a member of a co-operative can benefit from the society's net surplus (a co-operative society makes no profit) in proportion to this participation in the society. If the member is a consumer, he received a dividend in proportion to his consumption; if a producer, in proportion to his production; and if a worker, in proportion to his wage.

4. *Supervision in Co-operatives*

Under its by-laws, every co-operative must have a Supervisory Committee, with the function of supervising the business of the co-operative, hearing the complaints of members and dealing with them on a fair and democratic basis in the interest of the co-operative and its members.

5. *Direct Voting and Voting by Proxy*

Article 24 of the Act, relating to direct voting and voting by proxy, reads as follows:

"1. Each member of a co-operative shall have one and only one vote in the conduct of its affairs;

[1] Note furnished by the Government of the Hashemite Kingdom of Jordan.

"2. Any member not resident in the Hashemite Kingdom of Jordan may delegate another member to represent him. However, no member may represent more than two other members."

Thus, each member has one vote, whatever the value of his share of the co-operative's capital and whatever his social status. This is true democracy in the administration and supervision of the co-operative's affairs.

The rights of deceased members are protected by law. Article 33 of the regulation states that:

"1. If a member dies, the co-operative may, within one year from his death, transfer his shares to the person named by him pursuant to the co-operative's by-laws if the said person is duly accepted as a member of the co-operative in accordance with the regulations issued under this Act and the by-laws of the co-operative.

"2. If the person named is not present, the co-operative shall pay to the person verified to be the deceased member's heir or legal representative a sum equal to the value of that member's shares or participation in the share capital after it has been determined in accordance with the regulations issued under this Act and the by-laws of the co-operative."

Under the Act, a member's shares are exempted from attachment. Article 32 reads as follows:

"A member's shares or participation in the co-operative's share capital may not be attached or sold under an order made by a court or executive chamber in settlement of a debt or claim payable by the member.

"If a member is bankrupt, the official receiver may not impound his shares or participation in the co-operative's share capital, or submit a demand or claim therefor."

The Act does not neglect the human side of co-operation. Article 39, concerning donations for charitable purposes, states:

"The general meeting of any registered co-operative may, after transferring the sum specified in article 38, donate up to 50 per cent of the surplus balance for charitable purposes or the public welfare as decided by the President."

Regulation No. 42 of 1959, concerning housing co-operatives, safeguards the right of individuals to join housing co-operatives having the purpose of solving their housing problems and guaranteeing them housing, in order to ensure an atmosphere of stability in their daily life and to raise their economic level, under the protection of the co-operative system which affords them ease and prosperity.

The recently enacted regulation No. 47 of 1963 concerning the Co-operative Institute, guarantees the right of co-operative members and persons interested in the co-operative movement to receive education and instruction and to acquire expert theoretical and practical knowledge in the various co-operative fields. Article 3, paragraphs (*b*) and (*c*), of the regulation states that the purpose of the Co-operative Institute is to train selected members for co-operative society management; to prepare programmes of instruction for all co-operative members and to educate the latter in organizing the use of their human and productive resources; and to afford Jordanians an opportunity to join the Institute.

Lastly, it may be said that in addition to being practical schools of genuine democracy, co-operative societies seek to achieve self-help, mutual aid and organized collective effort. "One for all and all for one" is the slogan of the co-operative movement.

II. SOCIAL WELFARE AND HUMAN RIGHTS

The purpose of social services is to preserve the human dignity of the individual through the provision of material and moral assistance and personal care aimed at helping him to become integrated with his society and to avoid difficulties or mental distress which might cause him to become hostile or bitter towards society and to seek revenge upon it.

Act No. 14 (1956) of the Ministry of Social Affairs referred to the need to provide general social security and social services for all nationals in all age groups.

The Government promulgated the Social Services Tax Act, No. 89 of 1953, instituting a tax different in kind from other taxes, the proceeds of which were to be used for social services. Some of these services are provided by the Ministry of Social Affairs itself and some by public voluntary agencies the organization and financing of whose activities in this respect are supervised by the Ministry.

Among the services furnished by the Ministry is the provision of assistance in cash and in kind to the needy and the rehabilitation of those capable of being rehabilitated. In order to organize this service, the Government enacted regulation No. 1 of 1955 for the assistance of the poor and needy, subsequently replaced by regulation No. 42 of 1963, concerning assistance and rehabilitation.

Article 3 of the last-named regulation empowers the Minister of Social Affairs to afford recurrent assistance in cash or in kind to qualified widows and orphans, women long divorced or abandoned, sick persons and persons incapacitated owing to a disability or serious illness which prevents them from working, infirm men over sixty years of age and unmarried women over forty years of age. He is also empowered to furnish emergency aid in the event of illness, death, urgent travel, imprisonment and natural calamities or disasters, and to assist in physical and vocational rehabilitation.

These services also include efforts to protect young persons against vagrancy and delinquency and to reform juvenile delinquents through the provision of the necessary welfare services to make them once again useful members of society without their delinquency affecting the attitude of society towards them or their past offences affecting their futures. To this end, the Government promulgated the Juvenile Reform Act, No. 16 of 1954, organizing protective and remedial measures for persons in this category.

Under article 6 of this Act, if a young person is not released on bail, the court or examining judge

must make an order committing him to a place of detention, instead of to a prison.

Under article 7, a court dealing with a charge against a young person is to be deemed to constitute a juvenile court and is to sit, whenever possible, at a different time and in a different place from the time and place of its regular meetings. No one may enter the court except the probation officers, the parents or guardian of the person concerned, the officers of the court or persons directly concerned with it.

Under article 11, before deciding what action to take in regard to the young person and after it has satisfied itself that the charge against him has been proved, the court must obtain particulars from the probation officer concerning the young person's public reputation, environment, conduct at school and state of health, which will enable it to decide the case in his best interests.

Article 15 reads as follows: "If a young person is convicted of an offence, no account shall be taken of previous convictions and he shall not thereafter be liable, on commission of a second offence, to an increased penalty or to be sentenced to a penalty other than the one he could have received."

Under article 23 of the Act, the probation officer or social affairs inspector may bring before the juvenile court any person who appears to be under fifteen years of age, if he has found the said person to be in the care of a father or guardian unfit to take care of him, being of bad behaviour or morals, or to be living in a corrupt environment or begging or receiving charity from the public, or if he has found him to be a vagrant without a father or guardian or with a father or guardian who does not exercise proper guardianship or trusteeship over him. If the court is satisfied that the youth is in need of care and protection, it may order his father or guardian to undertake to care for him properly; or it may commit him to an institute it designates or to an institution specially designated by the Ministry of Social Affairs for the purpose; or it may put him for a specified period in the charge of a suitable person having the right of supervision over him, such as his father; or it may place him under the supervision of the probation officers.

The Ministry has opened rehabilitation institutes and homes, shelters and clubs for waifs, delinquents, beggars and young persons not attending school.

As for the services provided by benevolent agencies, these cover all fields of social welfare, including health, education, welfare, training and rehabilitation. With a view to regulating the organization, co-ordination and supervision of these services, the Government promulgated the Charitable Societies Act, No. 12 of 1956.

Article 3 of this Act reads as follows: "No charitable society may be established without the authorization in writing of the Minister [for Social Affairs] in accordance with the provisions of this Act."

Under article 4, every charitable society must have a statute based on democratic electoral principles and specifying the name of the society and the address of its central office, the names of its founding members, the principal purposes for which it is established, defined clearly and in detail, and any other purposes the society may seek to achieve, its membership and the conditions therefor, its electoral procedures, and the method of administering its activities, auditing its accounts and disposing of its assets on its dissolution.

Under article 10, the Minister, the Mutassarif, the Procurator-General or the public prosecutor or any other Ministry official delegated by the Minister for the purpose may enter the premises of any society, inspect it and examine its registers and documents in order to verify that the society's funds are being spent for the purposes for which it was established.

Article 11 of the Act makes it incumbent on every society to submit a report annually to the Minister, giving particulars of its activities, its total expenditures to achieve its aims and its sources of income and any other data which the society may wish to furnish. Every society must also obtain a certificate from the auditors of its accounts, authorized to carry out an audit at least once a year, and send a certified true copy thereof to the Minister within one month from the date of its issue.

In addition to the financial aid and assistance in kind which these societies receive from the Ministry, they themselves collect donations to be used in expanding their services. In order to organize the collection of such funds, the Government enacted regulation No. 1 of 1957 on the collection of donations for charitable purposes.

Under article 2 of this regulation, authorization has to be obtained from the Ministry of Social Affairs, while article 11 states that: "The funds collected may not be used for purposes other than those for which they were collected. . . ." According to article 12, "The society, institution or groups authorized to collect donations must submit a report to the Minister within the two weeks following the collection period, stating the amount collected and giving details of income and expenditure, all to be substantiated by documents attesting their accuracy."

III. HUMAN RIGHTS IN THE LABOUR MOVEMENT

The Department of Labour has endeavoured to achieve the aims of the United Nations with regard to the realization of social justice and equality for all citizens, and laws and regulations have been enacted for this purpose. The Jordanian Labour Code, promulgated under Act No. 21 of 1960, protects the rights and safety of the worker and guarantees him — as a human being — the possibility of a decent life. Many other laws and regulations, separate from the Labour Code, have been enacted to achieve the aims and aspirations of the working class and to improve relations between workers and employers, with a view to increasing production, serving the community and responding to its demands.

The following are examples of this legislation:

1. *Regulation No. 2 of 1962 on the Establishment of the Advisory Council*

This Council was established to accord with the essence of social justice. Under article 5, paragraph 2, it has the task, *inter alia*, of improving relations between employers and workers and encouraging employers to concern themselves with the affairs of workers and employees, by inspiring mutual confidence in them and endeavouring to improve working conditions.

With a view to helping oppressed workers and ensuring social justice in labour cases, the following regulation was enacted:

2. *Regulation No. 1 of 1962 on Procedure in Labour Cases*

Under this Regulation, a judge in Amman was designated with the exlusive function of examining and pronouncing on all cases arising out of individual labour contracts. He is required to pronounce his decision within the four weeks following the registration of the case with the court. With the enactment of this regulation, the workers began to obtain their rights very quickly, while it is common knowledge that in the past their cases used to take three or four years and then the worker would not obtain justice.

Another regulation of this kind is the following:

3. *Regulation No. 21 of 1960 on the Principles of Procedure in Labour Cases*

Under this regulation, all labour cases were exempted from payment of fees. This came about after the authorities realized that many workers neglected their rights, fearing to bring a complaint against their employer and to become liable for fees beyond their capacity to pay. In order to apply the principle of equality, the Government enacted this regulation so that both poor and rich might be able to obtain justice. The regulation also lays down that accelerated procedures are to be applied in all cases relating to the Labour Code, that the cases are to be heard by the court as a matter of urgency and given priority over other cases in this regard, that hearings are to be fixed within one week from the date of the case's referral to the registry of the court and the case decided within a maximum period of six weeks: all this is to accord fair treatment to the worker, who has no source of income other than his work and cannot afford to be unemployed for a long period.

Since it is human nature for the strong to dominate the weak and the rich the poor, it was necessary for the authorities to intervene in order to bring equality and social justice to all citizens, and an impartial agency was established to achieve this aim. This was the inspection system.

4. *Regulation No. 1 of 1963 on Labour Inspectors and their Functions*

Under this Regulation, labour inspectors are given a great many functions, some of them based on service to the working class and to employers in the interests of both. These include the following:

(1) Giving advice and information to employers and workers regarding the best way of applying the labour law;

(2) Co-operating with employers or their organizations in order to help improve human relations and economic development;

(3) Collecting data when so required on the number of workers, their various categories, training needs and wage rates, and any other matter relating to their terms of employment;

(4) Concerning themselves with health protection in establishments;

(5) Every labour inspector is required to call on the public health doctor or other competent person for assistance in studying the best methods of ensuring the health and safety of workers, and to require the establishments to introduce such methods; he may investigate industrial operations and other matters which may affect the health or safety of the workers;

(6) He may take legal action against any person he finds has violated any provision of law;

(7) Seeking, together with employers and workers, either separately or jointly, the best ways of implementing the provisions of law.

In order to protect workers against hazards and to ensure a suitable atmosphere for work, the following regulations were enacted:

5. *Regulation No. 57 of 1963 on Safety of Industrial Tools and Machinery, enacted under article 3 of the Labour Code, No. 21 of 1960*

Article 8 reads as follows:

"Every owner or responsible manager of an undertaking shall erect a strong protective fence in the following places: (1) around all exposed horizontal rotating rods (axles) seven feet or less above the ground, so as to cover the upper or lower parts according to the position of the rotating cylinder; (2) around all horizontal belts."

The Minister of Social Affairs and Labour also made a decree concerning "Facilities for rest and the taking of meals in open air establishments", which reads:

"All employers of workers in construction, building or stone-working or in other work performed in the open air shall, if the number of persons so employed is not less than five or the equivalent in the previous twelve months, provide for their workers at their (the employers') own expense, within one month after the publication of this decree in the *Official Journal:*

(*a*) One or more shelters to shade them from the sun during their rest periods, sufficient to accommodate them all; they may consist of a wooden base and posts with a straw covering;

(*b*) Straw or a wooden bench under the shelter or in the rest area for the workers to sit upon;

(*c*) A tank of water for drinking and washing."

6. *Regulation No. 31 of 1963 concerning Overtime*

The purpose of this regulation is to safeguard the worker's rights regarding hours of work and

the right not to work more than the prescribed number of hours save in exceptional cases, when he is to receive additional pay amounting to not less than 25 per cent of his regular pay, provided that he may not work overtime more than two hours a day.

The following are mong the exceptional cases in which employers are permitted to employ their workers overtime: (1) electricity companies and water boards, when employing their technical personnel to meet urgent public needs; (2) bakers and confectioners, as well as proprietors of foodshops and tailoring establishments, when employing their technical personnel to ensure services and to meet public demand.

7. *Regulation No. 32 of 1963 on the Settlement of Labour Disputes*

This regulation was prompted by the desire to maintain good employer worker relations and to prevent the further development of any dispute that might arise. The procedure for the settlement of labour disputes is divided into three stages:

(i) *The Mediator Stage*

On learning of a labour dispute, the mediator helps the parties to the dispute to reach a settlement by agreement. If he fails in this, he refers the dispute to a Mediation Board.

(ii) *The Mediation Board Stage*

The Minister of Social Affairs and Labour appoints a chairman of the Board and two or more members from each of the parties to settle the dispute. The Board considers the matters in dispute as submitted by the parties in writing and attempts to bring the parties' positions closer together in order to reach an agreement. If the Board fails to achieve an agreement, it submits a full report on the case to the Minister of Social Affairs and Labour, who in turn refers the case to the Industrial Court.

(iii) *The Industrial Court Stage*

This court is constituted to settle the dispute in the light of the Mediation Board's report on the dispute and the reasons for its referral to the court. Statements are also submitted to it in writing by the parties.

Subject to the provisions of the Regulation and of the Labour Code, the court may determine its own procedure as it sees fit.

KUWAIT

NOTE[1]

A. HUMAN RIGHTS AS GUARANTEED BY LAWS OF THE STATE OF KUWAIT

1. The proposals of the Human Rights Commission and the articles of the Universal Declaration of Human Rights have two basic objectives: (*a*) the guaranteeing of Man's liberty within the borders of the State; the upholding of his right to his possessions, to free choice of work and to freedom of movement, thought and belief; the provision of equitable and proper arrangements for court proceedings and the prevention of arbitrary arrest, detention, imprisonment or exile; and (*b*) restricting the State's powers in its legal relations with individuals lest such powers should be abused.

2. The constitution and laws of Kuwait affirm these principles and explicitly guarantee them. Since attaining her independence, Kuwait has endeavoured to bring about an over all renaissance, and has made use of the latest constitutions and laws of other countries, in her aim to establish a democratic system of government and further complete freedom of the individual. Justice, liberty and equality have been recognized by the constitution as the mainstays of society. The constitution has made it incumbent upon the State to safeguard them and to maintain the safety and security of society. It also guarantees equality of opportunities to all citizens (Articles 7 and 8).

3. The separation of the legislative, executive and judicial powers is provided for in the constitution.

4. Private ownership of property receives special protection in the constitution, which prohibits private property from being confiscated except in the public interest and only in return for equitable compensation (Articles 17, 18 and 19).

5. A Kuwaiti citizen may not be expatriated or forbidden return to his homeland, nor may he be deprived of his nationality except within the limits of the law (Articles 27 and 28 of the Constitution). The Passports Act, No. 11/62, affirms the right of the individual to travel freely from and return to his country without financial restrictions.

6. The handing over of political refugees is prohibited by the constitution (Article 46).

7. The constitution guarantees personal liberty and prohibits arrest, search, limitation on freedom of movement, and imprisonment except as permitted by laws and regulations (Articles 30 and 31).

8. Every person is assured adequate guarantees for a fair and public trial with the right of self-defence. The constitution forbids torture or humiliating treatment of anyone (Article 31) and guarantees everyone a fair judgement (Article 34) by an entirely independent, neutral and impartial judiciary, completely free from any outside influence (Articles 162, 163 and 164). Punishment is purely personal (Article 33).

9. The Penal Code of Kuwait implements these principles. It prevents the arrest of any citizen except in circumstances defined by law where the security of society may be endangered. Under these circumstances a fair investigation must be undertaken pursuant to a written order authorizing detention for a short period pending the inquiry findings of a competent authority (Attorney General). The detention period may not be prolonged except by the order of a judicial power, and only after listening to the defence of the accused in person or through his counsel (Article 34). Punishment may be meted out only for acts committed after the entry into force of the laws defining them as crimes.

10. The law requires the application of such laws as to eliminate the character of criminality in any act, and those which are considered most favourable to the accused, irrespective of whether such laws were issued prior to or after the final verdict.

11. The law considers juvenile any person under 18, and provides a special set of rules in accordance with which corrective penalties are administered to juvenile delinquents. These rules are derived from the latest theories and principles relating to trial and punishment. The same law absolves from penal responsibility the accused whose ability to realize the nature or the illegal character of the act, or of controlling his own will while committing the act, has been proved lacking as a result of mental disease or deficiency or any other abnormality, or because of inebriation or narcotization administered inadvertently or under duress. The accused may not be held responsible for any act committed in self-defence or in defence of his property if he had no other alternative to avert danger.

12. Act No. 17/60 of June 1960, dealing with judicial procedure, prohibits the carrying out of punishment except after a judicial hearing in accordance with the conditions and procedure laid down by law.

13. The accused may decline to make statements or answer questions upon interrogation, and he is allowed to postpone investigations pending the attendance of his lawyer.

14. The accused is not to take an oath. Resort to any medium of coercion or inducement against

[1] Note furnished by the Government of Kuwait.

him is prohibited, and the court must consider null, void, and valueless for the prosecution any statements or confessions of the accused obtained under duress or torture.

15. The accused is given the chance to defend himself and to cross-examine the witnesses of the prosecution. He is also permitted to conduct investigations in the manner he desires.

16. The law has made it the duty of the criminal courts to designate counsel to defend the accused in a criminal case if he has failed to produce one himself.

17. When the accused appears before the court, he must be free of restrictions. The silence of the accused or his abstention from answering any question shall not be construed as tantamount to confession of any sort, nor shall he be liable to punishment for any false statement given in self-defence.

18. Proved insanity, idiocy or mental disease rendering the accused unable to defend himself, and developing subsequent to the date of his committing the crime, shall lead to the suspension of court formalities until such time as the accused recuperates. But if such a condition arose prior to or contemporaneous with the crime and is one that justifies the elimination of penal responsibility, then the case can be proceeded with.

19. The law forbids the execution of an expectant mother sentenced to death; if she gives birth to a living baby, the court shall consider the case for substitution of the death sentence by a limited term of imprisonment.

20. The law deals with rehabilitation and allows the restoration to repute of the individual punished, provided that certain conditions are met and subject to a judicial decision. The rehabilitation necessarily revokes the conviction's effect on the future of the accused, and eliminates its criminal taint.

21. Act No. 26/62, dealing with the organization of prisons, allots one medical unit to each prison, to care for the health of prisoners and their protection against contagious diseases. Prisoners are only to carry out work commensurate with their physical ability. Prisoners with seriously deteriorating health may be acquitted.

22. By law there must be one or more ministers of religion for each prison, to inculcate into the prisoners the love of virtue, and to urge them to observe religious rituals.

23. To every prison, there must be attached one sociologist and one or more psychiatrist. A special committee must examine every criminal convict, psychologically and from a social point of view. This committee must consider the treatment of the prisoner, the kind of work to be required of him and the proposed means of reforming him and shall submit a report to this effect. This committee shall, before the fixed time of the prisoner's release, afford every possible assistance with a view to guaranteeing him a means of subsistence, and keeping him from returning to crime.

24. The prisons' administration has been entrusted with prisoners' education. Every prisoner, if a member of an educational institute, must be supplied with all the necessary books to enable him to pursue his studies, and he is to be allowed to sit for the examinations in the premises of the institute of which he is a member. The prisons' administration must make available a library in each prison, well supplied with literature and scientific and ethical books.

25. The Kuwait Constitution and laws deal with the free choice of work and prevent the imposition of specific work on individuals (Article 42 of the constitution) and the constitution guarantees the freedom of opinion, belief (Articles 35 and 36), association, assembly and petition (Articles 43, 44 and 45), press and printing (Article 37), education (Article 13), care for youth (Article 10), scientific research (Articles 14 and 36) and health (Article 15). The State guarantees by law aid and subsidies to individuals in old age, sickness or disability (Article 11).

26. Health services in Kuwait (preventive and therapeutic) are offered free to all citizens, foreign residents and visitors alike.

27. Educational opportunities in the fundamental, elementary, intermediate and secondary stages are available, completely free, to all inhabitants without distinction. School boys and girls are provided with transportation, food, clothing, text books, stationery, etc., entirely at the State's expense. Higher studies are encouraged and successful students are sent abroad at the State's expense for this purpose. Adequate subsidies are granted to families which stand in need of their son's earnings while he is studying abroad.

28. Kuwait forbids prostitution (and incitement or coercion thereto), slavery and the slave trade and urges adherence to Islamic institutions and virtues. (Article 2 of the constitution clearly states that the Islamic Sharia is a main source of legislation. Article 9 points out that the family is the fundamental unit of society, basic elements of which are religion and morality.) It is a crime to depend partly or solely for a living upon the earnings of a prostitute.

29. The Kuwaiti nationality law, as revised by Act No. 2/60, deals with the married woman's nationality. A foreign woman may become a Kuwaiti citizen, if she marries a Kuwaiti, unless she expresses her desire to retain her original citizenship within one year of the marriage. A woman who acquires a Kuwaiti nationality in the aforementioned manner may not lose it if her marriage comes to an end, unless her original nationality has been restored, or another country's citizenship has been acquired.

30. The nationality law states that a Kuwaiti woman who marries a foreigner acquires her husband's nationality, provided that the laws of her husband's country do not contradict this ruling.

31. At the international level, Kuwait pursues a frank and co-operative policy and strives to preserve world peace and supports peoples' right to self-determination.

B. SOCIAL LEGISLATION AND PROGRAMMES INTRODUCED AND CARRIED OUT BY THE MINISTRY OF SOCIAL AFFAIRS AND LABOUR, CONSISTENT WITH THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

32. The Ministry of Social Affairs and Labour is that division of Kuwait's Government which organizes and extends social care and aid to members of society and carries out the State's legislation dealing with the general well-being of society and the protection of Man from exploitation. The Ministry, by introducing generous plans and programmes affecting the various social walks of life in Kuwait, endeavours to improve man's lot and help him to lead a decent and productive life, thus enabling him to make a better living for himself and his family and to make a better contribution to society as a whole. In this manner the Ministry has been following the concepts of the Universal Declaration of Human Rights.

Family Matters

33. Man must be assisted by the State and guaranteed to the minimum degree a genuine productive life, thus carrying out the provisions of Articles 22 and 25 of the Universal Declaration.

34. Pursuant to para. 3 of Article 16 of the Universal Declaration, the Ministry has concerned itself with proper and complete social care for the family. For this purpose a section within the Ministry has been established and entrusted with caring for the 'woman's side' of the Arab family in Kuwait. This section investigates and looks after all cases involving assistance to widows, divorcees and needy families where women provide the sole support.

35. In the sphere of national activities, the 'family care section' has been guided by the contents of Article 20 of the Universal Declaration. It includes a branch interested in women's activities and societies, which have just made their effect felt in the service of Kuwait society. This section pays special attention to projects and services helping ultimately to maintain the family's existence, unity and stability, especially where it applies to the women's contribution.

36. In conformity with Article 25 of the Universal Declaration, the Ministry realizes that social care for the family in fact begins with the pre-natal period and the government is concerned with arranging for the child's birth and subsequent care. He is to be supplied with the necessary advice and assistance during the stages of his growth. For orphans and children of unknown parents, an orphanage has been established where social, health and psychological care can be offered. In this home the children will find an environment suitable for implanting constructive values, good conduct and self-esteem.

37. The Ministry has instituted kindergarten programmes, wherein children enjoy play activities and can find a suitable atmosphere for association and collective activities under the supervision of social experts. Thus, these programmes are helping to develop their personalities and to create in them the spirit of fellowship and co-operation.

38. In compliance with Article 26 of the Universal Declaration, Kuwait has a unique countrywide and free educational system available in all stages to every inhabitant without discrimination (this includes food, clothing, stationery, text books, and transportation all free of charge). The Ministry of Social Affairs and Labour has opened a Girls' Training Institute which accepts those who have passed the age-limit established for attendance at regular schools. Training schedules of the Institute aim at qualifying such girls in the domestic arts in addition to eradicating illiteracy. The Institute has just opened a new section to teach girls skilled work and specialized knowledge in modern social sciences. Another section trains Kuwaiti girls to qualify for administrative jobs in the Women's Teaching Institutes and elsewhere. The Ministry, by opening the night school section, has given an opportunity to those girls who cannot attend the morning sessions of the Institute to overcome their illiteracy. An exhibition of the girls' products and work in embroidery, sewing, and home management is held annually at the Institute. The success that this Institute has achieved will no doubt prompt the Ministry to expand these programmes.

Co-operative Societies

39. The Act on Co-operation, No. 20/62, embodies the concepts contained in Articles 1 and 20 of the Universal Declaration, and article No. 1 of the law runs as follows:

"By co-operative society is meant any society formed by natural or moral persons in accordance with the provisions of law, for a specific period and with unlimited capital, for the purpose of promoting the economic and social standards of its members by adhering to co-operative principles, especially those mentioned below:

1. Membership is optional.
2. Membership is open to those who fulfil the conditions of the society's basic regulations.
3. Equality in membership rights and duties regardless of the number of shares owned.
4. Capital shares may not earn interest exceeding 6 per cent of their nominal value.
5. Dividends are made on the basis of the size of each member's transactions in the society.
6. The society must not interfere with religious and political matters."

40. As indicated in item No. 1 above, membership may not be forced upon anybody; otherwise the society's formation would be intolerable even if it abided by the remaining principles adopted by co-operative societies. Joining the society's membership is an unconditional right enjoyable by anybody (male or female) able to buy one share of the society's stocks. The member may also at any time resign from the society either by transferring his stocks to another person who will be accepted for membership in the society or by transferring his stocks to another member of the society.

41. Members of the society (male or female) share equal rights and duties. An owner of one hundred shares in the society has no privilege whatsoever over the owner of only one share. Each member is granted one vote in the general assembly's meetings held periodically. Each member enjoys equally the right to stand for election to the Board's membership as long as he has gained the confidence of the voter, whether he be a man or a woman, rich or poor, and even if he owns only one share of the stocks.

42. The capital in a co-operative society is regarded as an instrument to help the society carry out its programmes in offering services required by the members. It is therefore considered as being borrowed from members, and so deserving of a limited interest, defined by the co-operative law of the State in the light of prevailing interest rates in the country's money markets and the degree of the society's need for funds.

43. The distribution of dividends on the basis of the size of the transactions made by each member is characteristic of co-operative societies. Net profits are paid to members subject to this rule at the end of every fiscal period.

44. Due to the fact that co-operative societies accept as members persons of different creeds and political parties, it is to the advantage, or even the duty, of the society to refrain from any religious or political involvement. Within the society, all are equal in rights and duties, and shall work for the principles on which co-operative procedures and regulations are built.

Labour Matters

45. International agreements relative to human rights, to which the State of Kuwait is a party, have been the inspiration of the labour legislation in force in Kuwait. Principles enunciated therein, and in the recommendations of the International Labour Conference, have not only been observed in Kuwait, but have been surpassed in many respects through the granting of more liberal privileges to the members of the working class.

46. Set out below are the International Labour Conventions which have been ratified or are being considered by Kuwait:

1) Convention No. 1 of 1919, limiting working hours in industrial undertakings to 8 per day and 48 per week. Kuwait has ratified this Convention; article 34 and article 12 of, respectively, the private and public sector's labour laws coincide with these standards.

2) Convention No. 52 of 1936. Whereas this Convention grants the worker only six days' annual leave with pay upon the completion of one year's service, Kuwaiti labour law grants fourteen days' annual leave with pay to the worker with one year of service.

3) Convention No. 87 of 1948, relating to freedom of association and protection of the right to organise, which authorises employers and employees alike to form or join the organizations they choose without prior permit, subject to the rules observed by such organizations. This corresponds to Articles 70 and 28, respectively, of the labour laws of the private and public sectors.

4) Convention No. 89 of 1948, concerning night work of women employed in industry. This agreement prohibits women from working at night in industrial undertakings. Article 24 of the private sector's labour law does not allow women to work at night. This law stems from and is in response to Arab social traditions, and is intended to protect women from any harm that might happen to them during night work.

5) Convention No. 105 of 1957 on the abolition of forced labour, which prohibits all kinds of forced or compulsory labour. It does not permit the resort to such measures as a means of political coercion or education or as a penalty or a means of racial, social, national or religious discrimination. Although the provisions of the labour laws of the two sectors do not directly and explicitly prohibit forced or compulsory labour, their provisions dealing with duration of notice and formalities of contract termination do in substance prohibit forced or compulsory labour.

6) Convention No. 106 of 1957, concerning weekly rest in commerce and offices, gives every person the right to a minimum of twenty-four hours of rest during every seven days. This rest period should fall as far as possible at the same time for all employees of any one organization, giving due consideration to the prevailing traditions within the State. This is consistent with article 36 of the private sector's labour law and the country's traditions, both of which fix Friday for the weekly day of rest.

7) Convention 117 of 1962, dealing with the basic objectives and standards of social policy, which aims at the unification of the bases of social policies in the countries ratifying the Convention. It is directed to the well-being and development of the people, the encouragement of their desire for social progress, and the promotion of their standards of living in the fields of health, housing, nutrition, education, welfare of children, the status of women, conditions of employment, protection of workers and social security in general. The Convention urges that every effort be made to grant additional benefits to those workers who are employed away from home to ensure the maintenance of the unity of the family. The 1962 constitution of the State of Kuwait revealed noble aims and high principles by guaranteeing the right of citizens to free medical treatment. The constitution has recognized the role of the family in building society, and the necessity for the provision of social services to sustain the family's status, protect motherhood and prevent the exploitation of youth. It further prohibited night work by women and children to protect them from danger. By ratifying this Convention, the State of Kuwait had actually nothing to add to its commitments towards Man. The concepts of the constitution and of State policy are in complete harmony with the purposes of the Convention.

8) Convention No. 118 of 1962 on equality of treatment of nationals and non-nationals in social security, which makes the ratifying State responsible for guaranteeing the enjoyment of certain benefits of social security to its citizens and to residents of its

country who are nationals of other ratifying countries without discrimination. Act No. 19/62 on social security in Kuwait covers grants for illness, disability and old age, and applies only to Kuwaitis. It may be considered a first step towards complying with Article 2 of the Convention. It is worth mentioning that in the case of Kuwait the State alone supplies the funds for these benefits. Additionally, the medical care and the health registration system provides free therapeutic and preventive treatment to every individual living in the country, citizens and non-Kuwaiti residents alike. In view of the comprehensive medical services provided by the State of Kuwait and the rules governing compensation for industrial injuries and illness, and in the light of Article 2 of the Convention which allows the Member State to commit herself to one part or more of the Convention, this Ministry has suggested the ratification of paragraph 1 (a) and (g) of Article 2. Decision on the remaining items was deferred pending the issuance of a general law for social security, fulfilling the requirements of the Convention.

9) Convention No. 111 of 1958, concerning discrimination in employment and occupation, and Recommendation No. 111, on the same subject, are still under consideration by the authorities concerned in Kuwait, but it may be stated that no laws are in force in Kuwait which may be thought to support discrimination in employment or profession. Treatment is but one for all workers in Kuwait. Preference is given however to: *a*) Kuwaiti citizens and *b*) Arabs. Kuwait welcomes workers from everywhere.

47. The Government of the State of Kuwait has also ratified the Labour Inspection Convention, 1947 (No. 81) and the Guarding of Machinery Convention 1963 (No. 119).

Employment Agreements, Free Choice of Employment and Security against Unemployment

48. Provisions of the Kuwait Labour Law have affirmed the principles promulgated by the Universal Declaration of Human Rights which states that every person has the right to work, and to free choice of work, under satisfactory and fair conditions, and is entitled to security against unemployment.

49. The law has not designated any standard contract of employment but requires any such contract to include information on the nature of the services, the date of its commencement, the rates of pay and the duration of the contract. The law permits limited and non-limited contracts of employment, with the proviso that no contract may exceed five years' duration, so that personal freedom may not be restricted.

50. Legislation concerning the employment of the juvenile fixes a minimum age when he can begin working, prohibits his working at night in dangerous industries, affirms the necessity of preserving his physical fitness and requires safety and preventative measures as precautions against industrial injuries and occupational diseases.

51. In connexion with the steps taken for security against unemployment, offices have been opened by the Ministry of Social Affairs and Labour to keep records of the unemployed, as a preliminary step to finding them suitable jobs on the basis of merit, technical skill and age.

52. Labour laws protect the worker against exploitation by limiting his daily working hours and by granting a weekly day of rest, official and religious holidays, annual vacations with pay and overtime compensation. Sick and compassionate leave have been fixed by law as well as the amounts of compensation due in illness, industrial injuries and partial or permanent disability.

53. The law forbids obligatory purchase by a worker of food-stuffs or the products of his employer. Deduction of any sum exceeding 10 per cent of a worker's wages in settlement of debts to his employer is not allowed, but deductions up to 25 per cent of the wages may be authorized for payment of alimony and other debts.

54. Laws have established the procedure and methods to be followed in cases of disputes arising between any or all of the workers of any one organization and the employers, and have set up arbitration and conciliatory committees.

Youth Matters

55. The constitution has provided for the protection of youth from exploitation and moral, physical and spiritual negligence and has expressed concern over the physical, moral and mental development of the youth. The programmes of the Ministry of Social Affairs and Labour for the care of youth have emanated from these humanitarian considerations and constitutional directives.

56. In planning the care of youth, the Ministry has in mind the following considerations:

1) That services offered in the field of youth care are rights equally due to citizens without regard to race, origin, language or religion.

2) That caring for youth is a branch of education and aims at preparing citizens to live together in a society having certain values. Youth care programmes must aim at developing Man's personality, at respecting Man and basic liberties, at cultivating the understanding, tolerance and friendship among all peoples and communities and at furthering the United Nations efforts for the maintenance of peace.

3) That the family is the natural environment wherein Man enjoys safety and dignity.

4) That the meanings of democracy, liberty, fraternity, equality and justice can be implanted and grown in human nature by their practice through free activity programmes, in which programmes of care for youth play a major part.

5) That 'free time' is a feature of today and a right of Man. In it, Man can recognize himself, develop his potentialities and enjoy happiness, and these free-time hours are established for citizens to enjoy the recreational and welfare services without pressure or compulsion.

57. To create a healthy atmosphere for a happy citizen the following branches have been set up within the Ministry: athletics, scouting, clubs and societies, youth clubs, youth training centres, camps and popular recreation.

CONSTITUTION OF THE STATE OF KUWAIT

of 11 November 1962[1]

Art. 2. The religion of the State is Islam, and the Islamic Sharia shall be a main source of legislation.

Art. 7. Justice, liberty and equality are the pillars of society; co-operation and mutual help are the firmest bonds between citizens.

Art. 8. The State safeguards the pillars of society and ensures security, tranquillity and equal opportunities for citizens.

Art. 9. The family is the corner stone of society; it is founded on religion, morality and patriotism. Law shall preserve its integrity, strengthen its ties and protect under its auspices motherhood and childhood.

Art. 10. The State cares for the young and protects them from exploitation and from moral, physical and spiritual neglect.

Art. 11. The State ensures aid for citizens in old age, sickness or inability to work. It also provides them with services of social security, social aid and medical care.

Art. 12. The State safeguards the heritage of Islam and of the Arabs and contributes to the furtherance of human civilization.

Art. 13. Education is a basic element for the progress of society, and shall be assured and promoted by the State.

Art. 14. The State shall promote science, letters and the arts and encourage scientific research.

Art. 15. The State cares for public health and measures of prevention and treatment of diseases and epidemics.

Art. 16. Property, capital and work are fundamental constituents of the social structure of the State and of the national wealth. They are all individual rights with a social function as regulated by law.

Art. 17. Public property is inviolable and its protection is the duty of every citizen.

Art. 18. Private property is inviolable. Except within the limits of law, no one shall be prevented from disposing of his property. No property shall be expropriated except in the public interest in the cases and manner specified by law, and on condition that just compensation is awarded.

Inheritance is a right governed by the Islamic Sharia.

Art. 19. Total confiscation of the property of any person shall be prohibited and confiscation of particular property as a penalty may not be imposed except by a judgment of a court in the cases specified by law.

. . .

Art. 27. Kuwaiti nationality shall be defined by law. No deprivation or withdrawal of nationality may be effected except within the limits prescribed by law.

Art. 28. No Kuwaiti may be expelled from Kuwait or prevented from returning thereto.

Art. 29. All people are equal in human dignity, and in public rights and duties before the law, without distinction as to race, origin, language or religion.

Art. 30. Personal liberty is guaranteed.

Art. 31. No person shall be arrested, detained, searched, or compelled to reside in a specified place, not shall the residence of any person or his liberty to choose his place of residence or his liberty of movement be restricted, except in accordance with the provisions of the law.

Nobody may be exposed to torture or to humiliating treatment.

Art. 32. Neither a crime nor a penalty may be established except by law. No penalty may be inflicted except for offences committed after the relevant law has come into force.

Art. 33. Punishment is personal.

Art. 34. An accused person is presumed innocent until he is proved guilty at a legal trial in which the necessary guarantees for the exercise of the right of defence are secured.

The infliction of physical or mental injury on an accused person is prohibited.

Art. 35. Freedom of belief is absolute. The State shall protect the free exercise of religion in accordance with established customs, provided that it is not contrary to public policy or morals.

Art. 36. Freedom of opinion and of scientific research shall be guaranteed. Every person shall have the right to express and publish his opinion verbally, in writing or otherwise, in accordance with the conditions and manner specified by law.

Art. 37. Freedom of the press, printing and publishing shall be guaranteed in accordance with the conditions and manner specified by law.

Art. 38. Dwellings shall be inviolable. They may not be entered without the permission of their occupants except in the cases and manner specified by law.

Art. 39. Freedom of communication by post, telegraph and telephone and the secrecy thereof shall be guaranteed; accordingly, censorship of communications and disclosure of their contents shall not be permitted except in the cases and manner specified by law.

Art. 40. Education is a right for Kuwaitis, guaranteed by the State in accordance with law and within the limits of public policy and morals. Education in its preliminary stages shall be compulsory and free in accordance with law.

The law shall lay down the necessary plan to eliminate illiteracy.

The State shall devote particular care to the physical, moral and mental development of youth.

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[1] Text furnished by the Government of Kuwait.

Art. 41. Every Kuwaiti has the right to work and to choose the type of his work.

Work is a duty of every citizen necessitated by personal dignity and public good. The State shall endeavour to make it available to citizens and to make its terms equitable.

Art. 42. There shall be no forced labour except in the cases specified by law for national emergency and with just remuneration.

Art. 43. Freedom to form associations and unions on a national basis and by peaceful means shall be guaranteed in accordance with the conditions and manner specified by law. No one may be compelled to join any association or union.

Art. 44. Individuals shall have the right of private assembly without permission or prior notification, and the police may not attend such private meetings.

Public meetings, processions and gatherings shall be permitted in accordance with the conditions and manner specified by law, provided that their purpose and means are peaceful and not contrary to morals.

Art. 45. Every individual shall have the right to petition the public authorities in writing over his signature. Only duly constituted organizations and bodies corporate shall have the right to petition the authorities collectively.

Art. 46. Extradition of political refugees is prohibited.

Art. 47. National defence is a sacred duty, and military service is an honour for citizens which shall be regulated by law.

Art. 48. Payment of taxes and public imposts is a duty which shall be executed in accordance with the law. The law shall regulate exemption of small incomes from taxes in such a way as to maintain the minimum standard of living.

Art. 49. Observance of public order and respect for public morals are a duty incumbent upon all inhabitants of Kuwait.

. . .

Art. 163. No authority shall have power over the judge in his administration of justice, and the law shall guarantee the independence of the judiciary and provide the guarantees and rules applicable to judges and the cases where their dismissal is inadmissible.

. . .

PENAL CODE

Act No. 16/1960[1]

Art. 185. Whoever brings into or takes out of Kuwait a person with the intention of using that person as a slave, and whoever buys or offers for sale or as a present a person considering that person as a slave, shall be punished with imprisonment for a term not exceeding five years or with a fine not exceeding Rs. 5,000 (Rupees Five Thousand) or with both.

. . .

[1] Text furnished by the Government of Kuwait.

ACT No. 35 OF 1962
CONCERNING ELECTIONS TO THE NATIONAL ASSEMBLY[1]

Chapter I
ELECTORS

Art. 1. Every male Kuwaiti who has reached the age of twenty-one years shall have the right to vote, with the exception of naturalized persons whose naturalization took place less than ten years after the date on which effect was given to Act No. 15 of 1959 concerning Kuwaiti nationality.

Art. 2. A person who has been sentenced for a crime or an offence of a dishonourable nature may not vote until he has been rehabilitated.

Art. 3. The exercise of the right to vote shall be suspended in the case of members of the armed forces and police officers.

. . .

[1] Text furnished by the Government of Kuwait.

Art. 5. No elector may vote more than once in a single election.

. . .

Chapter III
ELECTORAL PROCEDURE

. . .

Art. 19. A candidate for election to the National Assembly must be listed in one of the electoral registers.

. . .

Art. 21. Any person wishing to stand for election shall deposit the sum of fifty dinars as surety, which shall be used for charitable purposes to be specified by the Minister of Social Affairs and Labour if the person concerned withdraws his candidature or fails to win at least one tenth of the number of valid votes cast in the election.

No application for nomination as a candidate shall be admissible unless it is accompanied by a receipt for payment of the surety aforesaid.

Art. 22. A person may not stand for election in more than one electoral district. If he is found to be nominated in more than one district, he shall withdraw his candidature in all but one before the list of candidates is closed. If he fails to do so, his candidature in all the districts shall be deemed to be null and void.

Art. 23. Any public official who is a candidate for election shall be deemed to have resigned his post by operation of law five days after the closing of the list of candidates, unless he withdraws his candidature before that date.

. . .

Art. 33. Elections shall be held by secret ballot.

. . .

LEBANON

NOTE[1]

At present Lebanon is experiencing a period of social advancement and is quietly but steadily consolidating its progress in the field of economic and social rights.

In the sphere of freedom of information, the rulings of administrative and judicial tribunals are developing constants which are no longer tempered with legislative amendments, so that it can be said that proceedings concerned with the press are serving the cause of freedom.

I. SOCIAL RIGHTS

1. *Act of 24 December 1962[2] regulating Apartment Ownership*

This Act concerns both economic and social rights. However, it is more remarkable for its social side in that it will free various categories of workers and employees in the public and private sectors from constant worry about rent.

2. *Act of 17 September 1962 concerning Low-cost Housing*

The purpose of the Act is to provide, by purchase on credit or by renting, decent housing for Lebanese in need or of modest or limited means.[3]

General policy concerning "housing for the people" comes under a "Housing Council", presided over at present by a senior civil officer and comprising — apart from an official of the Ministry of Social Affairs acting on behalf of the Government — seven other members, including an official representing the Ministry of Justice.

It is the responsibility of the Council to determine the housing needs of the various regions of Lebanon, and to draw up in the light of those needs a complete programme providing for, *inter alia*, the elimination of unsanitary dwellings and the construction of housing that is in keeping with the requirements of modern life and hygiene, and to that end to define appropriate standards both at the technical level of construction and the finance and family level.

In discharging its functions, the Council will make use of Lebanese semi-public companies and public or private agencies or associations (public institutions, trade unions, co-operatives, charitable societies, etc.) which will be granted certain benefits by the State.[4]

The Council has other powers under the Act to make decisions, particularly as regards deprivation of rights. Thus, if a beneficiary does not meet his obligations — for instance, if he fails to make the payments due, he loses his rights by a decision of the Housing Council. The decision is final and immediately enforceable through the executive office within whose territorial jurisdiction the case comes. However, if the default on the terms of the contract of sale or of the lease is due to reasons beyond his control (death, illness, disability, etc.), the Housing Council may grant him a subsidy or allow him a special period of grace of up to six months.

Article 15 provides in rather general terms that the Housing Council is empowered to issue injunctions to either party to a contract or lease if he is in default, and to take any provisional or final action likely to end the breach of contract or its consequences, such as stopping subsidies or tax concessions to the recalcitrant party. Such decisions of the Housing Council may be appealed to the Conseil d'Etat within a period of two months after their notification to the party concerned.

II. PROCEEDINGS CONCERNED WITH THE PRESS

The Press Code promulgated on 14 September 1962 has some short-comings. A commission of three members[5] was set up by order No. 38, of 6 February 1964, for the purpose of making the needed changes. These are not likely seriously to disturb the principles governing proceedings concerned with the Press.

A. Reversal Proceedings

The Lebanese system is a system of prior authorization and it is the Minister of Information who is empowered to grant, refuse, withdraw or suspend such authorization. His decisions are ad-

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[1] Note prepared by Dr. Hassan-Tabet Rifaat, Deputy Conseiller d'Etat, delegate to the Disputes and Legislation Board, and government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Published in the *Journal officiel*, No. 1, of 3 January 1963.

[3] Decree No. 14753 of 13 December 1963 issued in pursuance of this Act defines each of these three categories in terms of annual income: 2,000 Lebanese pounds for the first, 5,000 for the second and 12,000 for the third (one dollar (U.S.) equals approximately 3.25 Lebanese pounds).

[4] Decrees (Nos. 14755 and 14756) of 13 December 1963 implementing the Act relate to public and private Lebanese companies and to semi-public companies respectively.

[5] Two representatives of the Ministry of Information (the Director-General and the Head of the Press Service) and the author of this note, representing the Ministry of Justice.

ministrative acts open to redress by a *recours en annulation.*

It should be noted that article 28 of the 1962 Act lays down that silence on the part of the administration one month after the submission of an application is tantamount to refusal. Such a "tacit" decision is likewise open to redress as an action *ultra vires.*

"Tacit" decisions are similar to "verbal" decisions which may be contested before the Conseil d'Etat.

The high administrative tribunal[1] thus annulled a verbal order of the Minister of Information implementing a decision of the Council of Ministers. The decision introduced prior censorship of the Press and provided for the suspension of any publication appearing in contravention of the censorship order.

Here is a translation of the three significant paragraphs in the preamble to the tribunal's decision:

"Whereas Lebanese law accepts the theory of the state of necessity in that legislative decree No. 27, of 16 February 1953, lays down that a state of emergency may be proclaimed by virtue of a decree adopted by the Council of Ministers, and requires such a decree to be referred to Parliament within one week at the latest, even if the Chamber is not in session. . .;

"Whereas the decision (introducing censorship) was adopted on 28 May, i.e., at a time when an emergency and concern about the possible course of events no longer existed, and when Parliament was in session;

"Whereas there was nothing to prevent a meeting of Parliament, and the Government took no steps indicating that it intended to submit for parliamentary approval the action taken, which has continued to be a mere verbal order and has not been preceded or followed by any decree transmitting a relevant bill to the Chamber."

Equally reversible are orders issued by the Minister of Information under article 50 of the 1962 Act which gave him the right to ban any foreign publication that jeopardizes morality, public security or public order [*ordre public*]. However, since the Conseil d'Etat is not competent to judge on the merits [*opportunité*], recourse must be had to the difficult principle of "abuse of authority".

B. Proceedings

The ordinary courts of law are traditionally competent to deal with arbitrary acts committed by the authorities. In a recent decision[2] the Beirut court of first instance held that, the seizure of the copies of a periodical having been conducted in disregard of the procedure laid down by article 44 of the Act then in force,[3] the Administration had taken the law into its own hands, and consequently must pay the plaintiff the price of the copies seized and make good the moral injury he had suffered by paying him a sum fixed by the court at its unfettered discretion.

There is, however, this question. The Act of 1962 is regarded as liberal because, among other new guarantees for journalists, it replaced the Minister of Information by the State Counsel-General to the Court of Appeal as the competent authority in the matter of suspension. Articles 56 and 62 grant the State Counsel-General to the Court of Appeal sole power to suspend, for a maximum period of five days, and to order the seizure of any publication which has reproduced any of the items restrictively enumerated in the Act (article 56)[4] or has been responsible for undermining public security and order, public decency, the religious feelings of the various communities which make up Lebanon, or the dignity of the head of a foreign State (article 62).

The substitution of the authority of the State Counsel-General, a law officer, for that of the Minister necessarily vests competence in the courts and consequently does away with the competence of the Conseil d'Etat. This bringing in of the judicial element implies an application of the theory of State responsibility. Another form of redress would be open to the plaintiff: to institute proceedings against the official concerned. This difficult procedure, provided for by articles 563 to 581 of the Code of Civil Procedure, was expanded in two directions by the Act of 16 October 1961, which makes it applicable to members of the Court of Cassation and of the Ministère public (article 87), and lays down for the first time in Lebanese law that serious professional misconduct by members of the judiciary entails the responsibility of the State (article 88, para. 2).

C. Responsibility of the Press

The above developments were designed to safeguard the freedom of the Press against encroachment by the authorities. The present section deals with the way in which the Act ensures against any abuse of that freedom by journalists, for it is the mission of the Press to guide and enlighten but not to injure.

There is no special body which tries press offences in Lebanon; they come within the jurisdiction of the Court of Appeal whose decisions may be appealed against to the Court of Cassation. Criminal liability is borne mainly by the author of the art-

[1] Order No. 423, of 21 October 1958, *Sieur Machnouk, Rev. Adm.* (in Arabic), p. 213.

[2] Dated 24 December 1962. The decision was upheld on appeal on 5 July 1963 by the Court of Appeal of Beirut (4th Civil Chamber).

[3] The article empowered the Minister of Information to suspend for a period of not more than three days any periodical responsible for undermining public security and order, and to bring it before the courts, which alone were competent to decide whether to continue the suspension.

[4] These pertain to State secrets (debates of parliamentary committees, files or correspondence marked "secret"...), the private life of individuals (for instance, investigations and proceedings concerning divorce, separation, filiation of natural children...) or public morality (indecent news items, printed matter, stories or illustrations).

icle[1] and the director of the publication, who may not be a member of Parliament;[2] otherwise, parliamentary immunity could prevent prosecution. The owner of the newspaper is civilly liable along with the author and the director, but his criminal liability is involved only when his effective participation is proved.

These are the main offences covered by the Act:

1. Blackmail[3] is punishable by two to twelve months' imprisonment and by a fine of 500 to 2,500 Lebanese pounds; the offender may be ordered to pay damages.

Special mention is made of the blackmail with which aliens (whom the Act politely describes as "guests of Lebanon") might be threatened: the same penalties apply but, if in such a case the blackmail is committed by a person who poses as a journalist, the penalties are doubled and the Minister of Information may then demand his detention until the end of the trial.

2. Prison sentences and fines are provided for in the case of false news, insult to authority and abusive language.[4] We would mention in particular the case of insult and abuse in respect of a foreign head of State,[5] in which the penalty is imprisonment for a period of not more than one year and a fine of 1,000 to 5,000 pounds without prejudice to the powers of the State Counsel-General to the Court of Appeal to suspend the newspaper, for a maximum period of five days, and to order the seizure of the copies concerned.

3. Incitement to crime[6] is punishable under article 218 of the Penal Code, which provides that "the instigator incurs the same penalty as that for the offence which he intended to cause to be committed, irrespective of whether it was consummated, attempted or frustrated"; provision is made for reducing the penalty if the instigation did not have any effect.

4. Articles 56 and 62 mention offences to which reference has been made in the preceding section.

In addition to the regulatory scheme outlined above, the Lebanese Press Code provides for the right of correction and the right of reply,[7] which are designed to check possible abuses of the freedom of information.

The right of correction belongs to the Administration, which in this instance is represented by the Minister of Information. In case of inaccurate news concerning a public service, he will send the necessary correction to the director of the publication concerned, who must publish it free of charge in the next issue.[8] Foreign publications are subject to this right of correction and they may be ordered banned by the Minister of Information in the event of refusal.

The right of reply may be exercised by private individuals. The right is "absolute"; it belongs to any private individual or corporate body that has an interest in the insertion of the reply, and this interest is interpreted so broadly as to cover criticism of scientific, artistic and literary works. In certain cases the director may refuse to insert the correction or the reply.[9] The person entitled to a correction (or reply) may then apply for redress through summary proceedings [*juge des référés*] in which the court will hand down its decision within a week; the decision will be indicated at the bottom of the application and is not open to appeal. Refusal to comply is punishable by a fine of 500 to 1,000 Lebanese pounds and by a term of imprisonment of two weeks to six months.

[1] Article 65.
[2] Article 23, para. 3.
[3] Article 63.
[4] Article 60.
[5] Article 62.
[6] Article 61.
[7] Articles 51 to 55.
[8] "In the same place and in the same type-face as the item to which the correction relates", says the Act.
[9] If the matter to be inserted is sent to him more than three months after the item to which it refers, if it contains abusive statements that are contrary to the law or to public decency and make him liable to legal proceedings, if it is sent in over an illegible or false signature, or if an explanation has already been printed by the publication.

ACT OF 10 JULY 1962 CONCERNING CONDITIONS OF ENTRY INTO, STAY IN AND DEPARTURE FROM THE LEBANESE REPUBLIC[1]

Chapter I
General Provisions

Art. 1. — For the purposes of this Act, the term "alien" shall mean any individual who does not possess Lebanese nationality.

. . .

Chapter II
Entry into Lebanon

Art. 6. — No alien shall enter Lebanon unless he passes through one of the frontier posts maintained by the Public Security Department and is in possession of the statutory documents and visas and of a travel document bearing a transit visa or resident's visa issued by the representative of Lebanon abroad, by the authority responsible for Lebanese interests or by the Public Security Department.

. . .

An alien who wishes to enter Lebanon in order to work or to practise a profession there must first obtain the consent of the Ministry of Social Affairs. In the case of performers, the necessary permission shall be given by the Public Security Department.

. . .

[1] Text furnished by Mr. Hassan-Tabet Rifaat.

Chapter VII

EMPLOYMENT OF ALIENS IN LEBANON

Art. 25. — It shall be unlawful for any alien other than a performer to work or carry on an occupation in Lebanon without first obtaining permission from the Ministry of Social Affairs in accordance with the laws and regulations in force.

Chapter VIII

POLITICAL ASYLUM

Art. 26. — Any alien who has been prosecuted or sentenced by a non-Lebanese authority for a political offence and any alien whose life or freedom is threatened for political reasons may apply for the grant of the right of political asylum.

The definition of political offences shall be governed by articles 196 and 197 of the Penal Code.[1]

. . .

Art. 27. — The right of asylum shall be granted by decision of a commission presided over by the Minister for the Interior and composed of the directors of the Ministries of Justice and Foreign Affairs and the Director of the Public Security Department. . .

Art. 28. — The Office of the Director of the Public Security Department shall issue to any person who is granted the right of political asylum a special card bearing full particulars of the holder's identity and such conditions as he may be required to satisfy.

Art. 29. — The commission shall be entitled to withhold the right of political asylum or to change its decision granting such right either by making an order for deportation or by making the exercise of the right of asylum subject to special conditions such as residence in a specified area.

Art. 30. — It shall be unlawful for any person who has been granted the right of political asylum to carry on any political activity while resident in Lebanon.

Art. 31. — No political refugee against whom an order for deportation has been issued shall be forced to go to a country where his life or his freedom may be in danger.

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[1] *Lebanese Penal Code:*

"*Art. 196.* — Any offence intentionally committed with a political motive shall be deemed to be a political offence.

"Any offence against the political rights of the community or of individuals shall also be deemed to be a political offence unless it was committed with a selfish or base motive.

"*Art. 197.* — Offences of a complex character or connected with political offences shall be deemed to be political offences except in the case of the most serious crimes against morality or under ordinary law, such as murder, grievous bodily harm, destruction of property by fire, explosion or flood and aggravated theft, including armed robbery and robbery with violence, or attempts at such crimes.

"In the event of civil war or insurrection, the said complex or connected offences shall only be deemed to be political offences if they are not prohibited by the usages of war and do not constitute acts of barbarism or vandalism."

LIBYA

ROYAL DECREE PROMULGATING AN ACT CONCERNING THE EXPROPRIATION OF LAND IN THE PUBLIC INTEREST

of 3 July 1961[1]

Art. 1. — The expropriation of land needed in the public interest and compensation therefor shall be effected in accordance with the provisions of this Act.

. . .

Art. 7. — The authority carrying out the expropriation shall estimate the amount of compensation to which the person concerned is entitled. It shall not include in its estimate the value of buildings, plantings, improvements, leases or the like if they are found to have been installed or effected for the purpose of obtaining greater compensation. This shall not affect the right of the person concerned to remove the said buildings, etc., at his own expense, provided that this does not prejudice the scheme to be carried out.

Any works or measures of this kind that are carried out after publication in the Official Gazette of the Decree adopted in the public interest shall be deemed to have been carried out for the purpose aforesaid and shall not be taken into account in the estimate of compensation.

. . .

Art. 10. — As soon as the reports referred to in the foregoing article have been prepared, the expropriating authority shall give notice to the owners of the land and the workers thereon to evacute the said land within a period which shall be specified by the authority but which may not exceed five months; the notice shall be given by registered letter against advice of receipt. If they refuse to evacuate the land within the prescribed period, they may be evacuated by administrative process.

Part IV

OBJECTIONS

Art. 11. — The persons concerned among the owners of the land or persons possessing rights therein may, within the thirty days following the period of posting of the lists referred to in article 9 hereof, lodge a petition objecting to the particulars given in the said lists. The petition shall be lodged with the expropriating authority and shall state the full address at which the petitioner is known.

If the petition relates to the estimate of compensation for the land or of the share of the owner thereof or of the person possessing rights therein, it shall be accompanied by a postal order or money order for a sum equivalent to 2 per cent of the additional compensation applied for, such sum not to be less than 500 millièmes nor more than 10 pounds. Any petition not accompanied by the full amount of this tax shall be deemed null and void.

However, if the petition relates to the ownership of the land or to the possession by the petitioner of a right in the land, such as a mortgage, servitude, usufruct, or the like, or to an application to purchase the remaining portion of the land in accordance with article 26 hereof, or to the area, number, description or classification of the pieces of land, or the like, the petition shall include a detailed description of the right invoked by the petitioner and shall be accompanied by all documents in support of his application and the dates and registration numbers of the rights concerning which the petition is lodged.

. . .

[1] Text published in the *Official Gazette*, No. 13, of 18 July 1961, and furnished by the Government of Libya.

ACT No. 15 OF 1962, CONCERNING VOCATIONAL REHABILITATION AND PLACEMENT FOR PERSONS INCAPACITATED FOR WORK

of 26 April 1962[1]

Art. 1. — For the purposes of this Act, the term "incapacitated person" means any person whose capacity to perform appropriate work on a continuing basis is impaired in practice as the result of a physical or mental disability; the term "employer" means any person employing twenty-five or more workers, whether these are employed in one place or in various places in Libya; the term "vocational rehabilitation" means the vocational services, such as physical therapy, vocational guidance and training, and placement services, rendered to an incapacitated person to enable him to regain his capacity to perform on a continuing basis work appropriate to his condition.

. . .

[1] Text published in the *Official Gazette*, No. 7, of 5 June 1962, and furnished by the Government of Libya.

Art. 4. — Incapacitated persons shall be admitted to vocational rehabilitation institutions on the basis of an application to be submitted by the person concerned or the one who supports him, stating the nature of the disability and its cause and the age of the applicant. The applications shall be examined to determine the extent of the disability by a board constituted by the decree of the competent Nazir, consisting of the director and the physician of the institution and a representative of the Nazirate concerned.

. . .

Art. 9. — Employers shall employ persons nominated by the Labour Office from the register of incapacitated persons who have completed their vocational rehabilitation, to the extent of 4 per cent of their total labour force.

Employers may employ in the proportion aforesaid incapacitated persons not nominated by the Labour Office, provided that such persons are registered with that Office in accordance with the foregoing article. In such a case they shall communicate the names of the persons to whom they have given work, immediately after their employment, to the Labour Office by registered letter.

Art. 10. — Incapacitated persons recruited for work in accordance with the provisions of this Act shall enjoy all the rights granted to other workers under the Labour Code.

Art. 11. — Employers shall notify the Labour Office in whose district their place of work is situated of posts and jobs that fall vacant in their establishments, within the quota reserved for incapacitated persons, stating the conditions attaching thereto, the qualification required and the wage fixed for the post or job; such notice shall be given by registered letter immediately after the vacancy occurs. In such a case the Labour Office shall nominate the required number of incapacitated persons for the posts or jobs within the fifteen days following the date of the notice aforesaid, and employers may not fill the specified quota of jobs with persons other than incapacitated persons duly registered in accordance with this Act except after the expiry of the said period.

. . .

MADAGASCAR

ACT No. 62-007, OF 6 JUNE 1962, AMENDING CERTAIN PROVISIONS OF THE ARTICLES OF THE CONSTITUTION OF THE MALAGASY REPUBLIC[1]

Art. 1. — The preamble to the Constitution of the Malagasy Republic shall be amended to read as follows:

Fifth paragraph

"All men have equal rights and duties without distinction as to origin, race, religion or opinion, and the Malagasy State shall endeavour to give each of its nationals an equal chance to achieve the full development of his capacities and personality."

Seventeenth paragraph

"Property is an inviolable right for all Malagasy citizens and aliens; no person may be deprived of it, except where this is required in the public interest as established in due legal form and except in return for just and prior compensation. The State shall recognize duly established ancestral property rights."

Twenty-first paragraph

Add the following provision:

"No person shall suffer any damage in his work or employment by reason of his origins, political opinions or beliefs."

Last paragraph

"No person may abuse the rights recognized by the Constitution or by law to attack the territorial integrity of the State, the republican régime or democracy or to violate the present Constitution."

. . .

Art. 4. — Article 8 of the Constitution of the Malagasy Republic shall be amended to read as follows:

"*Art. 8.* — The President of the Republic shall be elected by universal and direct suffrage."

. . .

[1] Published in the *Journal officiel de la Republique malgache*, No. 228, of 16 June 1962. For extracts from the Constitution, see *Yearbook on Human Rights for 1959*, pp. 193-194.

PENAL CODE

Promulgated on 7 September 1962[1]

PRELIMINARY PROVISIONS

. . .

Art. 4. — No petty offence [*contravention*], correctional offence [*délit*] or serious offence [*crime*] may be punished with penalties not provided by law prior to their commission.

. . .

BOOK I

Penalties for serious and correctional offences and their effects

. . .

Art. 10. — Sentences to penalties prescribed by law are always pronounced without prejudice to restitution and compensation which may be due to claimants.

. . .

Chapter I

Penalties in the Matter of Serious Offences

. . .

Art. 15. [Ordinance No. 62-013, of 10 August 1962] — Men sentenced to hard labour shall be employed in labour of the most onerous kinds.

Art. 16. — Women and girls sentenced to hard labour shall be employed in such labour only within the confines of a prison.

. . .

Art. 24. — In the case of detention pending trial, such detention shall be totally deducted from the term of the judicial sentence, unless the judge has decided, specifically assigning his reason therefor, that such deduction shall not apply or shall apply only partially.

. . .

Art. 27. — If a woman sentenced to death claims and is in fact found to be pregnant, she shall not be executed until after her delivery.

Art. 28. — Conviction of a serious offence shall entail loss of civic rights.

. . .

Art. 34. — The loss of civic rights consists of:

1. The destitution and exclusion of the offender from all public functions, employments and offices;

2. The forfeiture of the right to vote, of election, of eligibility and in general of all civic and political rights and of the right to wear decorations of any kind;

3. Disability to act as a sworn expert, to serve as

[1] Published in the *Journal officiel de la République malgache*, No. 240, of 7 September 1962. Text furnished by the Government of the Malagasy Republic.

a witness to legal instruments, and to give evidence in court for purposes other than mere information;

4. Disability to serve as a member of a family council, as a guardian [*tuteur or curateur*], surrogate guardian [*subrogé tuteur*] or court-appointed representative [*conseil judiciaire*], except in the case of the offender's own children and only on the advice of the family;

5. Prohibition to bear arms, to be a member of the National Guard, to serve in the Malagasy Armed Forces, to operate a school, to teach or to serve in any educational establishment as a teacher, instructor or teacher's assistant [*surveillant*].

Art. 35. — Whenever loss of civic rights has been imposed as the principal penalty, the judgement may also provide for imprisonment for a term which shall not exceed five years.

Where the offender is an alien or a Malagasy who has lost his citizenship, the penalty of imprisonment shall always be imposed.

Art. 36. — A person sentenced to death or to hard labour, deportation or rigorous imprisonment for life [*peine afflictive*] may not dispose of his property, in whole or in part, by gift *inter vivos* or by will, receive any property by gift *inter vivos* or by will, except for the purpose of support. Any will executed by him prior to the sentence imposed in a trial in which he was represented, which sentence has become definitive, shall be void. The above provisions shall be applicable to judgements imposed *in absentia* only after a period of five years from the day of constructive execution.

The Government may relieve a person sentenced to a *peine afflictive* of all or any of the disabilities prescribed in the preceding paragraph. It may allow him to exercise, in the place where the sentence is served, some or all of the civil rights which he lost by reason of his legal disqualification. At the place where he is serving his sentence, the prisoner may not by any act validly pledge the property which he owned before conviction or which gratuitously accrued to him thereafter.

Art. 37. — Whenever a sentence is imposed for a serious offence committed in time of war against the external security of the State, the courts having jurisdiction shall order the confiscation, for the benefit of the nation, of all existing and future property of the offender, of whatever nature, movable or immovable, separate or joint, in accordance with the following provisions.

Art. 38. — If the offender is married, the confiscation shall appertain only to that portion of the joint estate, or of property jointly owned by the spouses, which belongs to him personally.

If the offender has lineal descendants or ascendants, the confiscation shall appertain only to the freely disposable portion of the estate. If necessary, apportionment of the property, or, if it is indivisible, of the proceeds, shall be undertaken, in conformity with the rules governing succession.

. . .

Chapter II

Penalties in the Matter of Correctional Offences

. . .

Art. 42. — Courts judging correctional offences may, in certain cases, prohibit the exercise, in whole or in part, of the following civic, civil and family rights:

1. Suffrage;
2. Eligibility;
3. To be summoned or appointed to perform jury service or other public functions, or government service, or to engage in such functions or service;
4. To bear arms;
5. To have a vote or voice in family deliberations;
6. To be a guardian, except in the case of the offender's own children and only on the advice of the family;
7. To be an expert or a witness to legal instruments;
8. To give evidence in court, other than the making of mere statements.

. . .

BOOK III

Serious and correctional offences and their punishment

Title I

SERIOUS AND CORRECTIONAL OFFENCES AGAINST THE PUBLIC WELFARE

. . .

Chapter II

Serious and Correctional Offences against the Constitution

Section I. — *Serious and correctional offences pertaining to civic rights*

Art. 109. — If by assembly, acts or threats, one or more citizens are prevented from exercising their civic rights, each of the offenders shall be liable to imprisonment for not less than six months and not more than two years, and shall be prohibited from voting and being eligible for not less than five years and not more than ten years.

. . .

Section II. — *Attacks against liberty*

Art. 114. — Any public official, or any agent or officer of the Government, who orders or commits any act in abuse of authority or any act infringing the liberty of an individual or the civic rights of one or more citizens, or the Constitution, shall be sentenced to deprivation of civic rights.

Nevertheless, if he shows proof that he acted at the order of his superiors in a matter in which the said superiors are competent and in which obedience to their superior orders was mandatory, he shall be exempted from the penalty, which shall in this case be applied solely to the superior officers who gave the order.

. . .

Chapter III

Serious and Correctional Offences against the Public Peace

. . .

Section IV. — *Resistance, disobedience and other defiance of public authority*

. . .

Para. 2: Resisting the enforcement of judgements and judicial decisions; contemptuous and violent acts against the courts and persons representing authority and the law enforcement and security services.

. . .

Art. 222. — Any person who, by means of spoken words, written matter or drawings which are not published, insults one or more administrative or judicial officials, or one or more jurymen, in the exercise or in connexion with the exercise of their functions, in such a way as to impugn their honour their scrupulousness, shall be liable to a term of imprisonment of from fifteen days to two years.

If the official or juryman is insulted at a court hearing, the term of imprisonment shall be from two to five years.

. . .

Art. 226. [Ordinance No. 62-013, of 10 August 1962] — Any person who publicly, by deeds, in speech or in writing, attempts to throw discredit upon an act or decision of a court in circumstances calculated to impair the authority or independence of the judiciary shall be liable to a term of imprisonment of from one to six months and to a fine of from 5,000 to 100,000 francs.

In addition, the court may order its decision to be displayed and published at the cost of the offender in such manner as it may determine, provided that the cost does not exceed the maximum fine specified above.

The State Counsel-General at the court of appeal shall be responsible for the initiation of proceedings.

In no case shall the foregoing provisions apply to purely technical comments, or to deeds or spoken or written words relating to the review of a sentence.

. . .

Title II

SERIOUS AND CORRECTIONAL OFFENCES AGAINST PRIVATE PERSONS

Chapter I

Serious and Correctional Offences against Persons

. . .

Section IV. — *Infringements of morality*

. . .

Art. 336. — A wife's adultery may be charged only by the husband; even this right is non-existent in the case covered by article 339.

Art. 337. — A wife convicted of adultery shall be liable to imprisonment for not less than three months and not more than two years.

The husband may stop the service of the wife's sentence if he agrees to take her back.

Art. 338. — The accessory to a wife's adultery shall be liable to imprisonment for the same term and, in addition, to a fine of from 18,000 to 360,000 francs.

Apart from *flagrante delicto* evidence, only letters or other writings of his authorship shall be admitted as evidence against the person accused as accessory.

Art. 339. — A husband who keeps a mistress at the matrimonial home shall, upon conviction on his wife's charges, incur a fine of from 18,000 to 360,000 francs.

. . .

Section VII. — *Perjury, Defamation, Insults, Breach of Confidence*

. . .

Para. 2: Defamation, insults, breach of confidence.

. . .

Art. 373. — Any person who by any means whatsoever makes a false accusation against any individual or individuals to judicial officers or to officials of the administrative or judicial police, or to any authority empowered to act on such accusation or to refer it to a competent authority, or who makes such an accusation to superiors or employers of the person concerned, shall be liable to a term of imprisonment of from six months to five years and to a fine of from 25,000 to 750,000 francs.

The court may further order the publication of the judgement, in whole or in part, in one or more newspapers, at the offender's expense.

. . .

Art. 378. [Ordinance No. 60-161, of 3 October 1960] — Physicians, surgeons, pharmacists, midwives and other persons to whom, by reason of their position or profession or of their temporary or permanent duties, secrets are confided, and who divulge such secrets in cases other than those in which the law requires or authorizes them to report thereon, shall be liable to a term of imprisonment of from one to six months and to a fine of from 25,000 to 150,000 francs.

Such persons, however, shall not be liable to the penalties proscribed in the preceding paragraph if they report abortions which they deem to be criminal and of which they have gained knowledge in the exercise of their profession, even though they are not compelled to report them; when summoned to court in abortion proceedings, they may freely give evidence without incurring any penalty.

. . .

CODE OF CRIMINAL PROCEDURE PROMULGATED BY ORDINANCE No. 62-052 OF 20 SEPTEMBER 1962[1]

BOOK I

General provisions

Title I

PROSECUTION AND CIVIL ACTION

Chapter I

Prosecution

Art. 1. — Prosecution with a view to the application of criminal penalties shall be instituted and carried on by the judicial officers or officials upon whom the responsibility for prosecution is conferred by statute.

Prosecution may also be instituted by the injured party in the manner prescribed by this Code.

Art. 2. — Prosecution with a view to the application of criminal penalties shall be extinguished by the death of the offender, limitation of time, amnesty, repeal of a criminal law, and *res judicata.*

Prosecution may, moreover, be extinguished by agreement between the parties or by payment of an agreed fine where there is an express statutory provision to that effect; it may likewise be extinguished in the case of withdrawal of a complaint, where the complaint is a condition precedent to the institution of proceedings.

. . .

Chapter II

Civil Action

Art. 6. — A civil action with a view to securing compensation for the damage caused by a crime, correctional offence or petty offence may be brought by anyone who has personally suffered damage directly caused by the offence.

Except for cases in which the law makes the complaint of the injured party a condition precedent to prosecution, withdrawal of the civil action shall neither stay nor suspend the prosecution.

. . .

Title IV

DEFENCE OF THE PARTIES

Chapter I

Defence during judicial inquiry

Section I. — *Defence of the accused person*

Art. 53. — At the first appearance of the accused person, the examining judge, after taking the action set out in article 273 of this Code, shall advise the accused person of his right to select a counsel from among the advocates and probationary advocates of the bar of Madagascar.

At any time during the examination, the accused person may inform the examining judge of the name of the counsel selected by him. If he appoints several counsel, he must indicate to which one of them invitations and notices should be addressed.

Art. 54. — An accused person in custody may communicate freely with his counsel immediately after his first appearance before the examining judge. The prohibition on communication shall in no case apply to the accused person's counsel.

Art. 55. — Unless he expressly waives his rights in that respect, an accused person, whether in custody or at liberty, may be interrogated or confronted only if his counsel is present or has been duly invited to attend.

. . .

Section II. — *Defence of the civil claimant*

Art. 62. — From the time when he is first heard by the examining judge, a civil claimant shall be entitled to the assistance of a counsel selected by him from among the advocates and probationary advocates of the bar of Madagascar.

. . .

Chapter II

Defence before the Criminal Courts

Art. 65. — At hearings in the Criminal Court, the presence of counsel for the defendant shall be mandatory.

Before the opening of the trial in the Criminal Court, the president of the Court or the judicial officer to whom he delegates that function shall invite the defendant to select a counsel for his defence.

If the defendant does not select a counsel, the president or the judicial officer to whom he delegates that function shall appoint one *ex officio.* This appointment shall be cancelled if the defendant subsequently selects a counsel and if the latter serves.

Art. 66. — Counsel may be selected or appointed only from among advocates and probationary advocates of the bar of Madagascar or of a country which has an agreement with Madagascar for assistance in judicial matters.

Failing this, counsel shall be appointed from among the persons whom the president deems capable of effectively ensuring the defence of the defendant.

Art. 67. — A defendant may always communicate freely with his counsel. The latter may examine all the documents in the file on the spot, but such examination must not delay the course of the proceedings.

Counsel may copy or have a copy made of any document in the record of the proceedings, without removing the latter, at the defendant's expense.

. . .

[1] Published in the *Journal officiel de la République malgache*, No. 246, of 5 October 1962. Text furnished by the Government of the Malagasy Republic.

Title VI

COURT DECISIONS AND ORDERS

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Chapter III

Warrants

. . .

Section II. — *Execution of warrants*

Art. 104. — An accused person to whom a summons to appear has been issued must be interrogated forthwith by the judicial officer who issued the summons.

An accused person arrested by virtue of a warrant to compel attendance shall be interrogated in the same conditions; however, if the interrogation cannot take place immediately, the accused person shall be taken to a prison, where he may not be held for more than twenty-four hours.

At the expiration of that period, he shall automatically be brought by the chief warden before an official of the ministère public, who shall request the examining judge, the president of the court or a judge designated by the latter to conduct the interrogation forthwith, failing which the accused person shall be set free. At a place where sections of the court sit, the detained person shall be brought directly before the section president for interrogation.

If every judicial officer in the section is absent or unable to serve, the detained person shall be brought before the nearest officer of the ministère public for interrogation.

Art. 105. — Any accused person arrested by virtue of a warrant to compel attendance, who has been held in a prison for more than twenty-four hours without being interrogated, shall be deemed to be arbitrarily detained.

. . .

Art. 107. — An accused person who refuses to comply with a warrant to compel attendance or who attempts to escape must be restrained by force. The person bearing the warrant shall to that end call on the police of the nearest place, who must render assistance forthwith.

If an accused person against whom a warrant has been issued cannot be found, the warrant shall be submitted to the mayor or to his deputy, or to the police commissioner or to the head of the police force of the place where he resides, for signature. The warrant, having been signed, together with a report that the search was unsuccessful, shall be returned to the judicial officer who issued the warrant.

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BOOK II

Prosecution and judicial inquiry

Title I

CRIMINAL POLICE AND INVESTIGATION

. . .

Chapter II

Preliminary Investigation

. . .

Art. 136. — Where he acts in the territory of a commune in which a court or a section of a court sits, an officer of the criminal police may not hold a person at his disposal for the purposes of the preliminary investigation for more than forty-eight hours, excluding Sundays and holidays.

After that period has elapsed, the person so held must compulsorily be released or brought before an official of the ministère public.

Where the residence of the officer of the criminal police is situated outside the boundaries defined above, he may request authorization from a judicial officer or an officer of the ministère public in his administrative district to extend the surveillance of the person held for an additional period not exceeding forty-eight hours. This authorization must be confirmed in writing and attached to the record.

After the authorized period has elapsed, the person held must compulsorily be set free or brought before a judicial officer or an officer of the competent ministère public.

. . .

Title II

THE MINISTÈRE PUBLIC AND THE PROSECUTION OF OFFENCES

Chapter I

The Ministère public

Section I. — *General Provisions*

Art. 147. — The ministère public shall carry on prosecutions. It shall see to the application of the law. It shall ensure the enforcement of court decisions.

. . .

Section II. — *Powers and duties of the Procureur Général in the Appeal Court*

Art. 151. — It shall be the duty of the procureur général to see to the application of the criminal law throughout the territory of the Republic.

To that end, he shall receive a monthly statement from each procureur de la République concerning the cases within the latter's jurisdiction.

The procureur général, in carrying out his duties, shall have the right to request assistance directly from the police.

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Title V

SUMMARY JUDICIAL INQUIRY

. . .

Chapter II

Procedure governing Summary Judicial Inquiries

Section I. — *Procedure relating to Correctional Offences*

. . .

Art. 227. — Any accused person who has been prosecuted and detained in accordance with the procedure governing summary judicial inquiries may communicate freely with the advocate whom he declares that he has selected as counsel.

. . .

Section II. — *Procedure relating to Crimes*

. . .

Art. 239. — An accused person may appeal from an order transferring a case to the Criminal Court, within three days following the date on which he was notified.

That appeal shall be instituted, if the accused person is at liberty, by lodging a declaration with the registry of the court or, if he is held in detention, by delivering the declaration to the chief warden of the prison.

The appeal may be based only on grounds arising from irregularity or invalidity in the proceedings. The accused person or his counsel must submit an application stating these grounds to the registrar of the court within seven days following the appeal.

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Title VI

PRELIMINARY EXAMINATION

Chapter I

The Examining Judge

. . .

Section IV. — *Hearing of Witnesses*

. . .

Art. 263. — Any person summoned to be heard as a witness shall be obliged to appear, to take an oath and to testify, subject to the provisions of article 378 of the Criminal Code.

If the witness does not appear, the examining judge may issue a warrant to compel his attendance.

The judge may also, on the application of the ministère public, sentence a recalcitrant witness to a fine of 2,000 to 25,000 francs.

A witness who subsequently appears, however, may be discharged from that penalty by the examining judge, on the application of the ministère public, if he offers excuses and justifications.

A witness who, although he appears, refuses to take an oath and to make his statement may, on the application of the ministère public, be sentenced to the same penalty.

Art. 264. — Any person who declares publicly that he knows the perpetrators of a crime or of a correctional offence and who, being unable to invoke the provisions of article 378 of the the Criminal Code, refuses to answer questions put to him concerning that matter by the examining judge, shall be liable to imprisonment for a term of one month to one year and a fine of 25,000 to 250,000 francs or to one of those penalties only.

. . .

Art. 270. — Any person mentioned by name in a complaint or denunciation may refuse to be heard as a witness. In that case, he may be heard only as an accused person.

. . .

Section V. — *Interrogation and Confrontation*

. . .

Art. 274. — The examining judge shall have the right to order a prohibition on communication with regard to an accused person for a period of ten days. He may renew this prohibition, but only for a further period of ten days.

The prohibition on communication shall in no case apply to the accused person's counsel.

. . .

Title VII

DETENTION PENDING TRIAL

Chapter I

General Provisions

Art. 333. — Detention pending trial is an exceptional measure.

It shall not be applicable with respect to persons prosecuted for acts punishable under the law by penalties for petty offences or correctional penalties other than imprisonment.

Art. 334. — Detention pending trial may in no case be extended beyond a period equal to the maximum penalty involving deprivation of liberty incurred. As soon as this maximum has been reached, the accused person under detention must be set free, unless he is detained on another charge.

Art. 335. — Any person who has knowledge of an irregular or unlawful detention pending trial may apply to the procureur général or to the president of the arraignment chamber with a view to having the necessary verification made and, if need be, putting an end to the unlawful detention.

In all cases the arraignment chamber, after hearing the ministère public, may of its own motion order the release of the accused person during the summary judicial inquiry or preliminary examination.

. . .

BOOK III

Criminal courts

Title I

GENERAL PROVISIONS

Chapter I

Public Hearing and Maintenance of Order during the Proceedings

Art. 356. — Hearings shall be public. Nevertheless, the court, by a decision or judgement rendered in open court in which it finds that a public hearing will be prejudicial to law and order or public morals, may direct that the trial shall be held *in camera.*

The decision to hold the trial *in camera* shall apply to the pronouncing of any separate judgements on motions or procedural objections.

The decision on the merits must always be pronounced in open court.

Art. 357. — The president shall maintain order during the hearings and direct the trial.

It shall be his duty to prevent anything that would tend to detract from the dignity of the trial or to prolong it without any likelihood of reaching conclusions which are closer to the truth.

He may forbid all or some minors access to the court room.

Art. 358. — As soon as a hearing is opened, the use of photographic equipment, television or motion picture cameras, or sound-recording or broadcasting equipment shall be prohibited on pain of a fine of 25,000 to 1 million francs, which may be imposed in the conditions laid down in book V, title I. The court may also order the confiscation of the equipment used.

. . .

Title II

JUDGEMENT OF CRIMES

. . .

Chapter III

The Trial

. . .

Art. 438. — If the defendant is exonerated or acquitted, he shall immediately be set free, unless he is detained on another charge.

No one, having once been legally acquitted, may be detained or charged again in respect of the same acts, even under a different classification.

. . .

BOOK V

Special appeals

Title I

APPEAL ON POINTS OF LAW

Art. 539. — The decisions and judgements rendered in the last instance in criminal, correctional and police court cases may be annulled, in whole or in part, by an appeal on points of law taken by the ministère public or by the injured party.

The decisions of the arraignment chamber may be similarly annulled.

. . .

Title II

APPLICATIONS FOR REVIEW ON POINTS OF FACT

Art. 544. — An application may be made for review on points of fact of a conviction, which has become absolute, for the benefit or anyone who has been found guilty of a crime or correctional offence.

. . .

BOOK VI

Effects of criminal judgements

Title IV

CONDITIONAL RELEASE

Art. 574. — Convicted persons having to serve one or more sentences involving deprivation of liberty may be granted conditional release if they have given sufficient evidence of good conduct and offer substantial indications of social rehabilitation.

Conditional release shall be restricted to convicted persons who have served three months of their sentence if that sentence is less than six months, and one half of the sentence in the contrary case. For convicted persons considered by the law to be recidivists, the probationary period shall be increased to six months if the sentence is less than nine months, and to two thirds of the penalty in the contrary case. For persons sentenced to hard labour for life, the probationary period shall be fifteen years.

. . .

Title VII

REHABILITATION

Art. 600. — Any person sentenced by a Malagasy court to a criminal or correctional penalty may be rehabilitated in his rights.

Rehabilitation shall be either acquired as of right or granted by a decision of the arraignment chamber.

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ORDINANCE No. 62-117 OF 1 OCTOBER 1962 REGULATING RELIGIOUS ACTIVITIES[1]

Title I

PRINCIPLES

Art. 1. — The State guarantees its citizens' freedom of conscience and the freedom to manifest religion, subject only to the restrictions laid down by this ordinance in the interests of morality and law and order [*la morale et l'ordre public*].

Art. 2. — The State does not furnish remuneration or subsidies to any religious denomination, and therefore no expenditure relating to the manifestation of religion may be included in budgets of the State, the provinces, or the communes.

Title II

PRIVATE RELIGIOUS MEETINGS

Art. 3. — Religious meetings may be held freely on private premises, provided, however, that they in no way disturb public order and that the religious practices exercised are not contrary to morality or public policy [*bonnes moeurs*].

Art. 4. — Permission from the authorities is not required in order to hold a religious meeting. However, in order to enable the authorities, if required, to ensure free manifestation of religion, persons who organize a private religious meeting may inform the nearest administrative authorities of the time and place of the meeting, and if necessary, request their assistance.

. . .

[1] Published in *Journal officiel de la République malgache*, No. 252, of 26 October 1962. Text furnished by the Government of the Malagasy Republic.

ORDINANCE No. 62-038 OF 19 SEPTEMBER 1962 CONCERNING THE PROTECTION OF THE CHILD[1]

Title I
GENERAL PROVISIONS

Art. 1. — The child has a privileged position within the family: he shall have the right to material and moral security in the fullest possible degree.

Art. 2. — Responsibility for his education lies in the first place with the family, which must ensure the harmonious development of his personality.

Art. 3. — Nevertheless, whenever the security, morals, health or education of a minor under eighteen years of age are threatened, the State shall intervene, for the purpose either of aiding and assisting the family in its role as natural educator of the child, or of taking appropriate measures of educational assistance and supervision, or, when the circumstances and personality of the child appear so to require, of referring the minor to special courts.

Art. 4. — The age of majority for penal purposes shall be eighteen years; the age of a minor shall be determined as of the time of committing the offence.

Proof of minority shall be established by a birth certificate, by a special court decision, or by a physical examination in lieu of birth certificate or special court decision.

Title II
PROVISIONS GOVERNING PETTY OFFENCES

Art. 5. — Minors under eighteen years of age who commit petty offences shall be prosecuted and punished under ordinary law, subject to the following provisions.

Art. 6. — If the minor is under thirteen years of age he may only receive an admonition from the police court.

Art. 7. — If the minor is over thirteen and under eighteen years of age and is found guilty of the charge against him, the police court shall impose the fine laid down by law. It may also, after the sentence has been imposed, transmit the records of the case to the children's judge, who may place the minor on probation.

Even in the case of repeated offences, a minor may not be sentenced to imprisonment for a petty offence.

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Title V
THE CHILDREN'S COURT

Chapter I
Composition

Art. 27. — A special chamber known as a "children's court" shall be established by decree at courts of first instance having a sufficient number of judges.

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Chapter II
Competence

Art. 32. — The children's court shall try all correctional offences committed by minors under eighteen years of age.

Cases shall be brought before it by referral order of the children's judge or by direct summons.

In the latter case, the children's court may order a social inquiry or a medical examination, and, for the duration of these proceedings, the minor may be entrusted to the charge of one of the persons mentioned in article 12.

It may issue any warrants required subject to the rules of ordinary law.

Chapter III
Procedure

Art. 33. — Each case shall be tried separately, the minors charged in connexion with the other cases due to be heard not being present.

The deliberations shall take place in closed court. Only the minor and his counsel, the parents or in their absence the legal representative, the guardian, the members of the bar, the representatives of institutions or agencies devoted to children's welfare and the witnesses shall be admitted. Accomplices or accessories who are majors may be heard for information purposes only.

The presiding judge shall have the right at any time to instruct the minor to withdraw during all or part of the deliberations. Moreover, if the child's interests so require, the judge may excuse him from appearing at the hearing. In this case, the minor shall be represented by his lawyer, and the court's decision shall be regarded as being rendered after a full hearing of the parties.

Publication of the records of the deliberations of the children's court, in whatever form, is prohibited.

Art. 34. — The judgement shall be delivered in open court in the presence of the minor and may be published, save that the name of the minor may not be indicated, even by an initial, on pain of a fine of not less than 10,000 francs and not more than 100,000 francs.

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[1] Published in the *Journal officiel de la République malgache*, No. 244, of 28 September 1962. Text furnished by the Government of the Malagasy Republic.

LABOUR LEGISLATION

By decree No. 62–150, of 28 March 1962 (*Journal officiel de la République malgache*, 7 April 1962, No. 216, p. 577), detailed provisions were made for the observance of the weekly rest day and of public holidays both paid and unpaid. The text of the decree in French and a translation into English have been published by the International Labour Office in *Legislative Series* 1962 — Mad. 1.

Decree No. 62–152, of 28 March 1962 (*Journal officiel de la République malgache*, 7 April 1962, No. 216, p. 582), prescribing the conditions of work of children, women and pregnant women, contained provisions concerning work of an immoral nature; work which may exceed the strength of women and children; dangerous and unhealthy work; and employment of pregnant and nursing mothers. The text of the decree in French and a translation into English have been published by the International Labour Office in *Legislative Series* 1962 — Mad. 2.

ORDINANCE No. 62–041 OF 19 SEPTEMBER 1962 CONCERNING GENERAL PROVISIONS OF MUNICIPAL AND PRIVATE INTERNATIONAL LAW[1]

Title II

General Provisions of Private International Law

Chapter I

Status of Aliens

Section I. — *Status of Persons*

Art. 20. — Aliens in Madagascar shall enjoy the same rights as nationals, with the exception of those which are expressly denied them by law.

The exercise of a right may, however, be made subject to the rule of reciprocity.

Except as otherwise provided by treaties or by agreements on co-operation, aliens shall not enjoy the franchise or the right to be elected in elections to political or administrative bodies, or the right to be employed in a public or judicial office or to be a member of a body responsible for operating a public service.

Art. 21. — Aliens may not have a domicile in Madagascar within the meaning of Malagasy law unless they meet the obligations imposed by the legislation governing the presence of aliens in Madagascar.

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[1] Published in *Journal officiel de la République Malgache*, No. 244, of 28 September 1962. Text supplied by the Government of the Malagasy Republic.

MALI

ACT No. 62-17 A.N.-R.M. PROMULGATING THE MARRIAGE AND GUARDIANSHIP CODE OF THE REPUBLIC OF MALI

of 3 February 1962[1]

TITLE I

Marriage

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Chapter II

BRIDE-PRICE AND PRESENTS

Art. 3. — Where required by custom, the bride-price and marriage gifts may not exceed a total value of 20,000 francs with respect to a young woman [*jeune fille*] and of 10,000 francs with respect to a woman [*femme*].

In the case of divorce in which the wife is declared the culpable party, the husband may claim restitution of the bride-price and the gifts.

Where the divorce is pronounced against the husband, the bride-price and other presents remain the property of the wife.

In the case of divorce granted on the basis of reciprocal wrongs committed by the spouses, the court shall determine the extent of restitution to be made.

Any person obtaining or seeking to obtain gifts or a bride-price in contemplation of marriage which exceed in value the amount stipulated in the first paragraph of the present article shall be sentenced to the penalties set out in article 185 of the Criminal Code.

Chapter III

CONDITIONS GOVERNING FITNESS TO MARRY

Art. 4. — A man may not contract marriage until he has completed his eighteenth year, and a woman her fifteenth.

Nevertheless, the Minister of Justice may, by a decision not subject to appeal, waive the age requirement for serious reasons.

A copy of such decision shall be annexed to the marriage certificate.

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Chapter IV

CASES OF PROHIBITION OF MARRIAGE

Art. 7. — A woman may not contract a second marriage until the first marriage has been dissolved.

The same provision shall apply to a man who has opted for monogamous marriage. A man who has opted for monogamous marriage shall, however, be at liberty to revise his contract with the express consent of his wife.

A woman who has entered into the marriage bond who contracts another marriage before the previous one has been dissolved shall be punished by imprisonment of six months to three years and a fine of 12,000 to 1,2 million francs.

The same shall apply to a man who has opted for monogamous marriage and to a man who, having four legitimate wives, contracts a fifth union.

An official who knowingly lends his assistance to such marriages shall be sentenced to the same penalties.

Art. 8. — A man who has four legitimate wives may not contract a further marriage.

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Chapter V

CONSENT TO MARRIAGE

Art. 10. — There shall be no marriage without consent. Consent must be expressed orally and in person by both prospective spouses before the civil registrar. It shall be established by the affixing of signatures or, failing this, of finger-prints at the foot of the certificate.

The consent of parents or legal representatives may be given in accordance with the procedure laid down in the preceding paragraph. Where a party is prevented from appearing in person because of ill-health or absence or for any other reason, consent may be expressed in writing by means of an instrument drawn up by the Mayor or the Head of the administrative district of which the person concerned is a resident. The instrument shall bear the signature or, failing this, the finger-prints of the person making the declaration.

Art. 11. — A son who has not completed his twenty-first year or a daughter who has not completed her eighteenth year may not contract marriage without the consent of the father and mother.

Where either parent is deceased or is unable to express his or her will, the consent of the parent who is present and of the legal representative of the other parent is required.

If a prospective spouse is an orphan, the consent of his guardian is required. The latter's refusal may be appealed against to the Head of the administrative district, who shall pass judgement, which shall not be subject to appeal.

Art. 12. — In the case of disagreement between divorced or judicially separated parents, the ad-

[1] Text published in the *Journal officiel de la République du Mali*, fourth year, No. 111, special number, of 27 February 1962.

ministrative authority shall pass judgement, having due regard to the interests of the child.

Art. 13. — Natural children who have not completed their eighteenth or twenty-first years respectively, according to their sex, may not contract marriage without the consent of the parent who has acknowledged them, or of both parents if both have acknowledged them.

Art. 14. — Natural children who have not been acknowledged or who, having been acknowledged, have lost their parents or have parents unable to express their will and have no guardian, may not contract marriage before the age of eighteen or twenty-one years respectively according to their sex, without the special authorization of the Head of the administrative district in which they reside.

A copy of such authorization shall be annexed to the marriage certificate.

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Chapter VII
NULL AND VOID MARRIAGES

Art. 25. — Without prejudice to the legal proceedings laid down in the Criminal Code, marriages contracted in violation of the terms of articles 7, 8 and 9[1] above shall be null and void.

Any person having knowledge of the forthcoming celebration of an invalid marriage shall so inform the civil registrar, who shall stay the marriage and report the matter to the Procureur de la République or the lower-court judge with extended powers, who shall bring the matter before the competent civil authorities.

Art. 26. — A marriage contracted without the free consent of both the spouses or of one of them may be contested only by both the spouses or by the one whose consent was not freely given.

In the case of mistaken identity, the marriage may be contested only by the spouse who was led to make the mistake.

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Chapter VIII
THE RESPECTIVE DUTIES AND RIGHTS OF THE SPOUSES

Art. 32. — It is the duty of the husband to protect his wife, and of the wife to obey her husband.

It is the duty of the spouses to respect, be faithful to, succour and assist each other.

Art. 33. — By marrying they jointly undertake the moral and material charge of the family, and the responsibility for feeding, maintaining and rearing their children and giving them a start in life.

Art. 34. — The husband is the head of the family. Consequenty:

1. He bears the main responsibility for defraying the expenses of the household;

2. The choice of the family residence rests with him;

3. The wife is obliged to live with him, and he is obliged to receive her.

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Art. 36. — A married woman has full civil capacity; her exercise of this capacity is limited only by the marriage contract and by law.

Art. 37. — A married woman, under whatever régime, has the power to represent her husband for the purposes of the household and to use for the household the funds he leaves with her.

Acts thus performed by the wife are binding upon her husband vis-a-vis third parties, unless he has withdrawn from his wife the power to perform such acts and the third parties were personally aware of such withdrawal when dealing with her.

Art. 38. — A wife may not engage in trade without the authorization of her husband.

A wife engaged in trade may contract obligations in so far as her business is concerned; in such a case she does not commit her husband unless there is joint ownership.

A wife is not deemed to be a tradeswoman when she participates in her husband's business, but only when she exercises a separate trade.

Art. 39. — Where a wife has the administration and enjoyment of her personal property or of reserved property acquired through the exercise of a separate occupation, she may open a current account in her own name.

Art. 40. — In a married household the husband ceases to be the head of the family: (1) in the case of prolonged and unjustified absence, deprivation of legal capacity, inability on the part of the husband to express his will or separation from bed and board; (2) where he is convicted of a criminal offence.

Art. 41. — In marriages contracted in accordance with article 43, the wife replaces the husband as the head of the family; in polygamous marriages the head of the family shall be replaced by such person as he may have previously designated, or, failing that, by the first wife.

Chapter IX
SECOND MARRIAGES

Art. 42. — Divorced women and widows who have not completed their eighteenth year may remarry without the consent of their parents or any other legal representatives.

Chapter X
UNDERTAKING OF MONOGAMOUS MARRIAGE

Art. 43. — A man who contracts marriage for the first time or who has freed himself from previous marriage bonds may undertake not to contract another marriage unless the previous marriage is dissolved.

This undertaking may be given in the marriage contract or when the marriage is celebrated. It shall be noted on the certificate.

It may also be given after the celebration of the marriage, in a document drawn up before a judicial officer. It shall be noted in the margin of the marriage certificate.

Marriages contracted prior to the publication

[1] Article 9 concerns prohibited degrees of relationship.

of the present Act under the rules of monogamy shall remain subject to those rules.

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TITLE II

Dissolution of marriage

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Chapter II

GROUNDS FOR DIVORCE

Art. 59. — Either spouse may sue for divorce in the case of: (1) adultery committed by the other spouse; (2) Violence, cruelty and grave insult making conjugal life impossible; (3) A sentence imposing on one of the spouses a penalty affecting the person and honour; (4) Chronic alcoholism; (5) Inability of the other spouse to fulfil his or her marital obligations.

Art. 60. The wife may sue for divorce if her husband refuses to: (1) Provide for her essential needs: food, clothing and shelter; (2) Pay the bride-price within the time stipulated in the marriage certificate.

In respect of the latter ground for divorce, article 211 of the Criminal Code is applicable, in the case of a husband acting in bad faith.

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Chapter IV

EFFECTS OF DIVORCE

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Art. 80. — A divorced woman may not remarry within three months following the divorce, even if there has been prior separation from bed and board.

At the termination of the divorce proceedings it shall be verified by generally accepted methods that the wife is not pregnant by her husband.

Art. 81. — A wife who is granted a divorce retains all the benefits that her husband had conferred on her.

If the divorce is granted in the husband's favour, he may demand the restitution of the benefits he had conferred on his wife.

Art. 82. — The spouse against whom the divorce is pronounced shall pay alimony to the other spouse where the latter is likely to suffer hardship as a result of the divorce.

The alimony may be revoked if it ceases to be necessary or in the event of flagrant misconduct.

In polygamous marriages the alimony may not exceed one sixth of the spouse's income if he is married to two women, one ninth if he is married to three women and one twelfth if he is married to four women.

Art. 83. — The spouse against whom the divorce is pronounced shall lose all the benefits granted by the other spouse under the marriage contract or after the marriage.

Following the divorce the woman shall resume her maiden name.

Art. 84. — Apart from any other reparation to be made by the spouse against whom the divorce is pronounced, the judge may award damages in favour of the spouse obtaining the divorce to cover material or moral injury caused by the dissolution of the marriage.

Art. 85. — The dissolution of a marriage by means of a judicially declared divorce shall not deprive the children of such marriage of any of the benefits accruing to them by law or by the marriage convenants of their father and mother.

Art. 86. — The children shall be entrusted to the spouse who is granted the divorce unless, at the instance of the family or the minestère public and in the light of the information acquired in application of article 65 above, the court orders, in the interests of the children, that all or some of them shall be entrusted to the care of the other spouse, or of a third person.

Art. 87. — Whoever the person to whom the children are entrusted may be, the father and mother shall retain the respective right to supervise the maintenance and education of their children and shall be required to contribute thereto in proportion to their means.

They shall likewise enjoy the right to see their children, subject to the conditions laid down by the judge.

Where the person granted custody of a child fails to fulfil his or her obligations towards the child, one of the parents or the ministère public may request the modification of the custody award by applying to the President of the court.

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Chapter VIII

EFFECTS OF THE DISSOLUTION OF MARRIAGE BY DEATH

Art. 101. — In the event of her husband's death, a wife may not contract a new marriage until a period of four months and ten days has elapsed.

She may not have sexual relations during that period.

No representations with a view to marriage may be made to her or to her parents during that period. Proof of such representations shall render any such marriage which takes place null and void.

A widow pregnant by her husband may not contract marriage at the end of the said period if she has not yet given birth.

If she has given birth during that period she is no longer required to complete the term prescribed in the first paragraph.

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TITLE III

Guardianship

Chapter I

Art. 103. — After the dissolution of the marriage by the death of one of the spouses, the guardianship of minor and unemancipated children is vested as of right in the surviving father or mother.

Nevertheless, the father may assign to the sur-

viving mother and guardian a special council without the advice of which she may perform no act relating to the guardianship. If the father specifies the acts for which the council is to be appointed, the guardian may perform other acts without its assistance.

Failing such appointment, the Head of the administrative district shall designate a guardian on the recommendation of the family council in the conditions prescribed in article 106 and 107 below.

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Chapter III

THE ROLE OF THE GUARDIAN AND SURROGATE GUARDIAN

Art. 112. — Where a minor domiciled in Mali possesses property in other States, the special administration of such property shall be entrusted to a person designated for the purpose by the family council. In that case the guardian and the said person shall be independent and shall not be responsible to each other for their respective actions.

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ACT NO. 62-18 A.N.-R.M. OF 3 FEBRUARY 1962 ESTABLISHING THE MALIAN NATIONALITY CODE[1]

PRELIMINARY TITLE

General provisions

Art. 1. — The law shall determine which persons at birth have Malian nationality as their nationality of origin.

Malian nationality shall be acquired or lost after the date of birth by process of law or by a decision of the public authorities taken in accordance with the law.

Art. 2. — The provisions relating to nationality contained in international treaties and agreements duly ratified and published shall apply even when they are at variance with the provisions of Malian domestic law.

Art. 3. — New legislation relating to the attribution of Malian nationality as the nationality of origin shall apply even to persons born before the date on which such legislation becomes operative, if they have not attained their majority by that date.

However, the validity of instruments executed by the person concerned or the rights acquired by third parties under earlier legislative provisions shall not be affected thereby.

Art. 4. — The conditions governing the acquisition and loss of Malian nationality after the date of birth shall be those prescribed by the legislation in force at the time of occurrence of the events or acts entailing such acquisition or loss.

Art. 5. — A person shall attain his majority for the purposes of this Code on reaching the age of twenty-one.

Art. 6. — Ordinary residence shall be understood to mean having a permanent place of abode in the Republic of Mali.

Art. 7. — In defining the limits of Malian territory at any period, modifications resulting from acts of the Malian authorities and from international treaties shall be taken into account.

TITLE I

Malian nationality as the nationality of origin

Art. 8. — The following persons shall be Malian nationals whether born in Mali or abroad: (1) a legitimate child born of a Malian father; (2) a legitimate child born of a Malian mother and of a father who is stateless or of unknown nationality; (3) a natural child where the parent with respect to whom filiation has been established in the first place is a Malian national; (4) a natural child where the parent with respect to whom filiation has been established second is a Malian national and the other parent is stateless or of unknown nationality; (5) the child of a Malian mother and an alien father where the national law of the latter does not apply to the child.

Art. 9. — A legitimate child or a natural child born of a Malian mother shall be a Malian national if neither the father nor his family has participated in the support and education of the child.

Art. 10. — The following persons shall be Malian nationals, save that those not born in Mali shall have the right to renounce that status during the six months before attaining their majority: (1) the legitimate child of a Malian mother and an alien father; (2) a natural child where the parent with respect to whom filiation has been established last is a Malian national and the other parent is an alien.

Art. 11. — A child born in Mali of unknown parents shall be a Malian national.

However, he shall be deemed never to have been a Malian national if during his minority filiation is established in respect of an alien and he possesses the nationality of the parent under the national law of the latter.

A new-born child found in Mali shall, failing evidence to the contrary, be presumed to have been born in Mali.

Art. 12. — A legitimate child or a natural child born in Mali of a father or mother of African origin and likewise born in Mali shall be a Malian national.

Art. 13. — The provisions of article 12 shall not apply to children born in Mali of foreign sovereigns, diplomats, career consuls or international officials of foreign nationality.

Such children shall nevertheless have a right of option as provided for in article 27 below.

Art. 14. — A child who is a Malian national by

[1] Text published in the *Journal officiel de la République du Mali*, fourth year, No. 112, of 1 March 1962.

virtue of the provisions of this Title shall be deemed to have been a Malian national at birth, even if the statutory requirements for the attribution of Malian nationality are established only subsequent to the date of his birth.

However, in the last-mentioned case the attribution of Malian nationality at birth shall not affect the validity of instruments executed by the person concerned or the rights of third parties based on his apparent nationality.

Art. 15. — Filiation shall affect the attribution of Malian nationality only if established in accordance with the requirements of Malian civil law.

Art. 16. — Where filiation in the case of a natural child is established in respect of both father and mother in one and the same instrument or judgement, it shall be deemed to have been established first in respect of the father.

Art. 17. — Filiation in the case of a natural child shall be effective as regards his nationality only if established while he is a minor.

Art. 18. — Any minor possessing the right to renounce Malian nationality in the cases specified under the present Title may exercise such right without authorization by means of a statutory declaration as stipulated in article 45 *et seq.*

Art. 19. — In the case specified in the foregoing article, no person shall renounce Malian nationality unless he can show proof that he has by filiation the nationality of another country and that he has discharged his military obligations (if any) under the law of that country and subject always to the provisions of international agreements.

TITLE II

The acquisition of Malian nationality

Chapter 1

METHODS OF ACQUIRING MALIAN NATIONALITY

Section I. — ACQUISITION OF MALIAN NATIONALITY BY FILIATION

Art. 20. — A child who has been legitimized by adoption shall acquire Malian nationality if his father by adoption is a Malian national.

Art. 21. — The following persons shall acquire Malian nationality by right on the same grounds as their parents, provided that filiation is established in conformity with Malian law:

(1) A legitimate or legitimized minor whose father or widowed mother acquires Malian nationality;

(2) A natural child who is a minor, where the parent with respect to whom filiation was established first or the surviving parent acquires Malian nationality;

(3) A minor child whom neither the father nor the father's family has helped to support and educate and whose mother acquires Malian nationality.

These provisions shall not apply to a minor who is married.

Art. 22. — A minor child of a previous issue born to an alien woman who subsequently becomes a Malian national by marriage shall have the option of claiming Malian nationality during the six months preceding his coming of age and subject to the conditions laid down in article 45 *et seq.*, if his father is deceased and he is ordinarily resident in Mali.

Subject to the provisions of article 47 *et seq.*, the minor concerned shall acquire Malian nationality as from the date on which the statutory declaration is made.

Section II. — ACQUISITION OF MALIAN NATIONALITY BY MARRIAGE

Art. 23. — An alien woman who marries a Malian shall acquire Malian nationality.

However, if under her national law she is allowed to retain her nationality, she shall have the right to renounce her claim to Malian nationality before the marriage takes place. Even if she is a minor, she may exercise such right without authorization.

Art. 24. — The Government shall have the power during a period of one year to oppose by decree the acquisition of Malian nationality. The said period shall run from the date of celebration of the marriage where the marriage takes place in Mali. Where the marriage has taken place abroad, the period shall run from the date of registration of the marriage in Mali.

In the event of being so debarred by the Government, the woman concerned shall be deemed never to have acquired Malian nationality.

Art. 25. — A woman shall not acquire Malian nationality if her marriage to a Malian is declared null and void by a decision taken by a Malian court or enforceable in Mali, even though the marriage was contracted in good faith.

The issue of an annulled marriage shall be of Malian nationality.

Art. 26. Where the validity of instruments executed prior to the aforementioned decree or a judicial decision of nullity is subject to the acquisition of Malian nationality by the woman, validity may not be contested on the ground that she was unable to acquire that status.

Section III. — ACQUISITION OF MALIAN NATIONALITY BY BIRTH AND RESIDENCE IN MALI

Art. 27. — Any person born in Mali of foreign parents who at the date of attaining his majority has been ordinarily resident in Mali for not less than five years shall have the option of claiming Malian nationality.

The option shall be effected within six months of his coming of age.

The effects of such option shall be governed by the provisions of article 22 above.

Section IV. — Acquisition of Malian Nationality by Decision of the Public Authorities

Para. 1: Naturalization

Art. 28. — Naturalization as a Malian national shall be granted by decree on application by the person concerned following an inquiry.

The decree shall be issued within a year following such application. Failing this, the application shall be deemed to have been rejected.

A decree granting naturalization shall not include a statement of grounds.

The formal or implicit rejection of an application for naturalization shall not be subject to appeal.

Art. 29. — A person may not be naturalized unless he has been ordinarily resident in Mali for at least five years at the time of making application.

Statutory residence shall be reduced to two years in the case of a person who is married to a Malian woman or has rendered outstanding services to Mali.

Art. 30. — A person may not be naturalized:

1. If he has not attained the age of 18 years, unless, as a minor, he is entitled to the naturalization granted to his progenitor;

2. If he is not a person of good conduct and moral character;

3. If he has incurred a sentence of over one year's imprisonment not effaced by rehabilitation for an offence under Malian law or other sentence of imprisonment not effaced by rehabilitation for an offence covered by articles 150, 179, 183, 196, 207, and 210 of the Penal Code, or for receiving stolen goods or goods obtained by false pretences.

Sentences imposed abroad may be excluded from consideration; in such case, the naturalization decree shall be issued with the concurrence of the Supreme Court;

4. Unless he can produce evidence of his assimilation in the Malian community.

Art. 31. — An alien against whom an expulsion order has been issued may be naturalized only if the order has been rescinded.

Art. 32. — A minor may apply for naturalization without authorization if he has reached the age of eighteen.

Para. 2: Recovery of nationality

Art. 33. — Any person who has lost his Malian nationality may recover it by decree following an inquiry.

Par. 3: Common provisions

Art. 34. — A fee payable to the Exchequer may be charged in connexion with every case of naturalization or recovery of nationality, the amount to be fixed by decree.

Section V. — Provisions Common to Various Ways of Acquiring Malian Nationality

Art. 35. — When residence in Mali is a condition for acquiring Malian nationality, the following shall be regarded as equivalent to residence in Mali:

1. Residence abroad in the service of the Malian Government or as an official or employee of an Embassy, Legation, or Consulate;

2. Residence in any country of the Union of African States;

3. Service abroad with a unit of the Malian armed forces.

Chapter II

Effects of Acquisition of Malian Nationality

Art. 36. — A person acquiring Malian nationality shall, from the date of acquisition, enjoy all the rights inherent in the status of Malian national.

However, a naturalized alien shall be subject to the following disabilities:

1. During the period of ten years following a naturalization decree he may not be appointed to an elective function or office for the exercise of which Malian nationality is required;

2. During a period of five years following the naturalization decree he may not vote in an election for which only Malian nationals may be registered as electors;

3. During a period of five years following the naturalization decree he may not be appointed to a public post remunerated by the State, or be admitted to the Bar, or hold ministerial office.

Art. 37. In exceptional circumstances the naturalized person may be relieved of the disabilities prescribed in the preceding article by a decree of the Council of Ministers acting on a report by the Minister of Justice.

TITLE III

Loss and deprivation of Malian nationality

Art. 38. — A Malian national having attained his majority who voluntarily acquires a foreign nationality shall lose his Malian nationality.

Art. 39. — A Malian national, even if a minor, who possesses a foreign nationality may be authorized at his request to give up his Malian nationality.

The authorization shall be granted by decree.

Art. 40. — Such a request may be made without authorization by a minor who has reached the age of eighteen.

A minor over sixteen and under eighteen years of age must have the authorization of his father or, failing that, the authorization of his mother, empowered where necessary by the council designated in the law of marriage and guardianship, or the authorization of his guardian with the concurrence of the family council. A minor under sixteen years of age shall be represented by the person designated in the preceding paragraph and in accordance with the requirements laid down there.

Art. 41. — A Malian woman who marries an alien shall retain her Malian nationality unless before the marriage takes place she makes a declaration in accordance with the conditions and procedure laid down in article 45 *et seq.* renouncing her nationality.

The declaration may be made without authorization even if she is a minor.

The declaration shall be valid only if she can acquire her husband's nationality.

Art. 42. — A Malian national who in fact behaves as a national of a foreign State may, if he possesses the nationality of that State, be released by decree from his allegiance to Mali.

Art. 43. — A person who has acquired Malian nationality except as provided in article 20, may be deprived thereof during a period of ten years from the date of acquisition of Malian nationality if:

1. He is convicted and sentenced for an act constituting a crime or correctional offence against the internal or external security of the State;

2. He is convicted and sentenced for an act constituting a crime under Malian law and receives a sentence of over five years' imprisonment;

3. He is convicted and sentenced for evading his obligations under the law governing military service or civic duties;

4. He has performed, for the benefit of a foreign State, acts incompatible with Malian nationality and detrimental to the interests of Mali.

Art. 44. — Loss of nationality shall be pronounced by decree on a report by the Minister for Justice.

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TITLE VII

Transitional provisions

Art. 68. — Any person who at the date of entry into force of this Code is ordinarily resident in Mali and is a Malian national shall be deemed to have Malian nationality as his nationality of origin.

The foregoing presumption shall remain valid until evidence to the contrary is furnished by the person concerned or by the public authorities in accordance with the provisions of Title VI of the present Code.

Art. 69. — When marriage affects the acquisition or loss of Malian nationality, evidence thereof shall be established only by production of a Civil Registry certificate or, in the case of a marriage contracted prior to the date of entry into force of the law governing marriage and guardianship, by production of a declaratory judgement pronounced by the competent civil tribunal.

Art. 70. — Any person having reached his maturity who was born in Mali of alien parents and at the date of entry into force of this Code had been ordinarily resident in Mali for a period of not less than five years shall have the option of claiming Malian nationality.

The effects of such option shall be as indicated in Article 27.

Art. 71. — An alien woman who has married a Malian national prior to the date of entry into force of this Code shall be deemed to have acquired Malian nationality as from the day on which the marriage took place.

However, if her national law allows her to retain her nationality, she shall have the right not to accept Malian nationality.

Art. 72. — The legitimate child of a Malian mother and an alien father shall have the right to renounce Malian nationality in the manner laid down in article 10.

A natural child shall have the same right where the parent with respect to whom filiation was established last is a Malian national and the other parent is an alien.

Art. 73. — A Malian woman who is married to an alien and wishes to acquire his nationality shall have the right to declare that she renounces her Malian nationality.

Art. 74. — A declaration of renunciation pursuant to the preceding articles of this Title shall be made within a year following the date of publication of the present Code.

Art. 75. — Within six months following the date of publication of the present Code, any person, even if born abroad, who is ordinarily resident in Mali shall have the right to opt for Malian nationality by making a declaration as laid down in articles 45 and 46 of the Code.

The competent authority shall reject any declaration that is not accompanied by:

1. An oath of loyalty by which the declarant pledges himself to behave at all times as a worthy and loyal citizen of the Republic of Mali and to bring up his children in the same spirit;

2. A statement presented in person by two Malian citizens certifying on their word of honour that the declarant has given pledges of assimilation and of a Malian outlook.

The provisions of articles 47 to 49 shall apply.

The Minister for Justice shall give a decision within three months.

Registration shall have the same effects as Malian nationality of origin.

. . .

ACT No. 62-67 A.N.-R.M., OF 9 AUGUST 1962, INSTITUTING A LABOUR CODE IN THE REPUBLIC OF MALI[1]

TITLE I

General provisions

Art. 1. — This Act shall apply to workers and employers who carry on their gainful activity in the territory of the Republic of Mali.

The term "worker" means 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, natural or legal, public or private, lay or religious, who shall be termed an "employer".

For the purpose of determining whether or not a person is to be regarded as a worker, no account shall be taken of the legal position of the employer or of the worker.

Public officials shall be strictly excluded from the application of these provisions.

. . .

Art. 3. — Forced or compulsory labour is absolutely forbidden.

The term "forced or compulsory labour" means any labour or service demanded of an individual under threat of any penalty, being a labour or service which the said individual has not freely offered to perform.

However, the term "forced labour" or "compulsory labour" shall not include:

(1) Any labour or service required under the laws on compulsory military service and directed to work of a purely military character;

(2) Any work of public importance required under the laws and regulations concerning the organization of defence or the establishment of a national service;

(3) Any labour, service or aid required in case of *force majeure* i.e. in the event of war, calamity or threat of a calamity such as fire, flood, earthquake, cyclone, epidemic, epizootic, famine, invasion by harmful animals, insects or pests or, in general, in any circumstances endangering or likely to endanger the life or the normal conditions of existence of the entire population or any part thereof;

(4) Any work which a local community as a whole decides of its own free will to carry out and which is directed to the performance of tasks of direct benefit to that community, such as the establishment or maintenance of lines of communication, sanitation and cleaning of living quarters, water supply, clearing ground, and building for social, cultural or economic purposes;

(5) Any work or service required of an individual as the result of a sentence passed by a court of law; such work or service, however, must be carried out under the supervision of the public authorities and devoted to projects of public importance.

. . .

[1] Text published in the *Journal officiel de la République du Mali*, fourth year, No. 128, of 15 October 1962.

TITLE VI

Occupational institutions

Chapter I
TRADE UNIONS

Section I. — PURPOSE OF TRADE UNIONS

Art. 281. — Trade unions shall have as their sole object the study and defence of the economic, social and moral interests of the workers.

Art. 282. — Persons carrying on the same trade, similar crafts or allied trades associated in the preparation of specific products or services shall be free to form a trade union.

Art. 283. — The founders of every trade union shall register the by-laws and the names of those who are responsible in any capacity for its management or direction.

Registration shall be carried out at the principal office of the administrative area in which the trade union is formed. A copy of the by-laws shall be sent to the inspector of labour and to the procureur de la République, who shall verify their legality and communicate his conclusions to the trade union concerned, the head of the administrative area and the inspector of labour.

Any amendments to the by-laws and any changes in the composition of the board of managers or directors of the trade union shall be brought to the knowledge of the same authorities in the same way and examined in like manner.

Art. 284. — The members responsible for the management or direction of a trade union must be domiciled in the Republic of Mali, must be in possession of their civil rights and must not have incurred any sentence involving the loss of the franchise under the electoral laws in force.

Art. 285. — Married women carrying on a trade or profession may, without the authorization of their husbands, join trade unions and participate in their management or direction subject to the conditions laid down in the preceding article.

Art. 286. — Minors over sixteen years of age may join trade unions unless their father, mother or guardian objects.

. . .

Section V. — FEDERATIONS OF TRADE UNIONS

Art. 300. — Trade unions which have been duly formed in accordance with the provisions of this Act shall be free to unite for the study and defence of their economic, social and moral interests.

They may form themselves into any manner of federation.

The provisions of articles 283, 284, 285 and 286 shall apply to federations of trade unions, which must in addition report under article 283 the names and registered addresses of the member trade unions. Their by-laws must give rules for the representation

of the member trade unions on the governing body and in the general meetings.

. . .

Section VI. — Occupational Associations

Art. 303. — Occupational associations which have been recognized by order of the Minister of Labour shall be treated as trade unions and shall enjoy the same rights.

. . .

Section VIII. — Freedom of Trade Unions

Art. 306. — It shall be unlawful for any employer to take membership of a trade union or participation in trade union affairs into consideration in reaching decisions regarding, *inter alia*, the engagement of workers, the conduct and distribution of work, vocational training, promotion, remuneration, the grant of social benefits, disciplinary measures and dismissal.

It shall be unlawful for any employer to deduct trade union dues from the wages of his employees and to pay such dues in their stead.

The head of an undertaking or his representatives shall not exert any form of pressure either for or against any trade union organization.

Any measure taken by an employer contrary to the provisions of the preceding paragraphs shall be deemed an abuse and shall render him liable for damages.

[Other provisions of the Code deal with apprenticeship, contracts of employment, collective agreements, wages, hours of work, weekly rest and public holidays, leave, health and safety, the employment of women and children, labour disputes, staff representatives, labour inspection and the National Manpower Office.]

MAURITANIA

ACT No. 61.033 OF 30 JANUARY 1961 RESPECTING THE ESTABLISHMENT AND OPERATION OF TRADE UNIONS[1]

Art. 1. — Trade unions are permanent associations of persons or corporations carrying on in the Islamic Republic of Mauritania either the same trade or profession or different but allied trades or professions within one of the following fields of activity: public services and public agencies; private non-profit-making agencies, the professions, banking and insurance; trade; building and public works; industry; transport; others.

Trade unions may be formed freely under the provisions of this Act.

. . .

Art. 3. — Subject to the provisions of this Act any person or corporation shall be free to join a trade union selected by him or it within his or its own trade or profession or to withdraw therefrom.

Such person or corporation shall also be free not to join any organization.

Any provision of the by-laws contrary to freedom of association shall automatically be null and void and may lead to the dissolution of the trade union.

Any restriction on freedom of association shall be punishable with the penalties applicable to restrictions on the right to work.

Art. 4. — Trade unions shall have as their sole object the study and defence of the interests of the trade or profession or economic activity which they represent.

They may not: (*a*) pursue individual interests; (*b*) pursue political or religious objectives; (*c*) engage in such practices as the collection of fees or the distribution of their assets to one or more of their members.

Art. 5. — Persons or corporations who or which are members of a trade union shall carry on in the Islamic Republic of Mauritania the trade or profession whose interests the union defends. Nevertheless, persons who have ceased to carry on their trade or profession may continue to be members of a trade union if they have carried on the said trade or profession for three years or more.

Minors over sixteen years of age may join a trade union unless the father, mother or guardian objects.

. . .

[1] Text published in the *Journal officiel de la République islamique de Mauritanie*, third year, No. 51, of 15 February 1961.

MEXICO

HUMAN RIGHTS IN 1962[1]

In the course of the year covered by this report, regulations, decrees, resolutions and high court judgements were issued. Inasmuch as they afford even greater protection to the human rights proclaimed in Mexican legislation, they give greater scope to the principles established in the Universal Declaration and provide better guarantees of their implementation.

These legal measures include a considerable number of decrees making collective work contracts compulsory in various branches of industry and laying down rules advantageous to the working class, which are based directly on article 123 of the Constitution, a provision closely related to the principles of the Universal Declaration of Human Rights.

I. LEGISLATION

The legal measures which came into force in 1962 and which may be regarded as contributing to the progressive development of human rights are as follows:

1. Resolution calling for the Establishment of an Interministerial Commission composed of Representatives of the Executive Branch and of the Ministry of Finance and Public Credit to draw up immediately Short and Long-term National Plans for the Economic and Social Development of the Country

(Published in *Diario Oficial* No. 2, of 2 March 1962)

The establishment of this Commission, composed of representatives of the Executive Branch and of the Ministry of Finance and Public Credit, was based on the recognition of the need to intensify present efforts to work out national plans of economic and social development fixing specific objectives for the benefit of the community and the best means of attaining them.

2. Regulation on School Co-operatives

(Published in *Diario Oficial* No. 14, of 16 March 1962)

Article 2 of the regulation provides for the establishment of school co-operatives composed of teachers, students and school employees in all duly authorized public and private schools. Article 9 explains the objectives of these co-operatives, namely: to co-ordinate their activities with the development of school programmes in each branch of instruction, to foster among the members a spirit of mutual assistance, initiative and community service, and, finally, to provide members with the school supplies, clothing and food they require for their daily work in the schools.

3. Decree approving the International Convention for the Safety of Life at Sea (1948)

(Published in *Diaro Oficial* No. 5, of 6 January 1962)

The contracting governments, including Mexico, undertake to give effect to the provisions of the Convention and to the regulations annexed thereto, and to promulgate the acts, decrees, orders and regulations or take whatever other measures may be necessary to implement the Convention fully and completely, with a view to ensuring that vessels are properly equipped, from the point of view of the safety of human life, for the service for which they are intended.

4. Decree establishing the National Centre for Technical Training

(Published in *Diaro Oficial* No. 21, of 25 July 1962)

The effect of this Decree was to establish the National Centre for Training in Technical Education as an organ of the decentralized public service in order better to equip teachers of technical and specialized subjects and to collaborate in organizing courses in factories, workshops or special manpower training institutions engaged in training skilled workers, instructors and foremen. This measure will no doubt be of particular benefit to the working class.

5. Decree establishing the Navy Social Security Division in the Office of the Commander of the Navy in the Ministry of Marine

(Published in *Diario Oficial* No. 15, of 18 September 1962)

Article 2 of this Decree provides for the establishment of a Navy Social Security Division to examine, process and decide matters relating to the various social benefits provided under the Armed Forces Social Security Act, and for the Division to be so organized as to carry out its task in the most efficient manner possible.

6. Amendments and Additions to the Federal Labour Act resulting from the Amendments to the Constitution, Article 123, Sections II, III, VI, IX, XXI, XXII and XXXI (a), effected on 5 December 1962

(Published in *Diario Oficial* No. 50, part 2, of 31 December 1962)

As a result of these amendments, article 100, sections G and H, of the Federal Labour Act now

[1] Note furnished by the Government of Mexico.

provides that workers are to share in the profits of enterprises in a proportion to be determined by the National Profit-sharing Commission which, for this purpose, will carry out the necessary and appropriate research and studies in order to ascertain the general condition of the national economy and will take into account the necessity of promoting the industrial development of the country, the right to a reasonable return on capital, and capital reinvestment needs.

As a further result of these amendments, article 123 of the Federal Labour Act now stipulates that if, at the hearing of a given case, an employer does not show proper cause for the dismissal of a worker, the latter shall be entitled, at his option, to reinstatement in the position which he formerly occupied or three months' wages in compensation.

II. JUDGEMENTS OF THE SUPREME COURT OF JUSTICE RELATING TO HUMAN RIGHTS

1. Writs of "Amparo" must be complied with by all Authorities required by Law to participate in the Execution of a Writ, and Arguments which might have been advanced at the Proper Time may not be adduced in order to evade Compliance with the Judgement granting "Amparo"

The Supreme Court has ruled that "a writ of *amparo* must be immediately complied with by every authority having knowledge of it and which, by reason of its functions, is required to participate in the execution thereof, because, in accordance with article 107, first paragraph, last part of the Organic Law relating to article 103 and 107 of the Federal Constitution, not only the authority which appeared in the *amparo* proceedings as the responsible party but any other authority which, by reason of its functions, is required to participate in the execution of the writ of *amparo* judgement must comply with that decision".

2. Labour Accidents

Under the Mexican labour laws, the nature of a labour accident, its physical effect on the worker, and the degree of incapacity which it causes him in relation to the performance of his regular work, are facts to be determined not simply by the word of the worker affected but by the judgement of medical experts who are required, by the exercise of their professional knowledge, to reach the appropriate conclusions on such questions. It is, however, sufficient ground for initiating the relevant proceedings and for requiring the Conciliation and Arbitration Board, which has jurisdiction in labour cases, to undertake a legal appraisal of the evidence submitted by the parties that the worker should have claimed compensation for the labour accident be suffered, since by so doing he has specified the grounds on which he claims benefits, even if in formulating his claim he has committed errors with regard to the details of the accident and its physical effects upon him.

3. Contracts

The Supreme Court of Justice of the Nation has established precedents to the effect that, where a contract of employment signed by a worker is not disadvantageous to him, it is valid even if it has not been approved by the competent board; if, however, the contract is shown to be disadvantageous to the worker, the precedents definitely do not apply.

4. Pensions

If a worker has at some time been dismissed on suspicion of dishonesty detrimental to an enterprise and has been voluntarily reinstated "with full rights" by the same enterprise, his earlier dismissal cannot be made a ground for refusing him a pension on the argument that his seniority dates only from his reinstatement, since the reinstatement was unconditional, and his years of service in the enterprise prior to his dismissal must therefore be taken into account in calculating his seniority.

5. Suspension of Contracts of Employment

The fact that supplies of raw material are not available does not entitle the employer to suspend a contract of employment without incurring liability, since he is under statutory obligation to seek the prior consent of the competent Conciliation and Arbitration Board, and to submit all the necessary supporting evidence.

DECREE TO AMEND SECTION 123 OF THE POLITICAL CONSTITUTION OF THE UNITED STATES OF MEXICO

of 20 November 1962[1]

Sole section. — Clauses II, III, VI, IX, XXI, XXII and XXXI of paragraph A of section 123 of the Political Constitution of the United States of Mexico[2] are amended to read as follows:

II. The duration of night work shall not exceed seven hours. It shall not be lawful to employ women or young persons under 16 years of age on unhealthy or dangerous processes or on night work in industry, women after 10 p.m. in commercial establishments or young persons under 16 years of age after 10 p.m. in any establishment.

III. It shall not be lawful to use the labour of young persons under 14 years of age. Young persons of between 14 and 16 years of age shall not work more than six hours a day.

[1] Published in *Diario Oficial* No. 17, of 21 November 1962. Translation as published in *Legislative Series* 1962–Mex. 1, of the International Labour Office.

[2] See *Yearbook on Human Rights for 1946*, pp. 199–201, and *Yearbook on Human Rights for 1960*, pp. 239–240.

VI. The minimum wages to be paid to workers may be either general or occupational. In the former case they shall apply to one or more economic areas; in the latter they shall apply to specified branches of industry or commerce or to particular occupations, trades or types of work.

A general minimum wage shall be adequate to meet the normal material, social and cultural needs of a family man and to provide for the compulsory education of his children. An occupational minimum wage shall also be fixed with due regard for the conditions obtaining in the industrial or commercial activity concerned.

Agricultural workers shall be entitled to a minimum wage that is adequate to cover their needs.

Minimum wages shall be fixed by regional committees consisting of workers', employers' and government representatives and shall be submitted for the approval of a national committee constituted in the same way.

IX. Every worker shall be entitled to share in the profits of his undertaking, for which purpose the following rules shall apply:

(*a*) A national committee consisting of workers', employers' and government representatives shall fix the percentage profits to be distributed among the workers.

(*b*) The national committee shall carry out such investigations and studies as are necessary and appropriate to ascertain the general position of the national economy. It shall also have regard for the need to encourage industrial development and to provide for a reasonable return on capital and a necessary level of reinvestment.

(*c*) The national committee may alter the percentage it has fixed if new studies or investigations so warrant.

(*d*) Provision may be made by law for newly established undertakings to be exempted from the obligation to share out their profits for a certain limited number of years or for undertakings engaged in prospection or other work to be so exempted if the nature of their operations and the special conditions so warrant.

(*e*) The profits of each undertaking shall be determined on the basis of its taxable income for the purposes of the Income Tax Act. Any worker may lodge an objection with the appropriate office of the Secretariat of Finance and Public Credit in accordance with the procedure laid down by law.

(*f*) A worker's right to a share in the profits of an undertaking shall not imply any entitlement to take part in its management or administration.

XXI. If an employer refuses to submit his differences to arbitration or to accept an arbitration award, the contract of employment shall be terminated and the employer required to pay the worker three months' wages by way of compensation, without prejudice to his liabilities arising out of the dispute. This provision shall not apply to proceedings covered by clause XXII. If the refusal is on the workers's part, the contract of employment shall be terminated.

XXII. Where an employer dismisses a worker without just cause, for having joined a trade union or association or for having taken part in a lawful strike, he shall be required to fulfil the contract or pay the worker three months' wages by way of compensation, at the worker's choice. Provision shall be made by law for the cases in which an employer may be released from his obligation to fulfil the contract, subject to the payment of compensation. An employer shall likewise be required to pay a worker three months' wages by way of compensation if the latter leaves his service on account of the employer's dishonesty or his personal ill-treatment of the worker himself or his wife, parents, children, brothers or sisters. The employer shall not be released from his liability under this clause if the ill-treatment is attributable to any agent or relative acting with his consent or connivance.

XXXI. The administration of the labour laws shall be the duty of the authorities of the states, within their respective territories: Provided that it shall be the sole duty of the federal authorities in matters relating to the textile, electricity, film, rubber, sugar, mining, petro-chemical and metal-working industries, the iron and steel industry (including the extraction, refining and casting of the basic minerals, the production of iron and steel in all their forms and combinations and the rolled products of the same), the petroleum and cement industries, the railways and undertakings directly or indirectly administered by the Federal Government; undertakings operating under federal contracts or concessions and the related industries; undertakings operating in federal areas and territorial waters; disputes extending to two or more federative territories; collective agreements that have been declared binding in more than one such territory; and lastly the obligations of employers in matters of education, as prescribed in the relevant legislation."

Transitional Provision

Sole section. — This Act shall come into operation on the day following its publication in the official gazette of the Federation.

MONACO

DEVELOPMENTS IN THE FIELD OF HUMAN RIGHTS IN 1962[1]

I. CONSTITUTION

Political life in the Principality was marked in the course of 1962 by two constitutional developments of major importance, relating to human rights.

The first of these was the reinstatement of the Constitution of 5 January 1911, the provisions of which concerning the exercise of legislative power (chapter V), municipal administration (chapter VI), and the right of assembly (chapter II, article 14), had been suspended by a sovereign ordinance of 28 January 1959 (see *Yearbook of Human Rights for 1959*, p. 204). The decision reinstating those provisions was contained in a new sovereign ordinance, dated 27 March 1962 (*Journal de Manaco*, No. 5452, 2 April 1962).

The second development was the proclamation of a new Constitution by a sovereign ordinance dated 17 December 1962. Extracts from this Constitution will be found below.

Following the suspension of the constitutional law for a period of over three years, the new form of State organization denotes a marked shift in the direction of liberalism and democracy.

The text of the new Constitution is more specific than the previous one in its definition of national sovereignty, the character of the constitutional monarchy, the supremacy of the fundamental law and the separation of powers. It proclaims that "the Principality shall be a State founded on the rule of law and on respect for fundamental freedoms and rights" (art. 2). It prohibits any steps in the future to suspend the Constitution (art. 93). It provides that henceforward the Constitution may be amended only with the common agreement of the Prince, the legislative assembly elected by universal suffrage, and the National Council (art. 94).

Where human rights as such are concerned, these have been placed by the new Constitution, as by the 1911 Constitution (see *Yearbook on Human Rights for 1946*, p. 204, and *Yearbook on Human Rights: First Supplementary Volume*, 1959, p. 161), under the protection of a Supreme Court. The jurisdiction of this high tribunal also extends to other constitutional and administrative matters (art. 90).

Furthermore, the range of individual rights and freedom enshrined in the Constitution and safeguarded by the possibility of appealing to the Supreme Court in the event of infringement, has been substantially broadened under the influence of the Universal Declaration of Human Rights. The new political, economic, social and cultural rights which are embodied in the Monegasque declaration of rights include the right to due respect for the privacy of personal and family life (art. 22) and to the secrecy of correspondence (same article), freedom to work (art. 25), the right to State aid in the event of destitution, unemployment, illness, disablement, old age and maternity (art. 26), the right to free primary and secondary education (art. 27), trade union rights and the right to strike (art. 28), and the right to freedom of association (art. 30). Finally, other rules are laid down in the same chapter, including the stipulations that no one shall be detained in respect to an offence without prior interrogation (art. 19), that criminal laws shall not operate retroactively (art. 20), that the personality and dignity of the individual shall be respected (same article), that no one may be subjected to cruel, inhuman or degrading treatment (same article), and that the death sentence is abolished (same article).

Under article 32, aliens in the Principality shall enjoy all the public and private rights which are not expressly reserved for Monegasque nationals.

II. INTERNATIONAL INSTRUMENTS

On 1 September 1961, the instruments ratifying the Union Convention of Paris for the Protection of Industrial Property, signed at Paris on 20 March 1883 and amended most recently at Lisbon on 31 October 1958, were filed with the Swiss Federal Political Department. The Convention was given effect in Monaco by sovereign ordinance No. 2747, of 30 January 1962.

[1] Note communicated by Dr. Louis Aureglia, National Councillor, Monte Carlo, Government-appointed correspondent of the *Yearbook on Human Rights*.

CONSTITUTION OF THE PRINCIPALITY

of 17 December 1962[1]

Title I

THE PRINCIPALITY — THE PUBLIC POWERS

Art. 1. — The Principality of Monaco is a sovereign, independent State within the framework of the general principles of international law and of the special conventions with France.

The territory of the Principality is inalienable.

Art. 2. — The form of government shall be a hereditary, constitutional monarchy.

The Principality shall be a State founded on the

[1] Published in the *Journal de Monaco*, No. 5490, of 24 December 1962.

rule of law and on respect for fundamental freedoms and rights.

. . .

Art. 6. — The separation of the administrative, legislative and judicial functions shall be guaranteed.

. . .

Art. 8. — The official language of the State shall be French.

Art. 9. — The religion of the State shall be Apostolic Roman Catholicism.

. . .

Title III

Fundamental Rights and Freedoms

Art. 17. — Nationals of Monaco shall be equal before the law. There shall be no privileges among them.

Art. 18. — All persons born in Monaco or abroad of a Monegasque father shall be nationals of Monaco.

Other means of acquiring Monegasque nationality shall be specified by law.

The circumstances in which Monegasque nationality acquired by naturalization may be withdrawn shall be specified by law.

In all other cases, the loss of Monegasque nationality may be provided for by law only in the event of the voluntary acquisition of another nationality or of service illegally performed in a foreign army.

Art. 19. — The freedom and safety of the individual shall be guaranteed. No one may be prosecuted except in the cases provided for by law, before lawfully appointed judges and in the manner specified by law.

Save in the event of apprehension *flagrante delicto*, a person may be arrested only on the strength of a warrant stating the grounds of arrest issued by a judge, and such warrant must be produced at the time of arrest or at latest within twenty-four hours thereof. There shall be no detention without prior interrogation.

Art. 20. — No penalty shall be imposed or enforced except in pursuance of the law.

The criminal laws shall ensure that the personality and dignity of the individual are respected. No one may be subjected to cruel, inhuman or degrading treatment.

The death sentence is hereby abolished.

Criminal laws shall not operate retroactively.

Art. 21. — The domicile shall be inviolable. It may be entered and searched only in the cases provided by law and in the manner specified by law.

Art. 22. — Every person shall be entitled to due respect for the privacy of his personal and family life and to the secrecy of his correspondence.

Art. 23. — Freedom of religion and of public worship, and also freedom of expression in all matters, shall be guaranteed, subject to the right to prosecute any offences committed in the exercise of the said freedoms.

No one may be compelled to participate in the rites or ceremonies of any religion or to observe its days of rest.

Art. 24. — Property shall be inviolable. No one shall be deprived of his property save for reasons of public utility duly established in law, and in consideration of just compensation determined and paid in the conditions laid down by law.

Art. 25. — Freedom to work shall be guaranteed. Its exercise shall be regulated by law.

Nationals of Monaco shall have priority in securing public and private employment, subject to the conditions laid down in the legislation or in international conventions.

Art. 26. — Nationals of Monaco shall be entitled to the assistance of the State in event of destitution, unemployment, illness, disablement, old age and maternity, subject to the conditions and in the manner prescribed by law.

Art. 27. — Nationals of Monaco shall be entitled to free primary and secondary education.

Art. 28. — Every person shall be free to defend the rights and interests of his profession or calling through trade union action.

The right to strike is recognized, within the framework of the laws regulating it.

Art. 29. — Nationals of Monaco shall have the right to freedom of peaceful, unarmed assembly, subject to compliance with the law, which may regulate the exercise of that right without, however, subjecting it to prior authorization. This freedom shall not, however, extend to meetings in the open air, which remain subject to police regulations.

Art. 30. — Nationals of Monaco shall have the right to freedom of association, subject to the provisions of the Constitution.

Art. 31. — Any person may address petitions to the public authoritities.

Art. 32. — Aliens in the Principality shall enjoy all those public and private rights which are not expressly reserved for nationals of Monaco.

. . .

Title VII

The National Council

Art. 53. — The National Council shall consist of eighteen members, elected for a term of five years by direct universal suffrage, with voting by the list system.

Citizens of both sexes who have attained the age of twenty-one years and have been nationals of Monaco for at least five years, excluding those who are debarred from voting on one of the grounds specified by law, shall be electors.

Art. 54. — Nationals of Monaco of either sex who have attained the age of twenty-five years and are not ineligible on one of the grounds specified by law shall be eligible for election.

. . .

Title X

Justice

Art. 88. — Judicial power shall be vested in the Prince who, by virtue of this Constitution, shall

delegate its full exercise to the courts and tribunals. The tribunals shall administer justice in the name of the Prince.

The independence of the judges shall be guaranteed.

The organization, jurisdiction and manner of operation of the tribunals and the status of the judges shall be established by law.

. . .

Title XII

FINAL PROVISIONS

Art. 96. — The previous constitutional provisions are hereby repealed.

This Constitution shall enter into force immediately.

The re-election of the National Council and the Communal Council shall take place within the next three months.

. . .

MOROCCO

CONSTITUTION OF 14 DECEMBER 1962[1]

Title I
GENERAL PROVISIONS

Fundamental Principles

Art. 1. — Morocco is a constitutional, democratic and social monarchy.

Art. 2. — Sovereignty is vested in the nation, which shall exercise it directly by way of referendum and indirectly through constitutional institutions.

Art. 3. — Political parties shall contribute to the organization and representation of the citizens. There shall be no single-party system in Morocco.

Art. 4. — The law is the highest expression of the will of the nation. All shall be required to comply with it. No law shall have retroactive effect.

Art. 5. — All Moroccans are equal before the law.

Art. 6. — Islam is the religion of the State, which shall guarantee freedom of worship for all.

. . .

The Political Rights of the Citizen

Art. 8. — Men and women shall have equal political rights. All citizens of both sexes who are of full age and in full possession of their civil and political rights shall be entitled to vote.

Art. 9. — The Constitution guarantees to all citizens: freedom of movement and residence throughout the Kingdom, freedom of opinion, freedom of expression in all its forms, freedom of assembly, freedom of association and freedom to join any trade union or political organization of their choice.

The exercise of these freedoms shall be subject to no limitation save by law.

Art. 10. — No one shall be liable to arrest, detention or punishment save in the cases and in the manner prescribed by law. The domicile shall be inviolable. No searches or examinations shall be carried out save under the conditions and in the manner prescribed by law.

Art. 11. — Correspondence shall be secret.

Art. 12. — All citizens shall have access, on the same terms, to the public service and public employment.

The Economic and Social Rights of the Citizen

Art. 13. — All citizens shall have an equal right to education and to work.

Art. 14. — The right to strike remains guaranteed.

The conditions and the manner in which this right may be exercised shall be prescribed by an organic Act.

Art. 15. — The right to own property remains guaranteed. The law may limit the scope and exercise of this right if the planned economic and social development of the nation so requires.

No expropriation shall be undertaken save in the cases and in the manner prescribed by law.

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Title III
PARLIAMENT

The Organization of Parliament

Art. 36. — Parliament shall be composed of the Chamber of Representatives and the Chamber of Counsellors.

Art. 37. — The members of Parliament shall derive their mandate from the nation. Their right to vote shall be personal and shall be delegated.

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Title IV
JUDICIAL SYSTEM

Art. 82. — The judiciary shall be independent of the legislative and executive powers.

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Title VII
HIGH COURT OF JUSTICE

Art. 88. — The members of the Government shall be criminally liable for serious and less serious offences committed in the performance of their functions.

Art. 89. — They may be charged by the Chamber of Representatives and brought before the High Court of Justice.

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[1] Text published in the *Bulletin officiel*, No. 2616 *bis*, of 19 December 1962, and furnished by the Government of the Kingdom of Morocco.

NEPAL

THE CONSTITUTION OF NEPAL

of 16 December 1962[1]

Part III

FUNDAMENTAL DUTIES AND RIGHTS

9. *Fundamental duties of the citizens.* — (1) Devotion to the nation and loyalty to the State are the fundamental duties of every citizen.

(2) To exercise one's right with due regard to law and without infringing upon the right of others is also a fundamental duty of every citizen.

10. *Right to equality.* — (1) All citizens are entitled to equal protection of law.

(2) No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or any of them.

(3) There shall be no discrimination against any citizen in respect of appointment to the government service or any other public service only on grounds of religion, race, sex, caste, tribe or any of them.

11. *Right to freedom.* — (1) No person shall be deprived of his life or personal liberty except in accordance with law.

(2) Subject to the other provisions of this part all citizens shall have the right to the following freedom:

(*a*) Freedom of speech and expression;

(*b*) Freedom to assemble peaceably and without arms;

(*c*) Freedom to move to or reside in any part of Nepal; and

(*d*) Freedom to acquire or enjoy property, or to dispose of it by sale or otherwise.

(3) No person shall be punished for an act which was not punishable by law when this act was done, nor shall any person be subjected to a punishment greater than that prescribed by law for an offence when the offence was committed.

(4) No person shall be prosecuted and punished more than once for the same offence in any court.

(5) No person accused of any offence shall be compelled to be a witness against himself.

(6) No person is arrested shall be detained in custody without being informed, as soon as is practicable, of the grounds of such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

Explanation. — For the purposes of this clause, legal "practitioner" includes any person who, under the law for the time being in force, is authorised to represent any other person in any court.

(7) Every person who is arrested and detained in custody shall be produced before a judical authority within a period of twenty-four hours from such arrest, excluding the period of journey from the place of arrest to the court of judical authority, and no such person shall be detained in custody beyond the said period except on the order of such authority.

(8) Nothing in clauses 6 and 7 shall apply to a person who:

(*a*) Is an enemy alien; or

(*b*) Is arrested or detained under any law providing for preventive detention.

12. *Right against exile.* — No citizen shall be exiled.

13. *Right against exploitation.* — Traffic in human beings, slavery and forced labour are prohibited, provided that it not be a bar to provide for compulsory service by law for public purposes.

14. *Right to Religion.* — Every person, having regard to the traditions, may profess and practise his own religion as handed down from ancient times: provided that no person shall be entitled to convert another person from one religion to another.

15. *Right to property.* — No person shall be deprived of his property save in accordance with law.

16. *Right to constitutional remedies.* — Right to proceed in accordance with article 71, for enforcement of the rights conferred by this part is guaranteed.

17. *Restrictions on the exercise of fundamental right for public good.* — (1) Laws may be made for the sake of public good to regulate or controle the exercise of fundamental rights specified in this Part.

(2) If it is expressed in the preamble of any Act that it has been made for any or all of the following purposes, such Act or rule, order or byelaw made under such Act, and having the force of law, shall be deemed to be a law made for the sake of public good:

(*a*) For the preservation of the security of Nepal;

(*b*) For the maintenance of law and order;

(*c*) For the maintenance of friendly relation with foreign states;

(*d*) For the maintenance of good relations among the people of different classes or profession or between the people of different areas;

(*e*) For the maintenance of good conduct, health,

[1] Text furnished by the Government of Nepal.

comfort, economic interest, decency, or morality of the people in general;

(*f*) For the protection of the interest of minors or women;

(*g*) For the prevention of internal disturbance or external invasion;

(*h*) For the prevention of contempt of court or contempt of Rastriya Panchayat; (House of Representatives) and

(*i*) For the prevention of any attempt to subvert this constitution or any other law for the time being in force or for the prevention of any other like attempt.

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NETHERLANDS

NOTE[1]

A. LEGISLATION

1. Rights of the Child and Right to a Nationality

The Act of 12 July 1962 (*Staatsblad van het Koninkrijk der Nederlanden*, No. 249, 1962) amending the Act on Netherlands nationality and residential status includes provisions incorporating into Netherlands law the right of adoption, the granting of Netherlands nationality on the ground of birth in Surinam, the granting of Netherlands nationality to persons born in the Kingdom of the Netherlands of a Netherlands mother and a foreign father, and the consequences of the act of recognition and legitimation.

Henceforth, a child adopted under Netherlands law will also be treated, where Netherlands nationality is concerned, as a legitimate child of the adoptive parents.

2. Right to a Nationality

The Act of 14 September 1962 (*Staatsblad van het Koninkrijk der Nederlanden*, No. 358, 1962) abrogated the Act of 1910 on the status and nationality of indigenous inhabitants of the former overseas possessions of the Netherlands. The population of West Guinea has thereby lost its Netherlands nationality. This Act is consequent upon the Agreement of 15 August 1962 between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian).

3. Right to Freedom of Conscience

The Act of 27 September 1962, providing for exemption from military service where there are serious conscientious objections supersedes the Act of 13 July 1923 relating to the same subject. Just as under the former Act, serious conscientious objections held by a person liable for military service will, at his request, be respected by the Minister of Defense. The latter takes no decision until a special permanent commission has made its recommendations. The Commission submits a report when the petitioner has been heard. In the meaning of the Act, serious conscientious objections are insuperable conscientious objections to performing military service held by persons whose religious or moral convictions forbid them to participate in any acts of war. Their objections may apply to the performance of military service specifically involving the use of arms, or to the performance of any form of military service. Persons whose objections to the performance of military service specifically involving the use of arms are accepted as serious conscientious objections are liable for non-combatant military service. Persons whose objections to the performance of any form of military service are accepted are exempt from military service in all circumstances.

In view of the total nature of modern warfare, the new Act contains an additional stipulation that a recognised conscientious objector of the latter kind must not be required to perform work that, by its very nature, is intended to assist the military forces.

Moreover, new and more concrete provisions have been drawn up as regards the rights and obligations of persons who, their conscientious objections being recognised, are called up for alternative service. These provisions are based on the concept that, since the employment assigned to such persons is a substitute for compulsory military service, their legal position should resemble as closely as possible that of persons liable for military service.

4. Right to Social Security

(*a*) The General Children's Allowances Act of 26 April 1962 (*Staatsblad van het Koninkrijk der Nederlanden*, No. 160, 1962) contains new rules governing general children's allowance insurance, which covers the entire population. Under this Act, all persons who reside in the Netherlands and have reached the age of fifteen are insured. Persons who, although not residing in the Netherlands, are subject to Netherlands taxes on wages received for work carried out in the Netherlands are also insured under this Act. Under the terms of the General Children's Allowances Act, every family is entitled to children' allowances for the third child and all successive children.

(*b*) The Interim Disablement Pensions Act of 19 December 1962 (*Staatsblad van het Koninkrijk der Nederlanden*, No. 534, 1962) is intended to raise the relatively low pensions received under the Disablement Act to a specific percentage of the average wage of an unskilled worker, according to the disablement category to which the person in question belongs.

B. JUDICIAL DECISIONS

1. Right to the Integrity of the Person

On 26 June 1962 the Supreme Court of the Netherlands ruled that, in cases where a person is alleged to have driven under the influence of drink, evidence based on the results of blood tests was inadmissible if the tests were carried out without the consent of the defendant. It is clear from this that the employment of other means to obtain evidence from a suspect against his will (for instance, by the use of

[1] Note furnished by the Government of the Netherlands.

pentothal or a lie detector) will also be inconsistent with the Supreme Court's decision on the above occasion.

2. Right to Freedom of Religion

Decision of the Supreme Court of the Netherlands of 19 January, 1962 concerning religious processions.

Article 184 of the Constitution provides, *inter alia*, that public manifestations of religion outside buildings and enclosed places remain permitted where this was allowed in 1848 by specific legislation.

Article 6 of the Act of 10 September 1853, concerning the Supervision of Religious Associations, allows ministers to wear church garments outside buildings and enclosed places but only in places where the Constitution allows religious manifestations outside buildings and enclosed places.

The Supreme Court had to decide whether these provisions are compatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. Art. 9 of this Convention reads:

"(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion and belief, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

"(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The Supreme Court, after having examined the history of article 184 of the Constitution, considered, *inter alia*, that in a country such as the Netherlands with a population of mixed religious convictions public manifestations of religion which, by the fact that they are being held on public places, may involve people of other religious convictions against their will, may give rise to tension, disquiet and disturbances. A regulation restricting to a certain extent the freedom to organize such manifestations of religion, may be regarded as a necessary measure for the protection of public order. An examination of the question whether the enforcement of such a measure is in a specific case compatible with article 9 of the Convention, cannot be the yardstick by which to determine whether in this very case protection of public order actually necessitated such enforcement. The legislator in a democratic society, having in mind the interests of legal security, may very well deem it necessary to enact measures for the protection of public order in such a way that the admissibility of public manifestations of religions shall not be judged by the particular circumstances of each case but by generally applicable criteria. The legislator, in maintaining such criteria, has to weigh not only the interests of freedom of worship in public places but also the necessity to protect public order and has, when formulating these criteria, to take into account the interests of legal security. The final result of such an assessment is generally not subject to judicial review according to what has been called in the second paragraph of article 9 of the Convention "necessary. . . for the protection of public order". Therefore, it shall be accepted that, according to the intention of the provision, the contents of a legal norm, embodying an authorised restriction of any right guaranteed by the Convention, is in principle not susceptible to judicial review and shall remain a responsibility of the national legislator. From the foregoing it follows that any court that is called upon to decide on the question whether the enforcement of legislation restricting freedom to organize public manifestations of religion outside buildings or enclosed places is compatible with article 9 of the Convention can only answer this question in a negative sense if it should be deemed completely inconceivable that a legislator, finding himself obliged to enact rules for the protection of public order, could not reasonably have enacted and maintained such rules. The Supreme Court then held that the provision of article 184 still is not such a rule and that it shall be enforced at the present day.

C. ADMINISTRATIVE MEASURES

Right to Rest and Leisure, including Reasonable Limitation of Working Hours

(*a*) The royal decree of 7 February 1962 (*Staatsblad van het Koninkrijk der Nederlanden*, No. 31) amending the decree of 1949 regarding the working hours of café and hotel staff. Under the terms of this decree, the working hours of café and hotel staff were reduced from an average of 53 hours to an average of 50½ hours per week;

(*b*) The royal decree of 4 April 1962 (*Staatsblad van het Koninkrijk der Nederlanden*, No. 141) amending the decree of 1932 regarding hours of work in shops. *Inter alia*, this decree reduces the number of hours which may be worked on any one day of the week from eleven to ten.

D. INTERNATIONAL LEGAL INSTRUMENTS

1. Criminal Procedure

The Treaty on extradition and mutual legal assistance in criminal matters concluded on 27 June 1962 between the Kingdom of the Netherlands, the Kingdom of Belgium and the Grand Duchy of Luxembourg (*Netherlands Treaty Series, 1962*, No. 97). Extradition will not be granted in the case of political offences. The ratification of this treaty is in progress.

2. Freedom of Movement

(*a*) Exchange of letters of 18 January and 12 January 1962 between the Netherlands Government and the Government of the Ivory Coast on the abolition of the visa requirement for holders of diplomatic and service passports. The provisions set out in the letters came into force on 14 March 1962 (*Netherlands Treaty Series, 1962*, No. 85).

(*b*) Exchange of notes on 3 August 1962 between the Netherlands Government and the Colombian Government on the abolition of the visa requirement. The provisions set out in the notes came into force on 3 September 1962 (*Netherlands Treaty Series, 1962*, No. 113).

3. Right to a Nationality

The Convention of 28 September 1954, relating to the Status of Stateless Persons (United Nations, *Treaty Series*, Vol. 360, p. 130), was approved for the entire Kingdom by an Act, dated 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 were at any time nationals of an enemy country or of one regarded by the Kingdom as such. Secondly, the Netherlands has reserved the right, in connexion with the provision of article 26, to restrict, in the interests of public order, the settlement in the Netherlands of certain stateless persons or groups of stateless persons.

4. Rights of the Child

The Convention of 12 September 1962 on the establishment of legal bonds of affiliation between a child born out of wedlock and its mother, concluded between the Federal Republic of Germany, the Republic of Austria, the Kingdom of Belgium, the French Republic, the Kingdom of Greece, the Republic of Italy, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Swiss Confederation and the Republic of Turkey, all these countries being members of the International Commission on Civil Status (*Netherlands Treaty Series, 1963*, No. 93).

5. Right to social Security

The Convention of 17 September 1962 on social security, concluded between the Kingdom of the Netherlands and the Spanish State (*Netherlands Treaty Series, 1963*, No. 69).

6. Status of Women

Convention on consent to marriage, minimum age for marriage and registration of marriages. This Convention was signed by the Kingdom of the Netherlands on 10 December 1962.

NETHERLANDS ANTILLES

In 1962 the decree on admission and extradition was published (*Publicatieblad, 1962*, No. 69). This decree provides greater guarantees than previously existed for the rights of persons admitted to the Netherlands Antilles, particularly in the matter of extradition.

NEW ZEALAND

NOTE[1]

I. LEGISLATION

1. *Parliamentary Commissioner (Ombudsman) Act 1962 — No. 10*

This enactment establishes the office of a Commissioner, independent of the Executive but responsible to Parliament, modelled broadly on the Danish Ombudsman. His function is to investigate, on complaint or on his own motion, any act or decision of a government department or a government agency, except where there is a right of appeal to a court or tribunal. He has no power to reverse or modify any decision but only to report and make recommendations. His real sanction therefore is publicity.

2. *Wills Amendment Act 1962 — No. 17*

The Act extends the right of minors to make a formal will (at present confined to married minors) to persons on active service in the New Zealand Army or the Royal New Zealand Air Force, and to members of the Regular Field Force of the New Zealand Army.

3. *British Nationality and New Zealand Citizenship Amendment Act 1962 — No. 26*

The Amendment makes certain transitional provisions concerning the citizenship of South Africans resident in New Zealand following the withdrawal of South Africa from the Commonwealth.

4. *Criminal Justice Amendment Act 1962 — No. 29*

This Act introduces work centres for young criminal offenders between the age of 15 and 21 who may, in suitable cases, be sentenced to periodic detention in such a centre instead of imprisonment.

5. *Occupiers' Liability Act 1962 — No. 31*

The Act amends and clarifies the law relating to the liability of occupiers of premises or land for injury or damage suffered by persons lawfully on the premises or land, resulting from the state of the premises or land. It is based on the principle that any such occupier has a common duty of care to all his visitors.

6. *Copyright Act 1962 — No. 33*

The Act consolidates the present copyright protection and makes the necessary changes in the law enabling New Zealand to accede to the Universal Copyright Convention, thereby obtaining, in addition to the existing international protection of the Berne Copyright Union, reciprocal protection for New Zealand works in countries which are not members of the Berne Union, particularly the U.S.A. The Act adds to the present protection of literary, dramatic, musical, and artistic works (including gramophone records) protection for films, broadcasts, and the typography of published editions.

7. *Evidence Amendment Act 1962 — No. 34*

The Act extends the cases in which an accused's wife or husband may be a competent but not compellable witness, and it introduces new provisions relating to evidence for use in overseas proceedings.

8. *Juries Amendment Act 1962 — No. 35*

This enactment puts Maoris and non-Maoris on an equal footing for jury service.

9. *Maori Affairs Amendment Act 1962 — No. 45*

This Act applies the Family Protection Act to Maoris with the result that certain members of the family, if they have been insufficiently provided for under a will or through the intestacy legislation, may make claims on the estate of a deceased Maori; certain money held in trust may be made available for the purposes of maintenance and education.

10. *Limitation Amendment Act 1962 — No. 112*

The Act makes provisions for the extension of the limitation period for actions in respect of bodily injury, if the delay in bringing action was occasioned by mistake of fact or law.

11. *Adoption Amendment Act 1962 — No. 134*

This Act transfers the jurisdiction of the Maori Land Court in Maori adoption cases to a magistrate's court. It accordingly brings Maori Welfare Officers appointed under the Maori Welfare Act 1962 within the definition of Child Welfare Officers and prescribes the respective functions of Child Welfare and Maori Officers in adoption cases.

12. *Sale of Liquor Act 1962 — No. 139*

The Act consolidates and amends in some respects the former enactments regulating the liquor trade. It makes it an offence to refuse to admit any person to, or to order any person to leave, licensed premises, or to refuse to supply accommodation, meals, or liquor to any person, by reason only of the race, colour, nationality, beliefs, or opinions of that person.

[1] Note furnished by the Government of New Zealand.

II. REGULATIONS

British Nationality and New Zealand Citizenship Order 1962 (S.R. 1962/66).

The Order has the effect of making the citizens of Tanganyika "British subjects" for the purposes of New Zealand nationality and citizenship legislation.

III. COURT DECISIONS

1. *D'Audney* v. *Marketing Services (New Zealand) Limited* — [*1962*] *N.Z.L.R. 51*

The Supreme Court on appeal against a Magistrate's dismissal of an information confirmed that it is a good defence against the charge of importing indecent books to prove the absence of a "guilty mind" (*mens rea*).

2. *Small* v. *Police* — [*1962*] *N.Z.L.R. 488*

A magistrate heard charges against seven men of being on licensed premises after hours and entered convictions in each case. On a subsequent date he heard the charges against the licensee arising out of the same event and entered convictions. On appeal it was held that the mere possibility of the magistrate having allowed his mind to be influenced by the evidence heard in the earlier case was sufficient to nullify the convictions.

3. *Corbett* v. *Social Security Commission and Another* — [*1962*] *N.Z.L.R. 878*

Among other matters the Court of Appeal decided a question of constitutional law and ruled that the Courts of New Zealand possess the power to inspect a document for which Crown privilege is claimed and, if warranted, to overrule a ministerial objection to the production of the document in court.

IV. INTERNATIONAL INSTRUMENTS

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Geneva, 7 September 1956

The New Zealand Government's instrument of accession to this Convention was deposited on 26 April 1962 and the Convention entered into force for New Zealand on that date.

At the time of accession, the Government of New Zealand made a declaration, pursuant to paragraph 1 of Article 12 of the Convention, "that the non-metropolitan territories for the international relations of which the Government of New Zealand is responsible and to which the Convention shall apply *ipso facto* as a result of the accession thereto by the Government of New Zealand are the Cook Islands (including Niue) and the Tokelau Islands".

THE PARLIAMENTARY COMMISSIONER (OMBUDSMAN) ACT 1962

Act No. 10 of 1962, of 7 September 1962[1]

PARLIAMENTARY COMMISSIONER (OMBUDSMAN)

2. *Parliamentary Commissioner (Ombudsman).* — (1) There shall be appointed, as an officer of Parliament, a Commissioner for investigations, to be called the Ombudsman.

(2) Subject to the provisions of section 6 of this Act, the Commissioner shall be appointed by the Governor-General on the recommendation of the House of Representatives.

. . .

3. *Commissioner to hold no other office.* — The Commissioner shall not be capable of being a member of Parliament, and shall not, without the approval of the Prime Minister in each particular case, hold any office of trust or profit, other than his office as Commissioner, or engage in any occupation for reward outside the duties of his office.

4. *Term of office of Commissioner.* — (1) The recommendation for the appointment of the Commissioner shall be made in the first or second session of every Parliament.

(2) Unless his office sooner becomes vacant, every person appointed as Commissioner shall hold office until his successor is appointed. Every such person may from time to time be reappointed.

(3) The Commissioner may at any time resign his office by writing addressed to the Speaker of the House of Representatives, or to the Prime Minister if there is no Speaker or the Speaker is absent from New Zealand.

5. *Removal or suspension from office.* — (1) The Commissioner may at any time be removed or suspended from his office by the Governor-General, upon an address from the House of Representatives, for disability, bankruptcy, neglect of duty, or misconduct.

(2) At any time when Parliament is not in session, the Commissioner may be suspended from his office by the Governor-General in Council for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Governor-General; but any such suspension shall not continue in force beyond the end of the next ensuing session of Parliament.

. . .

8. *Oath to be taken by Commissioner.* — (1) Before entering upon the exercise of the duties of his office the Commissioner shall take an oath that he will faithfully and impartially perform the duties of his office, and that he will not, except in accordance with section 18 of this Act, divulge any information received by him under this Act.

[1] Text furnished by the Government of New Zealand.

(2) The oath shall be administered by the Speaker or the Clerk of the House of Representatives.

. . .

FUNCTIONS OF COMMISSIONER

11. *Functions of Commissioner.* — (1) The principal function of the Commissioner shall be to investigate any decision or recommendation made (including any recommendation made to a Minister of the Crown), or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any of the Departments or organisations named in the Schedule to this Act, or by any officer, employee, or member thereof in the exercise of any power or function conferred on him by any enactment.

(2) The Commissioner may make any such investigation either on a complaint made to him by any person or of his own motion; and where a complaint is so made he may commence any such investigation notwithstanding that the complaint may not on its face be against any such decision, recommendation, or act as aforesaid.

(3) Without limiting the provisions of subsection (1) of this section, it is hereby declared that any Committee of the House of Representatives may at any time refer to the Commissioner, for investigation and report by him, any petition that is before that Committee for consideration, or any matter to which the petition relates. In any such case, the Commissioner shall, subject to any special directions of the Committee, investigate the matters so referred to him, so far as they are within his jurisdiction, and make such report to the Committee as he thinks fit. Nothing in section 14 or section 19 or section 20 of this Act shall apply in respect of any investigation or report made under this subsection.

(4) The powers conferred on the Commissioner by this Act may be exercised notwithstanding any provision in any enactment to the effect that any such decision, recommendation, act, or omission shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision of the person or organisation whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed, or called in question.

(5) Nothing in this Act shall authorise the Commissioner to investigate —

(*a*) Any decision, recommendation, act, or omission in respect of which there is, under the provisions of any enactment, a right of appeal or objection, or a right to apply for a review, on the merits of the case, to any Court, or to any tribunal constituted by or under any enactment, whether or not that right of appeal or objection or application has been exercised in the particular case, and whether or not any time prescribed for the exercise of that right has expired:

(*b*) Any decision, recommendation, act, or omission of any person in his capacity as a trustee within the meaning of the Trustee Act 1956:

(*c*) Any decision, recommendation, act, or omission of any person acting as legal adviser to the Crown pursuant to the rules for the time being approved by the Government for the conduct of Crown legal business, or acting as counsel for the Crown in relation to any proceedings.

(6) Nothing in this Act shall authorise the Commissioner to investigate any matter relating to any person who is or was a member of or provisional entrant to the New Zealand Naval Forces, the New Zealand Army, or the Royal New Zealand Air Force, so far as the matter relates to —

(*a*) The terms and conditions of his service as such member or entrant; or

(*b*) Any order, command, decision, penalty, or punishment given to or affecting him in his capacity as such member or entrant.

(7) If any question arises whether the Commissioner has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court for a declaratory order determining the question in accordance with the Declaratory Judgments Act 1908, and the provisions of that Act shall extend and apply accordingly.

12. *House of Representatives may make rules for guidance of Commissioner.* — (1) The House of Representatives may from time to time, if it thinks fit, make general rules for the guidance of the Commissioner in the exercise of his functions, and may at any time in like manner revoke or vary any such rules.

(2) Any such rules may authorise the Commissioner from time to time, in the public interest or in the interests of any person or Department or organisation, to publish reports relating generally to the exercise of his functions under this Act or to any particular case or cases investigated by him, whether or not the matters to be dealt with in any such report have been the subject of a report to Parliament under this Act.

(3) All rules made under this section shall be printed and published in accordance with the Regulations Act 1936.

13. *Mode of complaint.* — (1) Every complaint to the Commissioner shall be made in writing.

(2) Notwithstanding any provision in any enactment, where any letter written by any person in custody on a charge or after conviction of any offence, or by any inmate of any institution within the meaning of the Mental Health Act 1911, is addressed to the Commissioner it shall be immediately forwarded, unopened, to the Commissioner by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is an inmate.

(3) On every complaint to the Commissioner there shall be paid to the Commissioner, on behalf of the Crown, a fee of one pound, unless, having regard to any special circumstances, the Commissioner directs that no fee shall be payable.

(4) The Commissioner shall cause all fees paid to him under this section to be paid into the Public Account.

14. *Commissioner may refuse to investigate complaint.* — (1) If in the course of the investigation of any complaint within his jurisdiction it appears to the Commissioner —

(*a*) That under the law or existing administrative practice there is an adequate remedy or right of appeal, other than the right to petition Parliament, for the complainant (whether or not he has availed himself of it); or

(*b*) That, having regard to all the circumstances of the case, any further investigation in unnecessary — he may in his discretion refuse to investigate the matter further.

(2) Without limiting the generality of the powers conferred on the Commissioner by this Act, it is hereby declared that the Commissioner may in his discretion decide not to investigate, or, as the case may require, not to further investigate, any complaint if it relates to any decision, recommendation, act, or omission of which the complainant has had knowledge for more than twelve months before the complaint is received by the Commissioner, or if in his opinion —

(*a*) The subject-matter of the complaint is trivial; or

(*b*) The complaint is frivolous or vexatious or is not made in good faith; or

(*c*) The complainant has not a sufficient personal interest in the subject-matter of the complaint.

(3) In any case where the Commissioner decides not to investigate or further investigate a complaint he shall inform the complainant of that decision, and may if he thinks fit state his reasons therefor, and may also, if he thinks fit, direct that the fee paid by the complainant under this Act be refunded to him.

15. *Proceedings of Commissioner.* — (1) Before investigating any matter under this Act, the Commissioner shall inform the Permanent Head of the Department affected, or, as the case may require, the organisation affected, of his intention to make the investigation.

(2) Every investigation by the Commissioner under this Act shall be conducted in private.

(3) The Commissioner may hear or obtain information from such persons as he thinks fit, and may make such inquiries as he thinks fit. It shall not be necessary for the Commissioner to hold any hearing, and no person shall be entitled as of right to be heard by the Commissioner:

Provided that if at any time during the course of an investigation it appears to the Commissioner that there may be sufficient grounds for his making any report or recommendation that may adversely affect any Department or organisation or person, he shall give to that Department or organisation or person an opportunity to be heard.

(4) The Commissioner may in his discretion, at any time during or after any investigation, consult any Minister who is concerned in the matter of the investigation.

(5) On the request of any Minister in relation to any investigation, or in any case where any investigation relates to any recommendation made to a Minister, the Commissioner shall consult that Minister after making the investigation and before forming a final opinion on any of the matters referred to in subsection (1) or subsection (2) of section 19 of this Act.

(6) If, during or after any investigation, the Commissioner is of opinion that there is evidence of any breach of duty of misconduct on the part of any officer or employee of any Department or organisation, he shall refer the matter to the appropriate authority.

(7) Subject to the provisions of this Act and of any rules made for the guidance of the Commissioner by the House of Representatives and for the time being in force, the Commissioner may regulate his procedure in such manner as he thinks fit.

16. *Evidence.* — (1) Subject to the provisions of this section and of section 17 of this Act, the Commissioner may from time to time require any person who in his opinion is able to give any information relating to any matter that is being investigated by the Commissioner to furnish to him any such information, and to produce any documents or papers or things which in the Commissioner's opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person. This subsection shall apply whether or not the person is an officer, employee, or member of any Department or organisation, and whether or not such documents, papers, or things are in the custody or under the control of any Department or organisation.

(2) The Commissioner may summon before him and examine on oath —

(*a*) Any person who is an officer or employee or member of any Department or organisation named in the Schedule to this Act and who in the Commissioner's opinion is able to give any such information as aforesaid; or

(*b*) Any complainant; or

(*c*) With the prior approval of the Attorney-General in each case, any other person who in the Commissioner's opinion is able to give any such information —

and for that purpose may administer an oath. Every such examination by the Commissioner shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury).

(3) Subject to the provisions of subsection (4) of this section, no person who is bound by the provisions of any enactment, other than the Public Service Act 1912 and the Official Secrets Act 1951, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any question put by the Commissioner in relation to that matter, or to produce to the Commissioner any document or paper or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

(4) With the previous consent in writing of any complainant, any person to whom subsection (3) of this section applies may be required by the Com-

missioner to supply information or answer any question or produce any document or paper or thing relating only to the complainant, and it shall be the duty of the person to comply with that requirement.

(5) Every person shall have the same privileges in relation to the giving of information, the answering of questions, and the production of documents and papers and things as witnesses have in any Court.

(6) Except on the trial of any person for perjury within the meaning of the Crimes Act 1961 in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Commissioner shall be admissible in evidence against any person in any Court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.

(7) No person shall be liable to prosecution for an offence against the Official Secrets Act 1951 or any enactment, other than this Act, by reason of his compliance with any requirement of the Commissioner under this section.

(8) Where any person is required by the Commissioner to attend before him for the purposes of this section, the person shall be entitled to the same fees, allowances, and expenses as if he were a witness in a Court, and the provisions of any regulations in that behalf made under the Summary Proceedings Act 1957 and for the time being in force shall apply accordingly. For the purposes of this subsection the Commissioner shall have the powers of a Court under any such regulations to fix or disallow, in whole or in part, or increase the amounts payable thereunder.

17. *Disclosure of certain matters not to be required.* (1) Where the Attorney-General certifies that the giving of any information or the answering of any question or the production of any document or paper or thing —

(*a*) Might prejudice the security, defence, or international relations of New Zealand (including New Zealand's relations with the Government of any other country or with any international organisation), or the investigation or detection of offences; or

(*b*) Might involve the disclosure of the deliberations of Cabinet; or

(*c*) Might involve the disclosure of proceedings of Cabinet, or of any committee of Cabinet, relating to matters of a secret or confidential nature, and would be injurious to the public interest —

the Commissioner shall not require the information or answer to be given or, as the case may be, the document or paper or thing to be produced.

(2) Subject to the provisions of subsection (1) of this section, the rule of law which authorises or requires the withholding of any document or paper, or the refusal to answer any question, on the ground that the disclosure of the document or paper or the answering of the question would be injurious to the public interest shall not apply in respect of any investigation by or proceedings before the Commissioner.

18. *Commissioner and staff to maintain secrecy.* — (1) The Commissioner and every person holding any office or appointment under him shall be deemed for the purposes of the Official Secrets Act 1951 to be persons holding office under Her Majesty.

(2) The Commissioner and every such person as aforesaid shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions.

(3) Every person holding any office or appointment under the Commissioner shall, before he begins to perform any official duty under this Act, take an oath, to be administered by the Commissioner, that he will not divulge any information received by him under this Act except for the purpose of giving effect to this Act.

(4) Notwithstanding anything in the foregoing provisions of this section, the Commissioner may disclose in any report made by him under this Act such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations. The power conferred by this subsection shall not extend to any matter that might prejudice the security, defence, or international relations of New Zealand (including New Zealand's relations with the Government of any other country or with any international organisation) or the investigation or detection of offences, or that might involve the disclosure of the deliberations of Cabinet.

19. *Procedure after investigation.* — (1) The provisions of this section shall apply in every case where, after making any investigation under this Act, the Commissioner is of opinion that the decision, recommendation, act, or omission which was the subject-matter of the investigation —

(*a*) Appears to have been contrary to law: or

(*b*) Was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any enactment or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or

(*c*) Was based wholly or partly on a mistake of law or fact;

or

(*d*) Was wrong.

(2) The provisions of this section shall also apply in any case where the Commissioner is of opinion that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.

(3) If in any case to which this section applies the Commissioner is of opinion —

(*a*) That the matter should be referred to the appropriate authority for further consideration; or

(*b*) That the omission should be rectified; or

(*c*) That the decision should be cancelled or varied; or

(*d*) That any practice on which the decision, recommendation, act, or omission was based should be altered; or

(*e*) That any law on which the decision, recommendation, act, or omission was based should be reconsidered; or

(*f*) That reasons should have been given for the decision; or

(*g*) That any other steps should be taken —

the Commissioner shall report his opinion, and his reasons therefor, to the appropriate Department or organisation, and may make such recommendations as he thinks fit. In any such case he may request the Department or organisation to notify him, within a specified time, of the steps (if any) that it proposes to take to give effect to his recommendations. The Commissioner shall also send a copy of his report and recommendations to the Minister concerned.

(4) If within a reasonable time after the report is made no action is taken which seems to the Commissioner to be adequate and appropriate, the Commissioner, in this discretion, after considering the comments (if any) made by or on behalf of any Department or organisation affected, may send a copy of the report and recommendations to the Prime Minister, and may thereafter make such report to Parliament on the matter as he thinks fit.

(5) The Commissioner shall attach to every report sent or made under subsection (4) of this section a copy of any comments made by or on behalf of the Department or organisation affected.

(6) Notwithstanding anything in this section, the Commissioner shall not, in any report made under this Act, make any comment that is adverse to any person unless the person has been given an opportunity to be heard.

20. *Complainant to be informed of result of investigation.* — (1) Where, on any investigation following a complaint, the Commissioner makes a recommendation under subsection (3) of section 19 of this Act, and no action which seems to the Commissioner to be adequate and appropriate is taken thereon within a reasonable time, the Commissioner shall inform the complainant of his recommendation, and may make such comments on the matter as he thinks fit.

(2) The Commissioner shall in any case inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation.

21. *Proceedings not to be questioned or to be subject to review.* — No proceeding of the Commissioner shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Commissioner shall be liable to be challenged, reviewed, quashed, or called in question in any Court.

22. *Proceedings privileged.* — (1) Except in the case of proceedings for an offence against the Official Secrets Act 1951, —

(*a*) No proceedings, civil or criminal, shall lie against the Commissioner, or against any person holding any office or appointment under the Commissioner, for anything he may do or report or say in the course of the exercise or intended exercise of his functions under this Act, unless it is shown that he acted in bad faith:

(*b*) The Commissioner, and any such person as aforesaid, shall not be called to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions.

(2) Anything said or any information supplied or any document, paper, or thing produced by any person in the course of any inquiry by or proceedings before the Commissioner under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a Court.

. . .

MISCELLANEOUS PROVISIONS

23. *Power of entry on premises.* — (1) For the purposes of this Act, but subject to the provisions of this section, the Commissioner may at any time enter upon any premises occupied by any of the Departments or organisations named in the Schedule to this Act and inspect the premises and, subject to the provisions of sections 16 and 17 of this Act, carry out therein any investigation that is within his jurisdiction.

(2) Before entering upon any such premises the Commissioner shall notify the Permanent Head of the Commissioner shall notify the Permanent Head of the Department or, as the case may require, the organisation by which the premises are occupied.

(3) The Attorney-General may from time to time by notice to the Commissioner exclude the application of subsection (1) of this section to any specified premises or class of premises, if he is satisfied that the exercise of the power conferred by this section might prejudice the security, defence, or international relations of New Zealand, including New Zealand's relations with the Government of any other country or with any international organisation.

24. *Delegation of powers by Commissioner.* — (1) With the prior approval in each case of the Prime Minister, the Commissioner may from time to time, by writing under his hand, delegate to any person holding any office under him any of his powers under this Act, except this power of delegation and the power to make any report under this Act.

(2) Any delegation under this section may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class.

(3) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Commissioner.

(4) Any such delegation may be made subject to such restrictions and conditions as the Commissioner thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(5) Until any such delegation is revoked, it shall continue in force according to its tenor. In the event of the Commissioner by whom it was made ceasing to hold office, it shall continue to have effect as if made by his successor.

(6) Any person purporting to exercise any power of the Commissioner by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.

25. *Annual report.* — Without limiting his right to report at any other time, but subject to the provisions of subsection (6) of section 19 of this Act and to any rules for the guidance of the Commissioner made by the House of Representatives and for the time being in force, the Commissioner shall in each year make a report to Parliament on the exercise of his functions under this Act.

26. *Offences.* — Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding fifty pounds who —

(a) Without lawful justification or excuse, wilfully obstructs, hinders, or resists the Commissioner or any other person in the exercise of his powers under this Act:

(b) Without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Commissioner or any other person under this Act:

(c) Wilfully makes any false statement to or misleads or attempts to mislead the Commissioner or any other person in the exercise of his powers under this Act.

. . .

29. *Savings.* — The provisions of this Act are in addition to the provisions of any other enactment or any rule of law under which any remedy or right of appeal or objection is provided for any person or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Act shall limit or affect any such remedy or right of appeal or objection or procedure as aforesaid.

SCHEDULE

[Section 11 (1)]

DEPARTMENTS AND ORGANISATIONS TO WHICH THIS ACT APPLIES

Part I — Government Departments

The Air Department
The Army Department
The Audit Department
The Crown Law Office
The Customs Department
The Department of Agriculture
The Department of Education
The Department of External Affairs
The Department of Health
The Department of Industries and Commerce
The Department of Internal Affairs
The Department of Island Territories
The Department of Justice
The Department of Labour
The Department of Lands and Survey
The Department of Maori Affairs
The Department of Scientific and Industrial Research
The Department of Statistics
The Government Life Insurance Office
The Government Printing Office
The Inland Revenue Department
The Law Drafting Office
The Legislative Department
The Maori Trust Office
The Marine Department
The Mines Department
The Ministry of Works
The Navy Department
The New Zealand Electricity Department
The New Zealand Forest Service
The New Zealand Government Railways Department
The Office of the Public Service Commission
The Police Department
The Post Office
The Prime Minister's Department
The Public Trust Office
The Social Security Department
The State Advances Corporation of New Zealand
The State Fire and Accident Insurance Office
The Tourist and Publicity Department
The Transport Department
The Treasury
The Valuation Department

Part II — Other Organisations

The Air Board
The Army Board
The Board of Management of the State Advances Corporation of New Zealand
The Board of Maori Affairs
The Earthquake and War Damage Commission
The Government Stores Board
The Government Superannuation Board
The Land Settlement Board
The Maori Purposes Fund Board
The National Parks Authority
The National Provident Fund Board
The National Roads Board
The New Zealand Naval Board
The New Zealand Army
The New Zealand Naval Forces
The Police
The Public Service Commission
The Rehabilitation Board
The Royal New Zealand Air Force
The Social Security Commission
The Soil Conservation and Rivers Control Council
The State Fire Insurance Board

NICARAGUA

DECREE No. 765, OF 12 OCTOBER 1962, TO MAKE BASIC CHANGES IN THE LABOUR CODE

NOTE

The decree amends the Labour Code in relation to, *inter alia*, weekly rest, annual leave with pay, payment of wages, termination of contracts of employment, conditions of work of domestic employees and of state employees, the right to strike, the settlement of disputes and minimum wage fixing.

The decree was published in *La Gaceta*, No. 233, of 13 October 1962. English and French translations have been published by the International Labour Office as *Legislative Series*. 1962, Nic. 1.

NIGER

ACT No. 62–12, OF 13 JULY 1962, TO PROMULGATE A LABOUR CODE FOR THE REPUBLIC OF THE NIGER[1]

Title I
General Provisions

. . .

Art. 2. — Forced or compulsory labour is absolutely forbidden.

The term "forced or compulsory labour" means any labour or service demanded of an individual under threat of any penalty, being a labour or service which the said individual has not freely offered to perform.

Title II
Trade Unions

Chapter I
Trade Unions and Formation of Such Unions

Art. 3. — Trade unions shall have as their sole object the study and defence of economic, industrial, commercial and agricultural interests.

Art. 4. — Persons carrying on the same trade, similar crafts or allied trades associated in the preparation of specific products, or the same profession, shall be free to form a trade union. Every worker or employer shall be free to join a trade union selected by him within his own trade or profession.

It shall be unlawful for an employer to take into consideration membership in a trade union or trade union activity in making decisions with regard in particular to hiring, the conduct and distribution of work, vocational training, promotion, remuneration and the granting of social benefits, disciplinary measures and dismissal.

It shall be unlawful for an employer to deduct contributions to trade unions from the wages paid to his workers and to pay such contributions in lieu and on behalf of the latter.

The head of an undertaking or his representatives shall not exercise any form of pressure either in favour of or against any trade union.

Any action taken by the employer which is inconsistent with the provisions of the foregoing paragraphs shall be deemed to be improper and shall render him liable for damages. These provisions are provisions of public policy.

Art. 5. — The founders of every trade union shall register the by-laws and the names of those who are responsible in any capacity for its management or direction.

Registration shall be carried out at the *mairie* or principal office of the administrative area in which the trade union is formed; a corresponding receipt shall be issued; a copy of the by-laws shall be sent to the inspector of labour and to the public prosecutor for the area.

Any amendments to the by-laws and any changes in the composition of the board of managers or directors of the trade union shall be brought to the knowledge of the same authorities in like manner.

Art. 6. — The members responsible for the management or direction of a trade union must be nationals of the Niger and must be in possession of their civil and political rights, in conformity with the provisions governing those rights contained in the electoral laws.

Art. 7. — Married women carrying on a trade or profession may join trade unions and participate in their management or direction subject to the conditions given in the preceding article.

Art. 8. — Minors over sixteen years of age may join a trade union unless the father, mother or guardian objects.

. . .

Art. 10. — Any member of a trade union may withdraw at any time notwithstanding any clause to the contrary, subject to the right of the trade union to demand the contribution in respect of the six months following withdrawal from membership.

[Other provisions of the Code relate to contracts of employment, apprenticeship, sub-contractors, collective agreements, wages, conditions of employment, hygiene and safety of workers, the inspectorate of labour, staff representatives and labour disputes.]

[1] Text published in the *Journal officiel*, special issue, No, 4, of 25 August 1962.

NIGERIA

JUDICIAL DECISIONS[1]

1. In *Williams* v. *Majekodunmi* (1962), F.S.C. 166/1962, the plaintiff brought proceedings in consequence of an order issued by the defendant, in his capacity as the administrator for a period of emergency, placing restrictions on his movements under the Emergency Powers (Restriction Orders) Regulations of 1962. The order was issued on 29 May 1962, after the Parliament had passed a resolution, in pursuance of section 65 of the Constitution, declaring the existence of a state of public emergency on that same day. Accordingly on 29 May, the Emergency Powers Act of 1961, adopted on 30 March 1961 in conformity with section 65 of the Constitution, together with thirteen sets of regulations, including the Emergency Powers (Restriction Orders) Regulations, adopted by the Parliament on the same day, under section 5 of the 1961 Emergency Powers Act, came into force. The plaintiff claimed, *inter alia*, that the restriction order served upon him was illegal and *ultra vires*. He stated that under section 26 of the Constitution every citizen was guaranteed freedom of movement throughout the territory and that limitation on the exercise of this right had to comply with the provisions of section 26 (2) of the Constitution and be "reasonably justifiable". The defendant said that what had been done was reasonable and moderate and that the question whether measures taken in a period of emergency were "reasonably justifiable" could be determined only by a pragmatic approach to the delicate issue of state security and public welfare.

The Federal Supreme Court held that there was nothing in the evidence from which it could be fairly inferred that the restriction of the plaintiff's freedom of residence and movement was reasonably justifiable. It therefore set aside the said Restriction Order on the freedom of movement and residence of the plaintiff.

2. In *The Director of Public Prosecutions* v. *Obi* (1961), F.S.C. 56/1961, the defence submitted that sections 50[2] and 51[3] of the Criminal Code on Sedition, in so far as they relate to the Government of Nigeria, are inconsistent with the provisions of section 24 of the Constitution of the Federation

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[1] Note based upon information furnished by the Government of the Federation of Nigeria. For the constitutional provisions referred to in this note, see *Yearbook on Human Rights for 1960*, p. 251.

[2] Section 50 provides, *inter alia*, that:

"(2) A 'seditious intention' is an intention—

"(*a*) To bring into hatred or contempt or to excite disaffection against the person of Her Majesty, her heirs or successors, or the person of the Governor-General or the Governor of a Region, or the Government or Constitution of the United Kingdom, or of Nigeria, or of any Region thereof, as by law established or against the administration of justice in Nigeria; or

"(*b*) to excite Her Majesty's subjects or inhabitants of Nigeria to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Nigeria as by law established; or

"(*c*) to raise discontent or disaffection amongst Her Majesty's subjects or inhabitants of Nigeria; or

"(*d*) to promote feelings of ill-will and hostility between different classes of the population of Nigeria.

"But an act, speech or publication is not seditious by reason only that it intends—

"(i) To show that Her Majesty has been misled or mistaken in any of her measures; or

"(ii) To point out errors or defects in the Government or Constitution of Nigeria, or of any Region thereof, as by law established or in the legislation or in the administration of justice with a view to the remedying of such errors or defects; or

"(iii) To persuade Her Majesty's subjects or inhabitants of Nigeria to attempt to procure by lawful means the alteration of any matter in Nigeria as by law established; or

"(iv) To point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Nigeria."

"(3) In determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself."

[3] Section 51 states, *inter alia*, that:

"(1) Any person who—

"(*a*) Does or attempts to do or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;

"(*b*) Utters any seditious words;

"(*c*) Prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;

"(*d*) Imports any seditious publication, unless he has no reason to believe that it is seditious;

"shall be guilty of an offence and liable on conviction for a first offence to imprisonment for two years or to a fine of one hundred pounds or to both such imprisonment and fine and for a subsequent offence to imprisonment for three years; and any seditious publication shall be forfeited to Her Majesty."

(guaranteeing freedom of expression). It was argued by the defence that a law is only valid if the acts prohibited are, in every case, likely to lead directly to disorder.

The Federal Supreme Court held that it is clearly legitimate and constitutional by means of fair argument to criticize the government of the day. What is not permitted is to criticize the government, meaning the principal officers of the state, in a malignant manner with the intention of causing "disloyalty, enmity or hostility". These exceptions to section 50 (2) of the Criminal Code form enough protection to a charge of sedition and offer enough freedom of expression to anyone. Thus, the section does not "prevent fair criticism of the Government and only prohibits publications made with the intention of exciting hatred and contempt, or disaffection against, *inter alia*, the government. It is the duty of the court to decide the real intentions of persons charged on the facts of each particular case. It is, however, for a person charged to show that his defence comes within the exception". The court, therefore, held that the provision of the Constitution relating to Fundamental Human Rights has not in any way invalidated the Law of Sedition as contained in sections 50 and 51 of the Criminal Code in so far as these sections related to the matters under consideration before it.

3. In *Aoko* v. *Fagbemi and Director of Public Prosecutions* (1961), Ibadan suit No. M/12/1961, the High Court (West) set aside a conviction by the Ijehu-Ijesha Grade "D" Customary Court and ordered the refund to the applicant of the fine as well as the amounts paid as compensation and as costs. The conviction by the Customary Court was made for an alleged offence not defined as an offence under any written law. The High Court held that the conviction of the applicant was in violation of her right as guaranteed by section 21 (10) of the Constitution of the Federation of Nigeria, 1960. This section states that:

"No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law:

"Provided that nothing in this subsection shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed."

4. In *Gokpa* v. *Inspector-General of Police* (1961), Appeal No. P/7A/61, before the High Court of Eastern Nigeria, the appellant had been charged before a Magistrate's Court on various counts of stealing and forgery. The charges seemed to have been on the Magistrate's Court list since 12 April 1960, but the appellant first appeared in court on 27 September 1960. No plea was taken on that day when, on the application of the prosecution, the case was adjourned to 25 October 1960, to enable them to obtain the opinion of a handwriting expert. On the 25th, the appellant's case was not called. On 28 November the case came up again but neither the appellant nor his counsel was in court, and it was not clear that they had been previously informed. The magistrate ordered a Bench Warrant to issue against the appellant and adjourned the case till the next day. On 29 November the appellant was brought to court without his counsel, the appellant informed the court that he had a counsel and asked for adjournment to enable his counsel appear. The magistrate adjourned the case till later in the day to enable the appellant to "make arrangement for legal defence". Under the prevailing circumstances, the nearest place where the appellant could get counsel was 23 miles away. The hearing was resumed in the afternoon, one witness's evidence taken, and then it was adjourned to the next day. The appellant did not take any active part in the proceedings. The magistrate found him guilty and sentenced him to two years hard labour on each count, to run concurrently.

The High Court, under section 38 (1) (*d*) of the High Court Law, ordered a new trial, holding that:

(1) A court should endeavour to see that an accused is given a fair chance to defend himself and with the aid of counsel when he is represented by one.

(2) A magistrate's desire to dispose of cases of long standing on his list is understandable; but such disposal of a case should not be done at the expense of giving an accused adequate opportunity of defending himself.

(3) By depriving him of the right to be represented by Counsel, the action of the Magistrate in this case amounted to denying the appellant the opportunity of a fair trial, contrary to the guarantee of section 21 (2) of the Constitution of the Federation.

NORWAY

NOTE[1]

A. LEGISLATION

1. *Act of 13 April 1962 (No. 3), amending the Protection of Workers Act of 7 December 1956*

This amendment reduced ordinary working time for labourers driving tunnels through mountains and blasting cavities under mountains. Whereas the general rule concerning groups of workers covered by the Act stipulates that working time must not exceed 9 hours per day and 45 hours per week, ordinary working time for labour of this type was reduced to a maximum of 40 hours per week.

2. *Act of 22 June 1962 (No. 8), concerning the Parliamentary Commissioner (Ombudsmann) of the Storting (Parliament) for civil administration*

This Act has created a Parliamentary Commissioner institution, similar to those already in existence in Denmark, Finland and Sweden. The Commissioner is to be elected by the Storting for a period of four years at a time. His task, as a representative of the Storting, is to see to it that no injustice is committed by the public administration against the individual citizen. His field of action includes all the State administrative bodies in the country, all State officers and officials, and all other persons employed by the State, excluding, however, decisions made by the Council of Ministers and the activity of the courts of law and state auditors. The Commissioner can in certain cases, deal with decisions made by the municipal administrative organs, including municipal administrative matters which involve deprival of personal liberty or are connected therewith.

The Commissioner can take cases up for consideration either on the basis of a complaint, or on his own initiative. The complaint must be made within twelve months of the date on which the administrative action or the factual circumstances complained of took place or ceased. However, overstepping of the time limit does not prevent the Commissioner from taking up a case on his own initiative. A person who has been deprived of his personal liberty has the right to apply to the Official Commissioner by means of a sealed letter. If the complaint concerns a decision which the petitioner has the right to have re-examined by a higher administrative instance, the Commissioner will as a rule not deal with the case. This, however, does not apply to cases where the King is the only higher authority the petitioner can apply to. If the matter complained of has already been examined by the Storting, the Odelsting (Lower Chamber) or the Protocol Committee of the Storting, the Commissioner cannot deal with the case.

The Commissioner has the right to secure from any officer of the State all the information he needs for the execution of this task. This does not, however, apply to internal working documents; here it is taken for granted that satisfactory co-operation will in practice be attained.

The Commissioner has the right to state his opinion regarding facts which are embraced by his field of activity. He can point out mistakes or negligence committed by an administrative organ or an officer of the State. If the Commissioner decides that a decision must be considered null and void, he can make a statement to that effect, and, if the prevailing conditions warrant this, and a new decision does not give a sufficient redress, he may call upon the said administrative organ to grant suitable compensation. If the Commissioner finds that a discretionary decision is obviously unfair, or in any other way does not comply with proper administrative usage, he can make a statement to that effect.

Extracts from the Act of 22 June 1962 appear below.

3. *Act of 22 June 1962 (No. 12) regarding pensions for nurses*

This Act established a general compulsory pension system for registered nurses employed by municipal, district or private hospitals. The grants include old age pension, debility pension, widow's pension, in certain cases also widower's pension, and children's pension. Full old age pension is granted after 30 years of service and constitutes 66% of the basic salary including seniority and other increments. The pension system is financed partly by the nurses' own contributions and partly by their employers'.

4. *Act of 29 June 1962 (No. 2), amending the provisional Act of 21 June 1956 (No. 11) regarding compulsory service for dentists*

The validity of the provisional Act of 1956 regarding *compulsory service for dentists* is prolonged to 30 June 1966. Simultaneously the maximum period of service is reduced from 24 to 18 months. Service can as previously only be required in order to fill a post in public dental care which in spite of public announcement has remained vacant.

5. *Act of 29 June 1962 (No. 8), amending the Act of 24 October 1946, regarding grants for children*

This Act introduces a fundamental amendment to the original system, whereby a family supporter now receives grants at progressive rates in accordance with the number of children in his care. (At present the grant is kr. 400 annually for the first child entitled to the grant, kr. 500 for the second child, kr. 600 for the third, and so forth increasing by kr. 100 per child up to a maximum of kr. 800 per child.)

[1] Note furnished by the Government of Norway.

6. *Act of 14 December 1962 (No. 2), amending the Act of 2 December 1955 (No. 1), concerning temporary prolongation of the protection of property rights to literary, artistic or scientific works*

The purpose of the Act is to prolong, unless the King decides otherwise, to 31 December 1966, the protection period of such property rights to literary, artistic or scientific works as would otherwise be due to expire in 1962, 1963 or 1964. The reason for this Act is the possibility of the stipulations regarding the protection period laid down by the Bern Convention being expanded in the near future. For this reason it was found reasonable that the protection period for a number of well-known Norwegian works should not be allowed to lapse until the new regulations are finally decided.

B. JUDICIAL DECISIONS

1. *Judgement of the Supreme Court of 13 April 1961*

Pursuant to the Act of 6 June 1957 (No. 26), regarding co-ordination of pension and social insurance grants (the Co-ordination Act), section 19, co-ordination is to take place between service pensions granted within the framework of the systems covered by the Act and basic old-age pensions granted in accordance with the Act of the same date (No. 16). Co-ordination has been effected by means or reducing service pensions by a certain part of the sum which the pensioner receives as basic old-age pension. This basic old-age pension is granted irrespective of need to every person who has reached the age of 70. The National Association of Service Pensioners brought an action against the State maintaining that those state pensioners who had reached the age of 70 before the co-ordination system came into force had the right to receive their old age pension from the Public Treasury unabridged. The Association's claim was based on the assumption that to make the Co-ordination Act's abridgement rules valid as regards such persons would constitute a contravention of article 97 of the Constitution which prohibits giving new regulations retroactive effect, and would furthermore also constitute a contravention of the constitutional principle of equality. The Supreme Court, which decided the case in plenary session, unanimously refused the pensioners' claim, supporting the verdicts of the lower courts. The court's reasoning was that the Co-ordination Act could not be regarded as an isolated fact, and should be considered in relation to the Basic Old-Age Pensions Act, which is of the same date and was prepared simultaneously with the Co-ordination Act. State pensioners had no claim on a basic old-age pension protected by the Constitution. During the preparation of the Act the question of adaptation by means of a reduction of the old-age pension was considered. However, for technical reasons, it proved preferable to effect the reduction in the service pension. State pensioners suffered no economic loss through the co-ordination system, and the constitutional ban on retroactive laws could not in this case be pleaded. The majority also based its view on the fact that both the present and previous Acts concerning the State Pension Fund contain reservations regarding the regulation of grants when social insurance for the entire population came into effect.

ACT No. 8 OF 22 JUNE 1962 CONCERNING THE PARLIAMENTARY COMMISSIONER FOR CIVIL ADMINISTRATION[1]

Art. 1. — After each parliamentary election the Storting shall appoint a Parliamentary Commissioner for Civil Administration *(Ombudsmann)*. The appointment shall be for a period of four years as from 1 January of the year following the parliamentary election.

The Parliamentary Commissioner shall have the qualifications required of a judge of the Supreme Court. He may not be a member of the Storting.

If the Parliamentary Commissioner dies or is unable to carry out his duties, the Storting shall appoint a new Commissioner for the remainder of the term of office. The same shall apply if the Commissioner resigns or if the Storting decides, by a majority of not less than two thirds of the votes cast, to relieve him of his duties.

If, owing to illness or other reasons, the Commissioner is temporarily prevented from carrying out his duties, the Storting may appoint a deputy to replace him during his absence.

Art. 2. — The Storting shall issue general instructions governing the Commissioner's activities. In other respects the Commissioner shall carry out his duties independently of the Storting.

Art. 3. — It shall be the duty of the Commissioner as the representative of the Storting to endeavour to ensure, in the manner prescribed by this Act and in accordance with his instructions, that no injustice is committed against any citizen in matters relating to public administration.

Art. 4. — The Commissioner shall have jurisdiction in respect of the administrative authorities of the State, state officials and civil servants, and other persons in the service of the State. He shall not have jurisdiction in respect of:

(1) Decisions of the Cabinet;

(2) The functions of the courts;

(3) The functions of the State Audit Office.

The Storting may specify in the Commissioner's instructions:

(1) Whether a particular public institution or function shall be regarded as a part of the State administration or the civil service for the purposes of this Act;

(2) That particular activities of a public institu-

[1] Published in *Norsk Lovtidend* No. 24, of 23 July 1962.

tion shall be outside the jurisdiction of the Commissioner;

(3) That in connexion with individual cases, the Commissioner may also deal with the local administrative authority that was concerned with the matter in the first instance.

The Commissioner may concern himself with any administrative matter, including matters pertaining to local administration, which entails deprivation of personal liberty or is connected with deprivation of liberty.

Art. 5. — The Commissioner may take up a matter either on a petition or on his own initiative.

Art. 6. — Any person who considers that he has been the victim of an injustice on the part of the public administration may submit a petition to the Commissioner.

A person who has been deprived of his personal liberty shall be entitled to submit a petition to the Commissioner in a sealed letter.

The petition shall be signed and must be submitted within one year from the date on which the official action or the circumstance, giving rise to the petition took place or ceased. If the petitioner has submitted the matter to a higher administrative authority, the said time-limit shall be reckoned from the date on which that authority handed down its decision.

The Commissioner shall decide whether or not a petition gives sufficient grounds for action.

Art. 7. — The Commissioner may apply to State officials and civil servants and any other persons in the service of the State for the information necessary for the performance of his duties. He may similarly require records and other documents to be produced.

Where the Commissioner has jurisdiction in respect of a local administrative authority (cf. art. 4, second paragraph, sub-paragraph 3, and third paragraph), his right to apply for information and to require records and documents to be produced shall also apply in relation to any person in the service of such authority.

The provisions of articles 204 to 209 of the Code of Judicial Procedure shall apply in respect of the Commissioner's right to request information.

The Commissioner may require evidence to be produced in court in accordance with the provisions of article 43, second paragraph, of the Courts of Justice Act. The court hearings shall not be open to the public.

Art. 8. — The Commissioner shall have access to the working premises, offices and other premises pertaining to any administrative authority or to any function coming within his jurisdiction.

Art. 9. — Unless otherwise required by his duties under this Act, the Commissioner shall maintain secrecy in respect of any information which he obtains in his official capacity concerning circumstances which are not known to the general public. Information concerning trade or business secrets shall on no account be made public. The obligation to maintain secrecy shall continue to apply even after the Commissioner has left office. The same obligation shall apply to his staff.

Art. 10. — The Commissioner shall be entitled to express his opinion concerning matters within his jurisdiction.

The Commissioner may draw attention to errors or negligence on the part of an administrative authority or an official. If he considers that there is sufficient reason for doing so, he may inform the prosecuting authority or the appointments authority concerning what action in his opinion should be taken with regard to the official concerned. If the Commissioner is of the opinion that a decision must be regarded as invalid or clearly unreasonable, he shall be entitled to make such opinion known.

The Commissioner may let the matter rest after the error has been rectified or a satisfactory explanation has been given.

The Commissioner shall notify the petitioner or the person or persons concerned of the results of his investigation of a case. He may also so notify the higher administrative authority.

The Commissioner shall himself decide whether and in what manner he shall make his action in a case publicly known.

Art. 11. — If the Commissioner discovers defects in laws or administrative regulations he may notify the competent ministry.

Art. 12. — The Commissioner shall report to the Storting each year on his activities. The report shall be printed and published.

If serious omissions or errors come to the knowledge of the Commissioner, he may submit a special report to the Storting and the competent ministry.

Art. 13. — The Commissioner's salary and pension shall be determined by the Storting. The same shall apply to the remuneration of a deputy appointed in accordance with article 1, fourth paragraph.

The Commissioner may not hold any other office or public or private appointment without the consent of the Storting or its duly authorized representative.

Art. 14. — The staff of the Commissioner's office shall be appointed by the President of the Storting on the recommendation of the Commissioner. Their salaries shall be determined in the same manner as those of the staff of the Storting.

Art. 15. — (1) This Act shall enter into force on 1 October 1962. The first Commissioner appointed after that date shall hold office from 1 January 1963 to 1 January 1966.

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PAKISTAN

THE CONSTITUTION OF THE REPUBLIC OF PAKISTAN

Enacted on 1 March 1962[1]

PREAMBLE

Whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority exercisable by the people is a sacred trust:

And whereas the founder of Pakistan, Quaid-i-Azam Mohammed Ali Jinnah, expressing the will of the people, declared that Pakistan should be a democratic State based on Islamic principles of social justice:

. . .

And whereas it is the will of the people of Pakistan that —

(*a*) The State should exercise its powers and authority through representatives chosen by the people;

(*b*) The principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, should be fully observed in Pakistan;

(*c*) The Muslims of Pakistan should be enabled, individually and collectively, to order their lives in accordance with the teachings and requirements of Islam;

(*d*) The legitimate interests of the minorities in Pakistan (including their religious and cultural interest) should be adequately safeguarded;

(*e*) The fundamental human rights (including the rights of equality before law, of freedom of thought, expression, belief, faith and association, and of social, economic and political justice) should, consistently with the security of the State, public interest and the requirements of morality, be preserved; and

(*f*) The independence of the judicature should be ensured:

. . .

PART I

The Republic of Pakistan

. . .

2. (1) To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular —

(*a*) No action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(*b*) No person shall be prevented from, or be hindered in, doing that which is not prohibited by law; and

(*c*) No person shall be compelled to do that which the law does not require him to do.

3. Loyalty to the Republic is the basic duty of every citizen.

4. Obedience to the law is the basic obligation of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

PART II

Principles of law-making and of policy

Chapter 1

PRINCIPLES OF LAW-MAKING

5. The Principles set out in this Chapter shall be known as the Principles of Law-making and it is the responsibility of each legislature to ensure that a proposed law is not made by it if the proposed law disregards, violates or is otherwise not in accordance with those Principles.

6. (1) The responsibility of deciding whether a proposed law does or does not disregard or violate, or is or is not otherwise in accordance with, the Principles of Law-making is that of the legislature concerned, but the National Assembly, a Provincial Assembly, the President or the Governor of a Province may refer to the Advisory Council of Islamic Ideology for advice any question that arises as to whether a proposed law disregards or violates, or is otherwise not in accordance with, those Principles.

(2) The validity of a law shall not be called in question on the ground that the law disregards, violates or is otherwise not in accordance with the Principles of Law-making.

PRINCIPLES OF LAW-MAKING

1. — *Islam*

No law should be repugnant to Islam.

2. — *Equality of Citizens*

1. All citizens should be equal before the law, be entitled to equal protection of the law and be treated alike in all respects.

2. This Principle may be departed from where —

(*a*) In the interest of equality itself, it is necessary to compensate for existing inequalities, whether natural, social, economic or of any othe kind;

[1] Text published by the Manager of Publications, Karachi, and printed by the Manager, Government of Pakistan Press, Karachi, 1962.

(*b*) In the interest of the proper discharge of public functions, it is necessary —

(i) To give to persons performing public functions powers, protections or facilities that are not given to other persons; or

(ii) To impose on persons performing public functions obligations or disciplinary controls that are not imposed on other persons; or

(*c*) It is necessary in the interest of the security of Pakistan or otherwise in the interest of the State to depart from this Principle,

but, where this Principle is departed from, it should be ensured that no citizen gets an undue preference over another citizen and no citizen is placed under a disability, liability or obligation that does not apply to other citizens of the same category.

3. This Principle shall not be construed as preventing a legislature from making laws different from laws made by any other legislature.

3. — *Freedom of Expression*

1. No law should impose any restriction on the freedom of a citizen to give expression to his thoughts.

2. This Principle may be departed from where it is necessary so to do —

(*a*) In the interest of the security of Pakistan;

(*b*) For the purpose of ensuring friendly relations with foreign States;

(*c*) For the purpose of ensuring the proper administration of justice;

(*d*) In the interest of public order;

(*e*) For the purpose of preventing the commission of offences;

(*f*) In the interest of decency or morality;

(*g*) For the purpose of granting privilege, in proper cases, to particular proceedings; or

(*h*) For the purpose of protecting persons in relation to their reputation.

4. — *Freedom of Association*

1. No law should impose any restriction on the freedom of citizens to assemble peacefully and without arms, or to form associations or unions.

2. This Principle may be departed from where it is necessary so to do —

(*a*) In the interest of the security of Pakistan;

(*b*) In the interest of public order;

(*c*) For the purpose of preventing the commission of offences;

(*d*) In the interest of decency or morality; or

(*e*) For the purpose of protecting persons in relation to their health or property.

5. — *Freedom of Movement and Right to Acquire Property*

1. No law should impose any restriction —

(*a*) On the freedom of a citizen to move throughout Pakistan or to reside or settle in any part of Pakistan; or

(*b*) On the freedom of a citizen to acquire, hold or dispose of property in any part of Pakistan.

2. This Principle may be departed from where it is necessary so to do in the public interest.

6. — *Freedom to Follow Vocation*

1. No law should impose any restriction on the freedom of a citizen to engage in any profession, trade business, occupation or employment, or otherwise to follow the vocation of his choice.

2. This Principle may be departed from where it is necessary so to do —

(*a*) In the interest of the security of Pakistan;

(*b*) In the interest of decency or morality;

(*c*) For the purpose of regulating, in the public interest, any profession or trade by a licensing system;

(*d*) For the purpose of ensuring, in the public interest, that, where a profession or trade requires special qualifications or skill, only persons possessing those qualifications or that skill engage in the profession or trade;

(*e*) For the purpose of ensuring, in the public interest, that a trade, business, industry or service may be carried on by or on behalf of the State or an organ of the State to the exclusion, in whole or in part, of other persons; or

(*f*) For the purpose of ensuring, in the public interest, the development of Pakistan and of its resources and industries.

7. — *Freedom of Religion*

No law should —

(*a*) Prevent the members of a religious community or denomination from professing, practising or propagating, or from providing instruction in, their religion, or from conducting institutions for the purposes of or in connection with their religion;

(*b*) Require any person to receive religious instruction, or to attend a religious ceremony or religious worship, relating to a religion other than his own;

(*c*) Impose on any person a tax the proceeds of which are to be applied for the purposes of a religion other than his own;

(*d*) Discriminate between religious institutions in the granting of exemptions or concessions in relation to any tax; or

(*e*) Authorize the expenditure of public moneys for the benefit of a particular religious community or denomination except moneys raised for that purpose.

8. — *Safeguards in Relation to Arrest and Detention*

1. A law authorizing the arrest or detention of persons should ensure that a person arrested or detained under the law —

(*a*) Is informed of the grounds of his arrest or detention at the time he is arrested or detained or as soon thereafter as is practicable;

(*b*) Is taken before the nearest Magistrate within

a period of twenty-four hours after he is arrested or detained, excluding the time necessary to convey him to the Magistrate;

(*c*) Is released from custody at the expiration of that period unless further detention is authorized by a Magistrate; and

(*d*) Is at liberty to consult, and to be represented and defended by, a legal practitioner of his choice.

2. This Principle does not apply to a law authorizing the arrest or detention of enemy aliens or providing for preventive detention, but a law providing for preventive detention —

(*a*) Should be made only in the interest of the security of Pakistan or of public safety;

(*b*) Should ensure that (except where the President or the Governor of a Province, in the interest of the security of Pakistan, directs otherwise) a person detained under the law is informed of the grounds of his detention at the time he is detained or as soon thereafter as is practicable; and

(*c*) Should ensure that a person is not detained under the law for a period longer than three months without the authority of a Board consisting of —

(i) Where the law is a Central Law — a Judge of the Supreme Court, who shall be nominated by the Chief Justice of that Court, and another senior officer in the service of Pakistan, who shall be nominated by the President; or

(ii) Where the law is a Provincial Law — a Judge of the High Court of the Province concerned, who shall be nominated by the Chief Justice of that Court, and another senior officer in the service of Pakistan, who shall be nominated by the Governor of that Province.

9. — *Protection against Retrospective Punishment*

No law should authorize —

(*a*) The punishment of a person for an act or omission that was not punishable by law at the time of the act or omission; or

(*b*) The punishment of a person for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.

10. — *Regulation of Compulsory Acquisition of Property*

1. No law should authorize the compulsory acquisition, or the compulsory taking possession, of property except for a public purpose.

2. A law that authorizes the compulsory acquisition, or the compulsory taking possession, of property should provide for the payment of compensation for the property, and either fix the amount of the compensation or specify the principles on which and the manner in which, the compensation is to be determined.

3. These Principles may be departed from —

(*a*) For the purpose of permitting the destruction, the acquisition or the taking possession of property in order to prevent or reduce danger to life, health or property;

(*b*) For the purpose of ensuring the proper management, for a limited period, of any property for the benefit of its owner; or

(*c*) In relation to property which is or is deemed to be evacuee property under any law.

4. For the purpose of these Principles, "public purpose" includes the purpose of acquiring, in the public interest, any industrial, commercial or other undertaking which is of benefit to the public, any interest in such an undertaking or any land for use in connection with such an undertaking.

11. — *Protection against Forced Labour*

1. No law should permit forced labour in any form.

2. This Principle may be departed from in relation to —

(*a*) The punishment of persons for offences against the law; and

(*b*) The compulsory service of persons for public purposes or otherwise in the public interest (whether by way of conscription or in any other way).

12. — *Public Educational Institutions*

1. No law should, on the ground of race, religion, caste or place of birth, deprive any citizen of the right to attend any educational institution that is receiving aid from public revenues.

2. This Principle may be departed from for the purpose of ensuring that a class of citizens that is educationally backward shares in available educational facilities.

13. — *Access to Public Places*

No law should deny to any person access to a public place (other than a place intended solely for religious purposes) on the ground of race, religion, caste or place of birth.

14. — *Protection of Languages, Scripts and Cultures*

No law should prevent any section of the community from having a distinct language, script or culture of its own.

15. — *Protection against Slavery*

No law should permit or in any way facilitate the introduction into Pakistan of slavery in any form.

16. — *Practice of Untouchability Forbidden*

No law should permit or in any way facilitate the introduction into Pakistan of the practice of untouchability in any form.

Chapter 2

PRINCIPLES OF POLICY

7. (1) The Principles set out in this Chapter shall be known as the Principles of Policy and it is the responsibility of each organ and authority of the State, and of each person performing functions on behalf of an organ or authority of the State, to act in accordance with those Principles in so far as they relate to the functions of the organ or authority.

(2) In so far as the observance of any particular Principle of Policy may be dependent upon resources being available for the purpose, the Principle shall be regarded as being subject to the availability of resources.

8. (1) The responsibility of deciding whether any action of an organ or authority of the State, or of a person performing functions on behalf of an organ or authority of the State, is in accordance with the Principles of Policy is that of the organ or authority of the State, or of the person, concerned.

(2) The validity of an action or of a law shall not be called in question on the ground that it is not in accordance with the Principles of Policy, and no action shall lie against the State, any organ or authority of the State or any person on such a ground.

PRINCIPLES OF POLICY

1. — *Islamic Way of Life*

1. The Muslims of Pakistan should be enabled, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam, and should be provided with facilities whereby they may be enabled to understand the meaning of life according to those principles and concepts.

2. The teaching of the Holy Quran and Islamiat to the Muslims of Pakistan should be compulsory.

3. Unity and the observance of Islamic moral standards should be promoted amongst the Muslims of Pakistan.

4. The proper organization of zakat, wakfs and mosques should be ensured.

2. — *National Solidarity*

Parochial, racial, tribal, sectarian and provincial prejudices amongst the citizens should be discouraged.

3. — *Fair Treatment to Minorities*

The legitimate rights and interests of the minorities should be safeguarded, and the members of minorities should be given due opportunity to enter the service of Pakistan.

4. — *Promotion of Interests of Backward Peoples*

Special care should be taken to promote the educational and economic interests of people of backward classes or in backward areas.

5. — *Advancement of Under-privileged Castes, etc.*

Steps should be taken to bring on terms of equality with other persons the members of under-privileged castes, races, tribes and groups and, to this end, the under-privileged castes, races, tribes and groups within a Province should be identified by the Government of the Province and entered in a schedule of under-privileged classes.

6. — *Opportunities to Participate in National Life, etc.*

The people of different areas and classes, through education, training, industrial development and other methods, should be enabled to participate fully in all forms of national activities, including employment in the service of Pakistan.

7. — *Education*

Illiteracy should be eliminated, and free and compulsory primary education should be provided for all, as soon as is practicable.

8. — *Humane Conditions of Work*

Just and humane conditions of work should be provided and children and women should not be employed in vocations unsuited to their age and sex, and maternity benefits should be provided for women in employment.

9. — *Well-being of the People*

The well-being of the people, irrespective of caste, creed or race, should be secured —

(*a*) By raising the standard of living of the common man;

(*b*) By preventing the undue concentration of wealth and means of production and distribution in the hands of a few, to the detriment of the interest of the common man; and

(*c*) By ensuring an equitable adjustment of rights between employers and employees and between landlords and tenants.

10. — *Opportunity to gain Adequate Livelihood*

All citizens should have the opportunity to work and earn an adequate livelihood, and also to enjoy reasonable rest and leisure.

11. — *Social Security*

All persons in the service of Pakistan or otherwise employed should be provided with social security by means of compulsory social insurance or otherwise.

12. — *Provision of Basic Necessities*

The basic necessities of life, such as food, clothing, housing, education and medical treatment, should be provided for citizens who, irrespective of caste, creed or race, are permanently or temporarily unable to earn their livelihood on account of infirmity, disability, sickness or unemployment.

13. — *Administrative Offices to be provided for Public Convenience*

Administrative offices and other services should, so far as is practicable, be provided in places where they will best meet the convenience and requirements of the public.

14. — *Entry into Service of Pakistan not to be Denied on Grounds of Race, etc.*

1. No citizen should be denied entry into the service of Pakistan on the grounds of race, religion, caste, sex or place of residence or birth.

2. This Principle may be departed from where, in the public interest —

(*a*) It is desirable that —

(i) A person who is to perform functions in relation to a particular area should be a resident of that area; and

(ii) A person who is to perform functions of a particular kind should be of a particular sex; or

(*b*) It is necessary so to do for the purpose of ensuring that, in relation to the Central Government, persons from all parts of Pakistan, and, in relation to a Provincial Government, persons from all parts of the Province concerned, have an opportunity of entering the service of Pakistan.

15. — *Reduction of Disparity in Remuneration for Public Services*

Disparity in the remuneration of persons in the various classes of the service of Pakistan should, within reasonable and practicable limits, be reduced.

16. — *Parity between the Provinces in Central Government*

Parity between the Provinces in all spheres of the Central Government should, as nearly as is practicable, be achieved.

17. — *Service in the Defence Services*

Persons from all parts of Pakistan should be enabled to serve in the Defence Services of Pakistan.

18. — *Elimination of Riba*

Riba (Usury) should be eliminated.

19. — *Prostitution, Gambling and Drug-taking to be discouraged*

Prostitution, gambling and the taking of injurious drugs should be discouraged.

20. — *Consumption of Alcohol to be discouraged*

The consumption of alcoholic liquor (except for medicinal purposes and, in the case of non-Muslims, for religious purposes) should be discouraged.

21. — *Strengthening Bonds with the Muslim World, and promoting International Peace*

The bonds of unity amongst Muslim countries should be preserved and strengthened, international peace and security should be promoted, goodwill and friendly relations amongst all nations should be fostered, and the settlement of international disputes by peaceful means should be encouraged.

PART III
The centre

Chapter 1
THE PRESIDENT

9. There shall be a President of Pakistan, who shall be elected in accordance with this Constitution and the law.

10. A person shall not be elected as President unless —

(*a*) He is a Muslim;

(*b*) He has attained the age of thirty-five years; and

(*c*) He is qualified to be elected as a member of the National Assembly.

. . .

Chapter 2
THE CENTRAL LEGISLATURE

. . .

20. (1) There shall be one hundred and fifty-six members of the National Assembly, one half of whom shall be elected in accordance with this Constitution and the law from the Province of East Pakistan and the other half of whom shall be so elected from the Province of West Pakistan.

(2) Three of the seats of members for each Province shall be reserved exclusively for women, but this clause shall not be construed as making a woman ineligible for election to any other seat in the National Assembly.

. . .

26. No Bill, or amendment of a Bill, providing for or relating to preventive detention shall be introduced or moved in the National Assembly without the previous consent of the President.

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Chapter 4
FINANCIAL PROCEDURE OF THE CENTRE

. . .

48. No tax shall be levied for the purposes of the Central Government except by or under the authority of an Act of the Central Legislature.

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PART IV
The provinces

. . .

Chapter 2
THE PROVINCIAL LEGISLATURES

70. There shall be a Provincial Legislature of each Province, which shall consist of the Governor of the Province and one House, to be known as the Assembly of the Province.

71. (1) There shall be one hundred and fifty-five members of the Assembly of each Province, who shall be elected in accordance with this Constitution and the law.

(2) Five of the seats of members of the Assembly of each Province shall be reserved exclusively for women, but this clause shall not be construed as making a woman ineligible for election to any other seat in the Assembly.

. . .

76. No Bill, or amendment of a Bill, providing for or relating to preventive detention shall be introduced or moved in the Assembly of a Province without the previous consent of the Governor of the Province.

. . .

PART V

Provisions applicable generally to the centre and the provinces

Chapter 1

THE CENTRAL AND PROVINCIAL LEGISLATURES

103. (1) Except as provided in this Article, a person is qualified to be elected as, and to be, a member of an Assembly if —

(*a*) His name appears —

(i) In the case of the National Assembly — on the electoral roll for any electoral unit; or

(ii) In the case of the Assembly of a Province — on the electoral roll for an electoral unit in the Province; and

(*b*) He is not less than twenty-five years of age.

(2) A person is disqualified from being elected as, and from being, a member of an Assembly if —

(*a*) He holds an office of profit in the service of Pakistan;

(*b*) He is an undischarged insolvent;

(*c*) He has, within the previous period of five years, been convicted of an offence by any Court and sentenced to transportation or to imprisonment for not less than two years or been sentenced to death and that sentence has been commuted to transportation or imprisonment;

(*d*) He has ceased to be a citizen or has affirmed allegiance to a foreign State; or

(*e*) He is otherwise disqualified from being a member of that Assembly by this Constitution or by or under any law.

(3) Notwithstanding paragraph (*a*) of clause (2) of this Article, the President, a Governor or a Minister is qualified to be elected as a member of an Assembly, but if he is so elected, he is not qualified to be a member of the Assembly until he ceases to hold office as President, Governor or Minister.

. . .

PART VII

Elections

. . .

Chapter 2

THE ELECTORAL COLLEGE AND THE CONSTITUENCIES

. . .

157. Except as provided by law, any citizen —

(*a*) Who is not less than twenty-one years of age;

(*b*) Who is not of unsound mind; and

(*c*) Who is a resident of, or who is deemed by law to be a resident of, an electoral unit,

shall be entitled to be enrolled on the electoral roll for that electoral unit.

. . .

169. (1) After a general election of members of a Provincial Assembly, the persons elected as members shall, before the first meeting of the Assembly, elect five members to the seats in the Assembly reserved exclusively for women, so that there is one woman member for each zone referred to in clause (1) of Article 162.

(2) Subject to clause (3) of this Article, after a general election of the members of the National Assembly, each Provincial Assembly shall, before the first meeting of the National Assembly, elect three members to the seats in the National Assembly reserved exclusively for women, so that there is one woman member for each zone referred to in clause (2) of Article 162.

(3) Where a general election of the members of the National Assembly is held at or about the same time as a general election of the members of a Provincial Assembly, the persons elected as members of the Provincial Assembly may, before the first meeting of that Assembly, conduct the election referred to in clause (2) of this Article.

. . .

172. All elections and referendums under this Part shall be decided by secret ballot.

173. Except as permitted by Act of the Central Legislature, any person who, in connection with an election required to be held under this Constitution, holds out himself or any other person as being a member of, or as having the support of, a political party or any similar organisation shall be punishable in such manner as may be prescribed by Act of the Central Legislature, but provision shall be made by law for ensuring —

(*a*) That each candidate at an election has the opportunity, and so far as is practicable, equal opportunity with other candidates, of addressing the persons who are entitled to vote at the election; and

(*b*) That the persons entitled to vote at the election have the opportunity of questioning each candidate, face to face.

PART VIII

The services of Pakistan

Chapter 1

TERMS AND CONDITIONS OF SERVICE, ETC.

. . .

175. (1) A person who is not a citizen of Pakistan shall not, except as provided in clause (2) of this Article, be eligible to hold any office in the service of Pakistan.

(2) A person who, immediately before the commencing day, was in the service of Pakistan shall not be disqualified from continuing in the service of Pakistan by reason only that he is not a citizen of Pakistan.

. . .

PART X

Islamic institutions

Chapter 1

ADVISORY COUNCIL OF ISLAMIC IDEOLOGY

199. There shall be an Advisory Council of Islamic Ideology.

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204. (1) The functions of the Council shall be —

(*a*) To make recommendations to the Central Government and the Provincial Governments as to means of enabling and encouraging the Muslims of Pakistan to order their lives in all respects in accordance with the principles and concepts of Islam; and

(*b*) To advise the National Assembly, a Provincial Assembly, the President or a Governor on any question referred to the Council under Article 6, that is to say, a question as to whether a proposed law disregards or violates, or is otherwise not in accordance with, the Principles of Law-making.

. . .

PART XII
Miscellaneous

Chapter 1
GENERAL

. . .

215. (1) The national languages of Pakistan are Bengali and Urdu, but this Article shall not be construed as preventing the use of any other language and, in particular, the English language may be used for official and other purposes until arrangements for its replacement are made.

(2) In the year One thousand nine hundred and seventy-two, the President shall constitute a Commission to examine and report on the question of the replacement of the English language for official purposes.

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217. Any law which permits a person to own beneficially or possess beneficially an area of land greater than that which, immediately before the enactment of this Constitution, he could lawfully have owned beneficially or possessed beneficially shall be invalid.

. . .

Chapter 2
COMMENCEMENT OF CONSTITUTION AND REPEAL AND CONTINUANCE OF LAWS

224. (1) Subject to clause (2) of this Article, this Constitution shall come into force on the day on which the first meeting of the National Assembly is held.

(2) This Constitution shall, to the extent necessary —

(*a*) To enable the first general elections of members of the National Assembly and of each Provincial Assembly to be conducted and for the first meeting of the National Assembly to be held; and

(*b*) To enable any other thing to be done which, for the purposes of this Constitution, it is necessary to do before the commencing day,

come into force upon the enactment of this Constitution.

(3) At any time before the commencing day or before the expiration of three months after the commencing day, the President may, for the purpose of removing any difficulties that may arise in bringing this Constitution, or any provision of this Constitution, into operation [whether in respect of the elections referred to in clause (2) of this Article or in any other respect] direct, by Order, that the provisions of this Constitution shall, during such period as is specified in the Order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient.

. . .

Chapter 3
TRANSITIONAL AND TEMPORARY PROVISIONS

228. The Chief Election Commissioner shall, as soon as is practicable after the enactment of this Constitution, take such steps as are necessary for the holding of the first elections of members to the National Assembly and each Provincial Assembly.

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THE POLITICAL PARTIES ACT, 1962

ACT NO. III OF 1962, OF 15 JULY 1962[1]

WHEREAS Article 173 of the Constitution provides that no person shall hold himself out at an election as a member of a political party unless permitted by Act of the Central Legislature;

AND WHEREAS it is expedient to provide for the formation of political parties and to permit persons to hold themselves out at elections as members of political parties;

. . .

2. *Definitions.* — In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Constitution" means the Constitution of the Republic of Pakistan enacted on the first day of March, 1962;

(*b*) "Foreign aided party" means a political party which —

(i) Has been formed or organised at the instance of any Government or political party of a foreign country; or

(ii) Is affiliated to or associated with any Government or political party of a foreign country; or

(iii) Receives any aid, financial or otherwise, from any Government or political party of a foreign country, or a substantial portion of its funds from foreign nationals;

[1] Text published in *The Gazette of Pakistan*, Extraordinary, of 16 July 1962.

(*c*) "Political party" means a body of individuals or an association of persons setting up an organisational structure or collecting funds or owning property, with the object of propagating political opinions or indulging in any other political activity.

3. *Formation of certain political parties prohibited.* — (1) No political party shall be formed with the object of propagating any opinion, or acting in a manner, prejudicial to the Islamic ideology, or the integrity or security of Pakistan.

(2) No person shall form, organise, set up or convene a foreign aided party or in any way be associated with any such party.

4. *Lawful political activities.* — Subject to the provisions of section 3, it shall be lawful —

(1) For any body of individuals or association of persons to form, organise or set up a political party;

(2) For any person to be a member or office bearer of, or be otherwise associated with, a political party; or

(3) For any person, for the purpose of an election to be held under the Constitution, to hold himself out or any other person as a member, or to have the support, of a political party, the formation, organisation or setting up of which is not prohibited by this Act.

5. *Disqualifications for being a member of a political party.* — (1) No political party shall have as its member or office bearer any person who is disqualified under sub-section (2).

(2) A person shall be disqualified for being a member or office bearer of a political party —

(*a*) If he has been convicted of any offence and sentenced by an ordinary court of law to transportation or to imprisonment for not less than two years, unless a period of five years has elapsed since his release;

(*b*) If he has been disqualified from holding public office under Article 121 or Article 122 of the Constitution, unless the period of his disqualification has expired;

(*c*) If he has been dismissed from the service of Pakistan, unless a period of five years has elapsed from the date of his dismissal; or

(*d*) If he is, for the time being, disqualified for membership of an elective body under clause (2) of Article 7 or clause (2) of Article 8 of the Elective Bodies (Disqualification) Order, 1959 (P. O. No. 13 of 1959).

6. *Reference to Supreme Court regarding certain parties.* — (1) Where the Central Government is of the opinion that any political party has been formed or is operating in contravention of section 3, it shall refer the matter to the Supreme Court, and the decision of the Supreme Court on such question, given after hearing the person or persons concerned, shall be final.

(2) Where the Supreme Court, upon a reference under sub-section (1), has given a decision that a political party has been formed or is operating in contravention of section 3, the decision shall be published in the official Gazette, and upon such publication, the political party concerned shall stand dissolved and all its properties and funds shall be forfeited to the Central Government.

7. *Penalty.* — (1) If any person who is disqualified under sub-section (2) of section 5 becomes a member or office bearer, or holds himself out as a member or office bearer, of a political party, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(2) Any person who, after the dissolution of a political party under sub-section (2) of section 6, holds himself out as a member or office bearer of that party, or acts for, or otherwise associates himself with, that party, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

8. *Certain disqualifications for being a member of the National Assembly or a Provincial Assembly.* — (1) A person who has been an office bearer of the Central or a Provincial Committee of a political party dissolved under sub-section (2) of section 6 or who has been convicted under section 7 shall be disqualified from being elected as a member of the National Assembly or a Provincial Assembly for a period of five years from the date of such dissolution or conviction, as the case may be.

(2) If a person, having been elected to the National or a Provincial Assembly as a candidate or nominee of a political party, withdraws himself from it, he shall, from the date of such withdrawal, be disqualified from being a member of the Assembly for the unexpired period of his term as such member unless he has been re-elected at a bye-election caused by his disqualification.

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THE COPYRIGHT ORDINANCE

ORDINANCE NO. XXXIV OF 31 MAY 1962 AMENDING AND CONSOLIDATING THE LAW RELATING TO COPYRIGHT[1]

3. *Meaning of copyright.* — (1) For the purposes of this Ordinance, "copyright" means the exclusive right, by virtue of, and subject to the provisions of, this Ordinance, —

(*a*) In the case of a literary, dramatic or musical work, to do and authorize the doing of any of the following acts, namely:

(i) To reproduce the work in any material form;

(ii) To publish the work;

[1] Text published in *The Gazette of Pakistan*, Extraordinary, of 2 June 1962.

(iii) To perform the work in public;

(iv) To produce, reproduce, perform or publish any translation of the work;

(v) To use the work in a cinematographic work or make a record in respect of the work;

(vi) To communicate the work by radio-diffusion or to communicate to the public by a loud-speaker or any other similar instrument the radio-diffusion of the work;

(vii) To make any adaptation of the work;

(viii) To do in relation to a translation or an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(*b*) in the case of an artistic work, to do or authorize the doing of any of the following acts, namely:

(i) To reproduce the work in any material form;

(ii) To publish the work;

(iii) To use the work in a cinematographic work;

(iv) To show the work in television;

(v) To make any adaptation of the work;

(vi) To do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(*c*) In the case of a cinematographic work, to do or authorize the doing of any of the following acts, namely:

(i) To make a copy of the work;

(ii) To cause the work in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public;

(iii) To make any record embodying the recording in any part of the sound track associated with the work by utilising such sound track;

(iv) To communicate the work by radio-diffusion;

(*d*) In the case of a record, to do or authorize the doing of any of the following acts by utilising the record, namely:

(i) To make any other record embodying the same recording;

(ii) To use the record in the sound track of a cinematographic work;

(iii) To cause the recording embodied in the record to be heard in public;

(iv) To communicate the recording embodied in the record by radio-diffusion.

(2) Any reference in sub-section (1) to the doing of any act in relation to a work or a translation or an adaptation thereof shall include a reference to the doing of that act in relation to a part thereof.

4. *Meaning of publication.* — (1) For the purposes of this Ordinance, "publication" means, —

(*a*) In the case of a literary, dramatic, musical or artistic work, the issue of copies of the work to the public in sufficient quantities;

(*b*) In the case of a cinematographic work, the sale or hire or offer for sale or hire of the work or copies thereof to the public;

(*c*) In the case of a record, the issue of records to the public in sufficient quantities;

but does not, except as otherwise expressly provided in this Ordinance, include, —

(i) In the case of a literary, dramatic or musical work, the issue of any records recording such work;

(ii) In the case of a work of sculpture or an architectural work of art, the issue of photographs and engravings of such work.

(2) If any question arises under sub-section (1) whether copies of any literary, dramatic, musical or artistic work, or records issued to the public are sufficient in quantities, it shall be referred to the Board whose decision thereon shall be final.

. . .

Chapter II

COPYRIGHT, OWNERSHIP OF COPYRIGHT AND THE RIGHTS OF THE OWNER

9. *No copyright except as provided in this Ordinance.* — No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Ordinance, or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

10. *Works in which copyright subsists.* — (1) Subject to the provisions of this section and to the other provisions of this Ordinance, copyright shall subsist throughout Pakistan in the following classes of works, that is to say, —

(*a*) Original literary, dramatic, musical and artistic works;

(*b*) Cinematographic works; and

(*c*) Records.

(2) Copyright shall not subsist in any work specified in subsection (1), other than a work to which the provisions of section 53 or section 54 apply, unless, —

(i) In the case of a published work, the work is first published in Pakistan, or where the work is first published outside Pakistan, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of Pakistan or domiciled in Pakistan;

(ii) In the case of an unpublished work other than an architectural work of art, the author is at the date of the making of the work a citizen of Pakistan or domiciled in Pakistan; and

(iii) In the case of an architectural work of art, the work is located in Pakistan.

(3) Copyright shall not subsist, —

(*a*) In any cinematographic work, if a substantial part of the work is an infringement of the copyright in any other work;

(*b*) In any record made in respect of a literary, dramatic or musical work, if, in making the record, copyright in such work has been infringed.

(4) The copyright or the lack of copyright in a cimematographic work or a record shall not affect the separate copyright in any work in respect of which or a substantial part of which, the work or, as the case may be, the record is made.

(5) In the case of an architectural work of art, copyright shall subsist only in the artistic character and design and shall not extend to the processes or methods of construction.

11. *Work of joint authors.* — Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Ordinance, the work shall be treated for the purposes of this Ordinance as if the other author or authors had been the sole author or authors thereof:

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions.

12. *Provision as to designs registrable under Act II of 1911.* — (1) Copyright shall not subsist under this Ordinance in any design which is registered under the Patents and Designs Act, 1911 (II of 1911).

(2) Copyright in any design which is capable of being registered under the Patents and Designs Act, 1911 (II of 1911), but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his licence, by any other person.

13. *First owner of copyright.* — Subject to the provisions of this Ordinance, the author of a work shall be the first owner of the copyright therein:

Provided that, —

(*a*) In the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

(*b*) subject to the provisions of clause (*a*), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematographic work made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(*c*) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (*a*) or clause (*b*) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(*d*) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(*e*) in the case of a work to which the provisions of section 53 apply, the international organisation concerned shall be the first owner of the copyright therein.

. . .

Chapter III

TERM OF COPYRIGHT

18. *Term of copyright in published literary, dramatic, musical and artistic works.* — Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the life time of the author until fifty years from the beginning of the calendar year next following the year in which the author dies.

Explanation. — In this section, the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.

. . .

Chapter IV

RIGHTS OF BROADCASTING ORGANIZATIONS

24. *Rights of broadcasting organizations.* — (1) Broadcasting organizations shall enjoy the right to authorize —

(*a*) The rebroadcasting of their broadcasts;

(*b*) The fixation of their broadcasts; and

(*c*) The copying of fixations made of their broadcasts.

(2) This right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast took place.

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Chapter XI

INTERNATIONAL COPYRIGHT

. . .

55. *Power to restrict rights in works of foreign authors first published in Pakistan.* — If it appears to the Central Government that a foreign country does not give, or has not undertaken to give, adequate protection to the works of Pakistani authors, the Central Government may, by order published in the official Gazette, direct that such of the provisions of this Ordinance as confer copyright on works first published in Pakistan shall not apply to works, published after the date specified in the order, the authors whereof are subjects or citizens of such foreign country and are not domiciled in Pakistan, and thereupon those provisions shall not apply to such works.

Chapter XII

INFRINGEMENT OF COPYRIGHT

56. *When copyright infringed.* — Copyright in a work shall be deemed to be infringed —

(*a*) When any person, without the consent of the owner of the copyright or without a licence granted by such owner or the Registrar under this Ordinance or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Ordinance, —

(i) Does anything, the exclusive right to do which is by this Ordinance conferred upon the owner of the copyright; or

(ii) Permits for profit any place to be used for the performance of the work in public where such performance constitutes an infringement of the copyright in the work unless he was not aware, and had no reasonable ground for suspecting, that such performance would be an infringement of copyright; or

(*b*) When any person —

(i) Makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) Distributes either for the purpose of trade to such an extent as to affect prejudicially the owner of the copyright, or

(iii) By way of trade exhibits in public, or

(iv) Imports into Pakistan,

any infringing copies of the work.

Explanation. — For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematographic work shall be deemed to be an "infringing copy".

. . .

Chapter XIII

CIVIL REMEDIES

. . .

60. *Civil remedies for infringement of copyright.* — (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Ordinance, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right:

Provided that if the defendant proves that at the date of the infringement he was not aware that copyright subsisted in the work and he had reasonable ground for believing that copyright did not subsist in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher, as the case may be, appears on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court.

. . .

Chapter XIV

OFFENCES AND PENALTIES

66. *Offences of infringement of copyright or other rights conferred by this Ordinance.* — Any person who knowingly infringes or abets the infringement of —

(*a*) The copyright in a work, or

(*b*) Any other right conferred by this Ordinance,

shall be punishable with fine which may extend to five thousand rupees, or with imprisonment which may extend to two years, or with both.

Explanation. — Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work, shall not be an offence under this section.

. . .

PARAGUAY

ACT No. 729 OF 31 AUGUST 1961 PROMULGATING THE LABOUR CODE

SUMMARY

The text of this Act was published in the *Gaceta Oficial* No. 94, of 31 August 1961. The Code entered into force on 1 February 1962.

Article 281 of the Code reads as follows:

"The law recognises the right of every worker and employer, without distinction as to sex or nationality, to join together with other workers or employers, without requiring prior authorisation, to form associations for the study, defence, promotion and protection of their occupational interests and for the social, economic, cultural and moral progress of the members of such associations."

Other provisions of the Code deal with contracts of employment, apprenticeship, employment of women and young persons, home work, domestic service, agricultural work, hours of work, leave with pay, wages, family allowances, health and safety, welfare facilities, the establishment of trade unions, their rights and obligations, collective agreements and strikes and lockouts.

The text of the Code in Spanish and translations into English and French have been published by the International Labour Office as *Legislative Series*, 1961 — Par. 1.

PERU

LEGISLATIVE DECREE No. 14238, LAYING DOWN PRINCIPLES FOR THE AGRARIAN REFORM

of 16 November 1962[1]

NOTE

The Agrarian Reform, as is stated in article 1 of this legislative decree, "should tend to the economic and social development of the Nation. Agrarian Reform legislation should be inspired by the principle of the common good and by that of land ownership being enjoyed in harmony with the interests of society."

The purpose of Agrarian Reform legislation, as enunciated in article 2, includes the following: "(*a*) Establishing real agrarian social justice; (*b*) providing the rural class progressively with land and means of production; (*c*) raising the standard of living of the rural population; (*d*) raising the national nutritional standards."

Article 14 of the decree provides furthermore that: "Agricultural labour legislation shall establish the minimum wage for each region and shall provide for the accelerated extension of social security to the rural sector. Similarly, it shall guarantee the free exercise of union activities and shall regulate the obligations of employers in respect of housing for permanent and seasonal workers."

Provisions for execution of the Agrarian Reform are to be promulgated through acts and decrees issuing regulations thereunder.

The legislative decree appears in *El Peruano*, No. 6465, of 17 November 1962. Translations into English and French appear in *Food and Agricultural Legislation*, vol. XII, No. 2, of 1 December 1963, published by the Food and Agricultural Organization of the United Nations.

[1] The Government of Peru has indicated that this text has been replaced by the Agrarian Reform Act, No. 15037, of 21 May 1964. Details concerning this Act will appear in the *Yearbook* for 1964.

PHILIPPINES

NOTE[1]

The years 1961 and 1962, the first years of the country's five-year socio-economic programme, saw a marked increase in economic and social legislation directed towards the promotion of the people's economic and social rights.

On the economic side, the most important piece of legislation is Republic Act No. 3466, otherwise known as the Emergency Employment Act of 1962. It is a comprehensive employment law designed to employ the greatest number of the country's manpower and thereby solve the unemployment problem, develop the income of the people and stimulate economic activity in general. Another law, Republic Act No. 3452, aims to raise the standard of living of the people by adopting a programme to stabilize the price of palay, rice and corn, (the Philippines' staple crops) to afford them a fair and just return for their labour and capital.[2]

Republic Act No. 3469 aims to promote the health and general welfare of the people through a provision of adequate housing projects. Specifically, it authorizes the construction of multi-storey building projects for the poor and homeless to alleviate the substandard living conditions of the masses.

[1] Note furnished by the Government of the Philippines.

[2] Republic Act No. 3452, published in *Official Gazette*, vol. 58, No. 42, of 15 October 1962, pages 6839–6842.

REPUBLIC ACT No. 3466

AN ACT TO PROVIDE MAXIMUM EMPLOYMENT IN PUBLIC ECONOMIC DEVELOPMENT PROJECTS, CREATING AN EMERGENCY EMPLOYMENT ADMINISTRATION, AND FOR OTHER PURPOSES

of 16 June 1962[1]

Sec. 1. — This Act shall be known as the Emergency Employment Act of 1962.

Sec. 2. — It is hereby declared to be the continuing policy and responsibility of the State to utilize every possible means to create maximum employment opportunities for all who are able, willing and seeking to work but cannot find employment, thus increasing mass purchasing power, developing income in rural areas, and stimulating economic activity in general.

It shall be part of the policy to de-mechanize construction and maintenance operations of the government as much as possible by utilizing man-power and draft-animal power instead of labour-saving machines, whenever permissible, if such a policy is not uneconomic.

Sec. 3. — There is hereby created the Emergency Employment Administration, hereafter called the Administration, under the Office of the President of the Philippines, which shall be responsible for planning out and helping to execute an emergency public employment programme designed to create maximum employment opportunities in the following government-financed projects: large-scale land clearance and establishment of agricultural estates; agricultural extension; promotion of cottage industries; conservation and reforestation of forest resources; public works projects which promote economic growth, such as power development projects, national and communal irrigation, river control and drainage: airports and ports construction and improvements; shore protection; construction and maintenance of highways and feeder roads connecting agricultural areas with market centres: Provided, That the planning and execution of the emergency employment programme shall give priority to projects authorized under the Public Works Appropriation Acts and other Acts of Congress and projects which will promote economic growth, which are already started but requiring additional funds for completion; . . . Provided, however, That at least sixty per cent of the annual available funds shall be spent for self-liquidating and revenue-producing projects: Provided, further, That in no case shall the expenditure for labour and tools exceed the certified engineer's estimate for such expense item: Provided, finally, That the Administration shall, in the planning, framing and execution of the projects mentioned in the law, act in consultation with the officials of the provinces, chartered cities and municipalities affected by these projects.

. . .

Sec. 8. — The Administration shall transmit to the President of the Philippines and to Congress an annual economic report setting forth: (1) the levels of employment, production and purchasing power generated by the projects undertaken by the Administration and such levels as may be needed to carry out the declared policy in Section two of this Act;

[1] Text published in *Official Gazette*, vol. 58, No. 43 of 22 October 1962.

(2) current and forseeable trends in the levels of employment, production and purchasing power; (3) a review of the economic situation affecting employment in the Philippines; (4) a progress report showing in detail the projects undertaken and the corresponding expenditure thereof; and (5) a programme for carrying out the policy together with such recommendations for legislation as it may deem necessary or desirable.

. . .

Sec. 10. — There is hereby appropriated, out of any funds in the national Treasury not otherwise appropriated, the sum of one hundred million pesos or so much thereof as may be necessary to carry out the purposes of this Act: Provided, That the Administration may, with the guarantee of the Republic of the Philippines, negotiate for long-term loans from foreign financial institutions, such as the Industrial Development Assistance (IDA) to finance preferential development projects:

. . .

Sec. 11. — This Act shall take effect upon its approval and shall be in force for a period of five years therefrom.

REPUBLIC ACT No. 3469

AN ACT AUTHORIZING THE CONSTRUCTION OF MULTI-STOREY TENEMENT BUILDING PROJECTS FOR THE POOR AND HOMELESS AND APPROPRIATING FUNDS THEREFOR

of 16 June 1962[1]

Sec. 1. — It is hereby declared to be the policy of the Government to alleviate the substandard living conditions of the masses. To this end, the Government shall provide, wherever practicable, tenement buildings for the poor and the homeless at nominal rental rates, consistently with the policy of avoiding concentration of population in densely inhabited areas.

The phrase "poor and homeless" shall include any family head whose gross income together with that of the spouse shall not exceed one thousand eight hundred pesos annually, and shall include any family head whose gross annual income together with that of the spouse exceeds such amount provided the excess shall not be more than the number of immediate dependents times one hundred twenty pesos.

Sec. 2. — The Department of Public Works and Communications is hereby authorized to plan, design and call for public bidding for the construction of the tenement buildings: Provided, That at least seventy-five per cent of the construction materials to be used in the multi-storey buildings must be of Philippine origin or locally produced or manufactured materials as far as practicable. Each apartment in such tenement buildings shall contain complete separate sanitary facilities and shall be so designed and constructed as to provide privacy and security to the family and adequate playground space for children as may be appropriate for the number of tenants therein; and the ground floor of such tenement buildings shall be built to be rented as stores to citizens of the Philippines.

Sec. 3. — After the completion of the tenement buildings, the Department of Public Works and Communications shall turn them over for purposes of maintenance, repair, improvement, expansion and administration to the People's Homesite and Housing Corporation which shall, in all cases, allocate by lottery the rooms of the tenement buildings.

Sec. 4. — A special committee is hereby created composed of the Auditor General, as chairman, and the Secretary of Public Works and Communications the Chairman of the People's Homesite and Housing Corporation, the Director of the National Planning Commission and the Social Welfare Administrator, as members, for the purpose of determining the proper sites, and the most equitable and minimum rental which prospective lessees should pay.

The special committee is authorized to promulgate, subject to the approval of the President of the Philippines, such guiding principles or sets of rules and regulations as are necessary to carry out the provisions of this Act in the determination of the prospective lessees of these tenements. One of the guiding factors shall be the elimination of slums from our cities and towns and priority should be given to slum dwellers whenever this would facilitate the elimination of said slums.

Sec. 5. — All accruals derived from rentals, consistent with section four hereof, shall constitute a revolving fund to be used exclusively for purposes of maintenance, repair, improvement, expansion, and administration incident to billing and collection, janitorial, security and other similar expenditures in the operation of the tenement building projects after their completion.

Sec. 6. — For carrying out the provisions of this Act, the amount of fifteen million pesos is hereby appropriated, out of the General Funds in the National Treasury not otherwise appropriated, and from the proceeds of the reparations from Japan: Provided, That the priority for cash reparations for war veterans, widows and orphans provided for in the Reparations Act, as amended, shall be respected and not more than five per cent of the total reparations can be used for this purpose.

Sec. 7. — This Act shall prevail over any Act or provisions thereof inconsistent herewith.

Sec. 8. — This Act shall take effect upon its approval.

[1] Text published in *Official Gazette*, vol. 58, No. 43, of 22 October 1962.

POLAND

PROTECTION OF HUMAN RIGHTS IN LEGISLATION AND JUDICIAL DECISIONS IN 1962[1]

I. LEGISLATION

1. *The Supreme Court Act of 15 February 1962 (Journal of Laws, 1962,* No. 11, text 54)

This Act defines the functions of the Supreme Court, laying down that it is the highest judicial organ which supervises the activity of general and special courts in matters of adjudication. In discharging those functions the Supreme Court decides whether remedial measures are to be granted against decisions which have not become valid, rendered at first instance by the voivodeship courts or by military courts, hears special reviews of final court decisions, lays down guidelines relating to the administration of justice and judicial practice, adopts decisions containing answers to legal questions and deals with other cases which are within its jurisdiction under the regulations of judicial procedure or provisions of specific laws.

2. *Act of 15 February 1962 changing the regulations of civil procedure (Journal of Laws, 1962,* No. 10, text 46)

The most important innovation in this Law is the inclusion of provisions regulating the recognition of foreign court decisions in a uniform way. Under the Act a system has been adopted by which the validity of decisions rendered by foreign courts in cases relating to rights of legal status are made dependent on the recognition of such decisions by Polish courts. Thus the principle has been established that only courts have the right to grant recognition to foreign court decisions, and not, as had been the case up to that time, each and any organ of authority in its own right.

Recognition of foreign court decisions in cases relating to rights of legal status is not conditional upon the existence of an international agreement but only upon actual reciprocity. This is a substantial improvement on the previous situation and considerably simplifies the settlement of matters within the family law as between Polish nationals and nationals of other States.

The Act provides that recognition of foreign court decisions is admissible where such decisions are legally valid, where the party in the case has not been deprived of the possibility of defence or — having no legal capacity to act in court — of proper representation, where there is no case of *res judicata* or *lis pendens*, where such decisions are not contrary to the basic principles of Polish law and where the law applied by the foreign court is not substantially different from Polish law.

As regards foreign court decisions in cases of property claims, the Act retained the condition of the existence of an international agreement for the execution of such decisions on Poland's territory, with the exception, however, of orders for the payment of maintenance in cases of family relations, and of agreements reached in court in respect of maintenance claims. Such orders and agreements are enforced also in the absence of an international agreement on condition of actual reciprocity. That exception of a decidedly humanitarian nature has created extensive possibilities for the implementation in Poland of the provisions of the New York Convention of 1956 on the Recovery Abroad of Maintenance, of which Poland is a signatory.

3. *A new Act on Polish Nationality of 15 February 1962 (Journal of Laws, 1962,* text 49)

In comparison with the Polish Nationality Act of 8 January 1951, previously in force, the new Act has introduced a simplified procedure as regards the acquisition and loss of Polish nationality by women:

(*a*) An alien woman who has contracted marriage with a Polish national may acquire Polish nationality if within 3 months from the date of marriage she makes a declaration to this effect in the office of internal affairs of the praesidium of a voivodeship people's council or — when residing abroad — in a Polish consular office, and receives a decision on the acceptance of such declaration (art. 10).

Also a woman who has lost Polish nationality by marriage to an alien, which subsequently ceased to exist or was annulled, may regain her Polish nationality if she makes a declaration to that effect and receives a decision on its acceptance (art. 11).

(*b*) The Act has also introduced a simplified procedure as regards the loss of Polish nationality by women who acquire foreign nationality by marriage to an alien and by women who have acquired Polish nationality by a marriage which subsequently has ceased to exist or has been annulled. In those cases loss of Polish nationality is effected by a declaration to that effect made before the office of internal affairs of the praesidium of a voivodeship people's council or, where applicable, before a Polish consular office, and the acceptance of such declarations by those offices (art. 14).

[1] Note furnished by the Government of Poland.

(*c*) To article 16 of the Act a provision has been added under which the Council of State may authorize the Minister of Foreign Affairs to grant permission to change Polish nationality to persons residing abroad. The Council of State may also give its consent to the Minister of Foreign Affairs to delegate the power of decision in this respect to the heads of some consular offices, a procedure which, undoubtedly, facilitates and simplifies the settlement of nationality matters.

4. *The new Assembly Act of 29 March 1962 (Journal of Laws, 1962,* No. 20, text 89)

In comparison with the Assembly Act of 1932 which was in operation until 22 April 1962, the new Act has considerably loosened administrative control over assemblies. It grants the right to hold assemblies to professional organizations, self-governing and co-operative societies and other social organizations and to Polish citizens of full age and legal capacity who are not deprived of public rights and honours, and enumerates a number of forms of assemblies for the holding of which prior authorization by or notice to the administrative authorities is not required. Exempted from the operation of the Act are all religious services and rites held by state-recognized religious associations in places designed for religious worship. Thus, the Act reaffirms the right to freedom of religion guaranteed in the Constitution.

5. *Resolution No. 505/61 of the Council of Ministers, of 24 November 1961, on the National Economic Plan for the year 1962* (part XIV, item 28)

This resolution, *inter alia*, has set tasks to the economic ministries and to the praesidia of the people's councils with respect to a further increase of the employment of women in work-establishments.

In particular, resolution 505/61 of the Council of Ministers: obligates ministers, heads of central offices and praesidia of people's councils to take — in consultation with the Chairman of the Committee for Work, Wages and Salaries — all appropriate measures in order to ensure an increase in the employment of women; authorizes the praesidia of people's councils to fix, within their co-ordinating functions, minimum proportions of female labour in the total labour force in specified work-establishments and branches of economy, depending on the number of women seeking employment in their area.

As a result of the implementation of the provisions of that resolution, a further increase in the proportion of women in the total labour force was achieved in 1962. As of June 30, 1962, the employment of women in the entire socialized economy reached 34.6 per cent, i.e., it was by 0.8 per cent higher than on June 30, 1961, and the proportion of women in the over-all growth of employment in 1962 amounted to 48 per cent.

6. *Resolution 541/61 of the Economic Committee of the Council of Ministers, of 29 December 1961, establishing principles governing the utilization by the praesidia of people's councils of the special State fund earmarked for the organization of emergency employment and for the vocational training of women*

The objective of this resolution was to assure employment in 1962 to persons temporarily out of work, especially in areas where seasonal difficulties in the field of employment occur.

7. In an endeavour to find the best methods of work which would ensure expeditious placement by the employment organs of persons seeking employment, the Chairman of the Committee for Work, Wages and Salaries issued an Ordinance No. 23, of 1 June 1962, which put into effect a new instruction on employment and vocational training placement services.

8. *Order of the Minister of Health and Social Welfare, of 18 August 1962, relating to some free services of the health service establishments (Journal of Laws, 1962,* No. 55, text 277)

This order ensures to all children the enjoyment of all forms of out-patient health services free of charge and to children up to one year of age also free hospitalization. Moreover, the Order ensures to the entire population the right to free health services for common dangerous diseases, like cancer.

9. *Act of 28 June 1962 on retirement pensions for members of agricultural producers, co-operatives, their families and members of their households (Journal of Laws, 1962,* No. 37, text 165).

By granting to that category of persons the same benefits as are enjoyed by insured persons, the Act takes a further step towards a general free health service.

10. *Act of 28 March 1962 on taking over by the State of the economic administration or ownership of some agricultural real estates and on retirement pensions for the owners of such property and for their families (Journal of Laws, 1962,* No. 38, text 106)

The objective of this legislative act is analogous to that of the Act referred to above under point 9.

11. *Instruction of the Ministers of Health and Social Welfare, National Defence, Internal Affairs and of Justice, of 28 March 1962, on the reporting of cases of malignant tumors and of tumors suspected of malignity (Polish Monitor* No. 30, text 141)

This instruction constitutes a basis for expanding health service activities in the field of early detection of tumors.

12. *Resolution No. 353 of the Council of Ministers, of 19 November 1962, on the participation of industrial work-establishments in the organization of health protection for their workers and employees (Polish Monitor,* No. 82, text 384)

This resolution reassures the principle of the employer's responsibility for the health of the employees.

13. *Instruction No. 52/61 of the Minister of Health and Social Welfare, of 14 December 1961, on reporting by public health service centres of all cases of deaths of women resulting from pregnancy, confinement and childbirth* (*Official Journal of the Ministry of Health and Social Welfare of 1962*, No. 1, text 6).

This Instruction is aimed at improving the work of health service centres as regards care of women before and after delivery, and at increasing responsibility of those centres for the proper organization of such care.

14. To give effect to the right of everyone to social insurance and in order to extend greater medical care to, among others, minors undergoing training in work establishments, the Minister of Health and Social Welfare issued an order of 19 November 1962 relating to the organization and duties of the medical treatment and prophylaxis centres of the industrial health service. (*Journal of Laws, 1962*, No. 60, text 293). By virtue of that order, trainees at vocational schools attached to work-establishments, as well as those, who, while attending other vocational schools, undergo practical training in work-establishments, benefit, free of charge, from health protection of the medical treatment and prophylaxis centres of the industrial health service.

15. *Instruction No. 25/62 of the Minister of Health and Social Welfare, of 22 June 1962, on granting benefits from funds earmarked for the economic self-dependence of the handicapped* (*Official Journal of the Ministry of Health and Social Welfare*, No. 13, text 81)

This Instruction gives further effect to the rule that the handicapped should be given a part in the social life of the community.

16. In order to give greater effect to the right of everyone to education and because of the increased demand for skilled workers and also on account of the unsatisfactory development of basic and secondary vocational training,

(*a*) The Council of Ministers adopted resolution No. 18, of 25 May 1962, changing resolution No. 191, of 9 June 1960, relating to the development of vocational training in work-establishments. The resolution authorizes the praesidia of people's councils to establish minimum proportions of apprentices to be employed in relation to the total labour force engaged in specified sectors of the economy or in work-establishments;

(*b*) The Chairman of the Committee for Work, Wages and Salaries issued Guidelines of 5 September 1962 relating to the determination by the praesidia of people's councils of the minimum proportion of girls to be employed in relation to the set percentage of the employment of apprentices;

(*c*) The Minister of Finance issued an order of 28 September 1962 relating to tax reductions for craftsmen training apprentices.

The object of this order is to create better conditions for the development of handicrafts through increased training of apprentices in privately-owned artisan shops.

II. JUDICIAL DECISIONS

In accordance with the provisions of the Constitution of the Polish People's Republic, it is the objective of the Polish legal system to promote and strengthen the fundamental rights of citizens in all spheres of social, economic and political life. The task of protecting and defining those rights belongs also to the courts of the Polish People's Republic, and particularly to the Supreme Court. The decisions of the Supreme Court have a significance extending beyond the particular case they refer to.

By way of example decisions of the Supreme Court in the following fields may be cited:

1. *Protection of contracts of employment and of the continuity of employment*

(*a*) In accordance with article 4, paragraph 1, of the decree to restrict the right to terminate contracts of employment without notice and to ensure continuity of employment, dated 18 January 1956, if a worker is placed under temporary arrest, the contract of employment expires at the end of three months' absence from work. Paragraph 2 of that article stipulates, however, that even where a worker's contract has expired at the end of three months' absence from work, the establishment may not refuse to re-employ him if he is rehabilitated in criminal proceedings by the case being dismissed or by his being acquitted and he reports for work within seven days.

In its decision of 15 February 1962 (3 CR 73/62, Official Collection 1963, No. 4, text 85), the Supreme Court has defined the rights of an employee placed under temporary arrest. The court ruled as follows: "In the circumstances specified in article 4, paragraph 2 of the decree of 18 January 1956 (*Journal of Laws, 1956*, No. 2, text 11, with subsequent amendments) the worker has as against the work establishment which refuses to re-employ him the right to claim reinstatement in his employment. Apart from that the worker may claim from that work-establishment damages for any losses sustained by him as a result of non-compliance by the establishment with the obligation to re-employ him (article 239 of the Code of Obligations).

"The establishment is under the obligation to propose to the worker who reports for work another suitable job if the one previously held by him cannot be offered."

(*b*) Under Polish law, special protection is accorded to older workers who retire. The rights of those workers with respect to entitlement to a pension have been defined by the Supreme Court in a resolution adopted by seven judges on 18 June 1961 (1 CO 14/61, *Official Collection* 1962, No. 1, text 5). The Supreme Court stated the following:

"A statement of the work-establishment on termination by notice of a contract of employment of unspecified duration is null and void when it is contrary to paragraph 8, sub-paragraph 1(*e*) of the collective agreement for employees engaged in establishments of the municipal economy of 25 April 1959, stipulating that such termination may not take place at a time when the worker needs up to two

years of employment in order to qualify for full rights to pension. Consequently, the worker may claim readmission to work and remuneration for the period he has been out of work."

(*c*) Also employees suffering from tuberculosis are included in the category of employees who remain under special protection of the Labour Law as regards their employment relation. The decision of the Supreme Court of 22 March, 1962, (4 CR 186/62, *Official Collection*, 1963, No. 3, text 72) relates to the inadmissibility of termination of contracts of employment with such employees within a one-year period. In that decision the following legal view has been expressed:

"The provisions of art. 3, paragraph 1, sub-paragraph (1) of the decree of 18 January 1956 to restrict the right to terminate contracts of employment without notice and to ensure continuity of employment (*Journal of Laws*, *1956*, No. 2, text 11, No. 41, text 187) under the terms of art. 22, paragraph 1, sub-paragraph 1(*a*) of the Act on combatting tuberculosis, dated 22 April 1959 (*Journal of Laws*, No 27, text 170) cover also such circumstances in which the employee suffering from tuberculosis is treated — for lack of sufficient places in a closed health centre — partly in such a centre and partly as an out-patient in the course of twelve months."

In connexion with this ruling of the Supreme Court, it should be noted that under the provisions referred to above inadmissibility of termination of contracts of employment is dependent on the worker's stay in a health centre for a period of one year.

2. Decisions of the Supreme Court reveal great concern for the protection of young workers. Characteristic of that concern is the following decision (2 CR 810/61 of 4 January 1962):

"If a minor who has been employed at prohibited work is involved in an accident which occurs directly after his attaining majority, it can be assumed that a causal relationship exists between the violation of the provisions on special protection of the work of minors and the accident. For a minor who has begun work dangerous to his life or health at an unsuitable age would not, as a rule, acquire habits of caution, of the need for which he is not sufficiently aware and this state of affairs cannot be automatically remedied by the mere fact of his attaining majority and it continues for some time to affect the methods of work of the employee after his reaching majority."

3. Provisions aimed at guaranteeing occupational safety to workers and employees are also subject to constructive interpretation by the Supreme Court. Thus, in its ruling of 24 January 1962 (3 CR 518/61, published in the monthly *Work and Social Security*, 1963, No. 3) the Supreme Court represents the view that the work-establishment infringes provisions of occupational safety not only where such provisions are not respected by persons representing the establishment but also where obligations following from provisions relating to the protection of life and health of workers and employees are disregarded by any employees who are obliged to observe those provisions. Thus the action of an employee who is guilty of causing a loss constitutes at the same time a violation of the provisions on occupational safety and hygiene, provided that under the terms of article 145 of the Code of Obligations such violation occurs in the actual exercise of a function entrusted to the employee. There has to be a normal causal relationship between the accident which results in a loss and the entrusted function. The Supreme Court in its ruling of 8 February 1962 (2 CR 250/61) emphasized that an unnecessary object which endangers the safety of the workers or employees who have to work close to it should be removed without delay. To order an employee to perform work under such conditions, while merely drawing his attention to the imminent danger, cannot serve as an excuse for the employer.

4. In its ruling of 14 May 1962 (2 CR 167/62), the Supreme Court gave expression to its concern for persons in need of maintenance payments. According to this ruling, the maintenance obligation of a distant relative exists not only where the nearer relative has no capacity to fulfil that obligation, but also where the nearer relative has, in principle, such capacity but fails to discharge his liability and actual circumstances do not allow the person entitled to maintenance to recover it by way of enforced execution. The distant relative who pays maintenance to the person entitled to it is not deprived of recourse to the nearer relative to the extent that the non-fulfilment by the latter of his maintenance obligation is not the result of his incapacity to fulfil that obligation, but of his failure to do so.

5. The ruling of the Supreme Court of 13 March 1962 (2 CR 435/61) relates to the question of protecting personal freedom. In that ruling the Supreme Court stated that litigious resort to the court may not in itself constitute grounds for legally incapacitating a person since such incapacitation was envisaged not in the interest of the authorities, which are protected by other provisions, but in the interest of the sick person.

6. Characteristic of the decisions of the Supreme Court in divorce cases is the view expressed in its ruling of 2 July 1962 (1 CR 491/61). In the opinion of the Supreme Court it would be contrary to the principles of socialist morality to recognize as a valid ground for the discontinuance of conjugal relations the incurable disease of one of the spouses at a time when that spouse is on account of his state of health in urgent need of financial and moral support.

7. *Right of Accused to Protection.* — The Supreme Court understands this right not in a formal sense, but realistically. A sentence of the Supreme Court in the case I K.11/95/60 says, for instance:

"According to the provision of article 307, paragraph 2, of the Code of Criminal Procedure the parties have the right to attend judicial activities and to put questions. If in the course of the trial the need arises to make an on-the-spot survey, the court is obliged to facilitate participation in that activity to defence counsel of the accused. If too short notice is given of the date of the survey, not leaving to counsel enough time to secure transportation and thereby making it impossible for him to appear at the place of the survey, it is considered — in accordance with Article 306 of the Code of Crimi-

nal Procedure — to be a violation of paragraph 2 of article 307 of the Code."

Negligence on the part of counsel cannot affect the interests of the defendant. For instance decision VI KO 25/62 states:

"Non-compliance by counsel with the time limit prescribed by law for asking revision of sentence is beyond the responsibility of the defendant, in the light of article 213, paragraph 1, of the Code of Criminal Procedure and entitles the court to restore the time limit to the defendant."

Revision applied for by the defendant may be in some instances carried through by a court of second instance in the absence of the defendant. If, however, the defendant wishes to be present at such trial but is by circumstances prevented from doing so, the Supreme Court does not direct lower courts to use the right of conducting the trial in the defendant's absence, but orders them to postpone the trial and enable the defendant to participate in it. Sentence of the Supreme Court in case V.K. 281/62 says the following with regard to that subject:

"Adjudication of the defendant's revision in case of his justified absence and in spite of his request for postponement of the trial in which he wished to participate — is a violation of the defendant's right to defence."

Going beyond the relevant provision the Supreme Court ordered that the accused be informed in the course of the trial not only of the possibility of his offence falling under a more severe paragraph (which is required by law), but also of the possibility of his offence being defined more leniently, where such definitions would necessitate a change in the line of defence. This is explained in the following judgement of the Supreme Court (in case III. K. 1001/61):

"Decisions of the Supreme Court have recognized, by way of interpretation advantageous to the accused (and hence admissible) that under Article 324 of the Code of Criminal Procedure there exists an obligation to inform the accused of the change in the definition of the offence committed by him which involves a lesser penalty if such change entails the necessity of changing the line of defence.

"Article 324 of the Code of Criminal Procedure is deemed to have been violated in such cases only where failure to inform the accused has limited his defence."

III. INTERNATIONAL AGREEMENTS

On 29 August 1962, in Sofia, there was signed an Understanding regarding enforcement of the Agreement on Co-operation in Social Policies between the Polish People's Republic and the People's Republic of Bulgaria, which had been signed in Warsaw on 12 July 1961.

The Agreement and Understanding deal with co-operation in all areas and questions of social policy and labour legislation, in order to promote and enhance social progress in these countries and in the international field.

PORTUGAL

NOTE[1]

During the year 1962, no legislation containing any principle of a constitutional character bearing on questions of human rights was promulgated. However, the legislative decrees, decrees and notifications listed below were published, containing provisions whose character touches upon the subject-matter in hand. Judicial decisions of the Supreme Court of Justice referring to *habeas corpus* are touched upon.

I. LEGISLATION OF 1962

1. *Legislative Decree No. 44,148 of 6 January* approved, for ratification, the Convention (No. 81) regarding the inspection of work in industry and commerce, adopted by the 30th General Conference of the International Labour Organisation.

2. *Legislative Decree No. 44,254 of 26 March* approved, for ratification, the General Convention on Social Security between Portugal and Spain.

3. *Legislative Decree No. 44,278 of 14 April* approved the new Judicial Statute.

4. *Legislative Decree No. 44,287 of 20 April* promulgated the reform of the services for the guardianship of minors.

5. *Legislative Decree No. 44,288 of 20 April* approved the organization of guardianship for minors.

6. *Legislative Decree No. 44,304 of 27 April* granted amnesty in respect of violations of the law on the payment of contributions and taxes to the State up to the date of the said decree.

7. *Legislative Decree No. 44,307 of 27 April* created the National Insurance Fund for Occupational Diseases.

8. *Legislative Decree No. 44,308 of 27 April* provided for the promotion of medical prevention of silicosis.

9. *Legislative Decree No. 44,330 of 8 May* altered the system of remuneration of judicial employees.

10. *Legislative Decree No. 44,356 of 21 May* provided for children of persons who lost their lives, or suffered mutilation or were maimed or in any manner incapacitated in the service of the country to receive admission and education as well as boarding and lodging in all State establishments of education, free of charge or at a reduced fee.

11. *Notification No. 19,200 of 24 May* reserved to person retired because of illness or old age from the syndical funds of assurance, the right to family allowances in the same terms as if they were in active service.

12. *Decree No. 44,382 of 5 June* made regulations for pensions left in the metropolitan territory by military personnel serving in the overseas provinces.

13. *Law No. 2,115 of 18 June* promulgated the bases of the reform of social security.

14. *Legislative Decree No. 44,427 of 29 June* defined the bases of emigration in Portugal.

15. *Decree No. 44,428 of 29 June* established the norms governing emigration.

16. *Legislative Decree No. 44,502 of 9 August* made eligible to receive blood pensions, and other pensions referred to in Decree No. 17,335, the male ascendants of military personnel killed in action or in the maintenance of public order, who, not having attained the age of 70 years, may be judged permanently incapacitated to exercise their habitual profession.

17. *Decree No. 44,537 of 22 August* regulated the organization of medical services for labour for the prevention of silicosis, referred to in Legislative Decree No. 44,308.

18. *Legislative Decree No. 44,579 of 19 September* prohibited prostitution as from 1 January 1963.

19. *Legislative Decree No. 44,620 of 9 October* set up in Lisbon the Institute of Social Studies to carry out investigation and to study the principles that must be applied in social policies in the sphere of labour, corporative organization and security.

II. JUDGEMENTS OF THE SUPREME COURT OF JUSTICE

The following judgements of the Supreme Court of Justice relate to the special remedy of *habeas corpus:*

Judgement of 30 May 1962 (*Boletim do Ministério da Justica*, No. 117, p. 399) specified, with the guidance of previous judgements, the cases in which *habeas corpus* operates, and laid down that it applies also to non-military accused subject to military trial.

Judgements of 4 August and 3 October 1962 (*Boletim do Ministério do Justica*, No. 119, p. 321 and No. 120, p. 287) decided that *habeas corpus* must be granted only in cases of actual and effective imprisonment, vitiated by any of the defects mentioned in Legislative Decree No. 35,043.

[1] Information furnished by the Government of Portugal.

REPUBLIC OF KOREA

CONSTITUTION PROMULGATED ON 26 DECEMBER 1962[1]

PREAMBLE

We, the people of Korea, possessing a glorious tradition and history from time immemorial, imbued with the sublime spirit of independence as manifested in the March 1st Movement in the year of Kimi (A.D. 1919), now being engaged in the establishment of a new democratic Republic on the basis of ideals as manifested in the April 19th Righteous Uprising and the May 16th Revolution, determined;

To consolidate national unity through justice, humanity and fraternity.

To eliminate outmoded social customs of all kinds, and,

To establish democratic institutions,

To afford equal opportunities to every person and,

To provide for the fullest development of the capacity of each individual in all fields of political, economic, social and cultural life.

To help each person discharge his duties and responsibilities,

To promote the welfare of the people at home and to strive to maintain permanent international peace and thereby to ensure the security, liberty and happiness of ourselves and our posterity eternally,

Do hereby amend, through national referendum, the Constitution, ordained and established on the Twelfth Day of July in the year of Nineteen Hundred and Forty Eight A.D.

The Twenty Sixth Day of December in the year of Nineteen Hundred and Sixty Two A.D.

Chapter I
General Provisions

Article 1. (1) The Republic of Korea shall be a democratic republic.

(2) The sovereignty of the Republic of Korea shall reside in the people and all state authority shall emanate from the people.

Article 2. The conditions necessary for being a Korean national shall be determined by law.

. . .

Article 5. (1) Treaties duly ratified and promulgated in accordance with this Constitution and the generally recognized rules of international law shall have the same effect as that of the domestic law of the Republic of Korea.

(2) The status of aliens shall be guaranteed in accordance with international law and treaties.

Article 6. (1) All public officials shall be servants of the entire people and shall be responsible to the people.

(2) The status and the political impartiality of a public official shall be guaranteed in accordance with the provisions of law.

Article 7. (1) The establishment of political parties shall be free and the plural party system shall be guaranteed.

(2) Organization and activities of a political party shall be democratic and political parties shall have necessary organizational arrangements to enable the people to participate in the formation of political will.

(3) Political parties shall enjoy the protection of the State. However, if the purposes or activities of a political party are contrary to the basic democratic order, the Government shall bring an action against it in the Supreme Court for its dissolution and the political party shall be dissolved in accordance with the decision of the Supreme Court.

Chapter II
Rights and Duties of the Citizens

Article 8. All citizens shall have the dignity and value as human beings, and it shall be the duty of the State to guarantee fundamental rights of the people to the utmost.

Article 9. (1) All citizens shall be equal before the law and there shall be no discrimination in political, economic, social, or cultural life on account of sex, religion or social status.

(2) No privileged castes shall be recognized, nor be ever established in any form.

(3) The awarding of decorations or marks of honour in any form shall be effective only for recipients and no privileged status shall be created thereby.

Article 10. (1) All citizens shall enjoy personal liberty. No person shall be arrested, detained, searched, seized, interrogated or punished except as provided by law, and shall not be subject to involuntary labour except on account of a criminal sentence.

(2) No citizens shall be subject to torture of any kinds, nor shall be compelled to testify against himself in criminal cases.

(3) The warrant issued by a judge upon request from prosecutor must be presented in case of arrest,

[1] The full text of the Constitution appears as annex IV A to the *Report of the United Nations Commission for the Unification and Rehabilitation of Korea, General Assembly, Official Records, Eighteenth Session, Supplement No. 12* (A/5512).

detention, search or seizure. However, in case the criminal is flagrante delicto or in case where there is danger that the criminal, who committed a crime subject to imprisonment for three years or more in long term, may escape or destroy evidence, the investigating authorities may request an ex post facto warrant.

(4) All persons who are arrested or detained shall have the right to a prompt assistance of counsel. When criminal defendant is unable to secure the same by his own efforts, the State shall assign a counsel to the use of the defendant as provided by law.

(5) All persons who are arrested or detained shall have the right to request the court for a review of the legality of the arrest or detention. When a person is deprived of personal freedom by other private individual, he shall have the right to request the court for a remedy.

(6) In case the confession of a defendant is considered to have been made against his will by means of torture, acts of violence, threat, unduly prolonged arrest, and deceit, etc., or in case the confession of a defendant is the only evidence against him, such confession shall not be admitted as evidence for his conviction nor shall he be punished on the basis of such a confession.

Article 11. (1) No person shall be prosecuted for a criminal offense unless such act constitutes a crime prescribed by law at the time it was committed, nor shall he be placed in double jeopardy.

(2) No restrictions shall be imposed upon the political rights of any citizen nor shall any person be deprived of the property right by means of retroactive legislation.

Article 12. All citizens shall have freedom of residence and of the change thereof.

Article 13. All citizens shall have freedom of choice of occupations.

Article 14. All citizens shall be free from violation of their residence. In case of search or seizure in the residence, the warrant of a judge must be presented.

Article 15. The privacy of correspondence of all citizens shall be guaranteed.

Article 16. (1) All citizens shall enjoy freedom of religion.

(2) No State religion shall be recognized, and religion and state shall be separated.

Article 17. All citizens shall enjoy freedom of conscience.

Article 18. (1) All citizens shall enjoy freedom of speech and press, and freedom of assembly and association.

(2) Licensing or censorship in regard to speech and press or permit of assembly and association shall not be recognized. However, censorship in regard to motion pictures and dramatic plays may be authorized for the maintenance of public morality and social ethics.

(3) The standard, for the publication of newspapers or press organs in general may be prescribed by law.

(4) Regulation of the time and place of outdoor assembly may be determined in accordance with the provisions of law.

(6) The press or publication shall not impugn the personal honour or rights of an individual, nor shall it infringe upon public morality and social ethics.

Article 19. (1) All citizens shall have freedom of science and arts.

(2) The rights of authors, inventors and artists shall be protected by law.

Article 20. (1) The right of property of all citizens shall be guaranteed. Its contents and restrictions shall be determined by law.

(2) The exercise of property rights shall conform to public welfare.

(3) In case of expropriation, use or restriction of private property for public purposes, due compensation shall be paid in accordance with the provisions of law.

Article 21. All citizens who have attained the age of twenty shall have the right to elect public officials in accordance with the provisions of law.

Article 22. All citizens shall have the right to hold public office in accordance with the provisions of law.

Article 23. All citizens shall have the right to submit written petitions to any State authority in accordance with the provisions of law. The State authority shall be obliged to examine such petitions.

Article 24. (1) All citizens shall have the right to be tried in conformity with the law by competent judges as qualified by the Constitution and law.

(2) Citizens who are not on active service or employees of the military forces shall not be tried in the court martial except in case of espionage on military affairs and in case of crimes in regard to sentinel, sentry-posts, provision of harmful food, and prisoners of war as defined by law, as well as except when they are under an extraordinary state of siege in the territory of the Republic of Korea.

(3) All citizens shall have the right to a speedy trial. The criminal defendant shall have the right to a public trial without delay in the absence of justifiable reasons.

Article 25. In case the criminal defendant under detention is found innocent he shall be entitled to a claim against the State for compensation in accordance with the provisions of law.

Article 26. In case a person has suffered damages by unlawful acts of public officials done in the exercise of their official duties, he may request for redress from the State or public entity; however, the public officials concerned shall not be exempt from liabilities.

Article 27. (1) All citizens shall have the right to receive an equal education correspondent to their abilities.

(2) All citizens who have children under their protection shall be responsible for their elementary education.

(3) Such compulsory education shall be free.

(4) Independence and political impartiality of education shall be guaranteed.

(5) Fundamental matters pertaining to the educational system and its operation shall be determined by law.

Article 28. (1) All citizens shall have the right to work. The State shall endeavor to promote the employment of workers through social and economic means.

(2) All citizens shall have the duty to work. The contents and conditions of the duty to work shall be determined by law in conformity with democratic principles.

(3) Standards of working conditions shall be determined by law.

(4) Special protection shall be accorded to the working women and children.

Article 29. (1) Workers shall have the right of independent association, collective bargaining and collective action for the purpose of improving their working conditions.

(2) The right to association, collective bargaining, and collective action shall not be accorded to the workers who are public officials except for those authorized by the provisions of law.

Article 30. (1) All citizens shall be entitled to a decent human life.

(2) The State shall endeavor to promote social security.

(3) Citizens who are incapable of making a living shall be protected by the State in accordance with the provisions of law.

Article 31. All citizens shall be protected by the State for the purity of marriage and health.

Article 32. (1) Liberties and rights of the citizens shall not be ignored for the reason that they are not enumerated in the Constitution.

(2) All liberties and rights of citizens may be restricted by law only in cases deemed necessary for the maintenance of order and public welfare. In case of such restriction, the essential substance of liberties and rights shall not be infringed.

Article 33. All citizens shall have the duty to pay taxes levied in accordance with the provisions of law.

Article 34. All citizens shall have the duty to defend the national territory in accordance with the provisions of law.

Chapter III

Organs of Government

Section I. — The National Assembly

Article 35. The legislative power shall be exercised by the National Assembly.

Article 36. (1) The National Assembly shall be composed of members elected by universal, equal, direct and secret elections of the citizens.

(2) The number of the members of the National Assembly shall be determined by law within the range of no less than one hundred and fifty and no more than two hundred persons.

(3) Any person desiring to become a candidate for the National Assembly shall be recommended by the political party to which he belongs.

(4) Matters pertaining to the election of the members of the National Assembly shall be determined by law,

. . .

Article 38. A person shall lose his membership in the National Assembly during his tenure when he leaves or changes his party, or when his party is dissolved. However, the provisions of this article shall not apply in cases of changes in party membership caused by amalgamation of parties or in case he has been expelled from his party.

Article 39. No member of the National Assembly shall concurrently hold the position of the Presidency, the Prime Minister, a member of the State Council, a member of the local council, or any other public or private positions as determined by law.

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Section II. — The Executive

1. The President

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Article 64. (1) The President shall be elected by a universal, equal, direct and secret ballot of the people. However, in case of vacancy in the office of the President with remaining terms of two years or less, the President shall be elected by the National Assembly.

(2) Citizens who are qualified to be elected to the National Assembly and who, on the date of the Presidential election, shall have resided continuously within the country for five years or more and have attained the age of forty years or more, shall be eligible to be elected to the Presidency. In this case, the period during which a person is dispatched overseas on official duty shall be considered as a period of domestic residence.

(3) Any person desiring to become a Presidential candidate shall be recommended by the political party to which he belongs.

(4) Matters pertaining to the Presidential election shall be determined by law.

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Article 75. (1) The President shall, in time of war, armed conflict, or similar national emergency when there is a military necessity or when it is necessary to maintain the public safety and order by mobilization of the military forces, proclaim a state of siege in accordance with the provisions of law.

(2) The state of siege shall consist of an extraordinary state and a precautionary state.

(3) Under the proclaimed state of siege, special measures may be taken, in accordance with provisions of law, with regard to the warrant system, freedom of speech, press, assembly and association, or with regard to the rights and the powers of the Executive or the Judiciary.

(4) The President shall immediately notify the National Assembly of the proclamation of a state of siege.

(5) When the National Assembly so requests, the President shall lift the proclaimed state of siege.

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Section III. — The Courts

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Article 98. The judges shall judge independently according to their consciences and in conformity with the Constitution and law.

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Article 102. (1) The Supreme Court shall have the power to make final review of the constitutionality of a law, when its constitutionality is prerequisite to a trial.

(2) The Supreme Court shall have the power to make final review of the constitutionality or legality of administrative orders, regulations or dispositions, when their constitutionality or legality is prerequisite to trial.

Article 103. Any decision to dissolve a political party shall have the concurrence of a three-fifths or more of the duly authorized number of justices of the Supreme Court.

. . .

Article 105. Trials and decisions of the courts shall be open to the public; however, trials may be closed to the public by a court decision when there is a possibility that such trials may disturb the public safety and order or be harmful to decent customs.

Article 106. (1) Court martials may be established as special courts to exercise jurisdiction over military trials.

(2) The Supreme Court shall have the final appellate jurisdiction over the court martials.

(3) The military trials under an extraordinary state of siege may be limited to the original jurisdiction only in cases of crimes of soldiers and civilian employees of the armed forces, in cases of espionage on military affairs, and crimes as defined by law in regard to sentinels, sentry-posts, provision of harmful food, and prisoners of war.

Section IV. — Election Management

Article 107. (1) Election Committees shall be established for the purpose of fair management of elections.

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Article 108. (1) Election campaigns shall be conducted under the management of the Election Committees of each level within the limit determined by law. Equal opportunity shall be guaranteed.

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Chapter IV
The Economy

Article 111. (1) The economic order of the Republic of Korea shall be based on the principle of respect for freedom and creative ideas of the individual in economic affairs.

(2) The State shall regulate and coordinate economic affairs within the limit necessary for the realization of social justice and for the development of a balanced national economy to fulfill the basic living requirements of all citizens.

Article 112. License to exploit, develop or utilize mines, and all other important underground resources, marine resources, water power, natural powers available for economic use may be granted for limited periods in accordance with the provisions of law.

Article 113. Agricultural tenancy shall be prohibited in accordance with the provisions of law.

Article 114. The State may impose restrictions or obligations necessary for the efficient utilization of the farm and forest land in accordance with the provisions of law.

Article 115. The State shall encourage the development of cooperatives founded on the self-help spirit of the farmers, fishermen, and the small and medium businessmen, and shall guarantee their political impartiality.

Article 116. The State shall encourage the foreign trade, and shall regulate and coordinate it.

Article 117. Private enterprises shall not be transferred to the State or public ownership nor shall their management be controlled or administered by the State except in cases determined by law to meet urgent necessities of national defense or national economy.

Chapter V
Amendments to the Constitution

Article 119. (1) A motion to amend the Constitution shall be introduced either by a one-third or more of the members of the National Assembly duly elected and seated, or by the concurrence of five hundred thousands or more of the voters eligible for the election of the members of the National Assembly.

(2) Proposed amendments to the Constitution shall be announced by the President to the public for more than thirty days.

Article 120. (1) The National Assembly shall decide upon proposed amendments to the Constitution within sixty days of its public announcement.

(2) The decision on a proposed amendment to the Constitution shall require the concurrence of a two-thirds or more of the members of the National Assembly duly elected and seated.

Article 121. (1) After an amendment to the Constitution has been adopted, it shall be submitted to a national referendum within sixty days and shall receive the affirmative votes of more than one half of votes cast by more than one half of all voters eligible to vote for the election of the members of the National Assembly.

(2) When the proposed amendment to the Constitution has received the affirmative votes referred to in the preceding paragraph, the Constitution shall be thus amended, and the President shall promulgate the amendment immediately.

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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, during 1962, no constitutional change took place, and no judicial decision was delivered, which would be suitable for inclusion in the *Yearbook on Human Rights*.

ROMANIA

NOTE[1]

I. LEGISLATION

A. State Budget

The State budget of the Romanian People's Republic for 1962, adopted under Act. No. 5/1961 (published in the *Official Bulletin of the Grand National Assembly*, No. 29, 30 December 1961) reflects — as did 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.

The budget of the republic, which includes the State's social security budget, provides for revenue of 66,629.7 million lei and expenditure of 65,629.7 million lei; 93 per cent of the revenue is derived from State and co-operative enterprises and economic organizations, while only 7 per cent is derived from taxation.

In absolute figures, budget expenditure for financing the national economy amounts to 49,510.9 lei; expenditure for social and cultural activities (State social security, education, science and culture, health, recreation and sports, social insurance, family allowances and State children's allowances) amounts to 16,964.2 million lei, as against 1,843.5 million lei for maintaining the executive and administrative machinery of the State, the state prosecutor's offices and the judicial system. National defence expenditure amounts to 3,988.5 million lei.

B. Social Measures

1. The development of all branches of the national economy, the introduction of new techniques and the increased mechanization and automation of production processes have necessitated the adoption of new regulations for the organization of labour protection.

Decree No. 834/1962 (published in the *Official Bulletin of the Grand National Assembly*, No. 22, 9 November 1962) and decision No. 1108/1962 of the Council of Ministers (published in *Collected Decisions and Regulations of the Council of Ministers*, No. 33, 12 November 1962) instituted a new system for organizing labour protection. This decree abrogates decree No. 185/1953 concerning the organization of labour protection. Under the new laws, labour protection is defined as a state problem; consequently, the responsibility for the application of labour protection measures now lies with those who organize, manage and supervise the processes of production.

The instruments referred to specify clearly those responsible for taking the most effective possible measures to eliminate the risks of industrial accidents and occupational diseases and to improve working conditions. They provide for measures designed to enforce technical standards of labour safety and hygiene in the formulation and introduction of new technological processes and the construction and reconstruction of industrial undertakings; they also provide for the introduction into the production process of safety devices and installations consonant with the latest achievements of science and technology. A further aim of these measures is to ensure the elimination of working conditions likely to be injurious to health, the regular supply and maintenance of safety equipment, etc.

The Ministry of Health and Social Insurance is the central body responsible for elaborating compulsory standards of labour protection and for seeing that they are enforced. The Ministries and other central organs elaborate departmental standards of labour safety, on the basis of which enterprises and institutions establish safety regulations for their employees. To ensure that labour protection measures are uniformly applied, the Ministry of Health exercises control through the State Inspectorate of Labour Hygiene and Protection, an organ established under decree No. 834/1962. At the same time, trade unions have the right to keep constant watch over the observance of the labour protection laws, through members appointed specifically for this purposes.

2. Under decision No. 1051/1962 of the Council of Ministers, (published in *Collected Decisions and Regulations of the Council of Ministers*, No. 37, 3 December 1962) the competent authorities are required to find employment in production units for persons discharged after serving sentences involving deprivation of liberty, with a view to ensuring their re-integration into the social life of the community. Jobs are found for them on request on the basis of their technical skills, including any skills acquired during detention. Managements of enterprises and institutions to which they are directed cannot refuse to employ them on the ground of their being discharged prisoners, and must offer them suitable living and working conditions, in order to facilitate their re-integration into social life.

Under the new regulations, minors discharged from houses of detention or rehabilitation centres are placed in a special category. As far as possible they are given jobs in production units near their families, according to their qualifications and their physical and intellectual aptitudes. If the minor is unskilled or only partially skilled, the unit in which he is placed must arrange for his training and mus

[1] Note furnished by the Government of the Romanian People's Republic.

provide suitable conditions for his physical, moral and intellectual development.

3. With a view to ensuring that employees in all branches of economic life receive the statutory paid holidays regularly, decision No. 970/1962 of the Council of Ministers (published in *Collected Decisions and Regulations of the Council of Ministers*, No. 23, 27 July 1962) requires the managements of enterprises and institutions to take adequate steps to see that all their employees annually take the paid holiday to which they are entitled.

4. Decree No. 521/1962 (published in the *Official Bulletin of the Grand National Assembly*, No. 16, 27 June 1962) established a special system of retirement for professors and lecturers at institutions of higher education. With the object of allowing such institutions to draw on the experience and services of elderly teachers, the retirement age for university professors and lecturers was fixed at sixty for women and sixty-five for men. It should be noted that under existing regulations other employees normally retire at the age of fifty-five (for women) and sixty (for men). Furthermore, retired professors and lecturers who have special qualifications in teaching science may continue certain types of work in those fields as "consultant" professors or lecturers. For these activities they will receive special remuneration.

5. In pursuance of Decision No. 1270/1962 of the Council of Ministers (published in *Collected Decisions and Regulations of the Council of Ministers*, No. 39, 27 December 1962) special monthly allowances ranging from 250 to 1,000 lei are payable to persons holding honorific titles for special activities in science, culture, or sport (honoured scientist, professor, doctor, artist, artiste, sportsman or coach, or people's artiste). These monthly allowances are paid to beneficiaries both while they are employed in a productive unit and after their retirement.

C. Education, Culture, Art

1. As long ago as 1950, evening and correspondence courses of general and higher education for workers and for certain categories of employees in State institutions were initiated to enable workers and employees to complete their intermediate or higher studies while continuing their employment.

Under decision No. 1052 of the Central Committee of the Romanian Workers' Party and the Council of Ministers, concerning the improvement of evening and correspondence courses of general and higher education (published in *Collected Decisions and Regulations of the Council of Ministers*, No. 32, 10 November 1962), a series of measures were adopted to offer production workers, foremen and technicians and other categories of workers, the best possible conditions enabling them to complete their intermediate or higher studies without leaving their jobs, while at the same time giving every opportunity to those following such courses to reach a high standard. Under the new regulations such workers enjoy a number of advantages affecting their working schedules on the job and are entitled to paid holidays during examination periods so that they can attend courses regularly and have the necessary time to study for examinations.

2. Decisions No. 1053/1962 and No. 1054/1962 of the Council of Ministers (both published in *Collected Decisions and Regulations of the Council of Ministers*, No. 34, 14 November 1962) institute a new system of scholarships for intermediate and higher students. Thanks to the present system, opportunities for awarding scholarships have expanded, and the number of such scholarships, together with other material benefits accorded to deserving students, has been increased. The necessary conditions have thus been created to allow increasing numbers of students to receive the scholarships and other material benefits (lodging in halls of residence, meals in students' cafeterias, monthly allowances etc.) provided for in the decisions referred to. The number of scholarships to be awarded during the academic year 1962/1963 to students at higher educational institutions has been fixed at 45,000, a figure representing about 45 per cent of the total student body.

3. With a view to expanding higher education, a new university was established at Timisoara, under decision No. 999/1962 of the Council of Ministers (published in *Collected Decisions and Regulations of the Council of Ministers*, No. 28, 16 October 1962), and started operations in the academic year 1962/1963.

4. In recent years, activities in all fields of culture and art have made great strides, and many new theatres, cinemas, libraries, cultural centres and other cultural and artistic institutions have been opened. The publication and mass dissemination of cultural and scientific knowledge has been intensified year by year. Amateur artistic activities have expanded considerably. In view of the extent of this activity and the need for the increasing development of culture and art to meet the greater demands of workers, it has been found necessary to establish a special organ responsible for State action in these fields. Decree No. 417/1962 (published in *Official Bulletin of the Grand National Assembly*, No. 14, 9 June 1962) established a State Committee for Culture and Art composed of the most competent specialists. The membership and working methods of the committee are designed to enlist representatives from all walks of life in the formulation of policy, the co-ordination of activities and the solution of problems in the fields of culture and art. In the regions and districts local bodies have been set up in the form of regional and district committees for culture and art, also composed of specialists. Excellent conditions have thus been created for the satisfactory solution of all problems connected with the dissemination of cultural and scientific knowledge and with the management and smooth operation of cultural and artistic institutions, so that the public may benefit from all achievements in this field.

D. Other Measures

1. With a view to ensuring the progressive development of agricultural production so as to improve the supply of farm products and foodstuffs, Act No. 1/1962 concerning the establishment of the Higher Council of Agriculture and Regional and District Agricultural Councils (published in *Official Bulletin of the Grand National Assembly*, No. 12, 21 May 1962) provides for the reorganization of

agriculture. The Higher Council of Agriculture and the Regional and District Agricultural Councils are bodies made up of the highest qualified agricultural engineers, specialists in animal husbandry and mechanization, veterinarians, managers of state farms and machine and tractor stations, chairmen of collective farms who have completed higher agricultural studies, and scientists at research and teaching institutions with experience and high qualifications. These organs are concerned with the efficient organization of agricultural production at the national, regional and district level. Their task is to promote the utilization of the most advanced agricultural techniques. Thus, the law provides for competent agricultural administration and the satisfactory and uniform solution of all problems arising in this sector.

With a view to building up the necessary cadres of agricultural specialists, Regulations Nos. 427 and 428 of the Central Committee of the Romanian Workers' Party and the Council of Ministers of the People's Republic of Romania (published in *Collected Decisions and Regulations of the Council of Ministers*, No. 13, 22 May 1962; and No. 14, 23 May 1962) contain special provisions designed to attract specialists to agriculture and promote the development and improvement of agricultural education. Under the first Regulation, specialists directly concerned with agricultural production are offered the best possible material conditions (as regards wages and housing and other facilities). The second Regulation provides for the organization of three-year courses of mass education in animal and plant husbandry for farm workers, and establishes vocational schools for training specialists in agricultural mechanization. It also provides for the reorganization of intermediate and higher agricultural education with a view to improving the qualifications of technicians and persons who have completed higher agricultural studies, offering special material benefits (full maintenance at school, scholarships) to those following courses of agricultural education.

2. Decisions No. 930/1962 of the Council of Ministers (published in *Collected Decisions and Regulations of the Council of Ministers*, No. 26, 13 September 1962) approves the Guide to the organization of patriotic competition between towns and communes with a view to improving their appearance and administration, institutes certain honorific titles and provides for the award of prizes to winning towns and communes. The aim of this enactment is to stimulate the administrative authorities of towns and communes; to bring about a progressive improvement in the level of activities and in municipal and communal administration; to ensure regular and efficient progress in public works and services (water supply, sewers, electricity and gas supply, urban passenger transport, health measures, etc.); to promote the better maintenance of property and ensure permanent conditions of aesthetic amenity and proper sanitation in public places (public buildings, stores, squares, theatres, cinemas, hotels, stations, schools, day nurseries, hospitals, polyclinics, etc.); and to educate citizens to preserve public property, keep buildings and their own courtyards properly maintained, etc.

3. Decree No. 100/1962 (published in *Official Bulletin of the Grand National Assembly*, No. 1, 27 February 1962) instituted a system of public supervision over the manufacture, transport and sale of bread. The aim of this supervision, which is exercised on a permanent basis by teams made up of specially appointed citizens, is to ensure that bread is of a regularly high quality and is manufactured, transported and sold under perfectly hygienic conditions, so as to satisfy all consumer requirements.

4. Decision No. 1307/1962 of the Council of Ministers (published in *Collected Decisions and Regulations of the Council of Ministers*, No. 40, 31 December 1962) extended to members of collective farms existing legislation concerning instalment purchases of goods and services applicable to employed and retired persons. Under this enactment, collective farm workers may buy goods at consumer cooperative stores on deferred monthly payments spread over one year.

II. REPORT OF THE CENTRAL STATISTICAL BOARD ON THE FULFILMENT OF THE STATE PLAN FOR 1962

The most important aspects of the economic development of the Romanian People's Republic and of the rise in the living standard of its people are illustrated by the following excerpts from the report of the Central Statistical Board on the fulfilment of the state plan for 1962.[1]

(*a*) Between 1961 and 1962 aggregate industrial production increased by 14.7 per cent, production of the means of production by 17.5 per cent and production of consumer goods by 10.2 per cent.

(*b*) Goods turnover: In 1962, goods sold through the socialist trade system amounted to 53,000 million lei at current prices. As compared with the previous year, the total volume of merchandise sales increased by 5,900 million lei, or 12.5 per cent (at comparable prices); sales of foodstuffs increased by 13.8 per cent and sales of other goods by 11.5 per cent.

(*c*) Improvements in living conditions: In 1962 the national income rose by approximately 7 per cent over the figure for 1961, exceeding the 1959 level by 50 per cent. The number of wage-earners employed in the national economy was 3,745,000, an increase of 260,000 over 1961 and of 690,000 over 1959. Real wages increased by 4 per cent as compared with 1961.

Expenditure for social and cultural development under the State budget amounted to 17,600 million lei — a figure 12.8 per cent higher than in 1961. These funds were allocated as follows:

Education: 5 million lei, or 17.6 per cent more than in 1961

Cultural and scientific activities: 1,300 million lei, or 9.1 per cent more than in 1961;

Health and social insurance: 4,900 million lei, or 11.4 per cent more than in 1961;

Social security: 4,200 million lei, or 8.1 per cent more than in 1961;

State children's allowances: 2,200 million lei, or 16 per cent more than in 1961.

[1] Published in the newspaper *Scînteia*, No. 5790, 1 February 1963.

More than 1,000 million lei in State funds were invested in social and cultural facilities including 560 million lei for education and about 400 million lei for health protection.

In the first three years of the six-year plan (1960–1962) more than 112,000 apartments (including 42,000 in 1962 alone) were built with state finance. During the same period, private citizens, especially in the rural areas, built about 300,000 dwellings at their own expense.

The expansion of the educational and cultural infrastructure continued. More than 3,800 classrooms were built for general education. University centres, halls of residence with approximately 4,500 places, and cafeterias with serving capacity for 2,000 were opened for students. Education at the various levels was provided for 3,360,000 students during the academic year 1962/63. This number is 8 per cent higher than the figure for the preceding academic year.

Health services continued to improve. The number of hospital beds rose to 138,700 towards the end of 1962, and the number of medical-and-health districts to 3,775. Twelve district and urban polyclinics were opened. In 1962 there was approximately one doctor for every 700 inhabitants. The number and activities of health resorts continued to increase. The visitor capacity of the Black Sea resorts increased by 5,400. In 1962, 700,000 persons spent their holidays and underwent treatment at spas and health resorts, holiday camps and children's camps.

The population of Romania on 1 January 1963 was 18,750,000.

III. JUDICIAL PRACTICE

1. By Decision No. 29, of 15 January 1962, the Civil Division of the Supreme Court ruled that in the case of accidents involving bodily injury the liability of those responsible is not limited to a sum representing "the equivalent of the diminution of working capacity" but must represent the equivalent of all the damage suffered.

2. Certain courts of appeal had held that under the terms of the Penal Code there was no obligation on the court to appoint defence counsel for an accused person held in custody where the Procurator had lodged an appeal in his case and he had chosen no defence counsel of his own. Under directive No. 30, of 5 November 1962, the Plenum of the Supreme Court of the Romanian People's Republic ruled that, since in an appeal lodged by the Procurator there is often need for a particularly competent defence, the obligation in such cases to appoint defence counsel for an accused person held in custody is even stronger than in an appeal lodged by an accused person himself — when the latter's right to court-appointed defence counsel is guaranteed by law. An appeal by the Procurator, unlike an appeal by the accused person, may result in a judgement more severe than that handed down by the original court. It would therefore be unnatural for the system of appointing defence counsel to operate in the latter case and not the former.

IV. INTERNATIONAL AGREEMENTS

During 1962, the Romanian People's Republic ratified or concluded the following international agreements which are closely related to human rights:

1. Treaty between the Romanian People's Republic and the Polish People's Republic concerning legal assistance and legal relations in civil, family and criminal cases (ratified by decree No. 323/1962 and published in *Official Bulletin of the Grand National Assembly*, No. 13, 4 June 1962).

The treaty contains the following main provisions:

(*a*) Nationals of either contracting party and bodies corporate constituted in accordance with the laws of that Party are to 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 other contracting party.

(*b*) The legal capacity of an individual is to be determined according to the law of the contracting party of which he is a national.

(*c*) The validity of legal transactions is to be determined in conformity with the principle "*locus regit actum*".

(*d*) The personal and property relations of spouses is to be governed by the law of the contracting party of which they are nationals.

(*e*) The treaty contains provisions for the protection of the interests of minors in the territory of one of the contracting parties whose parents are in the territory of the other contracting party. It gives effect to rights of succession arising in the territory of one of the parties in favour of persons domiciled in the territory of the other party. It also provides for the enforcement of civil judgements rendered by courts of one of the parties against persons domiciled in the territory of the other Party.

(*f*) Legal assistance in criminal cases relates more particularly to extradition. The provisions adopted on this subject uphold the principle that a country is not required to extradite its own nationals.

2. Consular Convention between the Romanian People's Republic and the Polish People's Republic, ratified by decree No. 955/1962 and published in *Official Bulletin of the Grand National Assembly*, No. 26, 21 December 1962.

The main provisions of this convention are as follows:

(*a*) Consuls are entitled, without special authorization, to represent nationals of the sending State before the organs of the receiving State in cases where, owing to absence or for other reasons, those nationals are unable to protect their own rights and interests within the appropriate time-limits and have not appointed any person to do so.

(*b*) Consuls may draw up official documents concerning legal relations between nationals of the sending State, or even between the latter and nationals of the receiving State or of a third State, provided that such instruments are to have legal effect exclusively in the territory of the sending State. The legal competence of consuls does not include the right to draw up and legalize deeds relating to immovable property situated in the territory of the

receiving State. Official documents drawn up by a consul have the same legal effect and evidential value in the receiving State as official documents drawn up by the competent authorities of the receiving State.

3. Agreement between the Romanian People's Republic and the Republic of Ghana concerning cultural co-operation (ratified by decree No. 515/1961 and published in *Official Bulletin of the Grand National Assembly*, No. 3, 8 March 1962).

4. Agreement between the Government of the Romanian People's Republic and the Government of the People's Republic of Bulgaria concerning scientific and cultural co-operation (published in *Collected Decisions and Regulations of the Council of Ministers*, No. 24, 20 March 1962).

The main provisions of the two above-mentioned agreements are as follows:

(*a*) The contracting parties agree to facilitate co-operation between their scientific research, educational, cultural and art institutions, and between their competent institutions in the field of press, radio and the cinema.

(*b*) This co-operation is to take the form of exchanges of studies and documentary materials in the above-mentioned fields; reciprocal visits for the exchange of experience between scientists and teachers at higher educational institutions; the organization of artistic tours and artistic and documentary exhibitions; and exchanges of books, reviews, translations and films.

(*c*) Scholarships are to be awarded on a reciprocal basis; visits by young people for studies and specialist training are to be organized.

5. The International Telecommunication Convention, concluded at Geneva on 21 December 1959, with the reservation made upon signature to the effect that the Romanian People's Republic's acceptance of the Radio Regulations referred to in article 14, paragraph 2 of the Convention remained open. (The Convention was ratified with that reservation by decree No. 5/1962 and published in *Official Bulletin of the Grand National Assembly*, No. 3, 8 March 1962).

6. The International Convention concerning the transport by rail of goods (CIM) and of passengers and baggage (CIV) and the Additional Protocol concerning those Conventions, signed at Berne on 25 February 1961 (both ratified by Decree No. 395, published in *Official Bulletin of the Grand National Assembly*, No. 16, 27 July 1962).

RWANDA

CONSTITUTION OF THE RWANDESE REPUBLIC

of 24 November 1962[1]

TITLE I
THE REPUBLIC

Art. 1. — Rwanda is a democratic, social and sovereign republic. It takes the name of the Rwandese Republic.

. . .

Art. 3. — The Rwandese Republic shall ensure the equality of all citizens without distinction as to race, origin, sex or religion.

It shall respect all regions which are not incompatible with public order and the security of the State.

. . .

Art. 7. — All power derives from the nation.

National sovereignty shall be vested in the Rwandese people, who shall exercise it through their representatives.

The conditions and procedures for ascertaining the will of the people shall be determined by law.

Art. 8. — Suffrage shall at all times be universal, equal and secret. It may be direct or indirect.

Art. 9. — All Rwandese nationals of both sexes who are of full legal age and in full possession of their civil and political rights shall be entitled to vote, under the conditions determined by the electoral law.

Art. 10. — Political groups which fulfil the legal conditions shall assist in the exercise of the franchise. They may be formed and engage in their activities freely, on condition that they respect democratic principles and do not endanger the republican form of government, the integrity of the national territory or the security of the State.

The State shall recognize constructive opposition but shall curb destructive agitation.

. . .

TITLE II
PUBLIC FREEDOMS

Chapter I
THE HUMAN PERSON

Art. 12. — The human person is sacred and shall be protected by the State.

Art. 13. — Fundamental freedoms as set forth in the Universal Declaration of Human Rights shall be guaranteed to all citizens. Their exercise may be regulated by laws and regulations.

Art. 14. — Everyone shall have the right to the free development of his personality, provided that he does no violate the rights of others or infringe public order and the law.

Art. 15. — The freedom of the human person shall be inviolable. No one may be convicted of an offence except by virtue of a law which came into force before the offence was committed.

No one shall be presumed to be ignorant of the law.

No penalty shall be imposed except in pursuance of the written law.

Criminal liability shall be personal. Civil liability shall be defined by law.

There shall be an absolute right of defence at all stages and at all levels of prosecution proceedings.

The right of asylum shall be recognized under the conditions defined by law.

Extradition shall be authorized only within the limits prescribed by law.

Art. 16. — All citizens shall be equal before the law, without distinction as to race, clan, colour, sex or religion.

Art. 17. — Caste privileges shall be abolished and may not be restored. No new caste privileges of any kind may be established.

Art. 18. — Everyone shall have the right to express and disseminate his opinions freely by any legal means. Everyone shall have the right to receive an education, unhindered and from every source of knowledge accessible to all.

These rights shall be subject to limitations imposed by laws and regulations and by respect for the security of the State and the good name of others.

Art. 19. — All citizens shall have the right freely to establish associations and societies, on condition that they observe the formalities prescribed by laws and regulations.

Art. 20. — Groups the aims or activities of which are contrary to the law or are directed against public order, the republican form of government or the security of the State shall be prohibited.

Art. 21. — The secrecy of correspondence and of postal, telegraphic and telephonic communication shall be inviolable. Restrictions on such inviolability may be imposed only by law.

Art. 22. — All citizens of the republic shall have the right to freedom of movement and of residence throughout the national territory. This right may be

[1] Text published in the *Journal officiel*, 1st year, No. 22 *bis*, 1 December 1962.

restricted only by law, for reasons of public order or State security. No one may be subjected to security measures except in cases provided for by law, on grounds of public order or State security.

Art. 23. — The right to private property, both individual and collective, shall be inviolable. This right may be overridden only in a case of legally recognized public necessity and subject to the payment of fair compensation in advance.

Art. 24. — There shall be inviolability of residence.

A search of premises may be ordered only by authorities designated by law. Such search may be carried out only in the form prescribed by law.

Chapter II

Foundations of the Family and Society

Art. 25. — All forms of slavery shall be abolished and may not be restored.

Art. 26. — The family, with its three constituent elements, the husband, the wife, and the children, shall be the main foundation of Rwandese society.

The State and the community shall have the duty of creating conditions favourable for the normal development of the family.

Art. 27. — Parents have the natural right to bring up their children.

Art. 28. — Only monogamous marriage, whether civil or religious, is recognized by this Constitution.

The Rules for the registration of marriage shall be defined by law.

Art. 29. — Polygamy shall be prohibited.

Divorce may be authorized by the competent judicial authorities, in the form provided for by law.

Art. 30. — Men and women shall be equal in law.

The man is the natural head of the family.

Chapter III

Education of the Young

Art. 31. — The State and the community shall establish the conditions and the public institutions that will ensure the education of children.

Art. 32. — The Constitution recognized both state and private education. However, the subsidizing of private schools shall be dependent upon the number of pupils and upon compliance with the agreements concluded between the State and the legal representatives of the educational establishments concerned.

The total expenditure per pupil in a subsidized school shall not be less than that in a State school offering the same course of study.

Art. 33. — Privileges in the matter of education shall be abolished and may not be restored. Violation of this provisions may lead to the closing of any educational establishment where such discrimination is practised.

Art. 34. — Without prejudice to the terms of article 27 of this Constitution, primary education shall be compulsory for all children of school age under conditions which shall be prescribed by law. Until the age of fifteen, schooling shall be partly or wholly free for any pupil whose parents lack the means to pay the school fees.

Art. 35. — Military service shall be compulsory for every male citizen of at least eighteen years of age, subject to exceptions authorized in application of the law. It shall be directed principally towards the physical, moral and civic training of youth.

The procedures for giving effect to this article shall be specified by law.

Art. 36. — Other provisions concerning public education shall be laid down by law.

Chapter IV

Religion and Religious Communities

Art. 37. — Freedom of conscience and the free profession and practice of religion shall be guaranteed to all, subject to the requirements of public order and State security.

Art. 38. — Religious institutions and communities shall regulate and administer their affairs in independence, on condition that they do not encroach on the prerogatives of the State or interfere in political matters.

Art. 39. — All communist activity and propaganda shall be prohibited.

Chapter V

Organization of Labour and Freedom of Employment

Art. 40. — Forced labour, except as a criminal penalty, shall be abolished and may not be restored.

Art. 41. — Everyone has the duty to work. All citizens shall have equal opportunity to obtain public employment. No person shall suffer in his work because of his origin, race, sex, colour, opinions or creed so long as their manifestation is not liable to impair public order, morality or the security of the State.

Art. 42. — Every worker may join a trade union of his choice and defend his rights through trade union action, on conditions that the provisions of social legislation are observed.

The right to strike is recognized. It shall be exercised in conformity with the laws by which it is governed. It shall in no case impair freedom of employment, public order or the security of the State.

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

Art. 43. — The right to strike shall not be recognized to officials and employees of public agencies.

Art. 44. — The national economy shall be organized in accordance with plans which conform to the principles of social justice, the promotion of the family, the development of productivity and the improvement of living standards.

Social questions shall come within the province of the law.

TITLE III
THE HIGHER INSTITUTIONS OF THE REPUBLIC

Art. 45. — The separation and the cooperation of the executive, legislative and judicial functions are laid down and regulated by the present constitution.

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TITLE IV
THE EXECUTIVE

. . .

Chapter I
THE PRESIDENT OF THE REPUBLIC

. . .

Art. 54. — Any citizen of male sex who is a communal councillor and who is not less than thirty-five and not more than sixty years of age, may, in accordance with this Constitution, stand for election as President of the Republic. The procedures for such election shall be determined by law.

. . .

Art. 56. — The President of the Republic

. . .

(*p*) Shall exercise the right to pardon;

. . .

Chapter III
GOVERNMENT RESPONSIBILITY

. . .

Art. 72. — Any organisational conflict between the executive and the legislative powers which is not regulated by the present Constitution shall be submitted to the Supreme Court for its consultative opinion. If the conflict persists, it shall be settled by referendum.

TITLE V
THE LEGISLATURE

Art. 73. — Legislative power shall be vested simultaneously in the National Assembly and in the President of the Republic, in accordance with the provisions of this Constitution.

The National Assembly shall supervise the action of the President of the Republic and of his Government.

It shall be composed of members known as deputies to the National Assembly. Deputies shall be elected for a term of four years by direct universal adult suffrage.

A person may not be elected deputy to the National Assembly unless he is a citizen of the Rwandese Republic, has attained the age of twenty-one years and satisfied the other conditions prescribed by the electoral law.

The number of deputies, their emoluments, the qualifications for voters and the rules concerning incompatibility of offices shall be laid down by law.

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TITLE VII
THE JUDICIARY

Art. 98. — The judiciary is an authority independent of the legislative and executive authorities.

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

. . .

Art. 101. — No one may be arbitrarily arrested. The judicial authority, as the guardian of personal freedom, shall ensure respect for this principle under the conditions prescribed by law.

. . .

TITLE IX
AMENDMENT OF THE CONSTITUTION

Art. 107. . . .

No procedure for amendment of the Constitution shall be admissible which threatens the republican form of government, the integrity of the national territory or the democratic principles governing the republic.

TITLE X
TRANSITIONAL PROVISIONS

Art. 108. — The laws in force in Rwanda on the date of the entry into effect of this Constitution, in so far as they do not contravene this Constitution, shall remain applicable, subject to the enactment of new laws or regulations by the National Assembly or the Government of the Rwandese Republic.

Art. 109. — The procedure whereby the customary laws shall be codified and brought into harmony with the fundamental principles of this Constitution shall be laid down in an organic law.

TITLE XI
FINAL PROVISIONS

. . .

Art. 111. — This fundamental law shall be carried into effect as the Constitution of the Rwandese Republic on the day of its promulgation.

SAUDI ARABIA[1]

SOCIAL SECURITY LAW OF 18 AUGUST 1962

This law is divided into part I (Pensions), part II (Social Security Department) and part III (General Rules).

Article 1 considers the following persons as entitled to receive a pension: orphans, i.e., persons under 18 whose father's identity or whereabouts are unknown; persons over 60 who are not in a physical condition to work; persons completely incapable of working for physical or mental reasons; and women over 18 who do not have anybody to support them. The amounts of the pensions payable are specified in articles 7, 8 and 9.

The law deals also with social assistance to be granted, both in cash and in kind, to victims of disasters, fires and floods and in other appropriate cases (articles 17–19).

Under article 20, a Social Security Department is to be created as a part of the Ministry of Labour and Social Affairs, which, according to article 21, is to keep records of all assistance and pensions given to beneficiaries through the Department in accordance with this law and through other sources.

[1] Summaries based on English texts published by the Ministry of Labour and Social Affairs and furnished by the Government of Saudi Arabia.

REGULATIONS ON THE SOCIAL SECURITY INSTITUTE of 18 August 1962

Under article 1 of these regulations, a Social Security Institute is to be set up. It is to be an autonomous institution affiliated to the Ministry of Labour and Social Affairs, with its headquarters in Riyadh. Its objectives, set forth in article 2, are as follows:

(*a*) To draw up a general programme for social security throughout the Kingdom;

(*b*) To supervise all activities designed to serve the ends of social security within the Saudi society, including the establishment of special schools and institutes for the disabled and taking care of the aged and the orphans; and

(*c*) To prepare and implement productive enterprises in order to increase the revenue of the Institute and create opportunities of work for the largest possible number of citizens.

The following will constitute the revenue of the Institute: alms, budgetary appropriations, private and other donations, and proceeds from the Institute's invested capital. There will be an executive body (article 4), the functions of which are described in article 5. According to article 6, the Institute, in carrying out its activities, is not necessarily bound by government financial regulations; it has the freedom to act however its executive body deems necessary.

SIERRA LEONE

SIERRA LEONE NATIONALITY AND CITIZENSHIP ACT, 1962

ACT NO. 10 OF 1962, DEEMED TO HAVE ENTERED INTO FORCE ON 27 APRIL 1961[1]

Part I

PRELIMINARY

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2. . . .

(2) 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.

(3) 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.

(4) For the purposes of this Act a person shall be deemed not to have attained a given age until the commencement of the relevant anniversary of the day of his birth.

Part II

CITIZENSHIP BY REGISTRATION AND NATURALIZATION

3. (1) Subject to the provisions of subsection (4), a citizen of any country to which section 7 of the Constitution[2] applies or of the Republic of Ireland or a protected person, being a person of full age and capacity, on making application therefor to the Minister in the prescribed manner, may be registered as a citizen of Sierra Leone if he satisfies the Minister —

(*a*) That he is of good character;

(*b*) That he would be a suitable citizen of Sierra Leone;

(*c*) That he has a sufficient knowledge of a language in current use in Sierra Leone; and

(*d*) That he is ordinarily resident in Sierra Leone 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) Subject to the provisions of subsection (4), any person of full age and capacity born outside Sierra Leone whose father was at the time of that person's birth a citizen of Sierra Leone by virtue of the provisions of subsection (2) of section 1 or section 5 of the Constitution may, on making application therefor to the Minister in the prescribed manner, be registered as a citizen of Sierra Leone.

(3) Subject to the provisions of subsection (4), any woman who is or has been married to a citizen of Sierra Leone may, on making application therefor to the Minister in the prescribed manner, be registered as a citizen of Sierra Leone whether or not she is of full age and capacity.

(4) A person shall not be registered as a citizen of Sierra Leone under this section unless and until he has made a declaration in writing in the prescribed form of his willingness to renounce any other nationality or citizenship he may possess and has taken an oath of allegiance in the form specified in the First Schedule.

4. (1) The Minister may cause the minor child of any citizen of Sierra Leone to be registered as a citizen of Sierra Leone upon application made in the prescribed manner by a parent or guardian of the child.

(2) The Minister, in such special circumstances as he thinks fit, may cause any minor to be registered as a citizen of Sierra Leone.

5. A person registered under section 3 or section 4 shall be a citizen of Sierra Leone by registration as from the date on which he is registered.

6. The Minister, if application therefor is made to him in the prescribed manner by any alien of full age and capacity who satisfies him that he is qualified under the provisions of the Second Schedule for naturalization, may grant him a certificate of naturalization and the person to whom the certificate is granted shall, on taking an oath of allegiance in the form specified in the First Schedule, and on making a declaration in writing in the prescribed form of his willingness to renounce any other nationality or citizenship he may possess and any claim to the protection of any other country, be a citizen of Sierra Leone by naturalization as from the date on which that certificate is granted.

Part III

RENUNCIATION AND DEPRIVATION OF CITIZENSHIP

7. (1) If any citizen of Sierra Leone of full age and capacity makes a declaration in the prescribed manner of renunciation of citizenship of Sierra Leone the Minister, if he is satisfied that the person is, or on ceasing to be a citizen of Sierra Leone will become — (*a*) a citizen of any country to which section 7 of the Constitution applies; or (*b*) a national of a foreign country; may cause the declaration to be registered and upon registration that person shall cease to be a citizen of Sierra Leone:

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[1] Published in *Supplement to the Sierra Leone Gazette*, Vol. XCIII, No. 25, dated 22 March 1962.

[2] See *Yearbook on Human Rights for 1961*, p. 299.

Provided that the Minister may withhold registration of any such declaration if — (i) he is satisfied that the person is ordinarily resident in Sierra Leone; and (ii) in his opinion registration of the declaration would be 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.

8. (1) The Minister may by Order deprive any person, other than a person who is a citizen of Sierra Leone by virtue of his having been born in Sierra Leone, of his Sierra Leonean citizenship if the Minister is satisfied that that person has at any time while a citizen of Sierra Leone and of full age and capacity:

(*a*) Acquired the nationality or citizenship of a foreign country by any voluntary and formal act other than marriage; or

(*b*) Voluntarily claimed and exercised —

(i) In a foreign country; or

(ii) In any other country under the law of which provision is in force for conferring on its own citizens rights not available to Commonwealth citizens generally,

Any right available to him under the law of that country, being a right accorded exclusively to its own citizens,

and that it is not conducive to the public good that he should continue to be a citizen of Sierra Leone.

(2) The Minister may require any citizen of Sierra Leone other than a person who is a citizen of Sierra Leone by virtue of his having been born in Sierra Leone who also possesses some other citizenship or nationality to renounce his nationality or citizenship of that country within such period as the Minister may specify and in the event of any such person failing to renounce such nationality or citizenship within the time specified the minister may by Order deprive that person of his citizenship of Sierra Leone.

9. (1) Subject to the provisions of this section, the Minister may by Order deprive any citizen who is such by registration or naturalization of his citizenship if he is satisfied that it was obtained by means of fraud, false representation or the concealment of any material fact.

(2) Subject to the provisions of this section the Minister may by Order deprive any citizen of Sierra Leone who is such by naturalization of his citizenship if he is satisfied that that citizen —

(*a*) Has shown himself by act or speech to be disloyal or disaffected towards Her Majesty or the Government of Sierra Leone; or

(*b*) Has, during any war in which Sierra Leone was engaged, unlawfully traded or communicated with any enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or

(*c*) Has within seven years after becoming naturalized been sentenced in any country to imprisonment for a term of not less than twelve months.

(3) The Minister may by Order deprive any citizen by naturalization of his citizenship of Sierra Leone if he is satisfied that that person has been ordinarily resident in a foreign country or foreign countries for a continuous period of seven years and during the period has not registered annually in the prescribed manner at a Sierra Leone consulate, or by notice in writing to the Minister, his intention to retain his citizenship of Sierra Leone.

(4) The Minister shall not deprive a person of citizenship under this section unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Sierra Leone.

10. Where a citizen of Sierra Leone who is such by registration —

(*a*) Was a citizen of any country to which section 7 of the Constitution applies or of the Republic of Ireland by virtue of a certificate of naturalization granted to him or in which his name was included; and

(*b*) Has been deprived of that citizenship on grounds which in the opinion of the Minister are substantially similar to any of the grounds specified in subsections (1), (2) and (3) of section 9.

the Minister may by an Order made under this section deprive him of his Sierra Leonean citizenship, if the Minister is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Sierra Leone.

11. (1) A citizen of Sierra Leone who is deprived of his citizenship by an Order of the Minister under sections 8, 9 or 10 shall, upon the making of the Order, cease to be a citizen of Sierra Leone

. . .

Part IV

SUPPLEMENTAL

12. Any reference in this Act 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 27th April. 1961, and the birth occurred after the 26th April, 1961, the national status that the father would have had if he has died on the 27th April, 1961, shall be deemed to be his national status at the time of his death.

. . .

SECOND SCHEDULE

(Section 6)

(1) Subject to the provisions of the next following paragraph, the qualifications for naturalization of an alien who applies therefor are —

(*a*) That he has resided in Sierra Leone 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 Sierra Leone for periods amounting in the aggregate to not less than five years; and

(*c*) That he has an adequate knowledge of a language in current use in Sierra Leone; and

(*d*) That he is of good character; and

(*e*) That he would be a suitable citizen of Sierra Leone; and

(*f*) That he intends, if naturalized, to continue to reside permanently in Sierra Leone.

(2) The Minister, if in the special circumstances of any particular case he thinks fit, may with the approval of the Governor-General —

(*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 sub-paragraph (*a*) of the last foregoing paragraph as though it had immediately preceded that date;

(*b*) Allow residence in a country other than a foreign country to be reckoned for the purposes of sub-paragraph (*b*) of the last foregoing paragraph as if it had been residence in Sierra Leone;

(*c*) Allow periods of residence earlier than eight years before the date of application to be reckoned in computing the aggregate mentioned in the said sub-paragraph (*b*).

ELECTORAL PROVISIONS ACT, 1962

ACT NO. 14 OF 1962, DEEMED TO HAVE ENTERED INTO FORCE ON 14 OCTOBER 1961[1]

Part IV

CONTESTED ELECTIONS. POLLING AND COUNTING OF VOTES IN ELECTIONS OF ORDINARY MEMBERS AND OF MEMBERS OF LOCAL AUTHORITIES

. . .

24. (1) Every ballot box shall be so constructed that the ballot papers can be put therein by the voter but cannot by him be withdrawn.

(2) The Presiding Officer shall cause to be placed at the polling station, ballot boxes equivalent in number to the number of candidates remaining nominated.

(3) Immediately before the commencement of voting the Polling Officer at each polling station shall show the ballot boxes empty to such persons as may be lawfully present so that they may see that they are empty and shall in such persons presence close and place distinctive seals upon the boxes in such manner as to prevent the boxes being opened without breaking the seals and shall keep them so closed and sealed until the voting is completed. He shall also seal to his ballot box the symbol and photograph (if any) allotted to the candidate in such manner as to prevent it or them being removed from the box without breaking the seal.

(4) The Presiding Officer shall place the ballot boxes, which he shall have caused to be prepared as aforesaid, in the place of voting at the polling station and shall cause them to be screened or hidden from observation by all persons other than the voter casting his vote, in such manner that no person other than the voter can see in which ballot box a voter places any ballot paper.

. . .

50. No person who has voted at an election shall, in any legal proceedings arising out of the election, be required to state for whom he voted.

Part VII

ELECTION OFFENCES

. . .

76. (1) Every officer, Polling Assistant, and polling agent shall maintain and aid in maintaining the secrecy of the voting in an election and shall not communicate, except for some purpose authorised by law, before the election is closed, to any person any information as to the name or number on a Register of Electors or a *Gazette* List of any elector who has or has not applied for a ballot paper or voted, or as to any official mark.

(2) No such officer, Polling Assistant or polling agent, and no person whatsoever shall interfere with or attempt to interfere with an elector when casting his vote, or otherwise attempt to obtain information as to the candidate for whom any elector is about to vote or has voted, or communicate at any time to any person information obtained during any election as to the candidate for whom any elector is about to vote or has voted or as to the number on the ballot paper given to any elector:

Provided always that the provisions of this subsection shall not extend or be construed to extend to any procedure prescribed by this Act for recording the vote or votes of any elector who is incapacitated by blindness or other physical cause from casting his vote himself.

(3) Every officer, polling Assistant, candidate or polling agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not communicate any information obtained at such counting as to the candidate for whom any vote is given by any particular ballot paper.

. . .

81. Every person who is convicted of personation, treating, undue influence or bribery,[2] or aiding, counselling or procuring the commission of the offence of personation, shall in addition to any other punishment, be incapable during a period of five years from the date of his conviction —

(*a*) Of being registered as an elector or voting at any election;

(*b*) Of being elected a Member of the House of Representatives or of any Local Authority, or, if elected before his conviction, of retaining his seat as a Member of the House of Representatives or any Local Authority.

82. Every person who —

(*a*) Votes or induces or procures any person to

[1] Printed and published separately by the Government Printer, Sierra Leone.

[2] The offences enumerated are defined in sections 72, 78, 79 and 80.

vote at any election under this Act knowing that he or such other person is prohibited by this Act or by any other law from voting at such election;

(*b*) Before or during an election under this Act knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate;

shall be guilty of an illegal practice and shall be . . . incapable during a period of five years from the date of his conviction, of being registered as an elector or voting at any election.

83. Every person who —

(*a*) (i) Swears or administers any oath otherwise than for the purpose of any legal proceedings, whether or not such oath is recognised as lawful by the customary laws; or

(ii) Administers, invokes or makes any other use of any fetish; or

(iii) Makes any other invocation; or

(iv) Purports to cast any spell;

and relates any such act to or connects any such act with the voting or refraining from voting by any person at any election held under this Act; or

(*b*) On the day or days of voting beats a drum or employs any other means of calling attention or of promulgating public messages normally used by the Paramount Chief or the Tribal Authority for public purposes, accompanied by any statement or announcement relating to or connected with the voting or refraining from voting by any person at any election held under this Act, other than an announcement or statement of the date, time, and place at which the voting is to take place; or

(*c*) Threatens any act referred to in paragraph (*a*);

shall be guilty of an offence and shall be . . . incapable for a period of five years from the date of conviction, of being registered as an elector or of voting at any election held under this Act, and of being elected as a Member of the House of Representatives or of any Local Authority, or, if elected before his conviction, of retaining his seat as such Member.

84. (1) No person other than a candidate shall within any building where voting for an election is in progress or on any highway, market place, square, street, bridge or other place lawfully used by the public, within a distance of fifty yards of any entrance to such building, wear or display any card, symbol, favour or other emblem indicating any support for a particular candidate or political party and no person shall within four hundred yards of any such building make any public address indicating support for a particular candidate or political party:

Provided that the provisions of this subsection shall not apply to a vehicle bearing a party symbol which proceeds along a public highway and which does not stop within the said distance of fifty yards.

. . .

85. If a candidate for any election or a political party or agent acting on his or their behalf has convened a public meeting any where in the Provinces for the purpose of advocating any candidate's election such meeting shall not be prohibited or interferred with by any Paramount Chief or Tribal Authority or Local Authority or by a Government Officer, unless it is likely to lead to a breach of the peace, or has in fact become disorderly.

. . .

SOMALIA

PENAL CODE OF THE SOMALI REPUBLIC

APPROVED BY LEGISLATIVE DECREE NO. 5 OF 16 DECEMBER 1962[1]

BOOK I

Offences in general

Part I

GENERAL PROVISIONS

1. *Offences and Punishment to be Expressly Provided by Law.* — No one shall be punished for an act which is not expressly made an offence by law, not with a punishment which is not prescribed therefor.

2. *Time at which Penal Laws Take Effect.* — (1) No one shall be punished for an act which, in accordance with the law in force at the time when it was committed, did not constitute an offence.

(2) No one shall be punished for an act which, in accordance with a subsequent law, does not constitute an offence; and if he has already been convicted and sentenced, the execution and the penal consequences of such conviction and sentence shall terminate.

(3) If the law in force at the time when an offence was committed and the subsequent law differ, that law shall be applied the provisions of which are more favourable to the accused, unless the conviction and sentence have become final.

(4) In the case of exceptional or temporary laws, the provisions of the two preceding paragraphs shall not apply.

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Part III

THE OFFENDER AND THE PARTY INJURED

. . .

Chapter II

THE PARTY INJURED BY THE OFFENCE

81. *Right of Making Complaint.* — Except for offences in respect of which proceedings are initiated which proceedings are initiated by the State, any offence shall be punishable upon the complaint of the party injured.

82. *Exercise of the Right in the Case of Persons Under Disability.* — (1) Where the party injured is under fourteen years of age or is under a disability by reason of mental infirmity, the right of making complaint may be exercised by his legal representative.

(2) In case of absence or disability of the legal representative or where the legal representative has conflicting interests with those of the party injured, the right of making complaint may be exercised by a special representative.

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Part IV

PUNISHMENT

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Chapter III

ACCESSORY PENALTIES

101. *Interdiction from Public Offices.* — (1) Interdiction from public offices may be permanent or temporary.

(2) Except as otherwise provided by law, permanent interdiction from public offices shall deprive the convicted person of:

(*a*) The right to vote or to be elected, and every other political right;

(*b*) Any public office, any non-obligatory assignment in the public service, and the related right to be regarded as a public officer or a person entrusted with a public service;

(*c*) The office of guardian or legal representative, even temporary, and any other office pertaining to guardianship or to the position of legal representative;

(*d*) Academic positions, titles, decorations or other public honours;

(*e*) Stipends, pensions and allowances borne by the State or other public body;

(*f*) Any honour inherent in any of the offices, services, titles, capacities, distinction and decorations referred to in the foregoing sub-paragraph;

(*g*) The capacity to assume or acquire any right, office, service, function, title, distinction, decoration and honour referred to in the preceding sub-paragraphs.

. . .

103. *Interdiction from Profession or Trade.* — Interdiction from a profession or trade shall deprive the convicted person of the capacity of exercising, during the period of the interdiction, a profession, craft, industry, commerce or trade, in respect of which any special permission, certificate, authorisation or licence is required, and shall entail the revocation of any such permission, certificate,

[1] Text published in *Bollettino Ufficiale della Repubblica Somala*, Year IV, Supplements Nos. 1–10, of 2 October 1963. Under article 1 of the decree, the Code was to enter into force six months after its publication.

authorisation or licence. The duration of such interdiction shall be not less than one month nor more than five years except in the cases expressly provided by law.

. . .

107. *Suspension from the Exercise of a Profession or Trade.* — (1) Suspension from the exercise of a profession or a trade shall deprive the person convicted of the capacity to exercise for a period of not less than fifteen days and not more than two years, a profession, craft, industry, commerce or trade in respect of which a special permission, certificate authorisation or licence is required.

(2) A sentence in respect of a contravention committed with abuse of the profession, craft, industry, commerce or trade, or in violation of the duties attached thereto, where the punishment imposed is not less than imprisonment for one year, shall entail suspension from the exercise of such profession or trade.

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Chapter IV
Application and Modification of Punishment

Section I. — *General Provisions*

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114. *Detention before Sentence.* — (1) The period of detention undergone before the judgment has become final shall be deducted from the total period of detentive punishment or from the amount of the pecuniary punishment imposed.

(2) For the purposes of deduction, detention prior to sentence shall be considered as imprisonment for a crime or for a contravention.

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Chapter V
Execution of Punishment

. . .

137. *Serving of Imprisonment by Minors.* — (1) Until they have attained 18 years of age, minors shall, where possible, serve imprisonment in establishments separate from those used for adults, or in separate sections of such establishments; and, during the hours not set apart for work, they shall be given instruction directed chiefly to moral rehabilitation.

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139. *Remuneration of Convicts for Work Performed.* — In establishments where sentences of imprisonment are served, convicts shall be paid remuneration for work done.

140. *Compulsory Postponement of the Execution of Punishment.* — (1) The execution of a punishment, other than a pecuniary punishment, shall be deferred:

(*a*) Where it has to be imposed on a pregnant woman;

(*b*) Where it has to be imposed on a woman who has been confined less than one year previously;

(*c*) Where a petition for pardon is submitted, in the case of a death sentence.

2. In the case referred to in paragraph 1(*b*) above, the deferment shall be revoked should the child die or be entrusted to a person other than the mother, and the birth occurred more than two months previously.

. . .

142. *Supervening Mental Infirmity of Convicted Person.* — (1) Where a convicted person, before the execution of a punishment restricting personal liberty or during the execution thereof, should become afflicted with a mental disability, the judge shall, if he considers that the infirmity is such as to hinder the execution of the punishment, direct that the latter be deferred or suspended and that the convicted person be committed to an asylum, hospital or a nursing home.

(2) The foregoing provision shall also apply where, by reason of mental disability which has supervened, a person sentenced to punishment of death has to be committed to an asylum.

(3) Where the grounds on which the aforesaid measure was based have ceased to exist, the order committing a convict to an asylum shall be revoked, and the punishment shall be executed.

Part V
EXTINCTION OF OFFENCE AND PUNISHMENT

Chapter I
Extinction of Offence

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147. *Judicial Pardon for Persons Under 18 or Over 70 Years of Age.* — (1) Where, in the case of an offence committed by a person under 18 or over 70 years of age, the applicable punishment is imprisonment for a maximum term of not more than three years or a pecuniary punishment, or both, the judge may abstain from entering conviction and grant judicial pardon where, having regard to the circumstances referred to in article 110, he considers the offender will not commit any further offence. A judicial pardon shall extinguish the crime.

(2) A judicial pardon may not be granted more than once.

Chapter II
Extinction of Punishment

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151. *Conditional Release.* — A person sentenced to imprisonment for life who has served at least twenty-five years, or a person sentenced to imprisonment who has served half of the punishment or at least three-fourths of the punishment if he is a recidivist, may be granted conditional release, provided he has given continuous proof of good conduct.

152. *Rehabilitation.* — Rehabilitation shall extinguish the accessory penalty and every other penal consequence of the conviction, otherwise provided by law.

153. *Conditions for Rehabilitation.* — (1) Rehabilitation shall be granted where five years have elapsed from the day on which the principal punishment was executed or was in any other way extinguished, and the convicted person has given real and continuous proof of good conduct.

(2) The period shall be ten years in the case of recidivists, as referred to in paragraph 2 of article 61.

(3) The period shall likewise be ten years in the case of habitual or professional offenders.

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Part VII

SECURITY MEASURES

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Chapter II

SECURITY MEASURES IN RESPECT OF PROPERTY

182. *Confiscation.* — Confiscation shall be a security measure in respect of property, which may be added to those prescribed by this Code or by special provisions of law.

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BOOK II

Crimes

Part I

CRIMES AGAINST THE PERSONALITY OF THE SOMALI STATE

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213. *Subversive Associations.* — (1) Whoever, within the territory of the State, promotes, constitutes, organises or directs associations whose object is to establish by force the dictatorship of one social class over others, or to suppress by force one social class, or to subvert by force the economic or social order of the State, shall be punished with imprisonment from five to twelve years.

(2) Whoever, within the territory of the State, promotes, constitutes, organises or directs associations having for their object the suppression by force of any political and legal institution shall be liable to the same punishment.

(3) Whoever participates in the associations referred to in the preceding paragraphs shall be punished with imprisonment from one to three years.

(4) The punishment shall be increased in the case of persons who reconstitute, even under a false name or form, any of the above-mentioned association whose dissolution has been ordered.

214. *Anti-National Associations.* — (1) Whoever, apart from the cases referred to in the preceding article, within the territory of the State promotes, constitutes, organises or directs associations which aim at pursuing or which pursue, activities directed against the national unity, shall be punished with imprisonment from one to three years.

(2) Whoever participates in the associations referred to in the preceding paragraphs shall be punished with imprisonment from six months to two years.

(3) The punishment shall be increased in the case of persons who reconstitute, even under a false name or form, any of the above-mentioned associations whose dissolution has been ordered.

215. *Subversive or Anti-National Propaganda.* — (1) Whoever, in the territory of the State, conducts propaganda in favour of the installation by force of the dictatorship of one social class over others, or of the suppression by force of any social class, or in favour of the subversion by force of the economic or social order of the State, or conducts propaganda in favour of the destruction of any political and legal institution, shall be punished with imprisonment from one to five years.

(2) If the propaganda is conducted in order to destroy or impair the national sentiment, the punishment shall be imprisonment from six months to two years.

(3) Any person who extols the acts referred to in the foregoing paragraphs shall be liable to the same punishment.

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Chapter II

CRIMES AGAINST THE INTERNAL ORDER OF THE SOMALI STATE

217. *Attempts against the Order Established by the Constitution.* — Whoever commits an act for the purpose of changing the Constitution or the form of government by means not authorised by the Constitution shall be punished with imprisonment for life.

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219. *Bringing the Nation or the State into Contempt.* — (1) Whoever publicly brings into contempt the Somali Nation, the State, the National flag or emblem, the constitutional organs or the armed forces of the State shall be punished with imprisonment from six months to three years.

(2) The punishment shall be increased where the act referred to in the previous paragraph is committed by a citizen in foreign territory.

220. *Offending the Honour or Prestige of the Head of the State.* — Whoever, apart from the cases referred to in the preceding articles, publicly offends the honour or prestige of the President of the Republic, or holds him to be blamed or responsible for the acts of the Government, shall be punished with imprisonment from six months to three years.

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Chapter III

CRIMES AGAINST THE POLITICAL RIGHT OF SOMALI CITIZENS

226. *Attempts against the Political Rights of a Citizen.* — Whoever, by force, threat or deception, prevents, wholly or in part, the exercise of a political right, or induces someone to exercise it in a manner contrary to his wishes, shall be punished with imprisonment from one to five years.

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Chapter II

CRIMES OF INDIVIDUALS AGAINST THE PUBLIC ADMINISTRATION

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268. *Insult to a Public Officer.* — (1) Whoever offends the honour or prestige of a public officer in his presence, and by reason of, or in the execution

of his duties, shall be punished with imprisonment from six months to two years.

(2) The same punishment shall apply in the case of a person who commits the act by means of telephone or telegraphic communication, or by writing or drawing, addressed to a public officer, by reason of his duties.

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269. *Insult to a Political Administrative or Judicial Body.* — (1) Whoever offends the honour or prestige of a political, administrative or judicial body, or of representatives thereof, or of a public authority acting as a collective body, in the presence of the body, its representatives or corporate assembly shall be punished with imprisonment from six months to three years.

(2) The same punishment shall apply to a person who commits the act by means of telegraphic communication, or by writing or drawing, addressed to the body, its representatives or corporate assembly, by reason of their duties.

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270. *Insult to a Judge during a Hearing.* — 1. Whoever offends the honour or prestige of a judge during a hearing shall be punished with imprisonment from one to four years.

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271. *Offence Against the Authorities by means of Damaging Posters.* — Whoever, as a sign of contempt towards the authorities, removes, tears or otherwise renders illegible, or in any manner unserviceable, notices or pictorial posters affixed or exhibited to the public by order of the said authorities, shall be punished with imprisonment from six months to one year or with fine up to Sh. So. 5,000.

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Part III

CRIMES AGAINST THE ADMINISTRATION OF JUSTICE

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Chapter II

CRIMES AGAINST THE AUTHORITY OF JUDICIAL DECISIONS

. . .

309. *Non-observance of Accessory Penalties.* — (1) Whoever, having received a conviction which involves interdiction from public offices, or interdiction or suspension from a profession or a craft, infringes the obligations inherent in such a penalty, shall be punished with imprisonment up to one year or with fine from Sh. So. 500 to 10,000.

(2) The same punishment shall apply to a person who infringes the obligations arising out of a provisional suspension from the exercise of public offices or of a profession or craft.

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Chapter III

ARBITRARY PROTECTION OF PRIVATE RIGHTS

312. *Unauthorised Exercise of Private Rights.* — (1) Whoever, for the purpose of exercising an alleged right in a case in which it would be possible to have recourse to a judicial authority, takes the law into his own hands and uses force against persons or property, shall be punished with imprisonment up to one year or with fine up to Sh. So. 4,000.

(2) Whoever, for the purpose of exercising an alleged right, in a case in which it would be possible to have recourse to a judicial authority, takes the law into his own hands and uses threat against persons or property, shall be punished, on the complaint of the injured party, with imprisonment up to six months or with fine up to Sh. So. 2,000.

Part IV

CRIMES AGAINST RELIGIOUS FEELINGS AND REVERENCE FOR THE DEAD

Chapter I

CRIMES AGAINST THE RELIGION OF THE STATE AND OTHER FORMS OF WORSHIP

313. *Bringing the Religion of the State into contempt.* — (1) Whoever publicly brings the religion of Islam into contempt shall be punished with imprisonment up to two years.

(2) Whoever publicly insults the religion of Islam by bringing into contempt persons professing it or places or objects dedicated to worship, shall be liable to the same punishment.

314. *Disturbance of Religious Functions.* — Whoever impedes or disturbs the exercise of functions, ceremonies or religious practices of the Islamic faith in a place intended for the purpose, or in a public place or a place open to the public, shall be punished with imprisonment up to two years.

315. *Crimes against Forms of Worship Permitted in the State.* — Whoever commits any of the acts referred to in articles 313 and 314 against a religion permitted in the State shall be punished in accordance with the provisions of the aforesaid articles.

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Part V

CRIMES AGAINST PUBLIC ORDER

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321. *Instigation to Disobey the Laws.* — Whoever publicly incites another to disobey the laws relating to public order, or stir up hatred between the social classes, shall be punished with imprisonment from six months to five years, from three to seven years.

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328. *Publication or Circulation of False, Exaggerated or Tendencious News Capable of Disturbing Public Order.* — Whoever publishes or circulates false, exaggerated or tendencious news so as to disturb public order shall be punished, where the act does not constitute a more serious offence, with imprisonment up to six months or with fine up to Sh. So. 3,000.

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Part IX
CRIMES AGAINST MORALS AND DECENCY

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Chapter II
OFFENCE AGAINST MODESTY AND SEXUAL HONOUR

. . .

403. *Obscene Publications and Performances.* — (1) Whoever, for purposes of sale or distribution, or public exhibition, manufactures, introduces into the territory of the State, purchases, holds, exports or puts into circulation any obscene paper, drawing, representation or any other obscene object of any nature, shall be punished with imprisonment from three months to three years and with fine of not less than Sh. So. 1,000.

(2) A person who trades, even clandestinely, in the articles mentioned in the preceding paragraph or distributes or exhibits them publicly, shall be liable to the same punishment.

(3) The said punishment shall also apply in the case of a person who:

(*a*) Employs any means of publicity intended to facilitate the circulation or sale of the objects specified in paragraph 1 of this article;

(*b*) Gives public theatrical or cinematographic performances, or public concerts or recitals, which have an obscene character.

(4) In the case referred in letter (*b*) of the preceding paragraph, the punishment shall be increased where the act is committed notwithstanding the prohibition of the authorities.

404. *Definition of Obscene Acts and Objects.* — For purposes of penal law, acts and objects are deemed to be obscene where they, in the general opinion, are offensive to modesty.

405. *Prostitution.* — (1) Whoever practises prostitution in any form, shall be punished with imprisonment from two months to two years and with fine from Sh. So. 100 to 2,000.

(2) Where the act is committed by a married person, the punishment shall be increased.

406. *Incitement to lewd Acts.* — Whoever, in a public place or a place open to the public, incites anyone to lewd acts, even in an indirect manner, shall be punished, where the act does not constitute a more serious offence, with imprisonment up to one year or with fine up to Sh. So. 2,000.

407. *Instigation, Aiding and Exploitation of Prostitution.* — (1) Whoever instigates another to commit prostitution, or aids or in any manner facilitates prostitution, or exploits, wholly or in part, the proceeds of prostitution, shall be liable to the punishment provided for in paragraph 1 of article 405.

(2) The punishment shall be increased where:

(*a*) The act is committed against a person who is incapable of giving consent;

(*b*) The offender is an ascendant, spouse, brother, sister or guardian of the person;

(*c*) The act is committed against a person entrusted to the offender for care, education, instruction, supervision or custody.

408. *Compulsion to Prostitution.* — (1) Whoever, by violence or threats, compels another to commit prostitution shall be punished with imprisonment from two to six years and with fine from Sh. So. 5,000 to 15,000.

(2) Where any of the conditions referred to in paragraph 2 of the preceding article exists, the punishment shall be increased.

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Part XI
CRIMES AGAINST THE FAMILY

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Chapter III
CRIMES ARISING OUT OF DERELICTION OF DUTY TOWARDS FAMILY

430. *Violation of Duty Towards Family.* — (1) Whoever avoids the obligations relating to the exercise of parental authority, legal guardianship, or marriage, shall be punished, where the act does not constitute a more serious crime, with imprisonment up to one year or with fine from Sh. So. 1,000 to 10,000.

(2) The same punishment shall apply to a person who misuses or squanders the estate of a minor child or ward.

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432. *Ill-treatment of Children and Members of the Family.* — (1) Whoever, other than in the cases referred to in the preceding article, ill-treats a member of the family, or a person under the age of 14 years, or a person subject to his authority, or entrusted to him for the purpose of education, instruction, treatment, supervision or custody, or for the exercise of a profession or craft, shall be punished with imprisonment from one to five years.

(2) Where the act results in a serious or a very serious hurt, the punishment shall be imprisonment, from two to eight years; where death results, the punishment shall be imprisonment from ten to fifteen years.

433. *Abduction of Persons under Legal Incapacity.* — (1) Whoever abducts a person under 14 years of age, or a person mentally infirm from a parent exercising parental authority, or from a guardian or trustee, or detains such person against the will of the aforesaid people, shall be punished, on the complaint of the parent exercising parental authority, the guardian or trustee, with imprisonment from one to three years.

(2) Whoever abducts or detains a minor who has attained 14 years of age, without the minor's consent, for purposes other than lust or marriage, shall be liable to the same punishment, on the complaint of the parent exercising parental authority, the guardian or trustee.

Part XII
CRIMES AGAINST THE PERSON AND SAFETY OF INDIVIDUAL

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Chapter II
CRIMES AGAINST HONOUR

451. *Insult.* — (1) Whoever offends the honour or dignity of a person by words or act in his pres-

ence, or by writing, or drawing, or by telephonic or telegraphic communications to that person, shall be punished, on the complaint of the party injured, with imprisonment up to one year or with fine up to Sh. So. 1,000.

(2) The punishment shall be increased up to double:

(*a*) Where the insult is committed in the presence of more than one person, or in such a manner that it directly comes to their knowledge;

(*b*) Where the act consists in the attribution of a specific act;

(*c*) Where the insult is also directed to the nationality, ethnical community or family to which the party injured belongs;

(*d*) Where the insult is committed by means of word, act, writing, drawing or communication which, according to the social customs, tends directly to provoke the party injured or which, even where no such provocation is caused, is of a particularly serious nature.

(3) The prosecution for the offence shall be initiated by the State where any of the circumstances referred to in letter (*c*) or (*d*) of the preceding paragraph is present.

(4) Where the insult is reciprocal, the court may declare that one of the parties or both are not punishable, notwithstanding that one of the parties has filed the complaint.

452. *Defamation.* — (1) Whoever other than in the cases referred to in the preceding article, by communicating with more than one person, injures the reputation of another, shall be punished, on the complaint of the party injured, with imprisonment up to one year or with fine up to Sh. So. 2,000.

(2) The punishment shall be increased up to double where any of the circumstances referred to in letters (*b*), (*c*) or (*d*) of paragraph 2 of the preceding article is present.

(3) Where the act is committed by means of the press or by any other means of publicity, the punishment shall be imprisonment from six months to three years or fine not less than Sh. So. 4,000.

453. *Proof of Truth.* — (1) In the cases referred to in articles 451 and 452, whenever the offence consists in the attribution of a specific act, the proof of the truth of such act shall be admitted in penal proceedings, provided that the party injured makes an express request before the commencement of the proceedings.

(2) The offender shall in all cases have the right to prove the truth:

(*a*) Where the party injured is a public officer and the act attributed to him relates to the exercise of the functions of such officer;

(*b*) Where criminal or disciplinary proceedings are pending against the party injured in respect of the act attributed to him, or where such proceedings are about to be instituted.

(3) Where the truth of the act attributed to the party injured is proved, the offender shall not be punishable.

454. *Provocation.* — Whoever commits any of the acts referred to in Articles 451 and 452 in a state of anger caused by an unlawful act of another person, and immediately after the same, shall not be punishable.

Chapter III

Crimes against Individual Liberty

Section I. — *Crimes against Human Personality*

455. *Reduction to Slavery.* — Whoever reduces a person to slavery or to a similar condition, shall be punished with imprisonment from five to twenty years.

456. *Dealing and Trading in Slaves.* — Whoever deals or in any manner trades in slaves or persons in a condition similar to slavery, shall be punished with imprisonment from five to twenty years.

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Section II. — *Crimes against Personal Liberty*

460. *Seizure of a Person.* — Whoever deprives another of personal liberty shall be punished with imprisonment from six months to eight years.

461. *Illegal Arrest.* — A public officer who, other than in the cases allowed by law effects an arrest, or, being in charge of a prison, receives therein any person without an order from the competent Authorities, or unduly delays the execution of the punishment or security measures, shall be punished with imprisonment up to three years.

462. *Abuse of Authority towards Person Arrested or Detained.* — (1) A public officer who subjects to rigorous measures not allowed by law a person arrested or detained, of whom he has the custody, even temporarily, or who is entrusted to him in execution of an order of the competent authorities, shall be punished with imprisonment up to three years.

(2) The same punishment shall apply where the act is committed by another public officer vested, by reason of his office, with any authority over the person in custody.

463. *Arbitrary Personal Search and Inspection.* — A public officer who, by abusing the powers inherent in his functions, carries out a personal search or inspection, shall be punished with imprisonment up to one year.

Section III. — *Crimes against the Right to Work*

464. *Compulsory Labour.* — Apart from the cases of military or civil emergency, or the cases in which compulsory labour is expressly provided for by law, whoever forces another to compulsory labour or avails himself of the services of persons forced to compulsory labour, shall be punished, where the act does not constitute a more serious offence, with imprisonment from six months to five years and fine from Sh. So. 5,000 to 20,000.

465. *Violation of the Right to Engage Workers or to Participate in a Trade Union.* — (1) Whoever by violence or threats, forces an employer to engage one or more workers or prevents him from engaging them, shall be punished with imprisonment up to four years and fine up to Sh. So. 10,000.

(2) The same punishment shall be imposed where violence or threats are used to force one or more persons to participate in a trade union or to prevent them from participating therein.

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Section V. — *Crimes against the Privacy of the Home*

470. *Violation of the Privacy of the Home.* — (1) Whoever enters the dwelling house of another or any other place of private residence, or the appurtenances thereof, against the will of the person who has the right to exclude him, or enters therein clandestinely or fraudulently, shall be punished with imprisonment up to three years.

(2) Whoever stays in the said places against the express will of the person who has the right to exclude him, or remains there clandestinely or fraudulently, shall be subject to the same punishment.

(3) The crime shall be punishable on the complaint of the party injured.

(4) The punishment shall be imprisonment from one to five years, and the prosecution shall be initiated by the State, where the act is committed with violence against objects or persons, or where the offender is openly armed.

471. *Violation of the Privacy of the Home committed by a Public Officer.* — (1) A public officer who, by abusing the powers inherent in his functions, enters or remains in the places indicated in the preceding article, shall be punished with imprisonment from one to five years.

(2) Where the abuse consists in entering the said places without observing the formalities prescribed by law, the punishment shall be imprisonment up to one year.

Section VI. — *Crimes Against Secrecy*

472. *Interception, Removal and Suppression of Correspondence.* — (1) Whoever ascertains the contents of a closed correspondence, not addressed to him, or removes or diverts a closed or open correspondence, not addressed to him, for the purpose of ascertaining its contents or enabling another to ascertain its contents, or destroys or suppresses the same, wholly or in part, shall be punished, where the act is not deemed to be a crime by another provision of law, with imprisonment up to one year or with fine from Sh. So. to 5,000.

(2) Where the offender, without good cause, discloses, wholly or in part, the contents of the correspondence, he shall be punished, where harm results from the act and the said act does not constitute a more serious offence, with imprisonment up to three years.

(3) The crime shall be punishable on the complaint of the party injured.

(4) For the purposes of the provisions of the present Section, the term "correspondence" includes letters, telegram or telephone.

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BOOK III

Contraventions

Part I

CONTRAVENTIONS RELATING TO PUBLIC ORDER AND PUBLIC TRANQUILLITY

. . .

510. *Seditious Assembly.* — (1) Whoever takes part in a seditious assembly of ten or more persons, shall be punished, for the act of such participation, with imprisonment up to one year.

(2) Where the person who takes part in the assembly is armed, the punishment shall be imprisonment for not less than six months.

(3) Whoever, before an order given by any public authority, or in compliance therewith, withdraws from the assembly, shall not be punishable.

511. *Cries or News Capable of Disturbing Public or Private Tranquillity.* — Whoever, for the purpose of selling or distributing papers or drawings in a public place or a place open or exposed to the public, announces or shouts news, whereby public or private tranquillity may be disturbed, shall be punished with fine up to Sh. So. 1,000.

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515. *Wrongful Exercise of the Typographic Art.* — Whoever, without a licence from the authorities, or without observing the directions of the law, exercises the typographic, lithographic, photographic or any other art for printing or for mechanical or chemical reproduction in several copies, shall be punished with imprisonment up to six months or with fine from Sh. So. 300 to 5,000.

516. *Wrongful Sale, Distribution or Posting of Papers or Drawings.* — (1) Whoever, in a public place or a place open to the public, sells or distributes or in any manner places in circulation papers or drawings, without having obtained the authorisation required by the law, shall be punished with fine up to Sh. So. 500.

(2) Whoever, without a licence from the authority, in a public place or a place open or exposed to the public, affixes papers or drawings, or makes use of luminous or acoustic means for making communications to the public, or in any way puts up inscriptions or drawings, shall be liable to the same punishment.

. . .

520. *Wrongful Performance of Acts intended for Reproduction by the Cinematograph.* — (1) Whoever causes to be performed in a public place or a place open or exposed to the public acts intended for reproduction by the cinematograph, without having given prior notice thereof to the authorities, shall be punished with fine from Sh. So. 1,000 to 5,000.

(2) Whoever manufactures, introduces into the territory of the State, or exports, or in any manner deals in cinematographic films, without having given prior notice thereof to the authorities, shall be liable to the same punishment.

(3) Where any of the acts referred to in the foregoing provisions is committed in defiance of the prohibition of the authorities, the punishment shall be imprisonment up to one month.

521. *Wrongful Theatrical or Cinematographic Performances.* — (1) Whoever recites in public dramas or other works, or gives in public theatrical representations of any kind, without first having given information thereof to the authorities, shall be punished with imprisonment up to six months or with fine up to Sh. So. 3,000.

(2) Whoever causes to be shown in public cinematographic films which have not been previously submitted for censorship to the authorities shall be liable to the same punishment.

(3) Where the act is committed in defiance of the prohibition of the authorities, the punishments of fine and imprisonment shall be imposed together.

(4) The act shall be deemed to be committed in public where any of the circumstances referred to in letters (*b*) and (*c*) of paragraph 4 of article 209 exists.

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Part IV

CONTRAVENTIONS RELATING TO MORALS AND DECENCY

. . .

559. *Blasphemy and offensive Acts towards the Dead.* — (1) Whoever publicly blasphemes, with invectives or insulting words, the deity or the symbols or the persons venerated in the religion of the State, shall be punished with fine from Sh. So. 100 to 3,000.

(2) Whoever publicly commits any offensive acts towards the dead, shall be subject to the same punishment.

560. *Trade in Writings, Drawings or other Articles Contrary to Public Decency.* — Whoever exhibits to the public view or, in a public place or a place open to the public, offers for sale or distributes writings, drawings or any other figurative object offensive to public decency, shall be punished with fine from Sh. So. 100 to 1,000.

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LAW No. 28 ON SOMALI CITIZENSHIP

of 22 December 1962[1]

Article 1

ACQUISITION OF CITIZENSHIP

Somali citizenship may be acquired by operation of law or by grant.

Article 2

ACQUISITION OF CITIZENSHIP BY OPERATION OF LAW

Any person:

(*a*) Whose father is a Somali citizen:

(*b*) Who is a Somali residing in the territory of the Somali Republic or abroad and declares to be willing to renounce any status as citizen or subject of a foreign country.

shall be a Somali citizen by operation of law.

Article 3

DEFINITION OF SOMALI

For the purpose of this law, any person who — by origin, language or tradition — belongs to the Somali Nation shall be considered a Somali.

Article 4

ACQUISITION OF CITIZENSHIP BY GRANT

Somali citizenship may be granted to any person who is of age and makes application therefor, provided that:

(*a*) He has established his residence in the territory of the Somali Republic for a period of at least seven years;

(*b*) He is of good civil and moral conduct;

(*c*) He declares to be willing to renounce any status as citizen or subject of a foreign country.

Article 5

REDUCTION OF PERIOD

The period referred to in sub-paragraph (*a*) of the preceding article shall be reduced to two years, where the person concerned is the child of a Somali mother even if she is not a citizen.

Article 6

RENUNCIATION OF FOREIGN CITIZENSHIP

1. Any person who, in accordance with articles 2 and 4 of this law, declares that he is willing to renounce any status as citizen or subject of a foreign country, shall make such declaration before the President of the District Court of the district where he resides or, if he resides abroad, before a Consulate of the Somali Republic.

2. A certificate, that the declaration has been made shall be issued in two copies, one of which shall be delivered to the person concerned.

3. In the case provided for in paragraph (*b*) of article 2, if the person concerned is a minor, the declaration may be made by his legal representative.

Article 7

GRANTING OF CITIZENSHIP

1. The granting of citizenship provided for in article 4 of this law shall be made by decree of the President of the Republic on the proposed of the Minister of Interior, having heard the Council of Ministers.

2. The granting of citizenship shall be subject to the prior advice of a special Commission consisting

[1] Text published in *Bollettino Ufficiale della Repubblica Somala*, Year III, Supplements Nos. 4–12, of 22 December 1962.

of a President and eight members appointed for a period of two years by decree of the President of the Republic on the proposal of the Prime Minister, having heard the Council of Ministers.

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Article 9

GRANTING OF HONORARY CITIZENSHIP

1. Honorary Somali citizenship may be granted to any person who has rendered exceptional services to the Somali Republic. The granting of honorary citizenship shall be made by decree of the President of the Republic on the proposal of the Prime Minister, having heard the Council of Ministers. The granting of honorary citizenship shall not be subject to the procedures and conditions established in the preceding articles.

2. The granting of honorary citizenship shall not include the enjoyment of political rights or the obligation to render military service. It shall not extend to the members of the family of the person to whom honorary citizenship has been granted.

Article 10

RENUNCIATION OF CITIZENSHIP

Any Somali citizen who:

(*a*) Having established his residence abroad, voluntarily acquires foreign citizenship or the status as subject of a foreign country.

(*b*) Having established his residence abroad, and having acquired, for reasons beyond his will, foreign citizenship or the status as subject of a foreign country, declares to renounce Somali citizenship;

(*c*) Being abroad and having accepted employment from a foreign Government or voluntary serving in the armed forces of a foreign country, continues to retain his post, notwithstanding the notice from the Somali Government that, unless he leaves the employment or the service within a definite period of time, he shall lose Somali citizenship;

shall cease to be a Somali citizen.

Article 11

DEPRIVATON OF CITIZENSHIP ACQUIRED BY GRANT BY REASON OF UNWORTHINESS

1. Any person who has acquired Somali citizenship by grant may be deprived of his Somali citizenship by reason of unworthiness:

(*a*) Where the decree granting citizenship has been obtained with fraud, false representation of the concealment of any material fact.

(*b*) Where the person concerned has been sentenced to imprisonment for a term not less than five years for a crime against the personality of the Somali State.

2. The decree depriving a person of his Somali citizenship shall be issued in the same manner prescribed for the decree granting citizenship.

3. Deprivation of citizenship acquired by grant shall not extend to the wife and minor children of the person concerned.

Article 12

RECOVERY OF CITIZENSHIP

1. Any person who fulfils the conditions laid down in article 2 of this law and has lost his Somali citizenship may recover it, on application made therefor, if he subsequently establishes his residence in the territory of the Somali Republic, and declares to be willing to renounce any status as citizen or subject of a foreign country.

2. In any other case, a person who has lost his Somali citizenship may recover it, on application made therefor, if he subsequently establishes his residence in the territory of the Somali Republic for al least three years and proves that he has fulfilled the conditions laid down in this law for the acquisition of citizenship.

Article 13

MARRIED WOMEN

1. Any woman who is not a citizen and marries a citizen shall acquire Somali citizenship. She shall retain it even after the dissolution of the marriage, except where she renounces her Somali citizenship under the terms of article 10.

2. Except as provided in paragraph 2 of article 9, any woman who is not a citizen and is the wife of an alien or stateless person who acquires citizenship, shall acquire Somali citizenship.

3. Any woman who is a citizen and marries an alien shall lose her Somali citizenship if, by her marriage, she acquires her husband's citizenship.

4. Except as provided in paragraph 3 of article 11, any woman married to a citizen who loses his citizenship, loses it also; unless the husband has become stateless or the new citizenship acquired by him cannot be extended to her.

5. Any woman who was a citizen and lost her citizenship because of marriage shall recover it, if the marriage is dissolved, provided that she establishes her residence in the territory of the Somali Republic and renounces any foreign citizenship or status as subject of a foreign country in the manner prescribed in article 6.

Article 14

MINORS

1. Except as provided in articles 9 and 11, any minor whose father acquires, loses or recovers Somali citizenship, shall follow his father's citizenship. If the father is stateless, the minor shall follow his mother's citizenship.

2. He may, however, after his attainment of majority declare to opt for the citizenship he had at the time of his birth. Such declaration shall be made in the manner prescribed in article 6.

Article 15

MINORS IN SPECIAL CIRCUMSTANCES

1. Any minor who is the child of unknown parrents and was born in the territory of the Somali Republic, shall be considered a Somali citizen, pro-

vided that he has not acquired a foreign citizenship or the status as subject of a foreign country.

2. Any child of unknown parents found in the territory of the Somali Republic shall be presumed, until the contrary is proved, to have been born in the territory of the Somali Republic.

Article 16

MINOR AGE

1. For the purpose of this law, any person under fifteen years of age shall be considered a "minor".

2. However, for the purposes of articles 4 and 14, the age of majority shall be determined on the basis of the law of the State the citizenship of which is renounced.

. . .

Article 18

CITIZENSHIP PREVIOUSLY ACQUIRED

Any person who, at the date of the entry into force of this law, had acquired Somali citizenship under the provisions of previous legislation, shall retain his citizenship for all purposes

. . .

Article 20

ENTRY INTO FORCE

This law shall come into force on the thirtieth day following the date of its publication.

SOUTH AFRICA

THE GENERAL LAW AMENDMENT ACT, 1962

ACT NO. 76 OF 1962, ASSENTED TO ON 22 JUNE 1962[1]

1. Section *one* of the Suppression of Communism Act, 1950 (hereinafter referred to as the principal Act), is hereby amended by the insertion in sub-section (1) in the definition of "gathering" after the word "having" of the expression "except in the case of any gathering contemplated in sub-paragraph (ii) of paragraph (*e*) of sub-section (1) of section *five* or paragraph (*b*) of subsection (1) or (3) of section *nine*".

2. Section *two* of the principal Act is hereby amended —

(*a*) By the addition to paragraph (*d*) of sub-section (2) of the word "or";

(*b*) By the insertion after the said paragraph of the following paragraph:

"(*e*) That any organization carries on or has been established for the purpose of carrying on directly or indirectly any of the activities of an unlawful organization,";

(*c*) By the substitution in sub-section (3) for the expression "and (*d*)" of the expression "(*d*) and (*e*)".

3. Section *five* of the principal Act is hereby amended by the substitution for paragraph (*e*) of sub-section (1) of the following paragraph:

"(*e*) Not to attend —

"(i) Any gathering; or

"(ii) Any particular gathering or any gathering of a particular nature, class or kind,

"at any place or in any area during any period or on any day or during specified times or periods within any period, except in such cases as may be specified in the notice or as the Minister or a magistrate acting in pursuance of his general or special instructions may at any time expressly authorize."

4. The following section is hereby inserted after section *five bis* of the principal Act:

"*5ter*. (1) The Minister may by notice in the *Gazette* prohibit all persons whose names appear on any list in the custody of the officer referred to in section *eight* or who were office-bearers, officers or members of any organization which has under sub-section (2) of section *two* been declared to be an unlawful organization or in respect of whom any prohibition under this Act by way of notices addressed and delivered or tendered to them is in force, from being or becoming office-bearers, officers or members of any particular organization or any organization of a nature, class or kind specified in such notice, except with the written consent of the Minister or a magistrate acting in pursuance of his general or special instructions: Provided that the Minister shall not issue any such notice in relation to any employers' organization or trade union registered under the Industrial Conciliation Act, 1956 (Act No. 28 of 1956), except after consultation with the Minister of Labour.

"(2) The Minister may at any time by like notice withdraw or vary any notice under sub-section (1)."

5. The following section is hereby inserted after section *six* of the principal Act:

"*6bis*. (1) No certificate of registration shall be issued under the Newspaper and Imprint Act, 1934 (Act No. 14 of 1934), in respect of any newspaper unless the proprietor of such newspaper deposits with the Minister of the Interior such amount not exceeding twenty thousand rand as the Minister may determine or unless the Minister certifies that he has no reason to believe that a prohibition under section *six* will at any time become necessary in respect of such newspaper.

". . .

"(4) If a prohibition is imposed under section *six* in respect of any newspaper, any amount deposited in respect of such newspaper together with any interest not paid to the proprietor concerned, shall be forfeited to the State: Provided that the Minister may direct that such portion of such amount as he may determine shall be refunded to such proprietor."

. . ."

6. Section *eight* of the principal Act is hereby amended by the addition of the following sub-sections:

"(3) The Minister may upon good cause being shown direct that the name of any person appearing on any such list be removed therefrom.

"(4) The Minister may cause any such list or any extract from any such list to be published in the *Gazette* and shall cause notice to be given in the *Gazette* of the removal of any name from any list so published or the removal from any list of any name appearing in any extract from such list so published."

[1] The text of the Act appears in *Statutes of the Republic of South Africa*, 1962. Various Acts have been amended by the present Act: for the Suppression of Communism Act, 1950, as amended, see *Yearbook on Human Rights for 1950*, pp. 300–306, *Yearbook on Human Rights for 1951*, pp. 347–350 and *Yearbook on Human Rights for 1954*, pp. 267–269; for the Riotous Assemblies Act, 1956, see *Yearbook on Human Rights for 1956*, pp. 239–241, and for the Unlawful Organizations Act, 1960, see *Yearbook on Human Rights for 1960*, p. 333.

7. Section *nine* of the principal Act is hereby amended —

(*a*) By the substitution for sub-section (1) of the following sub-section:

"(1) Whenever the Minister is satisfied that any person engages in activities which are furthering or are calculated to further the achievement of any of the objects of communism, he may by notice under his hand addressed and delivered or tendered to that person, prohibit him from attending, except in such cases as may be specified in the notice or as the Minister or a magistrate acting in pursuance of his general or special instructions may at any time expressly authorize —

"(*a*) Any gathering; or

"(*b*) Any particular gathering or any gathering of a particular nature, class or kind,

at any place or in any area during any period or on any day or during specified times or periods within any period";

(*b*) by the addition of the following sub-sections:

"(3) The Minister may in the manner provided in sub-section (2) of section *two* of the Riotous Assemblies Act, 1956 (Act No. 17 of 1956), prohibit the assembly, except in such cases as he may specify when imposing the prohibition or as may thereafter be expressly authorized by him or a magistrate acting in pursuance of his general or special instructions —

"(*a*) Of any gathering; or

"(*b*) Of any particular gathering or any gathering of a particular nature, class or kind,

"at any place or in any area during any period or on any day or during specified times or periods within any period, if he deems it to be necessary in order to combat the achievement of any of the objects of communism.

"(4) The Minister may, in the manner in which any prohibition under this section was imposed, at any time withdraw or vary such prohibition."

8. Section *ten* of the principal Act is hereby amended —

(*a*) By the substitution for sub-section (1) of the following sub-section:

"(1) (*a*) If the name of any person appears on any list in the custody of the officer referred to in section *eight* or the Minister is satisfied that any person —

"(i) Advocates, advises, defends or encourages the achievement of any of the objects of communism or any act or omission which is calculated to further the achievement of any such object; or

"(ii) Is likely to advocate, advise, defend or encourage the achievement of any such object or any such act or omission; or

"(iii) Engages in activities which are furthering or may further the achievement of any such object,

the Minister may by notice under his hand addressed and delivered or tendered to any such person and subject to such exceptions as may be specified in the notice or as the Minister or a magistrate acting in pursuance of his general or special instructions may at any time authorize in writing, prohibit him, during a period so specified, from being within or absenting himself from any place or area mentioned in such notice or, while the prohibition is in force, communicating with any person or receiving any visitor or performing any act so specified: Provided that no such prohibition shall debar any person from communicating with or receiving as a visitor any advocate or attorney managing his affairs whose name does not appear on any list in the custody of the officer referred to in section *eight* and in respect of whom no prohibition under this Act by way of a notice addressed and delivered or tendered to him is in force.

"(*b*) The Minister may at any time by like notice withdraw or vary any such notice."

(*b*) By the insertion after sub-section (1) *bis* of the follwing sub-section:

"(1)*ter* Without prejudice to the provisions of subsection (1) the Minister may, before deciding to impose any prohibition on any person under the said subsection, require any magistrate to administer to such person a warning to refrain from engaging in any activities calculated to further the achievement of any of the objects of communism."

(*c*) By the deletion in sub-section (3) of the words "Subject to the proviso to sub-section (1)" and the words "after the expiration of the period of not less than seven days stated in such notice".

9. The following section are hereby inserted after section *ten* of the principal Act:

"10*bis*. If the Minister is satisfied that in carrying out any of the provisions of this Act reasonable but unsuccessful attempts have been made to serve, deliver or tender any order, notice or document on or to any person, and that a copy of such order, notice or document has been affixed to the main entrance of the last-known residence of such person, he may cause such order, notice or document to be published in the *Gazette*, whereupon it shall be deemed to have been served, delivered or tendered on or to such person on the date of publication.

". . .

"10*quat*. (1) The Minister may at any time by notice under his hand addressed and delivered or tendered to any person whose name appears on any list in the custody of the officer referred to in section *eight* or in respect of whom any prohibition under this Act by way of a notice addressed and delivered or tendered to him is in force, order such person to report to the officer in charge of such police station and at such times and during such period as may be specified in the notice concerned.

"(2) The Minister may at any time in like manner withdraw or vary any notice issued under subsection (1)."

10. (1) Section *eleven* of the principal Act is hereby amended —

. . .

(*d*) By the insertion in paragraph (*g*) after the word "addresses" of the words "or prints, publishes, distributes or in any manner whatsoever circulates a notice convening";

(*e*) By the substitution for paragraph (*g*)*bis* of the following paragraph:

"(*g*)*bis*. Without the consent of the Minister or except for the purposes of any proceedings in any court of law records or reproduces by mechanical or other means or prints, publishes or disseminates any speech, utterance, writing or statement or any extract from or recording or reproduction of any speech, utterance, writing or statement made or produced or purporting to have been made or produced anywhere at any time by any person prohibited under section *five* or *nine* from attending any gathering;"

(*f*) By the deletion in paragraph (*i*) of the expression "subject to the proviso to sub-section (1) of section *ten*,";

(*g*) By the substitution in paragraph (*i*) of the expression "or (*d*)" of the expression "(*d*), (*d*)*bis*, (*d*)*ter* or (*d*)*quat*" and by the insertion in the said paragraph after the word "period" of the words "of not less than one year and";

(*h*) By the insertion in paragraph (ii) after the expression "(*e*)" of the expression "(*e*)*bis*" and after the expression "(*f*)*bis*" of the expression "(*f*)*ter*".

(2) Paragraph (*b*) of sub-section (1) shall come into operation six months after the date of promulgation of this Act.

11. Section *twelve* of the principal Act is hereby amended —

(*a*) By the insertion after sub-section (1) of the following sub-section:

"(1)*bis*. If in any prosecution for an offence under paragraph (*d*)*bis* of section *eleven* it is proved that the accused person has changed the place of his residence or employment he shall be deemed to have failed to give notice thereof as required by the said paragraph unless the contrary is proved."

(*b*) By the substitution for sub-section (3) of the following sub-section:

"(3) No person shall be convicted of an offence under paragraph (*g*) or (*g*)*bis* of section *eleven*, if he satisfies the court that at the time the offence was committed he had no knowledge of the prohibition concerned, unless at the said time the prohibition or particulars thereof had been notified in the *Gazette*."

12. Section *sixteen* of the principal Act is hereby amended by the substitution for all the words before the word "*three*" where it occurs for the second time of the words "Sections *six*, *seven* and *eight* of the Riotous Assemblies Act, 1956 (Act No. 17 of 1956), and sections".

13. Section *seventeen* of the principal Act is hereby amended by the substitution for the expression "and the powers conferred upon the Minister by sub-section (1) of section *ten* of this Act, except" of the expression "except the power conferred under sub-section (2) of section *two* in respect of an organization contemplated in paragraph (*e*) of the said subsection and".

. . .

19. Section *two* of the Riotous Assemblies Act, 1956, is hereby amended —

(*a*) By the insertion after sub-section (3) of the following sub-sections:

"(3)*bis*. (*a*) If the Minister is satisfied that reasonable but unsuccessful attempts have been made to deliver or tender to any person a notice issued under sub-section (3), and that a copy of such notice has been affixed to the main entrance of the last-known residence of such person he may cause such notice to be published in the *Gazette*, whereupon it shall be deemed to have been delivered or tendered to such person on the date of publication.

"(*b*) The Minister may cause particulars of any notice addressed to any person under sub-section (3) to be published in the *Gazette*.

"(3)*ter*. The Minister may, if he deems it necessary or expedient for the maintenance of the public peace, by notice in the *Gazette* prohibit the assembly, except in such cases as may be specified in the notice or as the Minister or a magistrate acting in pursuance of his general or special instructions may at any time expressly authorize, of any public gathering in any public place in any area during any period or on any day or during specified times or periods within any period."

(*b*) By the addition of the following sub-section:

"(5) (*a*). Any person who without the consent of the Minister or except for the purposes of any proceedings in any court of law records or reproduces by mechanical or other means or prints, publishes or disseminates any speech, utterance, writing or statement or any extract from or recording or reproduction of any speech, utterance, writing or statement made or produced or purporting to have been made or produced anywhere at any time by any person prohibited under sub-section (3) from attending any public gathering, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year and on a second or subsequent conviction to imprisonment for a period not exceeding two years.

"(*b*) No person shall be convicted of an offence under paragraph (*a*) if he satisfies the court that at the time of the alleged offence he had no knowledge of the prohibition concerned, unless at the said time the prohibition or particulars thereof had been notified in the *Gazette*."

20. Section *two* of the Unlawful Organizations Act, 1960, is hereby amended —

(*a*) By the substitution for the expression "and sections *three* to *fifteen*," of the expression "sections *three* to *five ter*, inclusive, and sections *seven* to *fifteen*,";

(*b*) By the substitution for the expression "sections *five bis* and *six*" of the expression "section *five bis*";

(*c*) By the substitution in paragraph (*e*) for the expression "or (*d*)" of the expression "(*d*) or (*e*)".

21. (1) Subject to the provisions of sub-section (2), any person who commits any wrongful and wilful act whereby he injures, damages, destroys, renders useless or unserviceable, puts out of action, obstructs, tampers with, pollutes, contaminates or endangers —

(*a*) The health or safety of the public;

(*b*) The maintenance of law and order;

(*c*) Any water supply;

(*d*) The supply or distribution at any place of light, power, fuel, foodstuffs or water, or of sanitary, medical or fire extinguishing services;

(*e*) Any postal, telephone or telegraph services or installations, or radio transmitting, broadcasting or receiving services or installations;

(*f*) The free movement of any traffic on land, at sea or in the air;

(*g*) Any property, whether movable or immovable, of any other person or of the State,

or who attempts to commit, or conspires with any other person to aid or procure the commission of or to commit, or incites, instigates, commands, aids, advises, encourages or procures any other person to commit, any such act, or who in contravention of any law possesses any explosives, fire-arm or weapon or enters or is upon any land or building or part of a building, shall be guilty of the offence of sabotage and liable on conviction to the penalties provided for by law for the offence of treason: Provided that, except where the death penalty is imposed, the imposition of a sentence of imprisonment for a period of not less than five years shall be compulsory, whether or not any other penalty is also imposed.

(2) No person shall be convicted of an offence under subsection (1) if he proves that the commission of the alleged offence, objectively regarded, was not calculated and that such offence was not committed with intent to produce any of the following effects, namely —

(*a*) To cause or promote general dislocation, disturbance or disorder;

(*b*) To cripple or seriously prejudice any industry or undertaking or industries or undertakings generally or the production or distribution of commodities or foodstuffs at any place;

(*c*) To seriously hamper or to deter any person from assisting in the maintenance of law and order;

(*d*) To cause, encourage or further an insurrection or forcible resistance to the Government;

(*e*) To further or encourage the achievement of any political aim, including the bringing about of any social or economic change in the Republic;

(*f*) To cause serious bodily injury to or seriously endanger the safety of any person;

(*g*) To cause substantial financial loss to any person or to the State;

(*h*) To cause, encourage or further feelings of hostility between different sections of the population of the Republic;

(*i*) To seriously interrupt the supply or distribution at any place of light, power, fuel or water, or of sanitary, medical or fire extinguishing services;

(*j*) To embarrass the administration of the affairs of the State.

(3) No trial for the offence of sabotage shall be instituted without the written authority given personally by the attorney-general or acting attorney-general having jurisdiction in the area concerned.

(4) Notwithstanding anything to the contrary in any law or the common law contained —

(*a*) Any person accused of having committed the offence of sabotage shall be tried by a judge of the Supreme Court without a jury as if the provisions of sections *one hundred and nine* and *one hundred and ten* of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), applied in respect of his trial;

(*b*) The trial of any such person may be held at any time and at any place within the area of jurisdiction of the division of the Supreme Court concerned;

(*c*) Whenever two or more persons are in any indictment, summons or charge alleged to have committed offences of sabotage at the same time and place, or at the same place and at approximately the same time, such persons may be tried jointly for such offences on that indictment, summons or charge;

(*d*) Any person accused of having committed the offence of sabotage shall, if the attorney-general so directs, be tried summarily without a preparatory examination having been instituted against him;

(*e*) If no preparatory examination is to be held, the procedure prescribed by law in respect of a criminal trial in a magistrate's court shall *mutatis mutandis* apply in respect of the trial of any such person before plea;

(*f*) No person shall on conviction of the offence of sabotage be dealt with under section *three hundred and forty-two*, *three hundred and forty-five* or *three hundred and fifty-two* of the said Act;

(*g*) Acquittal on a charge of having committed the offence of sabotage shall not preclude the arraignment of the person acquitted on any other charge arising out of the acts alleged in respect of the charge of the offence of sabotage.

(5) Nothing in this section contained shall render unlawful any action relating to a matter dealt with under the Industrial Conciliation Act, 1956 (Act No. 28 of 1956), or section *twenty-eight* of the Railways and Harbours Service Act, 1960 (Act No. 22 of 1960), which could immediately prior to the commencement of the General Law Amendment Act, 1962, have been lawfully taken.

. . .

SPAIN

ACT 56/1961 OF 22 JULY 1961 CONCERNING THE POLITICAL, VOCATIONAL AND EMPLOYMENT RIGHTS OF WOMEN[1]

Art. 1. Women shall enjoy the same statutory rights as men to engage in any political activity, vocation or work whatsoever, subject to no restrictions save those imposed by this Act.

Art. 2. 1. Women may participate in the election, and may be elected, to any public office.

2. Women may also be appointed to any public office under the State, the local government or any autonomous agency subordinate to either.

Art. 3. 1. Women may participate on the same terms as men in competitions, with or without examination, and in any other procedure for filling posts in any public department. They shall also have access to the teaching profession at all levels.

2. The provisions of paragraph 1 of this article shall not apply to engagement in:

(*a*) The arms and formations of the Army, Navy and Air Force, save where access to special services of the said Forces is expressly granted to women by special provision.

(*b*) Paramilitary organizations and bodies, services or occupations in which the use of arms is normally required in the course of duty.

(*c*) The judiciary, in the post of judge of the high or lower court or of State counsel, except in juvenile and labour courts.

(*d*) The officer corps of the merchant marine, except the health services.

Art. 4. 1. Women may enter into contracts of employment of any kind.

No discrimination whatsoever shall be made in employment regulations, collective agreements or the work rules of undertakings on grounds of sex or marital status, even where the latter changes during the labour-management relationship.

The regulations shall specify what occupations shall be closed to women as unduly arduous, dangerous or unhealthy.

2. Provisions in the field of employment shall recognize the principle of equal pay for work of equal value.

Art. 5. Where marital authorization is required by law for the exercise of the rights recognized in this Act, such authorization must be expressly given; if authorization is refused, the husband's opposition or refusal shall be without effect if the court declares that it was done in bad faith or in abuse of right.

The court declaration referred to in the preceding paragraph shall be made by the judge of first instance of the wife's habitual place of residence, at her request, and after both spouses have been heard; the said declaration shall be made within ten days, without further formalities, and shall not be subject to appeal.

. . .

[1] Text published in *Boletín Oficial del Estado*, Year CCCI, No. 175, of 24 July 1961. The Act entered into force on 1 January 1962. Certain other events of 1962 concerning Spain are dealt with in *Yearbook on Human Rights for 1961*, pp. 313–321.

SUDAN

NOTE

The Ministry of Foreign Affairs of the Sudan has informed the Secretariat of the United Nations that no legislation or judicial decisions of 1962 affected human rights.

SWEDEN

NOTE[1]

I. LEGISLATION

1. The social welfare legislative work was in 1962 mainly concentrated on matters in the field of social insurance. A study which had been in progress for several years was brought to a successful close when the *Riksdag* of 1962 adopted the National Insurance Act. This act entered into force on January 1, 1963. The most important branches of Swedish social insurance — health and maternity insurance and basic and supplementary pensions — have with this act been welded together into one whole. Thus Sweden has obtained a unified, materially and administratively coordinated social insurance scheme which provides for payments in case of child bearing, illness, disability, old age and death of the family breadwinner. It is characteristic of the Swedish social insurance scheme, as the Act shows, that it covers the whole people and gives benefits to all, regardless of their occupations. Everyone enjoys a certain minimum protection, and in addition, gainfully-employed insured persons are guaranteed payments graduated according to the size of their incomes. Adherence to the insurance system is automatic, and in general also compulsory. Persons owning their own businesses or practising the free professions, however, have the possibility, on special application, to place themselves outside those branches of the insurance which give benefits graduated according to incomes.

The rules of financing vary for the various types of insurance. In the financing of those benefits covering minimum protection, national tax revenue is used to a great extent. The employers bear most of the costs of those benefits to their employees which are graduated according to income, while the corresponding benefits for other categories of gainfully employed persons are paid for by the insured persons themselves. For the administration of the national insurance, there are regional public insurance benefit societies which, among other things, are responsible for the registration of insured persons and for deciding questions concerning the granting of benefits. These public insurance benefit societies have local service organizations for the public. A central Government agency, the National Social Insurance Board, independently exercises central supervision over the activities of the benefit societies and also serves as an instance of appeals. The final instance of appeals in national insurance questions is a special court, the Insurance Court. The national insurance is so complete and so efficient that there is comparatively little room for special types of social insurance along with the national insurance. The most important of the special insurance arrangements that do exist are those for insurance against industrial accidents and occupational diseases and against unemployment. Family allowances are not in Sweden arranged as a kind of social insurance.

The benefits in cash under the health insurance scheme consist of a basic allowance of Kr. 5.— a day as well as of a supplementary sickness allowance. The basic sickness allowance is paid, in addition to gainfully employed insured persons, also to housewives and certain other similar categories of women. Those who are gainfully employed receive in addition to the basic sickness allowance a supplementary sickness allowance, the amount of which varies with the income. The maximum aggregate compensation is Kr. 28.— a day. The cash benefits under the maternity insurance scheme consist of a non-recurring amount of Kr. 900.— for a single birth as well as of a daily compensation which is paid during a period of time not exceeding 180 days in the form of a supplementary sickness allowance. The right to supplementary sickness allowance accrues to women who owing to pregnancy or confinement are compelled to interrupt their gainful employment. The cash benefits under the sickness and maternity insurance scheme are tax-exempt. Under the terms of the sickness and maternity insurance scheme the insured receives compensation for costs incurred for hospital treatment and for two-thirds of the costs of medical treatment, to the extent these costs do not exceed a fixed tariff. Up to the present time, compensation is not as a rule granted for expenses for dental care, but pregnant women and women who have recently given birth to a child are, however, entitled to such compensation. The compensation for dental care is based on almost the same terms as apply to compensation in connection with medical treatment.

As a transitionary arrangement the basic pensions have not yet reached a stage of full functioning of the new legislation. Thus these pensions have, for technical reasons not yet been adjusted to what is called the basic amount the flexibility of which is intended to guarantee the constant value of national pensions as well as supplementary pensions.

At present the basic pension amounts to Kr. 3,400 a year in respect of an unmarried old-age pension The same amount is payable to a person who receives a widow's pension or full preretirement pension. In cases where a pensioner is married and one of the spouses receives basic pension, the pension shall be reduced by a certain amount. Special benefits are in many cases paid in addition to the basic pension, intended to compensate for housing costs as well as for certain costs in connection with medical care, minors, etc. The basic pension is

[1] Note furnished by the Government of Sweden.

augmented by a supplementary pension, the size of which depends on the insured person's income from gainful employment. The pension coverage comprises at present incomes up to an amount of Kr. 35,000 a year.

In accordance with the National Insurance Act the right to claim pre-retirement pension under the basic and supplementary pension schemes accrues to a person whose working capacity is reduced by at least one-half. The pre-retirement pensioners are divided into three classes which correspond to the degree of the reduced working capacity, it being understood that the grade under which the disablement has been classified, shall affect the amount of the pension.

2. Through the inclusion, in 1962, of amendments to the Seamen's Act alien persons employed in the Swedish Merchant Navy service — about one-third of the total number of personnel employed on board ships — have been put on an equal footing with Swedish seamen in so far as concerns certain benefits of a social character, such as the right to sick-pay in case of incapacity for work, supplementary wages to the survivors of a deceased seaman, free passage home in case of service for a long period of time and in case of illness, free medical treatment during a certain period of time when abroad, as well as free passage home and compensation for the loss of personal property in case of shipwreck.

3. Through certain amendments to the Labour Welfare Act, the special provisions referring to extended nightly rest for women employed in the crafts or in industrial work have been abolished. The provisions in respect of nightly rest shall thus apply equally to men and women in the future. From the prohibition to employ women for work under ground, exception has been granted to workers who have a supervising position and perform work of non-manual character. Further, the National Swedish Board of Industrial Safety may grant exemption from the prohibition in cases where a woman is occupied with the care of the sick or is engaged in other forms of social work, including those of a temporary nature, which are either associated with her vocational training or constitute non-manual work.

4. By a parliamentary resolution (passed in 1962) a new educational system is to be gradually introduced as from the beginning of the scholastic year 1962/63 in the form of a comprehensive school. This is a nine-year compulsory school, divided into three stages, a lower stage, an intermediate stage and a higher stage, each of which comprises three years. The right to receive an education is guaranteed to all children in Sweden, who have attained school-age. A new Act on Education has been adopted, according to which the parents and their children jointly have a free choice as to which subjects to study in the comprehensive school.

The pupil's right to receive a school education and the community's responsibility to provide for it are in full agreement with the Universal Declaration of Human Rights.

The new system does not require examinations. The teaching of English is introduced in grade 4; in grade 6 the pupils have jointly with their parents a free choice as to which optional subjects to study in grade 7; in grade 8 practical vocational guidance is compulsory for all pupils; the classes of the intermediate stage are to be held together around a core of common subjects at the transition to the higher stage; in grade 9 a dividing up of the streams takes place in order to make it possible within the same sectors to provide for a curriculum which will have on the one hand a theoretical specialization, and on the other a practical one. The teaching in grade 9 covers the following five sectors: one theoretical, one general, one technical-mechanical, one clerical and commercial, and one for domestic science and nursing.

II. INTERNATIONAL AGREEMENTS

In 1962, Sweden ratified the Conventions drafted by the International Labour Organisation concerning equal pay to men and women for equal work (No. 100), and concerning discrimination as regards employment and the carrying on of a trade or profession. Earlier the ratification had been declined on grounds that the Convention concerning equal pay might impose obligations upon the Government which would be inconsistent with the basic principle of the freedom of the labour market. As the parties of the labour market through agreements in 1960 and 1961 have accepted the responsibilities for the establishing of the principles of equal pay, the obstacle to a Swedish ratification of the Conventions has ceased to exist.

SWITZERLAND

NOTE[1]

I. CONFEDERATION

A. Legislation

Social Security

An Act dated 23 March 1962 deals with hire purchase and prepayment sales, while an ordinance dated 21 September 1962 deals with minimum down-payments and the maximum duration of contracts in hire purchase.

Protection of Life and Health

An ordinance dated 5 October 1962 relates to the hours of work and leisure of professional drivers of motor vehicles.

B. International Agreements

An order dated 2 October 1962 approved Convention No. 116 concerning partial revision of the Conventions adopted by the General Conference of the International Labour Organisation at its first thirty-two sessions for the purpose of standardizing the provisions regarding the preparation of reports by the Governing Body of the International Labour Office on the application of Conventions. This Convention entered into force for Switzerland on 5 November 1962.

II. CANTONS

Social Security

By an order dated 23 March 1962, articles 7, 13, 15, 16 and 21 of the standard labour contract for domestic workers, agricultural workers and rural domestic workers in the Canton of Neuchâtel, which entered into force on 1 January 1956, were rescinded and replaced. By an order dated 14 September 1962, article 15 of the revised standard contract was again amended and a new article 15 *bis* was added. The new articles 7, 13, 15, 15 *bis* and 16 concern respectively hours of work for male and female staff, accident insurance, holidays, courses and lectures, and leave.

In the Canton of Vaud, an order dated 19 January 1962 amended the order of 29 December 1959 extending the scope of the collective agreement for horticultural workers in Vaud, and an order dated 31 July extended the scope of the collective agreement relating to garment workers.

Protection of Life and Health

On 20 February 1962, the Canton of Berne promulgated a decree on the control of alcoholism, article 1 of which provides as follows:

(1) The State and the communes shall promote efforts, activities and institutions aimed at enlightening the people regarding the dangers of alcoholism and deterring them from excessive consumption of alcoholic drinks.

(2) They shall promote the activities of existing and the establishment of new welfare and advisory bureaux for persons in danger of becoming alcoholics, and of sanatoria and other institutions for the treatment of persons suffering from alcoholism.

(3) The welfare, guardianship, police, health and school authorities shall co-operate with these institutions and support them in the fulfilment of their task (article 135, paragraph 2, of the Welfare Act).

(4) The welfare and advisory bureau for persons in danger of becoming alcoholics and sanatoria for persons suffering from alcoholism are authorized in individual cases to propose to the authorities measures provided for by the law."

The following legislation was adopted in the Canton of Neuchâtel:

(1) Act of 28 May 1962 amending the Act of 17 November 1962 on the sanitary police. Article 2 of the amended Act deals with the regulations enacted by the Council of State concerning the safeguard and the protection of health and public hygiene, while article 2 *bis* deals with the intensification of tuberculosis control.

(2) Act of 2 July 1962 fixing the regulations for establishments serving the public, clubs, places where alcoholic beverages are sold and other similar establishments.

(3) Order of 30 November 1962 concerning compulsory periodic examinations in certain trade associations with a view to discovering tuberculosis.

The Canton of Vaud promulgated the following:

(1) Regulations of 16 March 1962 regarding the practice of the profession of technical assistant in radiology.

(2) Act of 28 May 1962 amending the Act of 3 June 1947 concerning the regulations for establishments serving the public and the sale of alcoholic beverages.

(3) Order of 4 December 1962 regarding vaccinations against smallpox and diphtheria, as amended by the order of 26 March 1963.

(4) Order of 28 December 1962 regarding the control of tuberculosis.

[1] This note is based upon texts communicated by the Permanent Observer of Switzerland to the United Nations.

Legal Protection

An order dated 22 June 1962 designates the Department of the Interior as the authority responsible for deciding when professional secrecy should be lifted in the medical profession.

Education

The Canton of Neuchâtel adopted the following legislation:

(1) Act of 19 February 1962 amending the Act of 17 May 1938 concerning vocational training. Article 59 of this Act contains the following provisions:

"The aim of vocational guidance is to:

"(*a*) inform school children and their parents of the conditions and requirements for vocational training and of the financial assistance which may be granted to them;

"(*b*) advise young people in a wise choice of an occupation and the preparation for it, taking into account their personal aptitudes and tastes and also the requirements of the occupation and of the economic situation;

"(*c*) facilitate placing in apprenticeship in cooperation with the Department of Industry, schools and occupational associations."

(2) Act of 21 November 1962 on vocational training for agriculture.

(3) Act of 10 December 1962 amending the Act of 18 November 1908 on primary education and the Act of 22 April 1919 on secondary education.

Article 1 of the Act of 18 November 1908, as amended, provides:

"Article 1. Primary education, with a five-year course of studies, is the basis of all schooling; furthermore, it prepares students for the lower level of secondary education, with a four-year course of studies."

Article 1 of the Act of 22 April 1919, as amended, reads as follows:

"Article 1. Secondary education is the continuation of primary education; it prepares students for university, polytechnic, pedagogical and vocational studies and for apprenticeship."

SYRIA

LAND REFORM LAW

LEGISLATIVE ORDER NO. 161 OF 27 SEPTEMBER 1958, AS AMENDED BY ACT NO. 193 OF 8 NOVEMBER 1958, LEGISLATIVE ORDER NO. 41 OF 4 FEBRUARY 1959, LEGISLATIVE ORDER NO. 266 OF 19 DECEMBER 1959 AND LEGISLATIVE DECREE NO. 2 OF 2 MAY 1962, ENTERED INTO FORCE ON 15 MAY 1962

SUMMARY[1]

This law provides that, with certain exceptions, no person may own (*a*) more than 80 hectares of irrigated and wooded land; or (*b*) more than 300 hectares of unirrigated land or more than 450 hectares in the unirrigated lands of the Hassaké, Deir El Zor and El Rachid Mouhafazates; or the equivalent of such areas in the ratio of the two categories aforesaid. Over and above this maximum, an owner may dispose, in favour of each spouse and each child, of areas not in excess of (*a*) 10 hectares in irrigated lands, (*b*) 40 hectares in unirrigated lands or 60 hectares in the unirrigated lands of the Hassaké, Deir El Zor and El Rachid Mouhafazates; or the equivalent of such areas in the ratio of the two categories aforesaid. The State shall assume possession of land areas exceeding these maxima during the five-year period following the date of entry into force of the law and shall pay the owner of such expropriated land an amount calculated on the basis of ten times the average rent of the land for an agricultural cycle not exceeding three years or the share of such rent accruing to the owner.[2] Generally, compensation shall be paid in the form of public bonds bearing interest at 1.5 per cent per year under the condition that where compensation does not exceed 100,000 Syrian pounds there will be ten equal annual payments and where compensation exceeds 100,000 Syrian pounds there will be fifteen annual payments provided that during the first ten years the annual payment shall not be less than 10,000 Syrian pounds. Compensation shall be fixed by commissions which shall be set up in each mouhafazate and which shall be composed of a magistrate of the Ministry of Justice, an agronomist of the Ministry of Agriculture and a civil engineer of the Ministry of Public Works. One or more special judicial tribunals composed of three magistrates shall be established for the settlement of disputes arising from the execution of this law, and their decisions shall become final only when approved by the Board of Directors of the Agrarian Reform Institute. The Agrarian Reform Institute is attached to the Office of the President of the Republic and is entrusted with the execution of the law. In each village where land has been expropriated, each farmer shall receive a small holding not exceeding eight hectares in irrigated or forested land and thirty hectares in the unirrigated land of the Hassaké, Deir El Zor and El Rachid Mouhafazates under the conditions that the beneficiaries shall (1) enjoy Syrian citizenship and be of age; (2) be professional farmers or hold agricultural diplomas or belong to the Bedouin tribes included in settlement programmes; and (3) not own any other agricultural land such that the land area distributed taken together with the land owned exceeds the prescribed maximum. Priority in distribution shall be granted first to persons who effectively cultivated the land, leased it, worked it in partnership or farmed it as agricultural labourers; secondly, to the person having the largest family in the village; thirdly, to the person who is the least wealthy; and finally, to those inhabitants who do not belong to the village, in the same order of preference. The recipient of the land shall be bound to cultivate it and to exercise care in his work. Beneficiaries of land distribution shall pay a price based on the amount of compensation paid by the State for purposes of expropriation, plus (1) annual interest of 1.5 per cent; and (2) a lump sum of approximately 10 per cent of the price to meet expenses of expropriation, distribution, etc. The total price shall be paid in equal instalments over a period of forty years.

This law also provides for the establishment of agricultural co-operative associations.

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[1] Summary based upon the text of the Act published in *Food and Agricultural Legislation*, Vol. XI, No. 2 of 1 December 1962 of the United Nations Food and Agriculture Organization.

[2] The owner's share referred to here may not exceed the proportions fixed under the Act on Agricultural Relations, No. 134 of 4 September 1958, known as the "Agricultural Labour Code".

TANGANYIKA

CONSTITUTION OF TANGANYIKA

of 9 December 1962[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:

Now therefore, this Constitution, which makes provision for the Government of Tanganyika as such a democratic society, is hereby enacted by the Constituent Assembly of Tanganyika.

PART I

THE REPUBLIC

1. Tanganyika is a Sovereign Republic.

. . .

4 . . .

(3) Any citizen of Tanganyika who —

(*a*) is qualified to be registered as a voter for the purposes of elections to the National Assembly;

(*b*) has attained the age of thirty years; and

(*c*) in the case of an election held on a dissolution of Parliament, is nominated by not less than one thousand persons registered as voters for the purposes of elections to the National Assembly,

shall be qualified for election as President.

. . .

PART IV

THE LEGISLATURE

20. — (1) There shall be a Parliament which shall consist of the President and the National Assembly.

(2) The legislative power of the Republic is vested in Parliament.

. . .

24. — (1) Subject to the provisions of subsection (2) of this section and of section 25 of this Constitution, any person who —

(*a*) is a citizen of Tanganyika; and

(*b*) has attained the age of twenty-one years,

shall be qualified for election as a member of the National Assembly, and no other person shall be so qualified.

(2) Parliament may make provision for the nomination of candidates for election and for regulating elections to the National Assembly.

25. — (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 —

(i) 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

(ii) he is detained under an order made under the Preventive Detention Act, 1962, and has been so detained under that order for a period exceeding six months; or

(iii) he has been deported in accordance with the provisions of section 2 of the Deportation Ordinance, under an order made under that section which has been in force for a period exceeding six months, and is still in force;

(*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 he holds or acts in any office or appointment in the service of the Republic, other than an office to which the President is required to or may, by this Constitution, make appointments from members of the National Assembly, specified (either individually or by

[1] Text furnished by the Government of Tanganyika.

reference to a class of office or appointment) by Parliament.

(2) No person shall be qualified for election as a member of the National Assembly at any general election at which he is a candidate for the office of President, or at any by-election while he holds the office of President.

(3) 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:

Provided that nothing in any such provision shall disqualify the Speaker for election or re-election to the National Assembly.

(4) 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.

(5) 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 (4) 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 (4) of this section until such time as may be so prescribed.

(6) For the purposes of paragraph (*c*) of subsection (1) of this section —

(*a*) two or more sentences that are required to be served consecutively shall be regarded as separate sentences if none of them exceeds six months but if any one of them exceeds six months 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.

(7) In paragraph (*f*) of subsection (1) of this section, "government contract" means any contract made with the Republic, or with a department of State, or with an officer of the Republic contracting as such.

26. — (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.

. . .

PART V
THE JUDICATURE

(a) *The High Court*

47 . . .

(3) (*a*) A person shall not be qualified for appointment as a judge of the High Court unless —

(i) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in any country outside the Commonwealth that may be prescribed by Parliament, or a court having jurisdiction in appeals from any such court; or

(ii) he holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than five years.

(*b*) In this subsection "the specified qualifications" means the professional qualifications specified by the Advocates Ordinance (or by or under any law amending or replacing that Ordinance) one of which must be held by any person before he may apply under that Ordinance (or under any such law) to be admitted as an advocate in Tanganyika.

. . .

(b) *Interpretation of the Constitution and Appeals*

50. — (1) An appeal shall lie as of right direct to a full bench of the High Court from final decisions of any court or judge in Tanganyika on questions as to the interpretation of this Constitution, and a decision of a full bench of the High Court on any such question shall be final and no appeal shall lie therefrom to any other court.

. . .

PART VIII
MISCELLANEOUS

. . .

69. This Act may be cited as the Constitution of Tanganyika and shall come into operation on the ninth day of December, 1962.

. . .

PREVENTIVE DETENTION ACT, 1962

No. 60 of 1962, of 5 October 1962[1]

2. — (1) Where —

(*a*) it is shown to the satisfaction of the Minister for Home Affairs (hereinafter referred to as the Minister) that any person is conducting himself so as to be dangerous to peace and good order in any part of Tanganyika or is acting in a manner prejudicial to the defence of Tanganyika or the security of the State; or

(*b*) the Minister is satisfied that an order under this section is necessary to prevent any person acting

[1] Text furnished by the Government of Tanganyika.

in a manner prejudicial to peace and good order in any part of Tanganyika, or to the defence of Tanganyika or the security of the State,

the Governor-General, acting on the advice of the Minister, may, by order under his hand and the Public Seal, direct the detention of that person.

(2) Unless the Minister is satisfied that it is not feasible or practicable to require that any particular item of information shall be given on oath, he shall require that any information on which he satisfies himself that a person is conducting himself or acting in any such manner aforesaid or that it is necessary that an order be made, as the case may be, shall be given on oath.

3. No order made under this Act shall be questioned in any court.

4. — (1) An order under this Act shall constitute an authority to any police officer to arrest the person in respect of whom it is made and for any police officer or prison officer to detain such person as a civil prisoner in custody or in prison; and such person shall, while detained in pursuance of the order, be in lawful custody.

(2) The Minister may make regulations —

(*a*) applying to persons detained under orders made under this Act, any of the provisions of the Prisons Ordinance or of any rules made thereunder relating to convicted criminal prisoners and disapplying in relation to such persons any of such provisions relating to civil prisoners; and

(*b*) prohibiting, regulating and controlling visits to, and correspondence to or from, such persons,

and where the Minister makes any such regulations, the Prisons Ordinance and any rules made thereunder shall have effect in relation to such persons subject to the provisions of such regulations.

5. The Governor-General, acting on the advice of the Minister, may —

(*a*) rescind any order made under this Act;

(*b*) direct that the operation of an order made under this Act be suspended subject to such conditions, if any, as may be specified in such direction —

(i) requiring the person in respect of whom the order is made to notify his movements in such manner, at such times and to such authority or person as may be so specified; and

(ii) requiring him to enter into a bond with or without securities for the observance of any such conditions aforesaid,

and if that person fails to comply with a condition attached to such a direction, he shall, whether or not the direction is revoked, be detained under the original order.

6. A person detained under this Act shall, not later than fifteen days from the beginning of his detention, be informed of the grounds on which he is being detained and shall be afforded an opportunity of making representations in writing to the Minister with respect to the order under which he is detained.

7. — (1) There shall be an Advisory Committee which shall consist of —

(*a*) a chairman and two members appointed by the Governor-General on the advice of the Minister; and

(*b*) two members appointed by the Chief Justice.

. . .

(4) The Minister shall refer to the Advisory Committee every order made under this Act —

(*a*) where representations have been made in pursuance of section 6, as soon as may be after the making of such representations;

(*b*) where no such representations have been made, within a year of the order being made,

and thereafter at intervals not exceeding a year (unless such order has previously been recinded), and shall inform the Committee of the grounds on which the order was made and such other matters relating to the person detained as are relevant to his continued detention, and shall provide the Committee with a copy of all representations made by the person detained.

(5) The Committee shall be afforded an opportunity of interviewing any person detained under an order referred to them under this section, at the place where such person is detained.

(6) The Committee shall advise the Minister whether, in their opinion, an order made under this Act should be continued or rescinded or suspended, but the Minister shall not be required to act in accordance with the advice of the Committee.

TANGANYIKA CITIZENSHIP ORDINANCE, 1961

No. 56 of 1961, of 9 December 1961[1]

as amended by the

TANGANYIKA CITIZENSHIP (AMENDMENT) ACT, 1962

No. 69 of 1962, of 9 December 1962[2]

PART II

CITIZENSHIP BY REGISTRATION AND NATURALIZATION

(a) *Registration*

3. (1) Subject to the provisions of subsection (3), a citizen of any country to which section 7 of the Constitution applies or of the Republic of Ireland or a protected person, being a person of full age and capacity, on making application therefor to the Minister in the prescribed manner, may be registered as a citizen of Tanganyika if he satisfies the Minister —

(*a*) that he is ordinarily resident in Tanganyika, and has been so resident for a period of five years; and

(*b*) that he has an adequate knowledge of the Swahili or the English language; and

(*c*) that he is of good character; and

(*d*) that he would be a suitable citizen of Tanganyika.

(2) Subject to the provisions of subsection (3), any person of full age and capacity born outside Tanganyika whose father was at the time of that person's birth a citizen of Tanganyika by virtue of the provisions of subsection (2) of section 1 or section 4 of the Constitution may, on making application therefor to the Minister in the prescribed manner, be registered as a citizen of Tanganyika.

(3) A person shall not be registered as a citizen of Tanganyika under this section unless and until he has made a declaration in writing in the prescribed form of his willingness to renounce any other nationality or citizenship he may possess and to take an oath of allegiance in the form specified in the First Schedule.

4. (1) Subject to the provisions of subsection (2), a citizen of any state to which this section applies, being a person of full age and capacity, on making application therefor to the Minister in the prescribed manner, may be registered as a citizen of Tanganyika if he satisfies the Minister —

(*a*) that he is ordinarily resident in Tanganyika and has been so resident for a period of five years; and

(*b*) that he has an adequate knowledge of the Swahili or the English language; and

(*c*) that he is of good character; and

(*d*) that he would be a suitable citizen of Tanganyika:

Provided that the Minister may, by order in the *Gazette*, waive or vary the requirement set out in paragraph (*b*) of this subsection in respect of the citizens of any state to which this section applies, where he is satisfied that any corresponding provision in the law of that state may be waived or varied in respect of citizens of Tanganyika.

(2) A person shall not be registered as a citizen of Tanganyika under this section unless and until he has made a declaration in writing in the prescribed form of his willingness to renounce any other nationality or citizenship he may possess and to take an oath of allegiance in the form specified in the First Schedule.

(3) The Minister may, where he is satisfied that reciprocal provisions are or may be made in respect of Tanganyika citizens under the law of any state on the Continent of Africa, and that it is desirable so to do, by order in the *Gazette* made with the prior approval signified by resolution of the National Assembly, declare such state to be a state to which this section applies.

4A. (1) Subject to the provisions of subsection (2), a person of full age and capacity, on making application therefor to the Minister in the prescribed manner, may be registered as a citizen of Tanganyika if he satisfies the Minister —

(*a*) that he is of African descent; and

(*b*) that either —

(i) he was born, and one of his parents was born, in a country to which this section applies; or

(ii) he has been resident for a period of not less than ten years in a country to which this section applies and he is not a citizen of an independent State on the Continent of Africa; and

(*c*) that he is ordinarily resident in Tanganyika and has been so resident for a period of five years; and

(*d*) that he has an adequate knowledge of the Swahili or the English language; and

(*e*) that he is of good character; and

(*f*) that he would be a suitable citizen of Tanganyika.

(2) A person shall not be registered as a citizen of Tanganyika under this section unless and until he has made a declaration in writing in the prescribed form of his willingness to renounce any other nationality or citizenship he may possess and to take an oath of allegiance in the form specified in the First Schedule.

(3) This section applies to the countries set out in the Fifth Schedule:

Provided that the Minister may, by order in the *Gazette* made with the prior approval signified by

[1] Published in *Supplement No. 1 to the Tanganyika Gazette*, Vol. XLII, No. 60, dated 8 December 1961.

[2] Text furnished by the Government of Tanganyika.

resolution of the National Assembly, add to or delete from the Fifth Schedule the name of any African country.

5. (1) The Minister may cause the minor child of any citizen of Tanganyika to be registered as a citizen of Tanganyika upon application made in the prescribed manner by a parent or guardian of the child.

(2) The Minister may, in such special circumstances as he thinks fit, cause any minor to be registered as a citizen of Tanganyika.

6. A person registered as a citizen —

(*a*) under sections 2 or 5 of the Constitution; or

(*b*) under sections 3, 4, 4A or 5 of this Ordinance,

shall become a citizen of Tanganyika by registration on the date on which he is registered:

Provided that where a person of full age who is registered as a citizen under this Ordinance fails to renounce the nationality or citizenship of any country other than Tanganyika and to take an oath of allegiance in the form specified in the First Schedule, and to provide evidence thereof to such person as the Minister may appoint in that behalf, within twenty-eight days of being so registered as a citizen, or such further time as the Minister or such appointed person may allow, his registration shall be cancelled and he shall be deemed never to have been so registered;

Provided further that where any person who, not being able to renounce his citizenship of some other country, is registered as a citizen of Tanganyika after making the declaration prescribed by section 19, and is, thereafter, able to renounce such first mentioned citizenship, the Minister may require him to renounce such first mentioned citizenship; and if such person fails to do so, within the period (not being less than twenty-eight days) specified by the Minister, his registration may be cancelled.

(b) *Naturalization*

7. The Minister may, if application therefor is made to him by any alien of full age and capacity who satisfies him that he is qualified under the provisions of the Second Schedule for naturalization, grant him a certificate of naturalization, and the person to whom the certificate is granted shall, on renouncing any other nationality or citizenship he may possess and any claim to the protection of any other country, and on taking an oath of allegiance in the form specified in the First Schedule, become a citizen of Tanganyika by naturalization as from the date on which that certificate is granted.

PART III

Renunciation and Deprivation of Citizenship

8. (1) If any citizen of Tanganyika of full age and capacity who is also —

(*a*) a citizen of any country to which section 7 of the Constitution applies, or of the Republic of Ireland; or

(*b*) a national of a foreign country,

makes a declaration in the prescribed manner of renunciation of citizenship of Tanganyika, the Minister may cause the declaration to be registered; and upon registration, that person shall cease to be a citizen of Tanganyika.

(2) The Minister may refuse to register any such declaration if it is made during any war in which Tanganyika may be engaged or if, in his opinion, it is otherwise contrary to public policy; but notwithstanding the refusal of the Minister, such person as aforesaid shall cease to be a citizen of Tanganyika at the time prescribed in section 6 of the Constitution.

9. The Minister may by order deprive any person, other than a person who is a citizen of Tanganyika by virtue of subsection (1) of section 1 or section 3 of the Constitution, of his Tanganyika citizenship if the Minister is satisfied that that person has at any time while a citizen of Tanganyika and of full age and capacity voluntarily claimed and exercised —

(*a*) in a foreign country; or

(*b*) in any other country under the law of which provision is in force for conferring on its own citizens rights not available to Commonwealth citizens generally.

any right available to him under the law of that country, being a right accorded exclusively to its own citizens, and that it is not conducive to the public good that he should continue to be a citizen of Tanganyika.

10. (1) Subject to the provisions of this section, the Minister may by order deprive of his citizenship any citizen of Tanganyika who is such by registration or naturalization if he is satisfied that the registration or certificate of naturalization was obtained by means of fraud, false representation or the concealment of any material fact.

(2) Subject to the provisions of this section, the Minister may by order deprive of his citizenship any citizen of Tanganyika who is such by naturalization if he is satisfied that that citizen —

(*a*) has shown himself by act or speech to be disloyal or disaffected towards the Republic of Tanganyika; or

(*b*) has, during any war in which Tanganyika was engaged, unlawfully traded or communicated with any enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or

(*c*) has, within seven years after becoming naturalized, been sentenced in any country to imprisonment for a term of not less than twelve months; or

(*d*) has been ordinarily resident in foreign countries for a continuous period of seven years and during that period has not registered annually in the prescribed manner with a Tanganyika consulate, or by notice in writing to the Minister, his intention to retain his citizenship of Tanganyika.

(3) The Minister shall not deprive a person of citizenship under this section unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Tanganyika.

(4) Before making an order under this section,

the Minister shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and of his right to an inquiry under this section.

(5) If that person applies in the prescribed manner for an inquiry, the Minister shall refer the case to a committee of inquiry consisting of a chairman, being a person possessing judicial experience, appointed by the Minister and of such other members appointed by the Minister as he thinks proper.

11. (1) Where a citizen of Tanganyika who is such by registration —

(*a*) was a citizen of any country to which section 7 of the Constitution applies or of the Republic of Ireland, or of any country to which section 4 of this Ordinance applies, by virtue of a certificate of naturalization granted to him or in which his name was included; and

(*b*) has been deprived of that citizenship on grounds which in the opinion of the Minister are substantially similar to any of the grounds specified in subsection (1) or (2) of section 10 of this Ordinance,

the Minister may by order deprive him of his Tanganyika citizenship, if the Minister is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Tanganyika.

(2) Before making an order under this section, the Minister shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and may refer the case to a committee of inquiry constituted in the manner provided by section 10.

12. (1) A citizen of Tanganyika who is deprived of his citizenship by an order of the Minister under sections 9, 10 or 11 of this Ordinance shall, upon the making of the order, cease to be a citizen of Tanganyika.

(2) The renunciation by any person of his Tanganyika citizenship or the deprivation of any person's Tanganyika citizenship under the provisions of this Part shall not affect the liability of that person for any offence committed by him before the renunciation or deprivation of his citizenship.

PART IV

SUPPLEMENTAL

13. For the purposes of Parts II and III, any woman who has been married shall be deemed to be of full age.

14. (1) A person born out of wedlock and legitimated by the subsequent marriage of his parents shall, as from the date of the marriage or of the commencement of this Ordinance, whichever is later, be treated, for the purpose of determining whether he is a citizen of Tanganyika, as if he had been born legitimate.

(2) A person shall be deemed for the purposes of this section to have been legitimated by the subsequent marriage of his parents if by the law of the place in which his father was domiciled at the time of the marriage the marriage operated immediately or subsequently to legitimate him, and not otherwise.

15. Any reference in this Ordinance 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 9th day of December, 1961 and the birth occurred after the 8th of December, 1961, the national status that the father would have had if he had died on the 9th day of December, 1961, shall be deemed to be his national status at the time of his death.

. . .

THE SECOND SCHEDULE

(Section 7)

(1) Subject to the provisions of the next following paragraph, the qualifications for naturalization of an alien who applies therefor are —

(*a*) that he has resided in Tanganyika 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 Tanganyika for periods amounting in the aggregate to not less than five years; and

(*c*) that he has an adequate knowledge of the Swahili or the English language; and

(*d*) that he is of good character; and

(*e*) that he would be a suitable citizen of Tanganyika; and

(*f*) that he intends, if naturalized, to continue to reside permanently in Tanganyika.

(2) The Minister, if in the special circumstances of any particular case he thinks fit, may —

(*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 sub-paragraph (*a*) of the foregoing paragraph as though it had immediately preceded that date;

(*b*) allow periods of residence earlier than eight years before the date of application to be reckoned in computing the aggregate mentioned in sub-paragraph (*b*) of the foregoing paragraph.

. . .

THE FIFTH SCHEDULE

(Section 4A)

COUNTRIES TO WHICH SECTION 4A APPLIES

Angola.

Cape Verde Islands.

Comorian Islands.

French Somaliland.

Mozambique.

Portuguese Guinea and the San Tomé and Principé Islands.

Spanish West Africa (comprising Ifri, Spanish Sahara, Fernando Po, Rio Irani and the Moroccan enclaves).

The Republic of South Africa.

THAILAND

NOTE[1]

I. LEGISLATION

Criminal Procedure: Power of Detention

1. *Act of 28 August 1962* concerning the detention of persons charged with an offence under the Prevention of Communist Activities Act, 1952.

This Act is an amendment to the Announcement of the Revolutionary Party, No. 12, dated 22 October 1958, which gives wide discretionary power to the inquiring authority to detain any person charged with an offence under the Prevention of Communist Activities Act, 1952. Since Communist activities constitute a threat to national security, alleged offenders under the 1952 Act have had to be dealt with by a stricter measure. The rights of the accused regarding the limit of the period of detention provided by the Criminal Procedure Code in normal circumstances are temporarily suspended. However, some relief is guaranteed under the new Act. Any person charged with an offence under the Prevention of Communist Activities Act 1952, and detained by virtue of Announcement No. 12, is entitled to submit a complaint to the Minister of the Interior asking for his release, should he consider his detention unjust (Section 3). If a complaint is lodged, the Minister of the Interior is obliged to consider the complaint and to reply within thirty days from the date of its receipt. His ruling is final. The procedure which is akin to what is known as *habeas corpus* and which obtains under the Criminal Procedure Code is not valid in cases where persons are detained under the Announcement (Section 3, paragraph 1). All cases pending in Court are also subject to the provisions of this Act (Section 4). The Act itself expressly furnishes its own justification on the grounds that it is dictated by necessity and is of a limited scope and duration, being applicable only to a limited type of offences and effective only during the enforcement of the Interim Constitution of Thailand. With the adoption of a new Constitution, the exceptional powers of detention provided by the Announcement of 1958 and the Act of 1962 will no longer be in force.

Non-Discrimination

2. *The Public Prosecutor Act (No. 2), 1962*

This Act amends Section 10 of an earlier act of 1960 by equating the position of public prosecutors to that of other Government officials with regard to their rights to pensions, gratuities and salaries while suspended from service, and their requirement of identity cards.

Right to Education

3. *Primary Education Act (No. 3), 1962*

This is an amendment to the Primary Education Act of 1935; it brings the Act into line with the new educational system set up under the National Education Plan, 1960. The purpose of the new Act is ultimately to extend the period of compulsory and to a limited extent free primary education to seven years, comprising two stages: four years in the first stage and three in the second. The Act lays down progressive steps which may be adopted in the transitional stage for the implementation of the extended period. Every child at the age of eight or over must attend a primary school until he is fifteen, unless he has finished his primary education before attaining that age. The Minister of Education is empowered, if he deems it expedient, to extend primary education from the existing first stage to cover the second stage by issuing a public notice to that effect in the *Government Gazette* (Section 6, as amended). The Act also establishes a close cooperation between the national and local authorities in the educational field by providing for representation of the Ministry of Education on the Educational Board of every Municipality (Section 42, as amended). Under the new Act, which serves to render the existing law more effective, more severe punishment may be inflicted for offences against the Act of 1935.

Administration of Justice for Juvenile Offenders

4. *Act on the Organization of the Songkhla Juvenile Court, 1962*

This Act represents a further step taken by the Government to promote the welfare of children. Previously, there was only one Court of its kind, i.e., the Central Juvenile Court exercising jurisdiction only within the metropolitan area (Bangkok and Dhonburi Provinces). The Juvenile Court established at Songkhla has been functioning since 5 April 1962. On the same day, a Children's Observation and Protection Centre was set up by Royal Decree as part of the Court's operational machinery. The activities of the Court and of the Centre are governed by the Act on the Organization of the Juvenile Court, 1951 and a further Act on the Procedure for the Trial of Alleged Juvenile Offenders.

Freedom of Conscience: Ecclesiastical Status

5. *Ecclesiastical Act (Buddhist), 1962*

Prior to the adoption of this Act, Buddhist monasteries were organized under an Act of 1941 which had

[1] Note furnished by the Government of Thailand.

fallen into desuetude. The provisions of both Acts, however, only apply to the administration of the activities of the national creed of Buddhism of Thailand. Other Buddhist creeds, also known and practised in Thailand, are specially governed by ministerial regulations issued pursuant to these Acts. Under the new Act, Buddhist monasteries in Thaikand are administered on the basis of the Sacred Buddhist Rules of Discipline under the supervision of the Ecclesiastical Council, called Maha-Thera-Samakom. The Supreme Patriarch appointed by the King is the Chief of the Buddhist Order, vested with the power to administer ecclesiastical affairs and to promulgate Patriarchal Proclamations not contrary to or inconsistent with the law, Sacred Buddhist Rules of Discipline and decrees of the Ecclesiastical Council (Section 7). He also presides over the Council which consists of the Supreme Patriarch as President, Supreme Hierarchs, called Somdej Rajakana, as ex officio members, and between four and eight other members appointed from among hierarchs by the Supreme Patriarch for a term of two years (Sections 12 and 14). Secretarial work of the Council is performed by the Religious Affairs Department of the Ministry of Education. The Ecclesiastical Council has both the power and the duty to administer Buddhist monasteries, and in particular, to enact decrees, lay down rules and regulations, and give orders consistent with the law and the Sacred Buddhist Rules of Discipline. The provincial ecclesiastical administration is divided into regions, provinces, districts and villages. Each territorial jurisdiction is headed by an abbot. Among other things, this Act classifies monasteries into two categories: ordinary monasteries and monasteries under Royal Charter. The administration of property belonging to the monasteries is governed by this Act. Land owned by a monastry is neither subject to judicial execution nor transferable, except by a legislative act. (Sections 34 and 35).

The Ecclesiastical Act, 1962 also contains penal provisions. A person, who while disqualified from entering monkhood by the Sacred Buddhist Rules of Discipline, becomes ordained by concealing his disqualification, shall be liable to an imprisonment for a term not exceeding six months. Causing defamation or dissension is punishable with a fine not exceeding five hundred baht or imprisonment for a term not exceeding one year, or both (Section 44).

Family Relations

6. *Act concerning Names of Persons, 1962*

This Act repeals the Family Names Act, 1913 as subsequently amended and the Act concerning Names of Persons 1941. Under the new Act, every Thai national is required to have a first name and a family name (or a middle name if so desired). The first name and the family name must not bear resemblance by design or inadvertence to the names of the King or Queen, or to a title conferred by the King, nor can it include an indecent word or meaning (Section 6). A title conferred by the King may be used, upon the King's approval, as family name both for the title-holder himself and for his ancestors and descendants. A married woman must use her husband's family name, but will resume her maiden name upon divorce.

Right to Work:

Organization of Liberal Professions

7. *Act on the Control of the Engineering Profession, 1962*

This Act is designed to organize and control the engineering profession. This profession is organized and administered by the "Engineering Control Commission", composed of the Under-Secretary of State for the Interior as Chairman, two representatives from the Department of Public and Municipal Works, two qualified professors from Universities and a number of qualified engineers in various branches as members appointed by the Minister of the Interior, totalling fifteen in number (Section 7). The powers and functions of the Commission are to issue, suspend and revoke engineering licenses, to lay down regulations for application for, issuance, renewal, suspension and revocation of licenses, as well as to recommend and give advice to universities and educational institutes with respect to instruction of engineering in its various branches. (Section 13). A person applying for a licence to practise as an engineer must be at least twenty years of age, must not be of bad conduct or morally defective, nor have been sentenced to imprisonment for dishonouring the profession. He must also possess the knowledge and experience required by the law (Sections 18 and 19). A person practising engineering for profit without a licence shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding ten thousand baht or both (Section 27). Every engineer must abide by professional ethics as prescribed in the ministerial regulations (Section 24).

8. *The Auditors Act, 1962*

This Act is designed to organize and control the auditing profession. Where auditing is required by law, no one other than a licensed auditor or official discharging his duties can certify an account (Section 13). The Act creates an Auditing Control Commission empowered to issue, suspend and revoke auditor's licences, to lay down rules and procedures relating to the application for, issuance, renewal, suspension and revocation of such licences, and to recommend and give advice to universities and institutes with respect to instruction in auditing (Sections 4 and 11). The Auditing Control Commission consists of the Under-Secretary of State for Economic Affairs as Chairman, the Director-General of the Commercial Registration Department, the Comptroller-General, the Director-General of the Revenue Department, the President of the Audit Council, the Dean of the Faculty of Commerce and Accountancy of Thammasat University as ex officio members, and eight other members appointed by the Ministers of Economic Affairs. Applicants for a licence must (*a*) possess the qualification required by law, (*b*) be at least twenty years of age, (*c*) be Thai nationals or nationals of a country which permits Thai nationals to practise auditing therein, (*d*) be of good conduct and not morally defective, (*e*) have never been sentenced to imprisonment for dishonouring the profession, and (*f*) refrain from

practising any profession incompatible or interfering with his duties as a licensed auditor (Section 15). Furthermore, once a licence is granted, the licensee must observe professional ethics as prescribed in the regulations issued by the Ministry of Economic Affairs.

9. *Veterinary Medicine Act, 1962*

This Act sets up a Veterinary Medicine Commission composed of the Director-General of the Livestock Department as Chairman, a representative from the Ministry of Defence, a representative from the Ministry of Public Health, two representatives from the Livestock Department, a representative from the Faculty of Veterinary Medicine of the University of Agriculture, a representative from the University of Medical Science, a representative from the Thai Red Cross Society, a representative from the Thai Veterinarian Association, and two other qualified members appointed by the Minister of Agriculture (Section 6). This Commission is empowered to issue, suspend and revoke licences for practising veterinary medicine, and to recommend and give advice to universities and educational institutes in the field of veterinary medicine (Section 11). Persons to whom a licence may be issued must (*a*) be at least twenty years of age, (*b*) have never been sentenced by a final judgement to imprisonment except for petty offences or offences committed through negligence, (*c*) be physically and mentally sound, and (*d*) have the knowledge and experience required by the law (Sections 20 and 21). Any person practising veterinary medicine without a licence is liable to an imprisonment not exceeding one year or a fine not exceeding two thousand baht, or both (Section 28). Those who are not subject to this Act are: (*a*) veterinarians engaged in official services, in activities of the Thai Red Cross Society or educational institutes of Veterinary Medicine belonging to the Government or recognized by the Government, and (*b*) foreign veterinarians engaged in activities under agreements between the Thai Government and international organizations or foreign governments, or any other activities as may be determined by a Royal Decree (Section 4).

II. JUDICIAL DECISIONS

The Supreme (Dika) Court of Thailand handed down a number of decisions in 1962 which have some bearing on the development of human rights.

1. *Constitutionality of a law, decision No. 766/2505*

Before the Announcement of the Revolutionary Party No. 3, 1958, the question of the constitutionality of a law had to be submitted to and decided by a special Tribunal set up in accordance with the Constitution of Thailand of 1932 as amended in 1952. That Constitution was repealed and replaced by the Interim Constitution of Thailand of 1958, which contains no reference to any such Tribunal. The Supreme (Dika) Court decided in this connexion that as a matter of basic principle of law, the Court of Justice is vested with the power and jurisdiction to apply and enforce all laws unless otherwise provided by the Constitution. In the absence of a constitutional provision conferring upon a special tribunal the power to decide upon the constitutionality of a law, it must fall within the jurisdiction of the Court of Justice to decide whether a law is constitutional. Accordingly, the Court considered itself competent and proceeded to give a judgement to the effect that the Act on Expropriation of Immovable Property at Klong-ton District 1953 was unconstitutional and void *ab initio*, since compensation for the land expropriated was not just and appropriate in accordance with the principles of the Constitution then in force. The Court held that as its nature affects public order and good morals, the question of constitutionality may equitably be raised and considered by the Court of Justice.

2. *Power to detain alleged offenders: decisions Nos. 326–327/2505*

Under the announcement of the Revolutionary Party No. 12, 1958, persons charged with an offence against the Prevention of Communist Activities Act, 1952 may in the course of inquiry be kept in custody by the inquiring authority regardless of the time limit imposed by the Criminal Procedure Code for detention. The extent of the application of this announcement is somewhat uncertain. The Supreme (Dika) Court decided in this case that the right of persons to be free from arbitrary arrest and detention is guaranteed by Section 87 of the Criminal Procedure Code, which lays down two basic principles designed to prevent abuse of authority. The first is that no person arrested should be kept in custody longer than is necessary according to the circumstances of the case. This principle is strengthened by the second principle concerning specified time limits of detention varying with the gravity of the alleged offences. This announcement, dictated by necessity, affects the fixed periods of time allowed for detaining persons charged with offences under the Prevention of Communist Activities Act. However, the arrested person who considers himself unjustly detained is entitled to submit a complaint to the Court for his release. The Court will release him immediately upon proof to the satisfaction of the Court that such detention has been unjustly or unreasonably made.

3. *Non-retroactivity of penal laws: decision No. 153/2505*

The Supreme (Dika) Court held that a person immigrating into Thailand in 1920, that is to say before the enactment of the present immigration legislation, is not subject to any liabilities imposed by legislation subsequent to his immigration.

TRINIDAD AND TOBAGO[1]

THE CONSTITUTION OF TRINIDAD AND TOBAGO[2]

Whereas the People of Trinidad and Tobago —

(*a*) have affirmed that the nation of Trinidad and Tobago is founded upon principles that acknowledge the supremacy of God, faith in fundamental human rights and freedoms, the position of the family in a society of free men and free institutions, the dignity of the human person, and the equal and inalienable rights with which all members of the human family are endowed by their Creator;

(*b*) respect the principles of social justice and therefore believe that the operation of the economic system should result in the material resources of the community being so distributed as to subserve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity;

(*c*) have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority;

(*d*) recognize that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

(*e*) desire that their Constitution should enshrine the above-mentioned principles and beliefs and make provision for ensuring the protection in Trinidad and Tobago of fundamental human rights and freedoms;

Now, therefore, the following provisions shall have effect as the Constitution of Trinidad and Tobago:

Chapter I

THE RECOGNITION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENAL FREEDOMS

1. It is hereby recognized and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

(*a*) 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;

(*b*) the right of the individual to equality before the law and the protection of the law;

(*c*) the right of the individual to respect for his private and family life;

(*d*) the right of the individual to equality of treatment from any public authority in the exercise of any functions;

(*e*) the right to join political parties and to express political views;

(*f*) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;

(*g*) freedom of movement;

(*h*) freedom of conscience and religious belief and observance;

(*i*) freedom of thought and expression;

(*j*) freedom of association and assembly; and

(*k*) freedom of the press.

2. Subject to the provisions of sections 3, 4 and 5 of this Constitution, no law shall abrogate, abridge or infringe or authorize the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognized and declared and in particular no Act of Parliament shall —

(*a*) authorize or effect the arbitrary detention, imprisonment or exile of any person;

(*b*) impose or authorize the imposition of cruel and unusual treatment or punisment;

(*c*) deprive a person who has been arrested or detained

(i) of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention;

(ii) of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;

(iii) of the right to be brought promptly before an appropriate judicial authority;

(iv) of the remedy by way of *habeas corpus* for the determination of the validity of his detention and for his release if the detention is not lawful;

(*d*) authorize a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied legal representation or protection against self crimination;

(*e*) deprive a person of the right to a fair hearing in accordance with the principles of fundamental

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[1] Trinidad and Tobago became an independent State on 31 August 1962.

[2] Published as the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962, *Statutory Instruments*, 1962, No. 1875, by H.M. Stationery Office, London. The order was made on 24 August 1962. The provisions of the constitution here reproduced entered into force on 31 August 1962.

justice for the determination of his rights and obligations;

(*f*) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause;

(*g*) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted; or

(*h*) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.

3. (1) Sections 1 and 2 of this Constitution shall not apply in relation to any law that is in force in Trinidad and Tobago at the commencement of this Constitution.

. . .

4. An Act of Parliament that is passed during a period of public emergency and is expressly declared to have effect only during that period shall have effect notwithstanding sections 1 and 2 of this Constitution, except in so far as its provisions may be shown not to be reasonably justifiable for the purpose of dealing with the situation that exists during that period.

5. (1) An Act of Parliament to which this section applies may expressly declare that it shall have effect notwithstanding sections 1 and 2 of this Constitution and, if any such Act does so declare, it shall have effect accordingly except in so far as its provisions may be shown not to be reasonably justifiable in a society that has a proper respect for the rights and of freedoms of the individual.

(2) An Act of Parliament to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House.

(3) For the purposes of subsection (2) of this section the number of members of the Senate shall, notwithstanding the appointment of temporary members in accordance with section 27 of this Constitution, be deemed to be the number of members specified in subsection (1) of section 23 of this Constitution.

6. (1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of the foregoing sections or section of this Constitution has been, is being, or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction —

(*a*) to hear and determine any application made by any person in pursuance of subsection (1) of this section; 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 for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections or section to the protection of which the person concerned is entitled.

(3) If in any proceedings in any court other than the High Court of the Court of Appeal any question arises as to the contravention of any of the provisions of the said foregoing sections or section the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless in his opinion the raising of the question is merely frivolous or vexatious.

(4) Any person aggrieved by any determination of the High Court under this section may appeal therefrom to the Court of Appeal.

(5) Nothing in this section shall limit the power of Parliament to confer on the High Court or the Court of Appeal such powers as Parliament may think fit in relation to the exercise by the High Court or the Court of Appeal, as the case may be, of its jurisdiction in respect of the matters arising under this Chapter.

7. (1) If any person who is lawfully detained by virtue only of such an Act of Parliament as is referred to in section 4 of this Constitution 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 Trinidad and Tobago from among the persons entitled to practise in Trinidad and Tobago as barristers or solicitors.

(2) On any review by a tribunal in pursuance of subsection (1) 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 otherwise provided by law, that authority shall not be obliged to act in accordance with such recommendations.

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

(*a*) Trinidad and Tobago is engaged in any war; or

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

(*c*) there is in force a resolution of both Houses of Parliament supported by the votes of not less than two-thirds of all the members of each House declaring that democratic institutions in Trinidad and Tobago are threatened by subversion.

(2) A Proclamation made by the Governor-General shall not be effective for the purposes of subsection (1) of this section unless it is declared therein that the Governor-General is satisfied —

(*a*) that a public emergency has arisen as a result

of the imminence of a state of war between Trinidad and Tobago and a foreign State or as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence, outbreak of infectious disease or other calamity whether similar to the foregoing or not; or

(*b*) that action has been taken or is immediately threatened by any person of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services essential to life.

(3) A Proclamation made by the Governor-General for the purposes of and in accordance with this section shall, unless previously revoked, remain in force for one month or for such longer period, not exceeding six months, as the House of Representatives may determine by a resolution supported by the votes of a majority of all the members of the House:

Provided that any such Proclamation may be extended from time to time for a further period not exceeding six 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.

Chapter II
CITIZENSHIP

9. (1) Every person who, having been born in Trinidad or in Tobago, was on the 30th August 1962 a citizen of the United Kingdom and Colonies shall become a citizen of Trinidad and Tobago on the 31st August 1962.

(2) Every person who, having been born neither in Trinidad nor in Tobago, was on the 30th August 1962 a citizen of the United Kingdom and Colonies shall, if his father becomes or would but for his death have become a citizen of Trinidad and Tobago in accordance with the provisions of subsection (1) of this section, become a citizen of Trinidad and Tobago on the 31st August 1962.

10. (1) Every person who on the 1st January 1962 was a citizen of the United Kingdom and Colonies or a British protected person and was on that day ordinarily resident in Trinidad and Tobago, and is not a person who has ceased to be a citizen of Trinidad and Tobago under the provisions of section 14 of this Constitution shall be entitled, upon making application before the 1st January 1967 in such manner as may be prescribed, to be registered as a citizen of Trinidad and Tobago:

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 31st August 1962 is or had been married to a person —

(*a*) who becomes a citizen of Trinidad and Tobago by virtue of section 9 of this Constitution; or

(*b*) who, having died before the 31st August 1962 would, but for his death, have become a citizen of Trinidad and Tobago by virtue of that section,

shall be entitled, upon making application in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Trinidad and Tobago.

(3) Any woman who on the 31st August 1962 is or had been married to a person who becomes a citizen of Trinidad and Tobago by registration under subsection (1) of this section shall be entitled, upon making application within such time and in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Trinidad and Tobago.

(4) Any woman who before the 31st August 1962 had been married to a person who becomes, or would but for his death have become, entitled to be registered as a citizen of Trinidad and Tobago under subsection (1) of this section, but whose marriage had been terminated by death or dissolution of marriage, shall be entitled, upon making application before the 31st August 1964 in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Trinidad and Tobago.

(5) The provisions of this section shall be without prejudice to the provisions of section 9 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 Trinidad and Tobago, be entitled to be registered as a citizen of Trinidad and Tobago under the provisions of this section unless he renounces his citizenship of that other country 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.

11. (1) Any person who on the 30th August 1962 was a citizen of the United Kingdom and Colonies —

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

(*b*) having become such a citizen by virtue of his having been naturalised or registered in the former Colony of Trinidad and Tobago under that Act,

shall be entitled, upon making application before the 1st January 1967 in such manner as may be prescribed, to be registered as a citizen of Trinidad and Tobago:

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 applica-

tion 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 Trinidad and Tobago, be entitled to be registered as a citizen of Trinidad and Tobago 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.

12. (1) Every person born in Trinidad and Tobago after the 30th August 1962 shall become a citizen of Trinidad and Tobago at the date of his birth:

Provided that a person shall not become a citizen of Trinidad and Tobago by virtue of this subsection if at the time of his birth —

(*a*) neither of his parents was a citizen of Trinidad and Tobago and his father possessed such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Trinidad and Tobago; or

(*b*) his father was an enemy alien and the birth occurred in a place then under occupation by the enemy.

(2) A person born outside Trinidad and Tobago after the 30th August 1962 shall become a citizen of Trinidad and Tobago at the date of his birth if at that date his father is a citizen of Trinidad and Tobago otherwise than by vitrue of this subsection or subsection (2) of section 9 of this Constitution.

13. (1) Any woman who, after the 30th August 1962, marries a person who is or becomes a citizen of Trinidad and Tobago shall be entitled, upon making application in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Trinidad and Tobago.

(2) Notwithstanding subsection (1) of this section, a woman shall not, if she is a citizen of some country other than Trinidad and Tobago, be entitled to be registered as a citizen of Trinidad and Tobago under the provisions of that subsection unless she renounces her citizenship of that other country and makes and registers such declaration of her intentions concerning residence or employment as may be prescribed:

Provided 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.

14. (1) Any person who, upon his attainment of the age of twenty-one years, was a citizen of Trinidad and Tobago and also a citizen of some country other than Trinidad and Tobago shall cease to be a citizen of Trinidad and Tobago 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 and, in the case of a person who is a citizen of Trinidad and Tobago by virtue of subsection (2) of section 9 of this Constitution, has made and registered such declaration of his intentions concerning residence or employment as may be prescribed.

(2) A person who —

(*a*) has attained the age of twenty-one years before the 31st August 1962; and

(*b*) becomes a citizen of Trinidad and Tobago on that day by virtue of the provisions of section 9 of this Constitution; and

(*c*) is immediately after that day also a citizen of some country other than Trinidad and Tobago,

shall cease to be a citizen of Trinidad and Tobago on the 31st August 1964 (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 and, in the case of a person who is a citizen of Trinidad and Tobago by virtue of subsection (2) of section 9 of this Constitution, made and registered such declaration of his intentions concerning residence or employment as may be prescribed.

(3) A citizen of Trinidad and Tobago 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 Trinidad and Tobago 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 Trinidad and Tobago and has not, before the expiration of one year after the date on which he acquired the citizenship of that other country, renounced his citizenship of that other country and made and registered such declaration of his intentions concerning residence or employment as may be prescribed.

(4) For the purposes of this section, where, under the law of a country other than Trinidad and Tobago, a person cannot renounce his citizenship of that other country, he may instead make such declaration concerning that citizenship as may be prescribed.

15. (1) Every person who under this Constitution or any Act of Paliament is a citizen of Trinidad and Tobago or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act, 1948 or who continues to be a British subject under section 2 of that Act shall by virtue of that status have the status of a Commonwealth citizen.

(3) Save as may be otherwise provided by Parliament, the countries to which this section applies are the United Kingdom and Colonies, Canada, Australia, New Zealand, India, Pakistan, the Federa-

tion of Rhodesia and Nyasaland, Ceylon, Ghana, the Federation of Malaya, the Federation of Nigeria, the Republic of Cyprus, Sierra Leone, Tanganyika, Jamaica and the State of Singapore.

. . .

17. Parliament may make provision —

(*a*) for the acquisition of citizenship of Trinidad and Tobago by persons who do not become citizens of Trinidad and Tobago by virtue of the provisions of this Chapter;

(*b*) for depriving of his citizenship of Trinidad and Tobago any person who is a citizen of Trinidad and Tobago otherwise than by virtue of —

(i) section 9 or subsection (1) of section 12 of this Constitution; or

(ii) subsection (2) of section 12 of this Constitution in relation to a person born outside Trinidad and Tobago whose father at the date of that person's birth is a citizen of Trinidad and Tobago by virtue of subsection (1) of section 9 or subsection (1) of section 12 of this Constitution; or

(*c*) for the renunciation by any person of his citizenship of Trinidad and Tobago.

18. (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;

"Tobago" means the island of Tobago and the territorial waters thereof;

"Trinidad" means the island of Trinidad and the territorial waters thereof.

(2) Any reference in this Chapter to the father of a person shall, in relation to a person born out of wedlock and not legitimated, be construed as a reference to the mother of that person.

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

(4) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of 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 31st August 1962 and the birth occurred after the 30th August 1962, the national status that the father would have had if he had died on the 31st August 1962 shall be deemed to be his national status at the time of his death.

. . .

Chapter IV

PARLIAMENT

PART I

Composition of Parliament

22. There shall be a Parliament of Trinidad and Tobago which shall consist of Her Majesty, a Senate and a House of Representatives.

. . .

24. Subject to the provisions of section 25 of this Constitution, a person shall be qualified to be appointed as a Senator if, and shall not be qualified to be so appointed unless, he is a citizen of Trinidad and Tobago of the age of thirty years or upwards.

25. (1) No person shall be qualified to be appointed as a Senator who —

(*a*) is a citizen of a country other than Trinidad and Tobago having become such a citizen voluntarily or is under a declaration of allegiance to such a country;

(*b*) is a member of the House of Representatives;

(*c*) is an undischarged bankrupt having been adjudged or otherwise declared bankrupt under any law in force in Trinidad and Tobago;

(*d*) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Trinidad and Tobago;

(*e*) is under sentence of death imposed on him by a court or is serving 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 is under such a sentence of imprisonment the execution of which has been suspended;

(*f*) is disqualified for membership of the House of Representatives by virtue of any law in force in Trinidad and Tobago by reason of his having been convicted of any offence relating to elections; or

(*g*) is not qualified to be registered as an elector at a Parliamentary election under any law in force in Trinidad and Tobago.

(2) Parliament may provide that, subject to such exceptions and limitations (if any) as may be prescribed, a person shall be disqualified for membership of the Senate by virtue of —

(*a*) his holding or acting in any office or appointment (either individually or by reference to a class of office or appointment);

(*b*) his belonging to any of the armed forces of the Crown or to any class of person that is comprised in any such force; or

(*c*) his belonging to any police force or to any class of person that is comprised in any such force.

(3) For the purposes of paragraph (*e*) of subsection (1) of this section —

(*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 twelve 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.

. . .

The House of Representatives

29. (1) Subject to the provisions of this section, the House of Representatives shall consist of members who shall be elected in the manner provided by Parliament.

. . .

30. Subject to the provisions of section 31 of this Constitution a person shall be qualified to be elected as a member of the House of Representatives if, and shall not be qualified to be so elected unless, he —

(*a*) is a citizen of Trinidad and Tobago of the age of twenty-one years or upwards, and

(*b*) has resided in Trinidad and Tobago for a period of two years immediately before the date of his nomination for election or is domiciled and resident in Trinidad and Tobago at that date.

31. (1) No person shall be qualified to be elected as a member of the House of Representatives who —

(*a*) is a citizen of a country other than Trinidad and Tobago having become such a citizen voluntarily or is under a declaration of allegiance to such a country;

(*b*) is an undischarged bankrupt having been adjudged or otherwise declared bankrupt under any law in force in Trinidad and Tobago;

(*c*) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Trinidad and Tobago;

(*d*) is under sentence of death imposed on him by a court or is serving 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 is under such a sentence of imprisonment the execution of which has been suspended;

(*e*) is disqualified for membership of the House of Representatives by any law in force in Trinidad and Tobago 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;

(*f*) is disqualified for membership of the House of Representatives by virtue of any law in force in Trinidad and Tobago by reason of his having been convicted of any offence relating to elections: or

(*g*) is not qualified to be registered as an elector at a Parliamentary election under any law in force in Trinidad and Tobago.

(2) Parliament may provide that, subject to such exceptions and limitations (if any) as may be prescribed, a person shall be disqualified for membership of the House of Representatives by virtue of —

(*a*) his holding or acting in any office or appointment (either individually or by reference to a class of office or appointment);

(*b*) his belonging to any of the armed forces of the Crown or to any class of person that is comprised in any such force; or

(*c*) his belonging to any police force or to any class of person that is comprised in any such force.

(3) For the purposes of paragraph (*d*) of subsection (1) of this section —

(*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 twelve 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.

. . .

34. Subject to such disqualifications as Parliament may prescribe, a person shall be qualified to vote at an election of members to serve in the House of Representatives if, and shall not be qualified to vote at such an election unless, he —

(*a*) is a Commonwealth citizen of the age of twenty-one years or upwards, and

(*b*) has such other qualifications regarding residence or registration as may be prescribed by Parliament.

. . .

Part 2

Powers and Procedure of Parliament

. . .

38. (1) Subject to the provisions of this section, Parliament may alter any of the provisions of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) any of the provisions of the Trinidad and Tobago Independence Act, 1962(a).

(2) In so far as it alters —

(*a*) section 1 to 8 (inclusive), . . .

a bill for an Act of Parliament under this section shall not be passed by Parliament unless at the final voting thereon in each House it is supported by the votes of not less than two-thirds of all the members of each House.

(3) In so far as it alters —

(*a*) this section;

(*b*) sections . . . 22, . . . 29, 34, . . .

. . .

a bill for an Act of Parliament under this section shall not be passed by Parliament unless it is supported at the final voting thereon

(i) in the House of Representatives by the votes of not less than three-fourths of all the members of the House; and

(ii) in the Senate by the votes of not less than two-thirds of all the members of the Senate.

. . .

TURKEY

NOTE[1]

1. LEGISLATION

A. *Protection of the Human Person*

1. *Act concerning acts prejudicial to the Constitution and the security and peace of the nation*

Act No. 38, which was adopted on 5 March 1962 and was promulgated and entered into force on 7 March 1962,[2] is designed to protect the democratic order of Turkey as established by the Revolution of 27 May 1960.[3] Accordingly, it provides for penalties of imprisonment for crimes and offences committed against the existing democratic order, which is based on human rights and fundamental freedoms, as laid down in the Constitution of the Turkish Republic. It also provides for penalties for threats and acts directed against the achievements of the Revolution of 27 May 1960. Lastly, article 5 of the Act states that seditious publications may be seized on the order of the police court judge.

2. *Act repealing certain articles of Act No. 114 on the recall and transfer of members of the University and adding some new articles*

Act No. 43, which was adopted on 12 April 1962 and was promulgated and entered into force on 18 April 1962,[4] stipulates in article 2 that the professors of the Universities of Ankara, Istanbul, Izmir (Aegean), and Erzurum (Atatürk) and the Technical University of Istanbul whose names and titles were published in tables 1 and 2 annexed to Act. No. 114, shall be restored to their functions with their seniority and rank without any formality other than acceptance by the council of their university.

Article 4 of Act No. 43 provides for compensation in the amount of two months' salary and allowances for those whose names appear in tables 1 and 2 annexed to Act No. 114 who were still without employment on the date on which Act No. 43 entered into force.

3. *Act repealing article 14 of Act No. 3005, concerning* flagrante delicto

Act No. 52, which was adopted on 7 June 1962 and was promulgated and entered into force on 14 June 1962,[5] repeals article 14 of the Act concerning *flagrante delicto*. Article 14 stated: "It is forbidden to resist warrants of arrest issued under this Act."

4. *Act amending article 49 and repealing article 117 of Act No. 3499 on the exercise of the profession of law*

Under Act No. 73, which was adopted on 29 September 1962 and was promulgated and entered into force on 5 October 1962,[6] article 49 of Act No. 3499 on the exercise of the profession of law was amended as follows: "Lawyers may not be arrested or sentenced, even to imprisonment or small fines, in accordance with the articles of the Code of Civil Procedure and the Code of Criminal Procedure concerning court proceedings". Article 2 of this Act repeals article 117 of Act No. 3499. Under provisional article 2 *bis* of the same Act, lawyers who were disbarred under certain provisions of article 117 of Act No. 3499 shall be reinstated, and consequently again be able to exercise their profession.

5. *Act repealing Act No. 105 of 19 October 1960*

Act No. 81, which was adopted on 18 October 1962, and was promulgated and entered into force on 23 October 1962,[7] repealed Act No. 105 of 19 October 1960 annexed to Act No. 2510 on population. Under article 2 of Act No. 81 the movable and immovable property confiscated by the liquidation commissions in accordance with Act No. 105 of 19 October 1960, and immovable property covering a maximum area of 5,000 *dönüm*[8] which, under Act No. 4753, was expropriated on grounds of public utility shall be restored to their owners in their present state.

6. *Act repealing certain paragraphs of article 161 of the Turkish Penal Code*

Under Act No. 121, which was adopted on 20 November 1962 and was promulgated and entered

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[1] Note furnished by the Turkish Government, compiled by Mr. Aydoğan Özman, member of the Faculty of Law of Ankara University, on behalf of the Turkish United Nations Group for the Defence and Protection of Human Rights and Fundamental Freedoms, who has been appointed correspondent of the *Yearbook on Human Rights* by the Turkish Government.

[2] Text published in *Resmî Gazete*, No. 11053, of 7 March 1962.

[3] See *Yearbook on Human Rights for 1960*, p. 326 *et. seq.*

[4] Text published in *Resmî Gazete*, No. 11086, of 18 April 1962.

[5] Text published in *Resmî Gazete*, No. 11128, of 14 June 1962.

[6] Text published in *Resmî Gazete*, No. 11224, of 5 October 1962.

[7] Text published in *Resmî Gazete*, No. 11239, of 23 October 1962.

[8] The *Dönüm* is the unit of surface measurement used in Turkey and equals 1,000 square metres.

into force on 28 November 1962,[1] the following paragraphs of article 161 of the Turkish Penal Code were repealed:

"Any person who, in time of peace, publishes or propagates unfounded or exaggerated news likely to alarm or excite public opinion, or who engages in activity prejudicial to national interests, shall be liable to six months' to two years' imprisonment and a fine of 500 to 5,000 Turkish pounds.

"If the act is committed in concert with an alien, the term of imprisonment shall be not less than one year and the fine not less than 1,000 Turkish pounds.

"Criminal proceedings in connexion with the offences referred to in the preceding paragraphs shall be initiated without prior authorization and such offences shall be dealt with by the regular courts.'

The new article 161 of the Turkish Penal Code establishes penalties for the offences referred to in the paragraphs repealed if such offences are committed in time of war.

7. *Legislation on pardon*

(*a*) Act No. 50, which was adopted on 5 May 1962 and was promulgated and entered into force on 18 May 1962,[2] provides that members of the armed forces who took part in the rebellion of 22 and 23 February 1962 shall not be prosecuted under criminal law for offences committed during the events of 22 and 23 February 1962 or for offences committed before those dates which were connected with those events.

(*b*) Under Act No. 78, which was adopted on 16 October 1962 and was promulgated and entered into force on 18 October 1962,[3] persons who have been convicted by the Supreme Court of Justice for subversion of the Constitution under article 146 of the Turkish Penal Code will have their prison sentence reduced by four years; furthermore, they will no longer be liable to forced residence under surveillance; in addition, the legal disabilities they incurred upon being convicted will be removed, and the steps taken to prevent them from exercising a trade or skill will not be applicable to them from the date of their release.

B. *Right to Health*

During 1962 two regulations concerning the right to health were issued.

Under the regulation which was issued and entered into force on 2 August 1962,[4] amending certain articles of the rules of the internal services of the Turkish Armed Forces, the Ministry of National Defence assumes the medical expenses of members of the Turkish Armed Forces and their families.

The regulation which was issued and entered into force on 25 December 1962[5] on the campaign against leprosy stipulates in its various articles the steps to be taken for the treatment of lepers.

C. *Right to Education*

In 1962 four regulations concerning the right to education were issued:

(*a*) A regulation concerning nursery schools and classes, drawn up pursuant to Act 222 on primary education, was issued and entered into force on 18 July 1962.[6] It provides for the establishment of nursery schools. Under this regulation, such schools are to take children aged at least three years (with the exception of precocious children, who are admitted from their thirtieth month). Their purpose is to provide children with the care required for their intellectual, physical and social development in optimum conditions, to teach them good habits, and lastly to give them instruction to prepare them for entry to the primary schools.

(*b*) A regulation which was issued and entered into force on 24 July 1962[7] and was drawn up pursuant to Act 222 on primary education, concerns children requiring special education. This regulation provides for the establishment of special classes and schools for retarded and gifted children. Article 31 of the regulation stipulates that the child welfare associations provided for by Act 6972 shall, in accordance with that Act, meet the cost of educating those children, who upon leaving special schools will continue their education in regular schools.

(*c*) A regulation concerning popular schools and their *curricula*, which was issued and entered into force on 5 September 1962,[8] provides for the establishment of popular schools in villages, towns and cities. The purpose of these schools is to teach reading and writing and to develop in the common man qualities required for good citizenship.

(*d*) A regulation which was issued and entered into force on 8 November 1962[9] and was drawn up pursuant to Act 222 on primary education, concerns regional primary schools. With a view to meeting the needs of sparsely populated rural areas, it provides for the establishment of regional primary schools having both resident and day pupils, each school to serve a group of villages or hamlets. The purpose of those schools is to develop education in the countryside and also to disseminate the Turkish language and culture; at the same time the schools will serve as centres for rural teachers.

D. *Right to Travel*

In 1962 the Turkish Government signed agreements with Iran, Portugal, the Federal Republic

[1] Text published in *Resmî Gazete*, No. 11268, of 28 November 1962.

[2] Text published in *Resmî Gazete*, No. 11106, of 18 May 1962.

[3] Text published in *Resmî Gazete*, No. 11235, of 18 October 1962.

[4] Text published in *Resmî Gazete*, No. 11170, of 2 August 1962.

[5] Text published in *Resmî Gazete*, No. 11291, of 25 December 1962.

[6] Text published in *Resmî Gazete*, No. 11157, of 18 July 1962.

[7] Text published in *Resmî Gazete*, No. 11162, of 24 July 1962.

[8] Text published in *Resmî Gazete*, No. 11198, of 5 September 1962.

[9] Text published in *Resmî Gazete*, No. 11251, of 8 November 1962.

of Germany, the Republic of Cyprus and Tunisia,[1] with a view to facilitating the entry of Turkish nationals into those countries.

Furthermore, the official gazette (*Resmî Gazete*, No. 11231, of 13 October 1962) published the Act of the Council of Europe concerning the right of young people to travel within countries members of the European Community and granting Turkish youth the collective passport provided for in the Act of the Council of Europe.

E. *Protection of Rights*

1. *Act on the establishment and proceedings of the Constitutional Court*

Act No. 44, which was adopted on 22 April 1962 and was promulgated and entered into force on 25 April 1962,[2] established a Constitutional Court; this court will deal with actions for the annulment of laws or rules of procedure of the National Assembly which are deemed to be contrary to the Constitution. As a High Court, it will try the President of the Republic, the Ministers, the President and members of the Court of Cassation, the Military Court of Cassation, the Supreme Council of Judges and the Audit Office, the Procurator General of the Republic and, lastly, its own President and members for any offences committed in the discharge of their duties. It will deal with all actions brought to secure the dissolution of political parties. It will consider actions for annulment brought against decisions of the National Assembly concerning the lifting of parliamentary immunity or the exclusion of deputies by members of the National Assembly or by ministers who are not members of it.

2. *Act on the Supreme Council of Judges*

Act No. 45, which was adopted on 22 April 1962 and was promulgated and entered into force on 25 April 1962,[3] establishes a Supreme Council of Judges. Article 3 of this Act stipulates that the Council shall consider matters concerning the judiciary and shall be completely independent.

II. JUDICIAL DECISIONS

Under article 11 of Act No. 6145, the Post, Telegraph and Telephone Office had been collecting a tax from telephone subscribers for the maintenance of the telephone lines.

By decision No. 24/2 of 5 February 1962,[4] the Court of Cassation ruled that the Post, Telegraph and Telephone Office could not require telephone subscribers to make any payment other than the charge for the use of the telephone.

III. INTERNATIONAL AGREEMENTS

In 1962 the Grand National Assembly ratified several international agreements concerning human rights.

The Convention of 4 September 1958 on changes of first names and surnames was ratified by Act No. 62, which was adopted on 6 July 1962 and was promulgated and entered into force on 13 July 1962 (text published in *Resmî Gazete* No. 11153).

The Convention of 4 September 1958 on exchanges of information concerning civil status was ratified by Act No. 63, which was adopted on 6 July 1962 and was promulgated and entered into force on 13 July 1962 (text published in *Resmî Gazete* No. 11153).

The Convention of 27 September 1957 on the free issue of certified copies concerning civil status was ratified by Act No. 130, which was adopted on 11 December 1962 and was promulgated and entered into force on 19 December 1962 (text published in *Resmî Gazete* No. 11286).

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[1] The texts of these agreements were published in *Resmî Gazete*, No. 11176 (with Iran); No. 11282 (with Portugal); No. 11120 (with the Federal Republic of Germany); No. 11110 (with the Republic of Cyprus); and No. 11161 (with Tunisia).

[2] Text published in *Resmî Gazete*, No. 11091, of 25 April 1962.

[3] Text published in *Resmî Gazete*, No. 11091, of 25 April 1962.

[4] Text published in *Resmî Gazete*, No. 11064, of 23 March 1962.

UGANDA[1]

THE CONSTITUTION OF UGANDA

Entered into force on 9 October 1962[2]

Chapter I
UGANDA AND ITS TERRITORIES

1. This Constitution is the supreme law of Uganda and, subject to the provisions of sections 5 and 6 of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

. . .

Chapter II
CITIZENSHIP

7. (1) Every person who, having been born in Uganda, is on 8th October 1962, a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of Uganda on 9th October 1962:

Provided that a person shall not become a citizen of Uganda by virtue of this subsection if neither of his parents was born in Uganda.

(2) Every person who, having been born outside Uganda is on 8th October 1962 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 Uganda in accordance with the provisions of subsection (1) of this section, become a citizen of Uganda on 9th October 1962.

8. (1) Any person who, but for the proviso to section 7 (1) of this Constitution would be a citizen of Uganda 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 Uganda:

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 8th October 1962, is or has been married to a person —

(*a*) who becomes a citizen of Uganda by virtue of section 7 of this Constitution; or

(*b*) who, having died before 9th October 1962, would, but for his death, have become a citizen of Uganda 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 Uganda.

(3) Any woman who, on 8th October 1962, is married to a person who subsequently becomes a citizen of Uganda 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 Uganda.

(4) Any woman who, on 8th October 1962, has been married to a person who becomes, or would, but for his death, have become, entitled to be registered as a citizen of Uganda 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 Uganda.

(5) Any person who, on 8th October 1962, is a citizen of the United Kingdom and Colonies, having become such a citizen by virtue of his having been naturalised or registered in Uganda 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 Uganda:

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, 9th October 1964;

(*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 Uganda 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, 9th October 1964; and

(*d*) in relation to a person to whom subsection (5) of this section refers, 9th October 1964,

or such later date as may in any particular case be prescribed by or under an Act of Parliament.

9. Every person born in Uganda after 8th Oct-

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[1] Uganda became an independent State on 9 October 1962.

[2] The Constitution appears in the schedule to the Uganda (Independence) Order in Council, 1962, Statutory Instruments 1962, No. 2175, which is included in *Uganda Constitutional Instruments*, published by the Government Printer, Entebbe, 1962.

ober 1962, shall become a citizen of Uganda at the date of his birth:

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

(*a*) neither of his parents is a citizen of Uganda and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Uganda; or

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

10. A person born outside Uganda after 8th October 1962 shall become a citizen of Uganda at the date of his birth if at that date his father is a citizen of Uganda otherwise than by virtue of this section or of section 7 (2) of this Constitution.

11. Any woman who, after 8th October 1962, marries a citizen of Uganda shall be entitled, upon making application in such manner as may be prescribed by Parliament, to be registered as a citizen of Uganda.

12. (1) Any person who, upon the attainment of the age of twenty-one years, is a citizen of Uganda and also a citizen of some country other than Uganda shall, subject to the provisions of subsection (7) of this section, cease to be a citizen of Uganda 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 Uganda by virtue of section 7 (2) or section 10 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 9th October 1962; and

(b) becomes a citizen of Uganda on that day by virtue of the provisions of section 7 of this Constitution; and

(*c*) is immediately after that day also a citizen of some country other than Uganda,

shall, subject to the provisions of subsection (7) of this section, cease to be a citizen of Uganda 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 Uganda by virtue of section 7 (2) of this Constitution, made and registered such declaration of his intentions concerning residence as may be prescribed by Parliament.

(3) A citizen of Uganda 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 Uganda 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 Uganda 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) A person who —

(*a*) becomes a citizen of Uganda by registration under the provisions of section 8 (1), 8 (2), 8 (3), 8 (4), 8 (5) or 11 of this Constitution; and

(*b*) is immediately after the day upon which he becomes a citizen of Uganda also a citizen of some other country,

shall, subject to the provisions of subsection (7) of this section, cease to be a citizen of Uganda upon the specified date unless he has 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.

(5) For the purposes of this section, where, under the law of a country other than Uganda 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 9th October 1964, whichever is the later;

(*b*) in relation to a person to whom subsection (2) of this section refers, 9th October 1964;

(*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 Uganda; and

(*d*) in relation to a person to whom subsection (4) of this section refers, at the expiration of three months after the date upon which he became a citizen of Uganda,

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 Uganda 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.

. . .

15. (1) Parliament may make provision for the acquisition of citizenship of Uganda by persons who are not eligible or who are no longer eligible to become citizens of Uganda under the provisions of this Chapter.

(2) Parliament may make provision for depriving of his citizenship of Uganda any person who is a citizen of Uganda otherwise than by virtue of section 7 (1) or section 9 of this Constitution.

(3) Parliament may make provision for the renunciation by any person of his citizenship of Uganda.

16. (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 9th October 1962 and the birth occurred after 8th October 1962, the national status that the father would have had if he had died on 9th October 1962 shall be deemed to be his national status at the time of his death.

Chapter III

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

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

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

(*b*) freedom of conscience, of expression and of assembly and association; and

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

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

18. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Uganda 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.

19. (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 established for Uganda or some other country, in respect of a criminal offence of which he has been convicted;

(*b*) in execution of the order of a court punishing him for contempt of that court or of a court inferior to it;

(*c*) in execution of the order of a court made to secure the fulfilment of any obligation imposed on law;

(*d*) for the purpose of bringing him before a court in excution of the order of a court;

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

(*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;

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

(*j*) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Uganda 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 Uganda in which, in consequence of any such order, his presence would otherwise be unlawful.

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

(3) Any person who is arrested or detained —

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

(*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Uganda,

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.

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

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

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

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

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

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

(*d*) any labour required during any period when Uganda is at war or in the event of any emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of, such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

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

21. (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 Uganda immediately before 9th October 1962.

22. (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 or utilisation of any property in such manner as to promote the public benefit; and

(*b*) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(*c*) provision is made by a law applicable to that taking of possession or acquisition —

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

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

(2) 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 under the law of Uganda;

(*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 judgments 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; or

(*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 Parliament.

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

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

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

(*b*) that is reasonably required for the purpose of promoting the rights or freedoms of other persons;

(*c*) that authorizes an officer or agent of the Government of Uganda, the Government of a Federal State, the East African Common Services Organization, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, Organization, authority or body corporate, as the case may be;

(*d*) that authorizes, for the purpose of enforcing the judgement or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law:

Provided that nothing in this subsection shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

(9) Any court or other adjudicating authority 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.

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

(11) Nothing in the last foregoing subsection

shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority —

(*a*) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings; or

(*b*) may be empowered by law to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

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

(*a*) 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 (*d*) of subsection (2) of this section to the extent that the law in question prohibits legal representation in a court established by or under the Native Courts Ordinance, the Buganda Courts Ordinance, the African Courts Ordinance, 1957, or any law replacing those Ordinances;

(*c*) 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;

(*d*) 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.

(13) In this section —

"criminal offence" means a criminal offence under the law of Uganda;

"legal representative" means a person entitled to practise in Uganda as an advocate.

25. (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 practice 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.

26. (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 in the interests of defence, public safety, public order, public morality or public health; or

(*b*) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or

(*c*) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

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

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

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

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

(*c*) that imposes restrictions upon public officers,

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

28. (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 Uganda, the right to reside in any part of Uganda, the right to enter Uganda and immunity from expulsion from Uganda.

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

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

(*a*) for the imposition of restrictions, by order of a court, that are reasonably required in the interests of defence, public safety or public order on the movement or residence within Uganda of any person;

(*b*) for the imposition of restrictions, by order of a court, on the movements or residence within Uganda of any person either in consequence of his having been found guilty of a criminal offence under the law of Uganda or for the purpose of ensuring that he appears before a court at a later date for trial of such criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or other lawful removal from Uganda;

(*c*) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or public health on the movement or residence within Uganda of persons generally, or any class of 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;

(*d*) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Uganda;

(*e*) for the imposition of restrictions on the acquisition or use by any person of land or other property in Uganda;

(*f*) for the imposition of restrictions upon the movement or residence within Uganda of public officers; or

(*g*) for the removal of a person from Uganda to be tried outside Uganda for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of Uganda of which he has been convicted.

(4) If any person whose freedom of movement has been restricted by the order of a court by virtue of such a provision as is referred to in subsection (3) (*a*) of this section so requests at any time during the period of that restriction not earlier than six months after the order was made or six months after he last made such request, as the case may be, his case shall be reviewed by that court or, if it is so provided by law, by an independent and impartial tribunal presided over by a person appointed by the Chief Justice.

(5) On any review by a court or a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the court or tribunal may, subject to the provisions of any law, make such order for the continuation or termination of the restriction as it may consider necessary or expedient.

29. (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

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

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision —

(*a*) for the appropriation of public revenues or other public funds; or

(*b*) with respect to persons who are not citizens of Uganda; 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;

(*e*) for the imposition of restrictions on the acquisition or use by any person of land or other property in Uganda; 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.

(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 disciplined force or for the service of a local government au-

thority 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 23, 25, 26, 27, 28 of this Constitution, being such a restriction as is authorised by section 23 (2), 25 (5), 26 (2), 27 (2) or 28 (3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

30. (1) The Governor-General may at any time, by Proclamation published in the Gazette, declare that a state of public emergency exists for the purpose of the provisions of this Chapter.

(2) A declaration of a state of public emergency under this section, if not sooner revoked, shall cease to have effect —

(*a*) in the case of a declaration made when Parliament is sitting or has been summoned to meet within five days, at the expiration of a period of five days beginning with the date of publication of the declaration;

(*b*) in any other case, at the expiration of a period of fifteen days beginning with the date of publication of the declaration,

unless, before the expiration of that period, it is approved by a resolution passed by less than one half of all the members of the National Assembly.

(3) Subject to the provisions of subsection (4) of this section, a declaration of a state of public emergency approved by resolution of the National Assembly under subsection (2) of this section shall continue in force until the expiration of a period of six months beginning with the date of its being so approved or until such earlier date as may be specified the resolution:

Provided that the National Assembly may, by resolution passed by not less than two-thirds of all the members of the Assembly, extend its approval of the declaration for periods of not more than six months at a time.

(4) The National Assembly may, by resolution passed by a majority of the members of the Assembly, at any time revoke a declaration of a state of public emergency approved by the Assembly under this section.

(5) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 19, 24, or 29 of this Constitution to the extent that the Act authorises the taking, during any period when Uganda is at war or any period when a declaration of a state of public emergency under this section is in force, of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period:

Provided that the provisions of this subsection shall not apply in relation to anything contained in or done under the authority of any instrument having the force of law that is made under the provisions of an Act of Parliament, during a period when a declaration of a state of public emergency is in force by virtue of a resolution of the National Assembly unless the Assembly has, by a like resolution, affirmed that that instrument shall have effect during that period.

31. (1) Where a person is detained by virtue of such a law as is referred to in section 30 (5) of this Constitution the following provisions shall apply —

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

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

(*c*) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;

(*d*) he shall be afforded reasonable facilities to consult, at his own expense, a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person;

(*e*) at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or, at his own expense, by a legal representative of his own choice.

(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) In every month in which there is a sitting of Parliament the Prime Minister or a Minister authorised by him shall make a report to Parliament of the number of persons detained by virtue of such a law as is referred to in section 30 (5) of this Constitution and the number of cases in which the authority that ordered the detention has not acted in accordance with the recommendations of a tribunal appointed in pursuance of this section.

32. (1) Subject to the provisions of subsection (5) of this section, if any person alleges that any of the provisions of sections 17 to 29 (inclusive) or section 31 (1) 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 that is lawfully available, that person may apply to the High Court of Uganda for redress.

(2) The High Court of Uganda shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section, 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 the said sections 17 to 29 (inclusive) or section 31 (1) to the protection of which the person concerned is entitled:

Provided that the High Court of Uganda 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) Where a court of appeal is established under section 96 (2) of this Constitution, any person aggrieved by any determination of the High Court of Uganda under this section may appeal therefrom to that court.

(4) No appeal shall lie from any determination under this section that any application is merely frivolous or vexatious.

(5) 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.

. . .

Chapter V
PARLIAMENT

Part 1
Composition of Parliament

37. There shall be a Parliament of Uganda, which shall consist of Her Majesty and a National Assembly.

. . .

39. Subject to the provisions of section 40 of this Constitution, a person shall be qualified to be a member of the National Assembly if, and shall not be so qualified unless, he —

(*a*) is a citizen of Uganda who has attained the age of twenty-one years; and

(*b*) is able to speak and, unless incapacitated by blindness or other physical cause, to read the official language well enough to take an active part in the proceedings of the Assembly.

40. (1) No person shall be qualified to be a member of the National Assembly who —

(*a*) has made a declaration of allegiance to a country other than Uganda;

(*b*) has been adjudged or otherwise declared bankrupt under any law in force in Uganda and has not been discharged;

(*c*) is adjudged or otherwise declared to be of unsound mind under any law in force in Uganda; or

(*d*) is under sentence of death imposed on him by any court in Uganda or under 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.

(2) Parliament may provide that a person who is the holder of any office the functions of which involve —

(*a*) any responsibility for, or in connection with, the conduct of any election to the National Assembly; or

(*b*) any responsibility for the compilation or revision of any register of voters for elections to the Assembly,

shall not be qualified to be a member of the Assembly.

(3) Parliament may provide that a person shall not be qualified to be a member of the National Assembly for such period (not exceeding five years) as may be prescribed if he is convicted of any such offence connected with elections to the Assembly as may be prescribed.

(4) Parliament may provide that, subject to such exceptions and limitations (if any) as may be prescribed, a person shall be disqualified for membership of the National Assembly by virtue of —

(*a*) his holding or acting in any office or appointment that may be prescribed;

(*b*) his belonging to any of the armed forces of the Crown that may be prescribed; or

(*c*) his belonging to any police force.

(5) For the purpose of this section —

(*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, and 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.

. . .

44. A person who —

(*a*) has attained the age of twenty-one years;

(*b*) is a citizen of Uganda; and

(*c*) has been resident in Uganda for six months immediately preceding the date on which he applies for registration as a voter,

shall, unless he is disqualified for registration as a voter under any law, be entitled, upon his making application in that behalf at such time and in such manner as may be prescribed by Parliament, to be registered as a voter for the purposes of elections of elected members of the National Assembly.

. . .

UKRAINIAN SOVIET SOCIALIST REPUBLIC[1]

NOTE ON THE STATE BUDGET FOR 1962

The successful fulfilment by the workers of the Ukrainian Soviet Socialist Republic of the development plan for the national economy of the Republic in 1961 made possible a further increase in State allocations for social and cultural measures in 1962.

On 27 December 1961, the Supreme Soviet of the Ukrainian SSR adopted an Act concerning the State budget of the Ukrainian SSR for 1962, the extracts from which quoted below bear witness to the tireless work carried on in our country on behalf of the individual and to satisfy his social and cultural needs.

"Article 1. The State budget of the Ukrainian SSR for 1962 (total revenue 7,652,928,500 roubles; total expenditure, 7,647,230,800 roubles; excess of revenue over expenditure, 5,697,700 roubles) submitted by the Council of Ministers of the Ukrainian SSR, with the amendments adopted on the report of the Budget Commission, is hereby confirmed."

"Article 3. A total appropriation of 3,585,333,100 roubles shall be made under the State budget of the Ukrainian SSR for 1962, 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."

"Article 4. A total appropriation of 3,656,033,000 roubles[2] shall be made under the State budget of the Ukrainian SSR for 1962 for social and cultural development: general-education schools, technical training schools, higher educational institutions, scientific and research institutions, workshop and factory training schools, libraries, clubs, theatres, the press and other educational and cultural activities: hospitals, crèches, sanatoria and other health and physical culture establishments; and pensions and allowances."

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 1, 5 January 1962, Act. No. 12, pp. 8 and 9.)

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

[2] Expenditure on social and cultural development in 1962 makes up 47.8 per cent of total expenditure under the budget of the Ukrainian SSR. In 1961, it made up 44.9 per cent of the budget. In actual figures, the increase in 1962 over 1961 amounted to 277,627,000 roubles.

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 1962

EXTRACTS

In 1962 — the fourth year of the Seven-year plan — the working masses of the Ukrainian Soviet Socialist Republic made further progress in the development of all branches of the national economy and in the raising of the material prosperity and cultural level of the people.

Provisional estimates showed a rise of 5 per cent in comparable figures, in the national income of the Ukrainian SSR for 1962, as against 1961.

The increase in the national income provided additional resources for the further expansion of socialist production and for the improvement of the well-being of the working people of the Republic.

In 1962, the population received about 5,000 million roubles out of social consumption funds for education, medical care, social security and various payments and benefits, or 330 million roubles more than in 1961.

The average annual employment figure for manual and non-manual workers in the national economy of the Ukrainian SSR in 1962 was 11,700,000 persons — an increase of almost 425,000 persons, or 3.8 per cent, over the previous year.

Owing to the increased productivity of labour, the average cash earnings of manual and non-manual workers in the national economy of the Republic rose by 3.6 per cent.

Further progress was made in the development of popular education, science and culture.

In 1962, the total number of persons undergoing training of all types was over 12 million, or more than one-fourth of the total population of the Republic. The number of students in general education schools alone, including schools for young workers and rural youth totalled about 8 million — 600,000 more than in the preceding school year. Students attending boarding-schools and extended-day schools and classes numbered 474,000, or 139,000 more than in 1961.

The training of highly-qualified specialists in all branches of knowledge was further expanded. Over a million persons are studying in higher educational

establishments and specialized secondary schools — 518,000 of them in the former. In 1962, about 156,000 new specialists, 60,000 of whom (including over 24,000 engineers) had a higher education, were absorbed into the national economy.

In 1962, 155,800 young skilled workers completed courses at trade and technical schools and went into industry, building, transport and agriculture.

Scientific workers employed in scientific institutions, higher educational establishments and other organizations numbered over 60,000 at the end of 1962.

The number of cinema installations rose by 700 and totalled over 23,000 at the end of the year.

The figure for cinema attendance was about 765 million, an increase of 32 million over the previous year.

The publication of books and newspapers, magazines and other periodicals increased in the past year.

The construction of housing and of cultural and social facilities was carried out on a large scale.

A total of over 13.8 million square metres of housing — 365,000 apartments — financed both by the State and by private individuals with the aid of State credit, was brought into use. Out of this total, State organizations and undertakings brought into use over 8.6 million square metres of total floor space, or 11 per cent more than in 1961.

In rural areas, 120,000 dwellings were built by collective farm workers and the rural intelligentsia with the aid of State credit and of the collective farms. Altogether, over 2 million persons in the Republic either moved into new apartments or else improved their living conditions in 1962.

There was an increase in capital investment by the State in the building of educational, cultural, scientific and health institutions.

In 1962, thanks to funds made available under the State plan, 11 per cent more schools providing general education, 90 per cent more crèches and nurseries, and 10 per cent more hospitals and polyclinics were brought into use than in 1961.

A further improvement in the medical services to the population was made in 1962.

Further expansion took place in the system of hospitals, maternity homes, dispensaries, clinics for women and children, preventive health institutions and other health facilities. There were almost 24,000 more hospital beds, over 4,000 more beds in sanatoria, rest homes and convalescent homes, and almost 11,000 more places in permanent crèches than in 1961. Over the year, the number of doctors increased by more than 5,000.

The figures regarding the fulfilment of the State plan for the development of the national economy show that in 1962 the Ukrainian SSR developed its economy still further and achieved a further improvement in the well-being of its population.

(From the newspaper *Pravda Ukrainy*, No. 27, 1 February 1963.)

AMENDMENTS TO THE REGULATIONS FOR THE ELECTION OF MEMBERS OF THE PEOPLES' COURTS OF THE UKRAINIAN SSR

In order to ensure that the workers of the Ukrainian SSR enjoy the fullest electoral rights in the election of members of peoples' courts, it was laid down in the Decree of the Presidium of the Supreme Soviet of the Ukrainian SSR amending and supplementing articles 19, 21, 22 and 24 of the regulations for the election of members of district (city) peoples' courts of the Ukrainian SSR that:

"Amendments and additions shall be made to articles 19, 21, 22 and 24 of the regulations for the election of members of district (city) peoples' courts of the Ukrainian SSR, which articles shall read as follows:

"19. In elections of members of peoples' courts, cities shall be divided into electoral wards for the collection of voting papers and the counting of votes.

". . .

"21. Electoral wards shall be set up on the basis of one electoral ward for every 500 to 3,000 inhabitants.

"22. Separate electoral wards may be formed for villages or groups of settlements numbering less than 500 but not less than 100 inhabitants.

". . .

"24. Military units and forces shall form separate electoral wards of not less than fifty and not more than 3,000 voters".[1]

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 35, 7 September 1962, Decree No. 445, p. 663.)

[1] Unlike the previous wording of these articles, the new text provides for a reduction in the number of voters in each electoral ward, undoubtedly a much more convenient arrangement for citizens during elections. Previously, the minimum number of persons required for the formation of one electoral ward was 300.

REGULATIONS REGARDING COMMISSIONS ON MINORS' AFFAIRS

Attaching great importance to the education of the rising generation in the Republic, and desiring to protect the rights of minors more effectively, the Presidium of the Supreme Soviet of the Ukrainian SSR, by Decree No. 51 of 30 December 1961, approved the regulations regarding commissions on minors' affairs in the Ukrainian SSR.

Article 1 of the regulations states that "the main

function of the Commissions on minors' affairs is to prevent the neglect of minors and juvenile delinquency, to put into effect measures to combat neglect, and to provide for the institutional placement of children and adolescents and the protection of their rights".

The Commissions on minors' affairs are formed by the executive committees of the regional, district and city Soviets of working people's deputies. The composition of the Commission must subsequently be approved by the corresponding Soviet of working people's deputies for the period of office of that Soviet.

The Commissions are composed of deputies of the Soviet, representatives of trade unions, communist youth and other public organizations, and of educators, health workers, social security workers, and officials of institutions of the Ministry of public security.

In all their activities, the Commissions are accountable to the corresponding Soviets, working people's deputies and their executive committees.

Under article III of the regulations of the Commissions on minors' affairs, all the work of the Commissions is organized on the basis of broad public participation, and the Commissions draw on the support of the standing committees of Soviets of working people's deputies, the factory, works and local trade union committees, the Young Communist Organization, the parents' committees at the schools, the committees of trustees of children's institutions, volunteer people's brigades, the assistance committees attached to housing administration offices and house managements, street and district committees, and the public authorities concerned with educational, health, cultural and other institutions.

The district (urban) Commissions on minors' affairs, acting jointly with the public, seek out cases in which children and adolescents are in need of State and voluntary aid or in which minors have left school but have not taken up employment, and take steps to set them to work or place them in educational institutions, boarding schools and other children's institutions.

The regulations give the Commissions the right to go into court to plead that minors who have committed a misdemeanour shall either not be punished or be treated leniently, to plead for a suspended sentence, to plead for the conviction of a minor to be quashed, or to plead for a minor to be freed before the end of his sentence or for the unexpired part of the sentence to be replaced by a more lenient punishment.

The Commissions on minors' affairs are empowered to verify that the managements of undertakings, institutions and organizations are complying with the employment policies and working conditions prescribed for minors, and that the material circumstances and living conditions of minors are satisfactory.

Under the regulations, persons under eighteen years of age may be dismissed by the management only with the consent of the district (urban) Commission on minors' affairs.

The district (urban) Commissions on minors' affairs are responsible for: (*a*) exercising public control over the activities of special educational and curative and educational institutions for children and minors situated in the district or urban area, and (*b*) considering the cases of:

1. Minors who have committed acts injurious to society before the age of fourteen;

2. Minors who have committed, between the ages of fourteen and sixteen, acts injurious to society which are not provided for in article 10 of the Criminal Code of the Ukrainian SSR;[1]

3. Minors who, between the ages of fourteen and eighteen, have committed offences which are not greatly injurious to society and in respect of which the court or the prosecutor has stopped proceedings or refused to bring proceedings or has referred the case to the Commission on minors' affairs;

4. Minors who have carried out other anti-social acts (petty hooliganism, petty speculation, etc.).

Thus, the Commissions may intercede with the appropriate State bodies or public organizations to awaken to their responsibilities parents who are not bringing up their children properly, persons responsible for creating conditions conducive to the commisson of offences by children or minors, or persons who incite or induce minors to commit crimes and other anti-social acts.

Such are the main functions of the Commissions on minors' affairs, as laid down in the regulations approved by the decree of the Presidium of the Supreme Soviet of the Ukrainian SSR of 30 December 1961.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 3, 19 January 1962, pages 73–78.)

[1] Under article 10 of the Criminal Code of the Ukrainian SSR, persons who commit a crime between the ages of fourteen and sixteen shall be held criminally responsible only for murder, aggravated assault resulting in damage to health, rape, theft, robbery, robbery with violence, vandalism, or intentional destruction of or damage to State, public or private property leading to serious consequences.

STATUTE CONCERNING LEGAL REPRESENTATION IN THE UKRAINIAN SSR

A number of practical measures have been brought into being in the Ukrainian SSR in the last few years in order to strengthen respect for socialist law. These measures include the decree of the Presidium of the Supreme Soviet of the Ukrainian SSR promulgating the Statute concerning legal representation in the Ukrainian SSR.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 39, 5 October 1962, Decree No. 494, pages 718–726.

The legal profession occupies a worthy place in the system of State and voluntary organizations devoted to the protection of the rights and freedoms of citizens of the Ukrainian SSR and to the strengthening of socialist law and public order.

The new Statute concerning legal representation in the Ukrainian SSR is intended to strengthen the legal profession by further democratizing it and to increase the role played by it by enlarging its competence and activating and improving its work.

It considerably clarifies and develops the 1939 Statute concerning legal representation which was previously in force.

Under article 1 of the new Statute concerning legal representation in the Ukrainian SSR, the regional associations of lawyers established in the Republic serve "to provide accused persons with defence in preliminary investigations and trial proceedings, to provide legal representation in civil actions and arbitration proceedings, and to afford other legal aid to citizens, undertakings, institutions, organizations and collective farms".

The lawyers' associations are required to co-operate in the protection of the rights and legitimate interests of citizens, undertakings, institutions and organizations, in the observance and strengthening of respect for socialist law, and in the administration of justice.

The members of the lawyers' associations carry out their tasks by:

(*a*) giving opinions on legal questions and furnishing advice, explanations and information on legislation;

(*b*) preparing statements, complaints and other documents of a legal nature at the request of citizens, undertakings, institutions, organizations and collective farms;

(*c*) participating in preliminary investigations and trial proceedings as counsel for the accused, representatives of injured parties, and representatives of plaintiffs and defendants in civil actions;

(*d*) participating in civil court cases as representatives of plaintiffs, defendants and other persons taking part in the case;

(*e*) appearing in court and before arbitration tribunals as representatives of undertakings, institutions, organizations and collective farms and providing other legal assistance to such parties.

The distinctive characteristic of the new Statute concerning legal representation is that it defines in great detail the rights and duties of lawyers.

Among the basic duties of lawyers is the duty to take all measures provided for by law to protect the rights and legitimate interests of citizens who apply to them for legal assistance.

One of the main principles of a lawyer's activity is its independence.

The legal profession is independent of the courts and prosecutors as regards not only its organization, but also the manner in which it is exercised. This is ensured by a lawyers' right to make an independent choice of the way in which he intends to provide legal assistance, and his right to conduct a defence in court in obedience only to the dictates of the law and of his own conscience.

The new Statute concerning legal representation in the Ukrainian SSR, which is intended to develop still further the democratic principles of the legal profession in the Republic, contributes to the defence of the rights of citizens and the strengthening of socialist law and public order.

PROGRESS IN THE IMPLEMENTATION OF THE ACT CONCERNING THE ESTABLISHMENT OF A CLOSER CORRESPONDENCE BETWEEN EDUCATION AND LIFE AND THE FURTHER DEVELOPMENT OF THE EDUCATIONAL SYSTEM IN THE UKRAINIAN SSR

As it attaches extraordinarily great importance to education in the development of a new generation as active builders of communism, the Supreme Soviet of the Ukrainian SSR adopted, on 4 July 1962, an Order on progress in the implementation of the Act concerning the establisment of a closer correspondence between education and life and the further development of the educational system in the Ukrainian SSR.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 28, 13 July 1962, Order No. 345, pp 513–520).

It was noted in this Order that the working masses of the Ukrainian Soviet Socialist Republic had made great strides forward in the development of science, education and culture.

In the Ukraine, the transition from universal compulsory seven-year education to universal compulsory eight-year education has been completed. The re-organization of seven-year schools into eight-year schools has been terminated, and the conversion of ten-year schools into eleven-year vocational polytechnical schools offering both general education and factory training is on the way to completion.

Considerable progress has been achieved in the development of higher and specialized secondary education. The system of higher educational establishments and technical schools is being extended and its organization is being improved. Every year there is a greater number of graduating specialists with higher or secondary education, who go into all branches of the national economy and culture,

particularly the branches concerned with modern techniques, the mechanization of production processes, automation and precision engineering.

The Supreme Soviet of the Ukrainian SSR has made it incumbent upon the appropriate Ministries, Departments, organizations and institutions to intensify their organizational work and inspection in the matter of the implementation of decisions regarding questions of national education; to take steps to bring about suitable conditions for the transition within the coming few years to universal compulsory secondary education; to bring about the early implementation of the plans for building and bringing into use schools, boarding schools, school and inter-school training and production workshops, workrooms, trade and technical schools, specialized secondary schools and higher educational establishments; and to take measures to expand considerably the system of pre-school establishments so as broadly to satisfy, by 1965, the needs of the working people of the Republic in the field of the education of children of pre-school age in children's institutions.

RATIFICATION OF INTERNATIONAL CONVENTIONS

In 1962, the Presidium of the Supreme Soviet of the Ukrainian Soviet Socialist Republic ratified the following international instruments:

1. Convention concerning the exchange of official publications and government documents between States and Convention concerning international exchange of publications.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 39, 5 October 1962, Decree No. 495, page 726.)

2. Convention against discrimination in education.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 39, 5 October 1962, Decree No. 496, page 726.)

3. Act (1962) on amendments to the Charter of the International Labour Organisation.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 48, 7 December 1962, Decree No. 616, page 872.)

UNION OF SOVIET SOCIALIST REPUBLICS[1]

RESULTS OF THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE USSR IN 1962

(REPORT OF THE CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE USSR)[2]

RISE IN THE PEOPLE'S MATERIAL AND CULTURAL LEVEL OF LIVING

According to provisional figures, the national income of the USSR in 1961 was 161,500 million roubles, which, in terms of comparable prices, represents an increase of some 9,000 million roubles, or 6 per cent, over the 1961 figure.

The growth of the national income made increased savings available for the further expansion of socialist production and resulted in a higher level of living for the working people of the USSR.

A considerably larger proportion of the national income was devoted to the expansion of socialist production and strengthening the country's defensive capacity than was laid down in the seven-year plan.

As in previous years, the real wages of the working people rose steadily. The real *per capita* income of the working population increased 18 per cent in the first four years of the seven-year plan, including 3 per cent in the past year.

As a result of the rise as of 1 June 1962 in the purchase prices of cattle and poultry paid by the State to the collective farms and the increase in labour activity of collective farm workers, their real *per capita* incomes rose by 5 per cent during the year. As the State retail prices for meat products and animal fats were raised at the same time as the purchase prices, that could have meant a reduction in the total income of manual and non-manual workers by an average of some 1.5 per cent. However, owing to a rise in labour productivity, the average cash pay of manual and non-manual workers employed in the national economy increased by 3.5 per cent, thus more than covering the increase in retail prices. Consequently, and also making allowance for the growth in public funds for general consumption, the real incomes of manual and non-manual workers increased on the average by 2 per cent.

The population received 28,400 million roubles from public funds for general consumption in the form of popular education, medical services, social security and various payments and benefits, as against 26,400 million roubles in 1961.

The yearly average number of manual and non-manual workers employed was 68,400,000, an increase over the year of 2,600,000 or 4 per cent.

In 1962, as in previous years, there was no unemployment in the country.

Deposits by the population in savings banks increased by 1,000 million roubles and by the end of the year amounted to 12,700 million roubles; the number of depositors reached 53 million.

The volume of State and co-operative retail trade amounted to 86,300 million roubles, or 200 million roubles less than called for in the plan. By comparison with the previous year the volume of retail trade increased by 6,100 million roubles or by 6 per cent in terms of comparable prices. The retail trade of consumer co-operatives trading in rural areas increased by 9 per cent. While the plan for trade as a whole was underfulfilled, the plan for public catering was over-fulfilled.

Sales of particular types of goods at State and co-operative shops developed as follows:

	1962 sales expressed as a percentage of 1961 sales
Meat, sausages and other meat products	104
Fish, herring and other fish products	105
Animal fats	97
Vegetable oil	107
Milk and milk products	101
Cheese	109
Eggs	117
Sugar	109
Confectionery	106
Tea	106
Vegetables	106
Citrus fruit	104
Cotton fabrics	96
Woollen fabrics	91
Silk fabrics	108
Clothing and underwear	112
Knitted goods	113
Hosiery	108
Leather footwear	107
Chinaware, earthenware and glassware	104
Soap	103
Furniture	115
Sewing machines	90
Refrigerators	118
Washing machines	137
Vacuum cleaners	120
Clocks and watches	115
Motorcycles and motorscooters	110
Bicycles and motor-bicycles	111
Radio sets and radio-gramophones	94
Television sets	109
Passenger automobiles	107

[1] Texts furnished by the Government of the Union of Soviet Socialist Republics.

[2] Published in *Izvestia* of 25 January 1963.

The popular demand for certain goods was not fully met. Many industrial undertakings did not give due attention to increasing the quality and improving the selection of various consumer goods, particularly clothes, footwear and textiles; the trading organizations often failed to exercise their right to refuse to accept goods for which there was no popular demand, so that goods lay unsold in the shops.

The rapid development of the Soviet Union's external trade with foreign countries continued. The volume of foreign trade amounted to 11,800 million roubles in 1962. During the year, the volume of the USSR's foreign trade increased by 11.5 per cent for all countries, and by 17 per cent for States members of the Council for Mutual Economic Assistance. The volume of trade with developing countries increased by more than 30 per cent.

The further development of the country's economy, the expansion of the volume of trade and of the services provided for the population, and the growth of deposits in savings banks ensured that the amount of money in circulation remained stable and the purchasing power of the rouble in the national economy increased during the past year.

Further progress was made in the fields of popular education, science and culture.

Students undergoing training of various types numbered some 60 million, or more than a quarter of the total population of the country. The number of students attending general education schools alone, including schools for young industrial and agricultural workers, was 42 million, or 3 million more than in the previous academic year. Enrolment in boarding schools and extended-day schools and classes was more than 2 million, or 556,000 more than in the previous year.

Over 800,000 students graduated from secondary schools, of whom more than half received a secondary education without interruption of employment, at schools for young industrial and agricultural workers.

The training of qualified specialists in all fields of learning was expanded. The number of persons studying at higher and specialized secondary educational establishments was 5.6 million, of whom 2.9 million were attending educational establishments. More than 770,000 specialists were added to the economy during the past year; 319,000 of these had a higher education, including over 120,000 engineers. Of the students enrolled in day courses at higher educational establishments, more than 180,000, or 59 per cent, had completed a period of practical work of not less than two years.

The number of persons studying without interruption of employment is some 7 million, including almost 4 million in schools for young industrial and agricultural workers and 3 million in higher and specialized secondary educational establishments.

At the end of 1962, over 450,000 scientific workers were employed in scientific institutions, higher educational establishments and other organizations.

The number of cinemas was more than 119,000, an increase of 5,000, while the number of cinema attendances was about 4,000 million, an increase of 100 million over the previous year.

Book publication reached more than 1,000 million copies during the past year; the circulation of newspapers and periodicals increased.

The construction of housing and of cultural, social and educational facilities was continued on a large scale. In the past year, over 81 million square metres of housing, representing over 2 million new and well equipped apartments, was brought into occupancy in towns and workers' settlements, including housing financed by the State and housing financed by the people with the help of State loans. Of that total, more than 60 million square metres, or 7 per cent more than in 1961, was financed by the State; however, the target for housing construction was not reached. In addition, collective farmers and the intelligentsia built some 450,000 dwelling houses in rural areas with the help of State loans and loans from the collective farms. In the past year some 12 million persons took occupancy of new apartments or otherwise improved their living conditions.

In the six years which have passed since the adoption of the well known Decision of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR on the Development of Housing Construction, i.e. from 1 January 1957 to 1 January 1963, 12 million apartments have been built in towns and workers' settlements and more than 3.8 million dwellings in rural areas. Some 75 million persons, or one-third of the population of our country, have moved into new buildings or otherwise improved their living conditions.

State capital investment in the construction of educational, cultural, scientific and medical institutions increased. Under appropriations in the State plan, 24 per cent more general education schools, 33 per cent more pre-school institutions for children and 31 per cent more hospitals and polyclinics were brought into operation than in 1961. Nevertheless, the target for the establishment of these institutions was not reached in many republics and regions.

Extensive work was carried out to supply gas to dwellings. During the past year the number of apartments with gas installed increased by 1,150,000, or 26 per cent. The amount of gas supplied to the population and for the communal and personal needs of staffs of undertakings and institutions increased by 22 per cent.

The number of passengers carried by urban transport of all types increased by 8 per cent. New tram cars, trolley-buses, motor buses, taxis and underground railway carriages were added to the stock of vehicles for urban transport.

Medical services for the population were further improved. The system of hospitals, maternity homes, general clinics, clinics for women and children, preventive health institutions and other medical facilities was expanded. The number of hospital beds increased by almost 100,000, the number of places in sanatoria, rest homes and boarding houses by almost 20,000, and the number of places in kindergartens and crèches by over 600,000. The number of physicians rose by 22,000 during the year.

The population of the Soviet Union increased by 3.3 million during the year and on 1 January 1963 was more than 223 million.

DECREE OF THE COUNCIL OF MINISTERS OF THE USSR CONCERNING ADDITIONAL LEAVE FOR PERSONS TAKING EXAMINATIONS AS EXTERNAL STUDENTS AT EIGHT-YEAR SCHOOLS

Dated 28 December 1962[1]

The Council of Ministers of the Union of Soviet Socialist Republics

Resolves:

That in connexion with the change-over to universal compulsory eight-year education additional leave of fifteen working days with pay shall be granted to persons taking examinations as external students at eight-year schools.

That order No. 4067 of the Council of Ministers of the USSR of 7 July 1956 where such leave is granted to persons taking examinations as external students at seven-year schools shall be rescinded.

[1] Published in *Sobranie Postanovlenii Pravitelstva SSR*, 1962, No. 21, p. 536.

DECREE OF THE COUNCIL OF MINISTERS OF THE USSR AND THE ALL-UNION CENTRAL COUNCIL OF TRADE UNIONS ON INCREASING THE PART PLAYED BY THE TRADE UNIONS IN DECIDING MATTERS RELATING TO PENSIONS FOR MANUAL AND NON-MANUAL WORKERS

Dated 2 January 1962[1]

With a view to increasing the role of the trade unions in deciding matters relating to pensions for manual and non-manual workers, the Council of Ministers of the Union of Soviet Socialist Republics and the All-Union Central Council of Trade Unions RESOLVE:

1. That the necessary documents for fixing the pensions of manual and non-manual workers shall be prepared beforehand by commissions consisting of the factory, plant or local trade union pension committees jointly with the administration of the undertaking, institution or organization at the last place of work of the manual or non-manual worker.

The provision concerning a commission of the factory, plant or local trade union pension committee is approved by the All Union Central Council of Trade Unions.

2. That the heads of enterprises, institutions and organizations shall be obliged:

(*a*) To furnish the labour books and individual accounts of the manual and non-manual workers, and other documents relating to their work record and remuneration, without hindrance to representatives of the trade unions so that they may verify the entries in these documents;

(*b*) At the request of trade union bodies and commissions of factory, plant, or local trade union pension committees, to deliver or transmit the documents required by manual and non-manual workers for the fixing of their pensions.

[1] Published in *Sobranie Postanovlenii Pravitelstva SSSR* 1962, No. 1, pp. 4 and 5.

UNITED ARAB REPUBLIC

PRESIDENTIAL DECREE PROMULGATING ACT No. 107 OF 1962 AMENDING CERTAIN ARTICLES OF THE CODE OF CRIMINAL PROCEDURE

of 11 June 1962[1]

Art. 3. The texts of . . . articles . . . 95, 143, . . . 206, . . . 342, . . . 402 . . . of the Code of Criminal Procedure are hereby replaced by the following:

. . .

"*Art. 95.* The examining judge may seize all letters, correspondence, newspapers, printed matter and parcels at post offices and all telegrams at telegraph offices; he may also monitor telephone and radio-telephone conversations if this will help in determining the facts."

. . .

"*Art. 143.* If the investigation has not been completed and the examining judge considers it necessary to extend the period of custody pending trial beyond the period prescribed in the preceding article, he must, before the expiry of the period aforesaid, transmit the documents of the case to the correctional court of appeal, sitting as an advisory body, which, after hearing the arguments of the Public Prosecutor's Department and the accused, shall order the detention extended for successive periods of not more than forty-five days each if the interests of the investigation so require, or else order the accused released subject to deposit of security or without such condition."

. . .

"*Art. 206.* The Public Prosecutor's Department may not search any person other than the accused or any dwelling other than that of the accused, unless there are strong indications that he is in possession of articles connected with the offence.

"The Public Prosecutor's Department may seize all letters, correspondence, newspapers, printed matter and parcels at post offices and all telegrams at telegraph offices; it may also monitor telephone and radio-telephone conversations if this will help in determining the facts.

"Before any of the aforesaid procedure is instituted, authorization therefor must be obtained from the judge of summary jurisdiction. The judge shall grant such authorization after studying the documents of the case and, if he deems it necessary to do so, hearing the arguments of the party whose person or dwelling is to be searched, or who is in possession of the letters, correspondence or documents to be seized or whose conversations are to be monitored.

"The Public Prosecutor's Department may read the seized letters, correspondence or other documents, provided that this is done if possible in the presence of the accused and of the person who is in possession of the documents or to whom they are addressed, and their observations shall be recorded on the items in question. Depending on what the examination of the documents reveals, the Department may order them inserted in the file of the case or returned to the person who was in possession of them or to whom they are addressed."

. . .

"Art. 342. Where, on the ground of the mental infirmity of the accused, an order is made dismissing the charge against him or he is acquitted, the authority making the order or pronouncing the judgement of acquittal shall, if the act with which the accused was charged is a crime or major offence punishable with imprisonment, order him detained in a mental institution until such time as the said authority orders his release, after studying the report of the director of the institution, hearing the arguments of the Public Prosecutor's Department and taking such other steps as the said authority deems necessary to verify that the accused has regained his sanity."

. . .

"Art. 402. Judgements delivered by a court of summary jurisdiction in criminal proceedings concerning a major offence may be appealed against either by the accused or by the Public Prosecutor's Department.

"However, judgements delivered by the said court in connexion with a petty offence may be appealed:

"1. by the accused, if he has been sentenced to a penalty other than the payment of a fine and of the costs;

"2. by the Public Prosecutor's Department, if it has asked for a sentence other than the payment of a fine and of the costs and the accused has been acquitted or has not been sentenced as requested by the Department.

"Apart from the cases aforementioned, an appeal may not be lodged by the accused or the Public Prosecutor's Department except on the ground of error in the application or interpretation of the text of the law."

[1] Text published in the *Official Journal*, No. 136 of 17 June 1962 and furnished by M. Hamdy Ahmed Azzam, Conseiller d'Etat adjoint, government-appointed correspondent of the *Yearbook on Human Rights*.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

NOTE[1]

A. *Article 16 of the Universal Declaration of Human Rights*

The Law Reform (Husband and Wife) Act, 1962, received the Royal Assent on 1st August. This Act substantially gives effect to the recommendations of the Ninth Report of the Law Reform Committee (Cmnd. 1268) by reversing the rule of English common law by which spouses are precluded from sueing each other in tort. The new general right of action conferred by the clause supersedes the limited right of a wife to sue her husband in tort for the protection of her property under section 12 of the Married Women's Property Act, 1882. But the court will have a discretion to stay any action in tort brought during the subsistence of the marriage if it appears that no substantial benefit would accrue to either party from the continuation of the proceedings, or that the question or questions in issue could more conveniently be disposed of under section 17 of the Act of 1882, which enables the court to deal in a discretionary way with disputes as to the title to or possession of property.

Section 2 makes corresponding provision under the law of Scotland. The Act of 1882 however does not extend to Scotland, and accordingly there is no special provision in this clause for disputes relating to the title to or possession of property.

Section 3 provides that the Bill is not to apply to any cause of action arising before it becomes law and is not to extend to Northern Ireland.

B. *Article 22 of the Universal Declaration*

1. Further provisions under the Family Allowances and National Insurance Act, 1961, mentioned in the 1961 *Yearbook*, came into force during 1962, and in addition, regulations were made to extend the scope of the National Insurance and Family Allowances Acts. These were:

(1) *Provisions and Regulations concerning widows, married women and children*

(i) *Section 7(1) of the Family Allowances and National Insurance Act, 1961*, enabled, as from 12 February 1962, a married woman separated from her husband to get, while sick or unemployed, the full standard rate of benefit, provided her husband is not contributing 18s. 6d. a week or more towards her maintenance. Previously such a woman receiving, or able to obtain, any allowance from her husband was paid benefit only at a lower rate applicable to married women.

(ii) *Section 4(3) of the Family Allowances and National Insurance Act, 1961*, enabled, as from 26 February, 1962, a widow who had lost her industrial injuries widow's pension because of cohabitation to have it restored, provided she is otherwise qualified.

(iii) *Section 3(3) of the Family Allowances and National Insurance Act, 1961*, made a minor change in the Industrial Injuries Scheme to bring the rules into line with the corresponding provisions of the National Insurance Scheme. For claims made after 26 February, 1962 for an increase of benefit for a dependent child, a woman living with her husband is entitled to such an increase only if her husband is incapable of self-support.

(iv) *The National Insurance (Married Women) Amendment Regulations, 1961*, removed, as from 5 January, 1962, a minor difficulty which could prevent certain widows from qualifying for a retirement pension at the full rate. Previously, widows who qualified for widow's benefit, other than the 10s. pension given as a reserved right from the old Contributory Pensions Scheme, were credited with contributions at the Class 3 (non-employed person's) rate if they chose not to contribute in a higher class, or if they would have been receiving benefit but for the earnings rule. The new regulations provide for a similar free credit of contributions to count for retirement pension purposes for women who would have been entitled to widow's benefit but for the fact that they were getting some other payment from public funds, or were absent from Great Britain or failed to make the necessary claim.

(v) *The National Insurance (Pensions, Existing Contributors) (Transitional) Amendment Regulations, 1961*, as from 5 January, 1962 enabled a widow whose husband was insured before 1948 for Widow's and Orphan's pension only under the old Contributory Pensions Acts to elect to use, for the purpose of her title to retirement pension, her husband's contributions under those Acts.

(vi) *The National Insurance (General Benefit) Amendment Regulations, 1961*, removed, as from 5 January, 1962, the provision which precluded the taking into account for title to a widow's retirement pension on her own insurance any contributions credited to the widow by reason only of her being in receipt of widow's benefit under the National Insurance Act, 1946, if on reaching pension age she was entitled to any of certain widow's benefits payable otherwise than under that Act.

[1] Note furnished by the Government of the United Kingdom.

(vii) *The National Insurance (Consequential Provisions) Regulations, 1962*, extended as from 15 January, 1962, the principle of giving increments of retirement pension to certain widows, contained in the Family Allowances and National Insurance Act, 1961 (*Yearbook* for 1961), to women who marry or re-marry when over the minimum pension age of 60.

(viii) *The National Insurance (Contributions) Amendment Regulations, 1962*, as from 26 February, 1962, gave to widows not entitled to widow's benefit exception from liability to pay flat-rate national insurance contributions for the week of the husband's death and the following thirteen weeks. They may, however, pay such contributions voluntarily. Hitherto, only widows receiving widow's benefit could choose not to contribute. The exception can continue until a claim for widow's benefit, which is under consideration, is decided. The regulations do not affect an employer's liability to pay his share of national insurance contributions in respect of a widow employee, nor a widow's liability to contribute under the graduated retirement pension scheme and the industrial injuries scheme.

(ix) *The Family Allowances (Qualifications) Amendment Regulations, 1962* and *The National Insurance and Industrial Injuries (Transitional Provisions) Regulations, 1962*, provided that, as from 3 April, 1962, an apprentice is only treated as a child for family allowance and national insurance purposes if his earnings from his apprenticeship, after deduction of specified expenses, do not exceed 40s. Certain transitional provisions applied to those who on 3 April were receiving national insurance benefit for an apprentice treated as a child under the old rules. These provisions secured that the benefit of such claimants would not be reduced on account of the change in the apprenticeship rules so long as their existing title otherwise continued.

(x) *The National Insurance (Guardian's Allowance) Amendment Regulations, 1962*, enabled guardian's allowance as from 26 June, 1962, to be paid for children, one of whose parents is dead and the other is serving a long-term sentence of imprisonment. Guardian's allowance is a national insurance benefit paid to people who have taken orphans into their family. It is normally payable only where both parents are dead.

(2) *Provisions concerning disabled persons covered by the old Workmen's Compensation Scheme*, etc.

(i) *The Family Allowances and National Insurance Act, 1961* increased by 15s. a week from 17 January, 1962, the supplements paid under the Workmen's Compensation and Benefit (Supplementation) Act, 1956, to certain totally disabled persons who, because their accidents occurred or their diseases were contracted before 1948, cannot qualify for benefit under the Industrial Injuries Act. It also increased, as from 28 February, 1962, the allowances paid to partially disabled persons on maximum compensation under the Workmen's Compensation (Supplementation) Act, 1951, and gave, in some cases, a new allowance of up to 10s. a week, subject to the appropriate workmen's compensation loss of earnings rule.

(ii) *The Industrial Diseases (Miscellaneous) Benefit Amendment Scheme, 1962*, and *The Pneumoconiosis and Byssinosis Amendment Scheme, 1962*, increased by 7s. 6d. a week from 28 February, 1962, allowances payable under the Industrial Diseases (Benefit) Acts, 1951 and 1954, for partially disabled men suffering from pneumoconiosis and Byssinosis due to pre-1948 employment who did not qualify for workmen's compensation.

(iii) *The Workmen's Compensation (Supplementation) Amendment Scheme, 1962*, increased by 10s. a week from 28 February, 1962, the allowance to men entitled to compensation for injuries sustained before 1 January, 1924, and introduced a new allowance of up to 10s. for men entitled to maximum compensation in respect of injuries after that date. These changes did not apply to persons entitled to an increase under the provisions mentioned in (i) above.

(iv) *The Family Allowances, National Insurance and Industrial Injuries (Consequential) Regulations, 1962*, as from 26 February, 1962, increased the special rate of unemployability supplement payable to certain severely disabled former police and firemen by 15s. a week, i.e. the amount of the increase provided by the 1961 Act for totally disabled Workmen's Compensation cases — see (1) above.

(3) *Miscellaneous Provisions*

(i) *Section 7(4) of the Family Allowances and National Insurance Act, 1961*, raised from 60s. to 80s. a week as from 15 January, 1962, the earnings limit for low wage earners below which an employer has to bear a larger proportion of the contribution.

(ii) *National Insurance (Consequential Provisions) Regulations. 1962*, enabled as from 15 January, 1962, self-employed and non-employed persons with incomes of less than £208 a year to apply to be excepted from liability for national insurance contributions. The limit was previously £156.

(iii) *The National Insurance (Contributions) Amendment (No. 2) Regulations, 1962*, enabled, as from 21 May, 1962, seasonal workers who cannot draw unemployment benefit during their off-season to qualify for contributions to be credited to them on the same conditions as other unemployed persons. This means that a seasonal worker must register at the employment exchange, be available for employment and have a recent record of insurance as an employed person. Previously he could not get credits when he was unemployed in his off-season unless, in addition to having registered at the employment exchange, he could prove that he had, or had reasonable expectations of obtaining, a substantial amount of employment in the current off-season.

(iv) *The Family Allowances, National Insurance and Industrial Injuries (Consequential) Regulations, 1962*, changed the rules as from 26 February, 1962 regarding repayment of benefit wrongly received. Previously repayment was required from any person who was subsequently found not entitled to some benefit which he had already received, unless he could satisfy the independent statutory authorities which decide claims that he received the benefit in

good faith. Under the new rules repayment is not required where the person can show that he used "due care and diligence" to avoid overpayment.

(v) *The Family Allowances (Determination of Claims and Questions) Amendment Regulations, 1962*, provided that, as from 16 July, 1962, a husband would not be liable to repay family allowances overpaid to his wife unless he has been notified of the overpayment and given an opportunity to appeal against the decision that it must be repaid.

2. An amendment to the National Insurance (Assessment of Graduated Contributions) Regulations, effective from 30 July, 1962, altered the calculation of graduated national insurance contributions on holiday pay.

3. Consequent upon the consolidation of the "Pay as You Earn" Regulations, the National Insurance (Collection of Graduated Contributions) Amendment Regulations, 1962, which became operative on 1 November of that year, contained a new provision concerning the power of Collectors of Taxes to certify amounts of unpaid graduated contributions.

4. A New Agreement on Social Security with Jersey which came into force on 6 August 1962 superseded the 1954 Agreement on Social Security, but not the 1954 Agreement on Family Allowances. It takes account of changes in legislation which have occurred since the 1954 Social Security Agreement was concluded.

5. A Supplementary Agreement on Social Security with Australia was signed on 16 August, 1962, and came into force on 1 October of that year. It introduced a number of improvements on the main Agreement which was signed in 1958, the most important being:

(1) Where a United Kingdom pensioner in Australia qualifies for an Australian pension by virtue of residence in Australia, his Australian pension is not, as previously, reduced by the amount of his United Kingdom pension. Instead, the United Kingdom pension is treated like any other income of the pensioner in arriving at the rate of Australian pension payable to him. The result is that unless he has a substantial amount of other income, both pensions are paid in full.

(2) Where parents in one country are maintaining their children in the other, the country in which the children are living now pays family allowances.

(3) Where a married woman claims retirement pension in the United Kingdom, any period during which she lived in Australia before her marriage now counts as a period for which she has paid United Kingdom contributions.

The arrangements with Canada (which enable people coming to the United Kingdom from Canada to count periods of residence or employment in Canada as if they were periods of residence or insurance in the United Kingdom for the purpose of qualifying for certain benefits under the United Kingdom Legislation) were modified in relation to retirement pensions. As from 1 February, 1962, people who are entitled, notwithstanding their absence from Canada, to receive old age pensions under the Canadian Old Age Security Act, cannot count residence in Canada towards satisfying the contributions tests for a British retirement pension. This prevents duplication of pension payments under both legislations.

The National Insurance and Industrial Injuries (Jersey) Order, 1962;

The Family Allowances and National Insurance (Australia) Order, 1962;

The National Insurance (Canada) Order, 1962.

6. Similar extensions in the field of social security have been made by parallel legislation in Northern Ireland.

C. *Article 23 of the Universal Declaration*

The Non-ferrous Metals (Melting and Founding) Regulations 1962)

The Non-ferrous Metals (Melting and Founding) Regulations (S.I. 1962 No. 1667), made on 30 July 1962, lay down standards for those parts of factories in which workers are engaged in the melting and founding of non-ferrous metals. Requirements relating to the construction of floors, the elimination, suppression and control of dust and fumes, the temperature of workrooms and the provision of washing facilities, accommodation for clothing and facilities for meals will not come into effect until 30 July, 1964. Requirements covering the cleanliness of floors, the storage of gear and materials, the provision of gangways and pouring aisles, the maintenance of ventilating plant and the provision of use of protective clothing came into operation on 30 January 1963.

The Docks (Training in First-Aid) Regulations 1962

The Docks (Training in First-Aid) Regulations 1962 (S.I. 1962 No. 241) were made in February 1962. The provision of first-aid facilities at docks is required by the Docks Regulations, 1934, and Regulation[6] requires that a person trained in first-aid shall be in charge of first-aid boxes or cupboards at certain docks, wharves or quays. The new Regulations lay down the standard of training required before a person is deemed to be trained for the purposes of Regulation 6. The person trained in first-aid must be a registered or enrolled nurse or the holder of a valid certificate in first-aid issued by one of the Voluntary Training Organisations — the St. John Ambulance Association, St. Andrew's Ambulance Association, British Red Cross Society, or any other body approved as a training organisation by H. M. Chief Inspector of Factories.

These Regulations bring the first-aid training requirements in docks substantially into line with those laid down for factories.

D. *Article 25 of the Universal Declaration*

In January, 1962, a national plan for hospitals development over the next ten years was presented to Parliament. Its aim was to modernise the hospital service and at the same time to develop care in the

community. The plan is as yet in its early stages, but it is hoped over the next ten years to revise and modernise old buildings and inadequate services and create better working conditions for the treatment of patients.

E. *Article 26 of the Universal Declaration*

The Education Act, 1962, together with the *University and Other Awards Regulations, 1962* placed a duty on local education authorities to grant monetary awards to all students possessing certain minimum educational qualifications to enable them to attend a university or similar institution. Local education authorities have for long been granting awards of this nature but the 1962 legislation for the first time imposed upon them a duty to do so.

In Scotland, under the *Education (Scotland) Act 1962* and the *Students' Allowances (Scotland) Regulations, 1962* awards are made by the Secretary of State to all eligible students attending full-time university or comparable courses.

On 14 March 1962 the United Kingdom deposited with UNESCO an Instrument of Acceptance of the *International Convention against Discrimination in Education* which was adopted by the General Conference of UNESCO at its 11th Session in December 1960. The Convention came into force in respect of the United Kingdom on 14 June 1962.

UNITED STATES OF AMERICA

HUMAN RIGHTS IN 1962

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 cooperation, 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.

HUMAN RIGHTS

In recognition of the 14th Anniversary of the Universal Declaration of Human Rights and the 171st Anniversary of the Bill of Rights in the Constitution of the United States, President Kennedy again proclaimed 10 December as Human Rights Day and 15 December as Bill of Rights Day, both to be celebrated in the course of "Human Rights Week" December 10–17. In his proclamation the President urged all citizens to observe the anniversaries "in order to celebrate the blessings of liberty for our country and the equal and inalienable rights of all members of the human family". He continued by calling upon the people of the United States to "shoulder our responsibilities, as trustees of freedom, to make the Bill of Rights a reality for all our citizens. Let us reach beyond the fears that divide nations to make common cause for the promotion of greater understanding of right and justice for all, and in so doing strengthen our faith in the reason and conscience of men as the basis for a true and lasting peace".

In a television message the Attorney-General of the United States urged citizens to rededicate themselves "to the basic guarantees of our Constitution, which have been given fresh voice in the Universal Declaration of Human Rights. We must give full meaning to these basic principles at home to survive as a democracy and to achieve a world of law and free choice".

Following the example of the President and the Attorney-General, Cabinet members, State Governors, Mayors, and officials at all levels of government joined in promoting observance of Human Rights Week and in emphasizing its significance in the light of local situations. In addition, the U.S. National Commission for UNESCO took the lead in providing informational materials for community celebrations in the form of panel discussions, symposiums, workshops and other meetings undertaken by individual citizens, local organizations, trade unions, religious groups and educational institutions in all parts of the country. Many of these groups made plans to survey progress in their communities and to provide support for official actions.

Efforts continued throughout 1962 to expand implementation of human rights and basic freedoms for all Americans. A survey of these efforts follows. This survey is confined to those official developments of the year 1962 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.

EQUAL PROTECTION OF THE LAW

(Articles 2, 7 and 8 of the Universal Declaration)

The number of desegregated southern school districts continued to increase in 1962, both through voluntary action and court decisions. With the desegregation of the University of Mississippi in the fall of 1962, only two States remained in which no educational institutions at any level had desegregated.

The events leading up to the admission of a Negro student, James Meredith, to the University of Mississippi are significant from the point of view of Federal-State relations in the United States. A private action brought by Mr. Meredith resulted in Federal court orders for his admission to the University.[2] The Governor and other State officials, attempted to ignore or circumvent these Federal Court orders and prevent Meredith's attendance. The Federal Government, fulfilling its responsibility to enforce the laws of the United States, intervened and Meredith was admitted, with the aid of Federal

[1] Note furnished by the Government of the United States of America.

[2] 306 F. 2d 374 (C.A. 5, 1962).

troops and marshals, who thereafter remained on campus for some time to prevent further outbreak of violence, which regrettably occurred at the time of Meredith's entrance. The Governor and Lieutenant Governor were found guilty of civil contempt of court,[1] and at the court's request, criminal contempt proceedings were then instituted against them. This action is still pending.

The Federal Government brought a contempt action against Louisiana State education officials in 1962 for failing to desegregate a State trade school, as had earlier been ordered by a Federal Court in a private suit.[2] When the State Board of Education passed a formal resolution stating there would be no discrimination on the basis of race, the Government agreed to dismissal of the contempt action, but reserved the right to inspect the school records to assure State compliance with the indicated resolution.

Significant steps were taken by administrative action and through the courts to assure that schools receiving Federal funds will not discriminate on the basis of race. Various local school systems receive Federal funds because they educate children of persons who reside or work on Federal property. Law suits arising from these actions are still pending.

In Albany, Georgia, a series of mass protests by Negroes against segregation resulted in numerous arrests and civil rights complaints. All such complaints were speedily referred to the Federal Bureau of Investigation. Although no violation of Federal law was found in most cases, prosecutive steps were taken where appropriate. In August, the Federal Government filed a friend-of-the-court brief in a suit brought in Albany. The brief asked the court to ignore the city's request for an injunction against demonstrations until the city first complied with the law and abandoned its segregation policies. Throughout the Albany difficulties, the Federal Government consulted with leaders on both sides in an effort to encourage an amicable resolution of the racial difficulties. All matters of dispute were brought before the Federal Courts, where litigation is still pending. The city has meanwhile repealed its segregation ordinances.

On 20 November 1962, the President issued an Executive Order[3] directing Federal departments and agencies to take all action necessary and appropriate to prevent discrimination because of race, colour, creed or national origin in the sale or lease of housing facilities owned or operated by the Federal Government, housing constructed or sold as a result of loans or grants to be made by the Federal Government or by loans to be insured or guaranteed by the Federal Government, and housing to be made available through the development or redevelopment of property under Federal slum clearance or urban renewal programmes. Regulations prohibiting discrimination may be enforced by cancellation of the contract providing for Federal aid, refraining from extending further aid under the programme or refusing to approve or revoking approval of a lending institution as a beneficiary of a Federal housing programme. The Executive Order also established the President's Committee on Equal Opportunity in Housing to assist the departments and agencies and to coordinate their efforts.

Through voluntary action and through legal action initiated by the Attorney General and the Interstate Commerce Commission, segregation in interstate transportation facilities was ended in 1962.[4]

Fair Trial and Hearing

(Articles 3, 5, 9, 10, and 11 of the Universal Declaration)

The United States Supreme Court held that a California law making it a misdemeanour to be addicted to the use of narcotics inflicts a cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution. The Court stated that even though 90 days' imprisonment is not, in the abstract, a punishment which is either cruel or unusual, narcotics addiction is an illness and cannot be punished as a crime by a State.[5]

The practice of detaining accused persons incommunicado again this year received consideration by the United States Supreme Court. The Court invalidated the murder conviction of a fourteen-year-old boy on the ground that his confession (on which the conviction may have rested), made during five days' detention during which time the youth saw no lawyer, parent or other friendly adult, was obtained in violation of due process of law.[6]

Federal law provides that any court of the United States may authorize indigent persons to prosecute, defend or appeal any civil or criminal proceeding, without prepayment of fees and costs, but an appeal *in forma pauperis* may not be taken if the trial court certifies in writing that it is not taken in good faith.[7] In a case involving an application for an appeal *in forma pauperis*, the United States Supreme Court defined the "good faith" which must be present in such an appeal. The Court held that if it is apparent on the face of papers filed by the person seeking to appeal *in forma pauperis* that he will present issues for review which are not clearly frivolous, he should be granted leave to take such an appeal, counsel should be appointed to represent him and the case should be considered on the merits in the same manner as if it were a paid appeal.[8]

Federal law provides that refusal to testify before

[1] 313 F. 2d 532 (C.A. 5, 1962).

[2] 287 F, 2d 32 (C.A. 5, 1961), cert. denied, 368 U.S. 830.

[3] E.O. 11063, 27 F.R. 11527.

[4] Cases decided in 1962 include *Georgia* v. *United States*, 201 F. Supp. 813 (N.D. Ga., 1961), *aff'd*, 371 U.S. 9 (1962); *United States* v. *City of Shreveport*, 210 F. Supp. 708 (W.D. La., 1962); *United States* v. *City of Montgomery*, 201 F. Supp. 590 (M.D. Ala., 1962); *United States* v. *City of Shreveport*, 210 F. Supp. 36 (W.D. La., 1962); *Lassiter* v. *United States*, 371 U.S. 10 (1962).

[5] 370 U.S. 660 (1962).

[6] 370 U.S. 49 (1962).

[7] 28 U.S.C. 1915.

[8] 369 U.S. 438 (1962).

a committee of Congress on questions pertinent to the inquiry may be judged a misdemeanour.[1] The United States Supreme Court, in reversing the convictions of six persons, held that an indictment under this law for contempt of Congress must specifically identify the subject under inquiry which the committee was pursuing when it questioned the witness.[2] The Court stated that this was necessary in order to meet the constitutional requirement that the accused be sufficiently apprised of the charges against him in order that he may adequately prepare his defense.

Asylum and Nationality

(Articles 14 and 15 of the Universal Declaration)

The Migration and Refugee Assistance Act of 1962 authorized the continued membership of the United States in the Intergovernmental Committee for European Migration and authorized the payment of funds for the Committee, for the United Nations High Commissioner for Refugees, and for the resettlement of Cuban refugees in the United States.

The Act also continued indefinitely the provisions of the Act of 14 July 1960, under which the Attorney General is authorized 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 1962, a total of 14,026 refugee-escapees were approved for parole into the United States under that Act. This included 315 persons designated by the UN High Commissioner for Refugees as "difficult to resettle." The 1960 law also provides that parolees who have been in the United States for at least two years following parole as refugee-escapees will be examined for admission as immigrants. Under this provision, 242 refugees had been adjusted to permanent resident status by 31 December 1962.

On 23 May 1962, the President requested the Attorney General to parole into the United States several thousand Chinese refugees from Hong Kong. Most of the 5,314 Chinese refugees authorized for entry into the United States by 31 December 1962, were close relatives of United States citizens or resident aliens.

Many Cuban refugees continued to make the United States their country of first asylum. Through the first nine months of 1962, refugees arrived from Cuba at the rate of about, 1,500 per week, bringing the total number at the end of the year to approximately 153,000.

In accordance with the principle of family unification, an Act of Congress of 24 October 1962 provided for extending nonquota status to brothers, sisters, married sons and married daughters of United States citizens, and to their accompanying spouses and children. Of the 299,620 immigrants admitted to the United States in 1962, 52,306 were close relatives of United States citizens or resident aliens.

This legislation also broadened the application of section 244 of the Immigration and Nationality Act, which authorizes the Attorney General, with the concurrence of Congress, to suspend deportation and adjust the status of deportable aliens who had resided in the United States for a continuous period of at least seven years, and in the case of some deportable classes of aliens, at least ten years.

Under section 243(*h*) of the Immigration and Nationality Act, the Attorney General is authorized to withhold deportation of any alien to any country in which the alien would be subject to physical persecution. Deportation was stayed for 51 aliens under this provision.

In accordance with long established practices manifesting the emphasis placed by the United States on the right to a nationality and a national homeland, 128,164 immigrants were granted United States citizenship in 1962 and 34,439 certificates of citizenship were issued to children of naturalized parents or children born in a foreign country to United States citizen parents.

Freedom of Religion

(Article 18 of the Universal Declaration)

The United States Constitution not only guarantees freedom of religion, but prohibits both the Federal and State governments from making any law respecting an establishment of religion. The "establishment" clause has been construed by the courts to require not only that the State be neutral in matters of religion but that there be a complete separation of Church and State. Invoking this doctrine, in June 1962, the United States Supreme Court held that State school officials could not compose and prescribe a prayer for recital in public schools because this constitutes an establishment of religion in violation of the Constitution, even though pupils whose parents did not wish them to attend or join in the prayer were excused from doing so. In its opinion, the Court stated: "we think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government."[3]

The Supreme Court also decided to hear two cases in which the constitutionality of daily Bible reading and recital of the Lord's Prayer in public schools was challenged.

A number of cases were brought by Negro prisoners who are members of a religious sect known as the Black Muslims, alleging religious discrimination against them by prison officials. Federal courts have upheld their right to raise this issue, although the findings have differed as to whether or not actual discrimination existed and the extent to which prison regulations should allow the Muslims special privileges in the practice of their religion.[4]

Government by the Will of the People

(Article 21 of the Universal Declaration)

In a case arising in a Federal district court in

[1] 2 U.S.C. 192.

[2] 369 U.S. 749 (1962).

[3] 370 U.S. 421, 425.

[4] *Pierce* v. *LaVallee*, 293 F. 2d 233 (C.A. 2, 1961), 212 F. Supp. 865 (N.D. N.Y., 1962); *Fulwood* v. *Clemmer*, 206 F. Supp. 370 (D.C. D.C., 1962); *Sewell* v. *Pegelow*, 291 F. 2d 196 (C.A. 4, 1961), 304 F. 2d 670 (C.A. 4, 1962).

Tennessee, a group of voters challenged the constitutionality of the Tennessee Apportionment Act of 1901, which allocated the representatives in the State legislature among the various districts and counties of Tennessee according to the voter population at that time. Although the Tennessee Constitution required that the State legislature be reapportioned according to the population of qualified voters every ten years, all proposals for reapportionment since 1901 had failed to pass the State legislature. The plaintiffs claimed that because of the growth and change in the distribution of the population among the various counties and districts in the State since 1901, the allocation of representatives in the State legislature according to the old law was disproportionate and denied them the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution, by virtue of the debasement of their votes. Such voter representation cases have traditionally been considered political questions which must be resolved by the legislature and not the courts.

The Federal district court dismissed the suit because it believed it lacked jurisdiction of the subject matter and that no claim was stated upon which judicial relief could be granted.[1] In an historic decision,[2] the United States Supreme Court reversed the lower court and held that the allegation of a denial of equal protection presented a justiciable constitutional cause of action upon which the voters were entitled to a trial and a decision.

In 1962, Congress approved a proposal which would amend the United States Constitution by prohibiting any State from requiring the payment of a poll tax as a prerequisite to voting. The proposed amendment was submitted to State legislatures to become effective when ratified by three-quarters of the States, as required by the Constitution.

By virtue of an Attorney General's Opinion[3] interpreting Federal civil service laws as authorizing the President to prescribe regulations with respect to the appointment of women in the Federal service, the President directed the Civil Service Commission and heads of Federal agencies to make appointments to positions solely on the basis of merit and fitness and without regard to sex unless justified by special needs of hazards.

A New York State court held that the New York City Civil Service Commission could not deny the application of a policewoman to take an examination to qualify for promotion to the rank of sergeant solely because of her sex.[4] The Court construed the provisions of the New York City Administrative Code as permitting women to be eligible for such promotion and stated that a contrary construction would amount to a denial of the policewoman's constitutional rights on the basis of sex.

[1] *Baker* v. *Carr*, 179 F. Supp. 824 (M.D. Tenn., 1959).

[2] *Baker* v. *Carr*, 369 U.S. 186 (1962).

[3] 42 Op. A.G., No. 9 (June 14, 1962).

[4] 32 Misc. 2d 693 (1961), *modified and aff'd*, 234 N.Y.S. 2d 285 (1962).

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 — cooperate 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 recognition of human dignity and equality by setting wage and hour, health, safety, and educational standards. Local, State and Federal authorities share further responsibility for the initiation and financing of programmes for education, research, welfare, cultural and other activities in the public interest.

Progress in these fields was reflected in legislation adopted in 1962 by the Federal Congress and also by State legislatures, some twenty of which met during the year. Many of these bodies took special action expanding support for education. Significant actions are reported below.

Just and Favorable Conditions of Work

(Articles 23 and 24 of the Universal Declaration)

Labour Standards

Federal and State laws establish minimum wage and other labour standards which are widely supplemented throughout the United States by collective bargaining and agreements between labour unions and employers. The Federal Fair Labor Standards Act, which applies to workers employed in the production of goods moving in interstate commerce, establishes a basic minimum wage which has risen over the years from 25 cents an hour in 1938 to $1.25 an hour in 1962. The States are constantly adjusting their minimum wage rates in the light of the rising Federal standard and other factors; in 1962 Alaska amended its law to establish a basic minimum of $1.75 an hour, bringing to seven the number of States with the minimum rates equal to or higher than the Federal rate.

Increased rates came into effect also in a number of States and other jurisdictions where minimum rates are established for specific industries and occupations. Virginia amended its labour law to make it applicable to any business rather than to enumerated industries, and also gave its Labor Commissioner power to sue for and collect wages which had not been paid to workers. Michigan amended its equal pay law by extending coverage to all types of employment; the law previously covered only manufacturing.

The establishment of State wage standards is particularly important for women workers, since large numbers of women work in trade and service occupations, which are generally not covered by the Federal law. Arizona and Virginia improved the coverage of their maximum hour provisions for women. Arizona enacted an equal pay law, bringing the number of States with such laws to 22. The

Arizona law prohibits any employer from paying any female a wage rate less than the rate paid a male employee in the same establishment for the same quantity and quality of work.

The Congress enacted the Work Hour Act of 1962 providing for an 8-hour workday and a 40-hour workweek for all employees of contractors and subcontractors doing business with the Federal Government or agencies subject to Federal law. Such employers are required to pay time and a half for any work beyond these hours, and provisions are made for remedies in case of default and nonpayment by the employer.

Under the Federal Constitution and laws workers have, in general, the right to form associations, to strike and to bargain collectively. This right is implemented in State and other legislation. During 1962 Massachusetts, Michigan and Louisiana continued a movement, begun the previous year, of taking measures to prohibit or regulate strike-breaking practices. Four States adopted legislation or extended existing laws relating to the rights of public employees in the employer-employee relationship. Massachusetts authorized certain public authorities to bargain collectively with unions, to make agreements as to hours, wages, and working conditions, and to submit grievances and disputes to arbitration.

Many States have made significant progress in the protection of workers from working hazards. With the passage of 1962 legislation in Virginia and Delaware, there are now 41 States giving rule-making authority on safety matters to appropriate agencies in their governments. In recent years control of radiation hazards has been the focus of State action. Continuing this trend, Kentucky, Louisiana, and South Carolina adopted new legislation to provide safety control of radiation sources, and cooperation with the Federal Government for this purpose has been established by 17 States.

In addition, New Jersey enacted a Safety Construction Act, and Kentucky created a Board of Boiler Safety Rules.

All States have long had laws in the field of workmen's compensation with gradual increases in cash and medical benefits for work-connected injuries and illnesses. This trend continued in 1962, and in addition additional public employees were brought under the protection.

Additional protections were also provided for migratory agricultural workers. Virginia required camp operators to obtain annual permits and established housing and sanitation standards for migrant labour camps, giving the State Board of Health rulemaking and inspection authority, and Rhode Island gave its Health Department similar authority. The 28 States which now regulate migratory labour camps include almost all the areas in which any considerable number of migrant workers are employed.

Equal Employment Opportunity

Fair Employment Practice Acts or other anti-discrimination laws prohibiting discrimination in employment on grounds of race, colour, religion or national origin were in force in 25 States. In addition, over 40 municipalities prohibited such discrimination through local ordinances. In 1962, New York amended its law to include apprentice and other training programme. New Jersey prohibited labour organizations from practicing all discrimination. It also added a prohibition against discrimination based on age to its fair employment law, making a total of 15 States and Puerto Rico which have specific legal provisions barring age discrimination in employment. Massachusetts extended its age discrimination law to include additional public employees; Rhode Island's law now applies also to recruitment by employment agencies.

The President's Committee on Equal Employment Opportunity found that in Federal employment there was an increase of almost 20 per cent in middle income jobs for Negroes in 1962 while the over-all increase in new jobs in this income range was only 6 per cent. In the higher grades there was an increase of almost 36 per cent of Negroes as compared with only a 9.5 per cent increase in new jobs.

Outside the Government employment field, 75 of the nation's largest employers co-operating with the Committee reported that non-white employees filled 25 per cent of all new jobs in 1962, and that the proportion of Negroes in service and non-skilled jobs had declined. In addition to the mandatory compliance by government contractors, the Committee undertook two programmes to secure the voluntary co-operation of additional employers and unions not covered by other legislation — "Plans for Progress" and "Plans for Fair Practices." Under these plans, several hundred employers and unions voluntarily agreed to abolish segregated hiring and membership practices, including such discrimination in lines of seniority and apprenticeship training.

Other actions tended toward the geographic equalization of employment opportunities. State and local governments, for example, continued efforts 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 further improvements.

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. In addition, Congress adopted the Manpower Development and Training Act, which requires the Secretary of Labor to study the impact of automation and technological progress on unemployment and underemployment, and to establish broad and diversified programmes of training and retraining in skills for those displaced from the labour market. Testing, counseling and referral services are provided together with a spe-

cial programme of occupational training and further schooling for youths 16 years of age or older. Weekly training allowances are available to some trainees. Although this Act did not come into operation until August, by the end of the year projects were planned or in operation in 49 States, covering some two hundred different areas, with participation by thousands of workers. Finally, a Trade Expansion Act was adopted providing trade adjustment allowances to workers adversely affected by increased imports due to tariff concessions.

Living Conditions and Social Security

(Article 25 of the Universal Declaration)

Housing

New housing units begun during 1962, including both publicly and privately sponsored units, other than those on farms, rose to a total of 1,482,000 units, an increase of 9% over the number of units begun in 1961.

Although the 1960 census showed that approximately 81% of all available housing in the United States contained adequate sanitary and other facilities, there remained substantial numbers of substantard or deteriorating units. The Federal Government, in co-operation with State and local governments continued its attack on slum and deteriorating housing. By the end of 1962, 636 communities were participating in urban renewal programmes to eliminate slum and blighted areas, with a substantial increase over 1961 in the amount of land acquired for this purpose.

Federal assistance continued to local authorities for low-rent housing for persons of low income. By the close of 1962, 525,700 units were under management, 42,500 units were under construction and 76,800 units were in the preconstruction stage under this programme, thus providing decent, safe and sanitary housing to over two million people in all parts of the United States, Puerto Rico and the Virgin Islands. In addition, a demonstration programme was begun on the use of existing housing to accommodate large low-income families.

The Federal Government encourages private enterprise in the housing field through insurance of housing loans. Commitments were made to insure mortgages on a total of 405,131 homes, the second highest total since the inception of the programmes in 1934. The commitments for long term loans on low-cost homes for moderate income families were issued at approximately four times the 1961 rate. There was a notable increase also on rental units.

Encouraging progress was made in the provision of low-rent housing for senior citizens. At the end of 1962 nearly 8,000 units of low-rent housing specially designed for the elderly were in operation, nearly double the 1961 figure. Contracts for 11,000 similar units had also been issued and 42,000 more were in the planning stage. Further provision was made through the passage of the Senior Citizens Housing Act of 1962, which nearly doubled the amount authorized for direct loans for rental housing and provided a new Federal loan programme at low interest rates for housing in rural areas. Government-insured mortgages were also issued for 49 projects of private rental housing for the elderly and to finance 76 nursing homes.

Special efforts were made to provide adequate, low-rent housing for American Indians. The first units of low-rent public housing were dedicated at the Oglala-Sioux reservation in October, and applications for additional units were approved during the year.

The rapid increase in the number of Americans entering college was reflected in the continuing applications for building loans under the Federal college housing programme. In 1962, there were 314 applications and loans approved covering accommodations for 67,000 students.

In addition to the President's Executive Order on Equal Opportunity in Housing, reported above, legislation prohibiting discrimination in housing and related facilities was enacted or strengthened in Alaska, Kentucky, and New York, bringing to twenty the number of States with such anti-discrimination housing laws. Numerous municipal and local ordnances for this purpose were also in force.

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 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. Social insurance against other risks is provided through unemployment insurance and State programmes for workmen's compensation. In addition a programme of Federal grants to the States helps them provide financial assistance, medical care, and other services to needy people, and 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 employee benefit plans and a wide variety of services provided through private funds by voluntary social agencies.

At the end of June 1962, social insurance, related payments and public assistance accounted for about 7 per cent of total personal income in the United States. Under old-age, survivors, and disability insurance — the largest social insurance programme — the number of current beneficiaries in June 1962 had increased 11 per cent over the previous year and the rate of monthly benefit payments had increased 14 per cent over the previous June. Congress made changes in the coverage provisions of the social security law for some State and local employees and provided tax deferment for income set aside in qualified pension plans for self-employed persons.

Health and Medical Care

Health programmes and services of all types have expanded considerably in recent years in response to increasing public demand for improved health

facilities. Government — at all levels — has contributed significantly to this expansion. For example, expenditures for medical research have almost doubled over the last three years and the Federal Government has contributed more than 60 per cent of all appropriated funds and materials for new health knowledge.

This vast research effort has produced a steady stream of new techniques, new instruments, new medicines, and new methods of preventing, diagnosing, and treating disease. During 1962, for example, new vaccines against measles were licensed by the U.S. Public Health Service. Measles in one of the leading diseases of childhood; it has killed 500 children in the United States each year and permanently injured many more. These vaccines can be administered in physicians' offices, in clinics, and by health departments throughout the country.

Action was taken to apply the results of research more quickly and comprehensively to the health needs of the people. In 1962 the Congress enacted the Vaccination Assistance Act, which authorizes grants to the States to buy vaccine and conduct immunization programmes to eradicate polio, diphtheria, whooping cough, and tetanus. The Congress also authorized the Public Health Service to make grants for the establishment and operation of health service clinics for agricultural migrant workers and their families. These programmes, coupled with progress being made to develop and improve out-of-hospital community health services, are directed toward the goal of comprehensive health services which will be available to people in their own communities, when and where they need them.

Renewed emphasis was also placed on the health problems associated with the complex modern environment. In the spring of 1962, a scientific advisory group recommended that the United States Public Health Service undertake a major national effort to safeguard the environment against chemical, radiological, and other pollutants of air, land, and water. American communities spent more than ever before in 1962, to a total of at least $600 million, to build needed waste treatment facilities.

The national programme of protection against undue exposure to radiation was strengthened through broadened surveillance, expansion of research, increased training of manpower, and aid to the States in developing programmes of radiation protection and control. The programme of technical assistance and research related to air pollution control, including studies of motor vehicle exhausts, was extended and improved.

The Congress in 1962 enacted amendments to the Federal Food, Drug, and Cosmetic Act, known as the Kefauver-Harris Drug Amendments of 1962, which are designed to give to consumers of drugs the most far-reaching protection so far afforded in law. Among these are requirements that all drugs be produced in a plant established, equipped, administered, and operated in conformity with current good manufacturing practice to insure their safety, identity, strength, quality, and purity. In addition, proof is required of the efficacy as well as safety of a new drug before it is put on the market, requiring the manufacturer of new drugs to report concerning any adverse effects and other clinical experience observed, and authorizing the Department of Health, Education and Welfare to withdraw approval of a new drug when the facts warrant, such as new clinical evidence or other information showing that the drug is not safe. Further amendments prevent the testing of new drugs on humans unless there have been adequate preclinical tests (including tests on animals) and require investigators to certify that they will inform patients when an experimental drug is being administered. Provision was also made to strengthen factory inspection authority for prescription drugs, authority to standardize nonproprietary drug names (which, together with other amendments, would encourage the use of such names in prescribing drugs), regulating advertisements for prescription drugs, providing for the annual registration of establishments producing drugs, batch-by-batch certification of antibiotics for human use, and other improvements.

Child and Youth Welfare

The most far-reaching legislative changes in public child welfare programmes since passage of the Social Security Act in 1935 were instituted by Congress in 1962. Funds authorized for child welfare grants were substantially increased over a long-term period to enable States to move more rapidly in widening constructive services for children everywhere. Portions of the annual appropriations were earmarked for day care services under State direction. Planning was begun for a National Institute of Child Health and Human Development to be established in connection with the National Institutes of Health in Bethesda, to absorb and expand activities already begun under Research Centers for Child Health and for the Aging.

Other legislation required each State to improve both the geographic availability and scope of their child welfare programmes by 1 July 1965, with priority for communities in greatest need. To meet the serious national shortage of skilled child welfare workers, financial grants were authorized to numerous public and other non-profit institutions of higher learning for special child welfare projects, particularly in the form of traineeships.

Under the Juvenile Delinquency and Youth Offences Control Act adopted by Congress in 1961, towns and cities throughout the country undertook programmes to help young people, particularly on such pressing problems as school dropouts and location of employment. The entire resources of the community were focussed for this purpose, including school facilities, health and welfare services, employment counselling and placement, housing and recreation programmes. Special training was organized for the many types of personnel working with children and youth, including juvenile court judges, probation officers, teachers, and other persons coming in daily contact with young people.

New York State established a special family court to deal with all aspects of family problems. The establishing legislation reflects recent case decisions and legal enactments to meet the requirements of fair hearing and due process of law in children's cases

and to protect all members of the family in accord with modern social standards.

Experiments in the use of group therapy as a method of treatment for disturbed children and adolescents were set up in 1962 both within institutions and outside; some of these were designed to reduce the need for institutional care by providing intensive group treatment in a community setting.

The Social Security Act was amended in 1962 to provide Federal grants-in-aid to States specifically for day care services, and the State public welfare agency receiving the grants must meet certain requirements, including licensing of all facilities for day care purposes. The Act recognizes the need to make available adequate day care facilities for all children who need them irrespective of the economic condition of their parents, with reasonable fees in cases where the family is able to pay all or part of the costs.

Another provision of great significance in the new legislation is the requirement for establishment, by the welfare agency responsible for day care programmes, of cooperative arrangements with the State Health authority and the State agency responsible for supervision of public schools. The purpose of this provision is to insure that the day care programme will give proper consideration to the child's health and education as well as to physical care needs. The law also provides for an advisory committee which includes representatives of other State agencies and of interested public and private groups.

Vocational Rehabilitation

The number of disabled persons rehabilitated into employment in the United States under the State-Federal programme reached an all-time high of 102,377 in 1962. This represents an increase of about 38 per cent over the past five years.

Legislation was enacted by both the Federal and State Governments to promote the vocational and cultural opportunities and to guarantee the constitutional rights of the blind. The Congress made provision for the establishment and maintenance by the Library of Congress of a music loan library containing scores, instructional texts, and other specialized materials for the use of blind residents of the United States and its possessions.

On the State level, Oklahoma took steps to assure the voting rights of the blind and Massachusetts and New Jersey extended employment opportunities for blind persons by authorizing them to operate vending stands on State owned property.

The Federal Property and Administrative Services Act of 1949 was amended so as to permit donations of surplus personal property to schools for the mentally retarded, schools for the physically handicapped, radio and television stations licensed as educational television stations, and to public libraries.

Advances are being made in the national effort toward making public buildings more accessible and adaptable to use by the disabled through provision of ramps at entrances, automatic doors, handrails and other conveniences. New legislation in Massachusetts provides that all plans and specifications for the erection of public buildings provide facilities for handicapped persons.

Recognizing drug and alcohol addiction as symptoms of emotional disabilities that may be capable of rehabilitation, a number of States have undertaken or extended programmes for such disability groups. New York amended its mental hygiene law to authorize establishment of a comprehensive programme to combat the effects of drug addiction. The Commissioner of Public Health is empowered to survey and analyze State needs and to provide special hospital facilities for drug addicts, and for their aftercare and supervision.

Massachusetts authorized voluntary commitment of those addicted to the intemperate use of narcotic stimulants and alcoholic beverages and the designation of rehabilitation centers or hospitals for their rehabilitation. Colorado empowered the Department of Public Health to study the methods and facilities available for the care, custody, detention, treatment, employment and rehabilitation of alcoholics and to disseminate information on this problem.

National efforts in regard to the aged, the mentally ill and the mentally retarded are also reflected in special legislation by Louisiana, Georgia, and New York. In Louisiana the State Department of Hospitals was authorized to establish and administer geriatric units to care for elderly and infirm persons discharged by hospitals for mentally ill or for other elderly individuals in need of nursing and medical care. Georgia established a Commission on Aging to study, promote, plan and execute a broad programme to meet the present and future needs of aging citizens. New York State authorized the establishment of an institution for research in mental retardation to study the causes and measures for prevention, treatment, and care of this disability.

EDUCATION

(Article 26 of the Universal Declaration)

In keeping with the provision of Article 26 of the Universal Declaration of Human Rights that everyone should have a right to an education, numerous developments can be noted in State legislation to make education more readily available to all, and to improve its quality. Public education in the United States is the primary responsibility of the various States, and public schools are maintained in all States. Parents are also free to choose private schools for their children, again in keeping with Article 26. Typically, States have delegated their responsibility for elementary and secondary education to local governmental units, but States give financial aid to local schools.

During 1962, several States increased their efforts to assure a basically equal quality of education to their students by varying the amount of State aid in accordance with the ability of the local unit to pay for its schools.

The growing concern for the education of handicapped children was reflected by laws in Arizona and Louisiana regarding programmes for retarded children, and also in national legislation providing captioned films for the deaf.

Several States undertook to maintain or improve the quality of education by raising qualifications for teachers and establishing higher minimum salaries. Use of television for educational purposes was supported by legislative enactments in several States, and the United States Congress enacted a law to aid certain States and non-profit agencies in establishing educational television stations.

To meet the problem of "drop-outs" West Virginia began an experimental programme intended ultimately to require young men who leave school before graduation to undergo "job preparation" training. Free training in technical subjects is generally available in the United States, largely through the facilities of secondary schools.

In the area of higher education, opportunities continued to expand through development of community and junior college programmes. During 1962, Arizona established three new junior colleges and required counties which do not maintain such colleges to pay tuition elsewhere for their students. New Jersey established a system of county junior colleges and provided State aid for their operation. South Carolina provided a State programme of scholarships to make higher education more readily available on the basis of merit.

Judicial decisions during the year strengthened the effect of Teacher Tenure Statutes, which exist in the majority of the States. Some of these cases emphasized the importance of fair and impartial hearings on the right to employment. In *Hoek* v. *Board of Education of Asbury Park*,[1] a New Jersey court declared that a teacher has a right to an impartial hearing and disqualified from the hearing a school board member who had already decided against the accused school official.

Congress provided for the extension to American Samoa of four Federal grant-in-aid programmes (vocational education, the National School Lunch Act, the Public Health Service Act, and the Library Services Act), as well as for technical assistance from Federal agencies to the Government of American Samoa. The Virgin Islands Legislature established the College of the Virgin Islands and made provision to aid financially students with marked ability.

In response to increased interest among certain American Indian tribes in wider educational opportunity for their children, voluntary summer programmes have been initiated on reservations to supplement regular classroom work during the school year. The number of students in these programmes, which include sports, academic instruction, part-time employment and tours to national and regional points of interest, has increased from 2,000 in 1960 to 13,000 in 1962. Responsibility for such provision for American Indians lies with the Federal Government. While the great majority of Indian children now attend public schools in nearby communities, the Federal Government provides additional schools as necessary and also makes grants to help Indian students attending college or other institutions of higher learning. To meet the needs of Indians who were unable to obtain adequate schooling in their youth, the Federal Government also provides an adult education programme at convenient centres. Demand for this programme has grown rapidly; whereas in 1960 it was offered at 97 locations, by 1962 it was in operation on 127 Indian reservations and native communities in Alaska. In addition to fundamental education, there is opportunity to attend vocational schools or receive training on-the-job.

[1] 182 A. 2d 577 (N.J. App. Div. 1962).

Culture and Science

(Article 27 of the Universal Declaration)

Cultural Opportunities — Benefits of Scientific Advance

Cultural facilities in the United States are provided in large part through private initiative or voluntary civic organizations. Under traditional American freedoms of speech, opinion, and action, each individual may seek out and enjoy cultural activities of his own choice. At the same time, the United States Government is increasingly manifesting an interest, not only in providing public facilities and programmes in the arts but in actively promoting their development and appreciation.

In March 1962, the President appointed a special consultant to keep abreast of and make recommendations for progress in the arts. Also indicative of growing official concern was the reconstitution of the White House furnishings and decoration as a symbol of America's cultural heritage. The works of some of America's finest painters were collected for this purpose. In addition, outstanding representatives of the literary and artistic communities were included in numerous White House events.

Popular interest in folk music was reflected in expanded use of Library of Congress' Archive of Folk Song and of similar collections in many States. The Library of Congress Archive maintains a folklore collection which contains hundreds of recordings of American ballads, many of them made on the spot by indigenous singers perhaps 20 to 30 years ago, preserving this portion of the United States heritage. This resource has been of great value to scholars, musicologists and anthropologists and has also been continually tapped by performers.

The Institute of American Indian Arts, which the Federal Government operates at Sante Fe, New Mexico, to provide training for artistically gifted Indian youth, began operations in the fall of 1962 with an enrollment of approximately 140 art students from 74 tribes. In addition to courses in the creative arts of the American Indian, the Institute offers the usual academic courses required for high school graduation.

A further illustration of official efforts to assure citizens a share in the benefits of scientific and cultural advance is the federal Tennessee Valley Authority, which marked its 30th anniversary in 1962. Within this span, vast changes have taken place under the TVA policy of unified development; not only changes in the harnessing of water power, the development of industry, the improvement of agriculture and the extension of resource conservation practices, but also attendant promotion of cultural and human rights opportunities for residents of a once under-developed territory. While growth in

manufacturing provided only 12 per cent of total employment in 1933, as contrasted with 27 per cent in 1961, tax income from this and other sources has increased far more rapidly, and has been used to expand health, education and recreation facilities in the seven states of the TVA system. To illustrate, state expenditures on public health and hospital services increased from less than $26 million in 1942 to more than $433 million in 1961. Milk sales, regarded by statisticians as an index to living levels, more than doubled between 1939 and 1962 although the population increase in this period was less than 20 per cent.

In education, TVA was first to make use of the bookmobiles now in use in rural areas throughout the country. Nearly 1,500 persons have completed the diverse training and apprenticeship programme conducted cooperatively by the TVA and the Tennessee Trades and Labor Council. This programme has been instrumental in providing a pool of trained regional manpower.

The industrialization and urbanization of the population has resulted in a vast increase in interest in outdoor recreation. States and local agencies have taken advantage of the opportunities for development afforded by TVA-made lakes. More than 75 state, municipal, and county parks have been developed along the lakes, with many privately-owned resorts and some 50,000 pleasure boats. These recreation areas draw more than 40 million person-day visits annually.

1962 was a year of significant progress in the United States in the fields of basic research, applied science, and advanced technology. Major productive efforts were continued in the exploration of outer space and the earth's structure.

For the first time, US astronauts made orbital flights around the earth, a space probe was launched toward Venus, and Telstar, the world's first satellite to relay television programmes, was launched. This experimental communications satellite was also used to relay telephone, telegraph, and computer data over the Atlantic Ocean. It contains its own miniaturized receiving, amplifying and resending apparatus.

In 1962, rapid strides were made in the development of the "LASER" (Light Amplification by Stimulated Emission of Radiation). A laser is a relatively simple instrument that emits a light beam one million times as bright as the sun. Its heart is a man-made ruby or other substance whose atoms re-emit focused light, sacrificing duration for intensity. Lasers were used to cut diamonds and steel, and to reflect narrow light rays off the moon. One newly developed laser is powered directly by electricity and holds great promise in the field of communications. It is thought that a laser can carry a million telephone calls or radio messages or a thousand radio programmes. The Government has appropriated funds for research in the application of lasers, and some 2,000 scientists are working in 400 laboratories in this area.

Ten American ships and many scientists participated in the International Indian Ocean Survey along with personnel and vessels from other nations. Among practical results expected from this comprehensive oceanographic programme are larger seafood catches and better weather forecasting.

Two nuclear devices were exploded to demonstrate that atomic explosives can be used safely for such peaceful industrial, scientific, and civilian purposes as excavation projects and heat reservoirs.

Reference is made elsewhere to advances in the fields of public health and medical science, financed in whole or in part from official sources.

Realization through International Co-operation

(Article 28 of the Universal Declaration)

In addition to action taken to enhance the rights and freedoms of its own citizens, the United States continued efforts to promote a social and international order in which the rights and freedoms of people everywhere might be fully realized.

With a view to strengthening United Nations work for this purpose, the United States again supplemented its regular payments to the UN and the specialized agencies with payments to UN projects supported by voluntary contributions. For example, the US contributed more than 44 per cent of the UNICEF funds in 1962, 33 per cent of the funds supporting the UN High Commissioner for Refugees, 70 per cent for the funds of the Relief and Works Agency for Palestine Refugees, and 40 per cent of the UN funds for Technical Assistance.

Among bilateral actions recognizing the importance of human rights was the Treaty of Friendship, Establishment and Navigation between the US and Luxembourg which was renewed in 1962. This guarantees equitable treatment by each party of the nationals of the other with respect to human rights, including liberty of conscience, holding of religious services, freedom to gather and transmit information for dissemination to the public abroad, and the right of the foreign national 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 defense and the services of competent counsel of his choice. By the end of 1962 the United States was a party to at least 31 bilateral treaties containing similar provisions. Treaties also came into effect during the year providing for scientific cooperation with ten countries, and eleven agreements were concluded regarding technical economic and general assistance.

Through his Executive Order of June 25, 1962, the President strengthened the Department of State's educational and cultural exchange programme by recognizing it as one of the major elements of US foreign policy. The programme which was expanded in 1962 to embrace a total of 120 countries and territories, provides for exchange of cultural presentations as well as of individuals. For example, more than 50 group and individual performers were sent to other countries in 1962. More than 7,500 indivi-

duals received travel grants, including students, teachers, professors, research scholars, distinguished parliamentarians, journalists and community leaders. Approximately 2,100 of these were Americans who went abroad; some 5,400 were foreign citizens who came to the United States. Three new educational exchange agreements were signed in 1962 — with Ghana, Cyprus, and Israel — bringing the total number of such agreements to 44.

The exchange programme also provides for the cooperative arrangements between American universities and universities abroad. For example, Northwestern University in Illinois and the University of California at Los Angeles have received grants for work with the University of Khartoum in the Sudan. The University of Chicago received a similar grant for work with Makerere University in Uganda. A Center for Cultural and Technical Interchange Between East and West was administered for a second year in affiliation with the University of Hawaii under a grant-in-aid agreement with the Department of State.

The Agency for International Development (AID) continued its cooperative programmes with other nations requesting such action. During 1962 some 1,700 projects to promote the welfare of peoples were in operation in more than 75 countries, designed essentially to encourage indigenous institutions working to increase production and distribution of food, to strengthen educational programmes, to improve health conditions, and to increase the economic capability of the country to sustain its total development without outside help.

Five thousand American specialists worked overseas, while some 5,900 technical and professional personnel from host countries came to the US or appropriate third countries for training. AID also supplied funds to support the work of the specialists and to build new institutions. For example, 1,600 teachers, government officials, and labour and industrial specialists from the Far East trained in the US; 15 million textbooks were printed for schools in the Far East and an Institute of Technology was opened with the assistance of nine leading US engineering schools; a Polytechnic Institute was established in Africa; and 57 Latin American institutions of higher education were assisted by 37 US universities. In agriculture, AID-assisted projects have included the establishment of cooperative agricultural services to increase food output; improvement of forestry practices, more than tripling the annual timber cut in one country; promotion of fertilizer use through demonstrations and testing laboratories. In the field of health, AID devoted much of its effort to the World Health Organization's worldwide campaign to eradicate malaria. AID also works around the world to train medical personnel and build up health and other resources for national health programmes. Similar activities were carried out in the areas of housing, community development, and public administration, all of which were founded upon the self-help concept which is central to AID activities.

Working closely with and supplementing AID's programmes are the Peace Corps and the Food-for-Peace Program. In 1962, twenty-two more countries requested Peace Corps Volunteers, bringing the total of peace-corps countries to 44. More than 4,000 US volunteers served in the Peace Corps during the year in such important areas as teaching, community development and agriculture. Under the Food-for-Peace Program in 1962, over 92 million people in 112 countries and territories were recipients of food produced on American farms.

WESTERN SAMOA

CONSTITUTION OF WESTERN SAMOA

Entered into force on 1 January 1962[1]

Part I

THE INDEPENDENT STATE OF WESTERN SAMOA AND ITS SUPREME LAW

Name and description

1. (1) The Independent State of Western Samoa (hereinafter referred to as Western Samoa) shall be free and sovereign.

(2) Western Samoa shall comprise the islands of Upolu, Savai'i, Manono and Apolima in the South Pacific Ocean, together with all other islands adjacent thereto and lying between the 13th and 15th degrees of south latitude and the 171st and 173rd degrees of longitude west of Greenwich.

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The Supreme Law

2. (1) This Constitution shall be the supreme law of Western Samoa.

(2) Any existing law and any law passed after the date of coming into force of this Constitution which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

Part II

FUNDAMENTAL RIGHTS

Definition of the State

3. In this part, unless the context otherwise requires, "the State" includes the Head of State, Cabinet, Parliament and all local and other authorities established under any law.

Remedies for Enforcement of Rights

4. (1) Any person may apply to the Supreme Court by appropriate proceedings to enforce the rights conferred under the provisions of this part.

(2) The Supreme Court shall have power to make all such orders as may be necessary and appropriate to secure to the applicant the enjoyment of any of the rights conferred under the provisions of this part.

Right to Life

5. (1) No person shall be deprived of his life intentionally, except in the execution of a sentence of a court following his conviction of an offence for which this penalty is provided by Act.

(2) Deprivation of life shall not be regarded as having been inflicted in contravention of the provisions of this Article when it results from the use of force to such extent and in such circumstances as are prescribed by law and as are reasonably justifiable:

(*a*) In defence of any person from violence; or

(*b*) In order to effect an arrest or to prevent the escape of a person detained, if the person who is being arrested or who is escaping is believed on reasonable grounds to be in possession of a firearm; or

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

Right to Personal Liberty

6. (1) No person shall be deprived of his personal liberty except in accordance with law.

(2) Where complaint is made to the Supreme Court that a person is being unlawfully detained, the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and shall release him.

(3) Every person who is arrested shall be informed promptly of the grounds of his arrest and of any charge against him and shall be allowed to consult a legal practitioner of his own choice without delay.

(4) Every person who is arrested or detained shall be produced before a Judge of the Supreme Court or some other person holding judicial office within a period of twenty-four hours (excluding the time of any necessary journey), and no such person shall be detained beyond that period without the authority of a Judge of the Supreme Court or some other person holding judicial office.

Freedom from Inhuman Treatment

7. No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

Freedom from Forced Labour

8. (1) No person shall be required to perform forced or compulsory labour.

(2) For the purposes of this article, the term "forced or compulsory labour" shall not include:

(*a*) Any work required to be done in consequence of a sentence of a court; or

(*b*) Any service of a military character or, in the case of conscientious objectors, service exacted instead of compulsory military service; or

[1] Texts furnished by the Government of New Zealand.

(*c*) Any service exacted in case of an emergency or calamity threatening the life or well-being of the community; or

(*d*) Any work or service which is required by Samoan custom or which forms part of normal civic obligations.

Right to a Fair Trial

9. (1) In the determination of his civil rights and obligations or of any charge against him for any offence, every person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established under the law. Judgement shall be pronounced in public, but the public and representatives of news services may be excluded from all or part of the trial in the interest of morals, public order or national security, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(2) Nothing in clause (1) shall invalidate any law by reason only that it confers upon a tribunal, Minister or other authority power to determine questions arising in the administration of any law that affect or may affect the civil rights of any person.

(3) Every person charged with an offence shall be presumed innocent until proved guilty according to law.

(4) Every person charged with an offence has the following minimum rights:

(*a*) To be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(*b*) To have adequate time and facilities for the preparation of his defence;

(*c*) To defend himself in person or through legal assistance of his own choosing and, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(*d*) To examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(*e*) To have the free assistance of an interpreter, if any doubt exists as to whether he can understand or speak the language used in court.

(5) No person accused of any offence shall be compelled to be a witness against himself.

Rights concerning Criminal Law

10. (1) No person shall be convicted of an offence other than an offence defined by law.

(2) No person shall be held guilty of any offence on account of any act or omission which did not constitute an offence at the time when it was committed; nor shall a heavier penalty be imposed than the one that was applicable at the time that the offence was committed.

(3) No person who has been tried for any offence shall, after conviction or acquittal, again be tried for that offence except:

(*a*) Where a retrial is ordered or conducted by a court or judicial officer exercising a jurisdiction superior to that under which that person was acquitted or convicted; or

(*b*) In the case of a conviction entered in a trial conducted by a Judge or Judges of the Supreme Court, where a retrial is ordered by a Judge of that Court on an application made within fourteen days of that conviction.

Freedom of Religion

11. (1) Every person has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and, in public or private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Nothing in clause (1) shall affect the operation of any existing law or prevent the State from making any law in so far as that existing law or the law so made imposes reasonable restrictions on the exercise of the right conferred under the provisions of that clause in the interests of national security or of public order, health or morals, or for protecting the rights and freedom of others, including their rights and freedom to observe and practice their religion without the unsolicited interference of members of other religions.

Rights concerning Religious Instruction

12. (1) No person attending any educational institution shall be required to receive religious instruction or take part in any religious ceremony or attend religious worship, if that instruction, ceremony or worship relates to a religion other than his own.

(2) Every religious community or denomination shall have the right to establish and maintain educational institutions of its own choice and to provide therein religious instruction for pupils of that community or denomination.

(3) Nothing in clause (2) shall prevent the State from making any law requiring the inspection of educational institutions and the maintenance therein of standards in keeping with the general educational level in Western Samoa.

Rights regarding Freedom of Speech, Assembly, Association, Movement and Residence

13. (1) All citizens of Western Samoa shall have the right:

(*a*) To freedom of speech and expression; and

(*b*) To assemble peaceably and without arms; and

(*c*) To form associations or unions; and

(*d*) To move freely throughout Western Samoa and to reside in any part thereof.

(2) Nothing in subclause (*a*) of clause (1) shall affect the operation of any existing law or prevent the State from making any law in so far as that existing law or the law so made imposes reasonable restrictions on the exercise of the right conferred under the provisions of that subclause in the interests of national security, friendly relations with

other States, or public order or morals, for protecting the privileges of the Legislative Assembly, for preventing the disclosure of information received in confidence, or for preventing contempt of court, defamation or incitement to any offence.

(3) Nothing in subclauses (*b*) or (*c*) of clause (1) shall affect the operation of any existing law or prevent the State from making any law in so far as that existing law or the law so made imposes reasonable restrictions on the exercise of either or both of the rights conferred under the provisions of those subclauses in the interests of national security or public order, health or morals.

(4) Nothing in subclause (*d*) of clause (1) shall affect the operation of any existing law or prevent the State from making any law in so far as that existing law or the law so made imposes reasonable restrictions on the exercise of the right conferred under the provisions of that subclause in the interests of national security, the economic well-being of Western Samoa, or public order, health or morals, for detaining persons of unsound mind, for preventing any offence, for the arrest and trial of persons charged with offences, or for punishing offenders.

Rights regarding Property

14. (1) No property shall be taken possession of compulsorily, and no right over or interest in any property shall be acquired compulsorily, except under the law which, of itself or when read with any other law:

(*a*) Requires the payment within a reasonable time of adequate compensation therefor; and

(*b*) Gives to any person claiming that compensation a right of access, for the determination of his interest in the property and the amount of compensation, to the Supreme Court; and

(*c*) Gives to any party to proceedings in the Supreme Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that court sitting as a court of original jurisdiction.

(2) Nothing in this article shall be construed as affecting any general law:

(*a*) For the imposition or enforcement of any tax, rate or duty; or

(*b*) For the imposition of penalties or forfeitures for breach of the law, whether under civil process or after conviction of an offence; or

(*c*) Relating to leases, tenancies, mortgages, charges, bills of sale, or any other rights or obligations arising out of contracts; or

(*d*) Relating to the vesting and administration of the property of persons adjudged bankrupt or otherwise declared insolvent, of infants or persons suffering under some physical or mental disability, of deceased persons, and of companies, other corporate bodies and unincorporated societies, in the course of being wound up; or

(*e*) Relating to the execution of judgements or orders of courts; or

(*f*) Providing for the taking of possession of property which is in a dangerous state or is injurious to the health of human beings, plants or animals: or

(*g*) Relating to trusts and trustees; or

(*h*) Relating to the limitation of actions; or

(*i*) Relating to property vested in statutory corporations; or

(*j*) Relating to the temporary taking of possession of property for the purposes of any examination, investigation or inquiry; or

(*k*) Providing for the carrying out of work on land for the purpose of soil conservation or for the protection of water catchment areas.

Freedom from Discriminatory Legislation

15. (1) All persons are equal before the law and entitled to equal protection under the law.

(2) Except as expressly authorized under the provisions of this Constitution, no law and no executive or administrative action of the State shall, either expressly or in its practical application, subject any person or persons to any disability or restriction or confer on any person or persons any privilege or advantage on grounds only of descent, sex, language, religion, political or other opinion, social origin, place of birth, family status, or any of them.

(3) Nothing in this article shall:

(*a*) Prevent the prescription of qualifications for the service of Western Samoa or the service of a body corporate directly established under the law; or

(*b*) Prevent the making of any provision for the protection or advancement of women or children or of any socially or educationally retarded class of persons.

(4) Nothing in this article shall affect the operation of any existing law or the maintenance by the State of any executive or administrative practice being observed on Independence Day:

Provided that the State shall direct its policy towards the progressive removal of any disability or restriction which has been imposed on any of the grounds referred to in clause (2) and of any privilege or advantage which has been conferred on any of those grounds.

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Part V

PARLIAMENT

Parliament

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Qualifications for Membership

45. (1) Any person shall be qualified to be elected as a Member of Parliament who:

(*a*) Is a citizen of Western Samoa; and

(*b*) Is not disqualified under the provisions of this Constitution or of any Act.

(2) If any person other than a person qualified under the provisions of clause (1) is elected as a Member of Parliament, the election of that person shall be void.

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Part VI

THE JUDICIARY

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Jurisdiction in Respect of Fundamental Rights

81. An appeal shall lie to the Court of Appeal from any decision of the Supreme Court in any proceedings under the provisions of article 4.

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Part X

EMERGENCY POWERS

Proclamation of Emergency

105. (1) If the Head of State is satisfied, acting in his discretion after consultation with Cabinet, that a grave emergency exists whereby the security or economic life of Western Samoa or of any part thereof is threatened, whether by war, external aggression, internal disturbance or natural catastrophe, he may by proclamation (hereinafter referred to as a Proclamation of Emergency) declare that a state of emergency exists.

(2) A Proclamation of Emergency shall remain in force for a period of thirty days, if not sooner revoked, but the provisions of this clause shall not preclude the issue of a further Proclamation before the expiry of the period for which the immediately preceding Proclamation is in force.

(3) If the Legislative Assembly is meeting at the time the Proclamation of Emergency is made, the Proclamation shall forthwith be laid before the Assembly.

(4) If the Legislative Assembly is not meeting at the time the Proclamation of Emergency is made, the Head of State shall appoint a time for the Assembly to meet which time shall be as soon as the Head of State, acting in his discretion, considers that conditions make it practicable, and the Proclamation shall forthwith be laid before the Assembly:

Provided that, if not less than one-half of the total number of Members of Parliament (excluding vacancies) by notice in writing to the Head of State require that a time for the meeting of the Assembly be appointed for the purposes of this clause, the Head of State shall appoint such a time which shall not be later than seven days after the date of receipt of that notice.

Emergency Orders

106. (1) When a Proclamation of Emergency has been made and so long as it remains in force, the Head of State may from time to time make such orders (hereinafter referred to as Emergency Orders) as appear to him to be necessary or expedient for securing the public safety, the defence of Western Samoa and the efficient prosecution of any war in which Western Samoa may be engaged, for maintaining public order and the supplies and services essential to the life of the community and generally for safeguarding the interests and maintaining the welfare of the community.

(2) Emergency Orders may empower or provide for empowering such authorities, persons or classes of persons as may be specified in the Orders to make regulations, rules or by-laws for any of the purposes for which Emergency Orders are authorized under the provisions of this article to be made, and may contain such incidental and supplementary provisions as appear to the Head of State to be necessary or expedient for making effective the powers conferred under the provisions of clause (1).

(3) Every Emergency Order, if otherwise valid, shall have effect notwithstanding anything contained in part II.

(4) No provision of any Emergency Order, and no regulation, rule or by-law duly made under the provisions of any such Order, shall be invalid because it deals with any matter already provided for under any law or because of any inconsistency with any such law.

Orders to be laid before Legislative Assembly

107. (1) If the Legislative Assembly is meeting at the time an Emergency Order is made under the provisions of article 106, the Order shall forthwith be laid before the Assembly; and, if the Assembly is not then meeting, the Order shall be laid before the Assembly as soon as the next meeting thereof commences.

(2) When an Emergency Order has been laid before the Legislative Assembly under the provisions of clause (1), a notice of motion, signed by six Members of Parliament and made within ten days of the day the Order was laid before the Assembly, praying that the Order be revoked shall be debated in the Assembly at the first convenient opportunity within four sitting days next after the day on which notice of motion was given and, if the Assembly resolves that the Order be revoked, it shall cease to be in force.

(3) All Emergency Orders made under the provisions of article 106, if not sooner revoked, shall expire on the date on which the Proclamation of Emergency ceases to be in force or, where more than one such Proclamation is made in respect of the emergency, when the last of those Proclamations ceases to be in force.

(4) The revocation or expiry of an Emergency Order shall not affect the previous operation thereof, the validity of anything done or omitted to be done thereunder, or any offence committed or any penalty or punishment incurred.

Restriction on Detention

108. (1) For the purposes of this article, there shall be an advisory board, which shall consist of:

(*a*) A Chairman appointed by the Head of State from among the persons who are or have been Judges of the Supreme Court or are qualified to be Judges of the Supreme Court;

(*b*) Two other members appointed by the Head of State, acting in his discretion after consultation with the Chief Justice.

(2) Where an Emergency Order made under the provisions of article 106 authorizes the detention of any person:

(*a*) Any person detained under the provisions of that Order shall, as soon as possible, be informed of the grounds for his detention and, subject to the

provisions of clause (3), of the allegations of fact on which it is based, and be given an opportunity of making representations to the advisory board against his detention; and

(*b*) No person shall be detained under the provisions of that Order for a period exceeding three months unless the advisory board has considered any representations made by him under the provisions of subclause (*a*) and has reported, before the expiry of that period, that there is in its opinion sufficient cause for the detention.

(3) This article shall not require any authority or person who is authorized to detain any person under any Emergency Order made under the provisions of article 106 to disclose facts whose disclosure would in its or his opinion be against the national interest.

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YUGOSLAVIA

DEVELOPMENTS IN THE REALISATION AND PROTECTION OF HUMAN RIGHTS IN 1962[1]

The intensive implementation and improving protection of human rights continued in 1962. Important new laws were introduced, especially in the field of social insurance. Although no essential novelties are introduced, the new laws nevertheless constitute a step forward in the development of the legal system and organization designed to ensure the fullest enjoyment of fundamental human rights. Self-government, which was introduced and improved in all sectors of social life in the Socialist Federal Republic of Yugoslavia, has been further developed.

This year, however, the main efforts have been directed towards the preparation of the new Constitution, adopted on 7 April 1963, which deals thoroughly with human rights.

1. Act on the Organization and Financing of Social Insurance *(Official Gazette of the Federal People's Republic of Yugoslavia,* No. 22/63*)*

The social development in Yugoslavia has made necessary changes in social insurance. The continuous growth of productive forces and the increase in insured persons have made it possible to widen the material basis for the implementation of the rights of the insured. In order to align self-government in this sphere with the development of self-government in all other sectors of social life, it became necessary to reform the system of organization and the manner of financing of social insurance.

Self-government was to some extent introduced into social insurance as early as 1952. The decentralized management of social insurance funds constituted a step forward. This system, however, still contained elements of State control. It did not permit the insured to be in touch with the elected organs; nor did they play a sufficiently active role in the management of social insurance.

The new Act strives to make it possible for the insured and their trade unions to play a more active role in the management of social insurance, to develop further the independence of its funds and organization through further development in self-government and to create possibilities for the establishment of expanded insurance in addition to the rights which have been laid down by law at the initiative of the insured and in accordance with their requirements. The new organization of social insurance strengthens the position of the insured and of their trade unions in this field, enabling them to take a direct and active part in making decisions on policies, and to exercise in their territory a direct influence in the solution of problems which may arise. Thus, social insurance will function as an autonomous organization operated by the insured, while the community will regulate by decisions made by its organs the system and principles governing the organization and financing. The aim of these measures is to ensure the protection of the insured at a minimum expense to him.

On the basis of the new Act, the social insurance communities are responsible for the functions of self-government, while the functions of operative execution and the direct management of funds on behalf of the community fall within the competence of social insurance institutes.

The full significance of social insurance can be seen only when account is taken of the fact that large funds are set apart for this purpose. These funds have been growing continually not only in absolute amounts (in 1962, expenditure for social insurance amount to 421,246,000,000 dinars), but also in relation to national income; thus, in 1959, expenditure for social insurance amounted to 10.3 per cent of the total national income, while in 1962 it amounted to 12.7 per cent. Consequently, social insurance constitutes one of the most prominent forms of realization of basic human rights.

General Principles

Social insurance secures for those covered by it determined benefits for health protection and compensation in cash, and other benefits in cash, in case of temporary inability to work, disability, old age or death. It is implemented through three branches: (1) health, (2) pension and (3) disability insurance.

Social insurance is established by federal law. For certain categories of self-employed persons it may also be established by contracts between the social insurance and the respective professional organizations. It may also be established on the basis of socialist republic laws in accordance with the principles laid down by the federal law.

Social insurance is obligatory for all persons covered by the law or by contracts. In addition, economic and other organizations, organs and institutions may secure for members of their collectives as well as the insured themselves other forms of protection or rights not established by law by making separate contributions on a voluntary basis.

The rights deriving from social insurance are uniform for all the insured in the same category.

[1] Note prepared by Dr. Boško Jakovljević, Research Fellow of the Institute for International Politics and Economy, Belgrade, government-appointed correspondent of the *Yearbook on Human Rights.*

Self-government on the part of the insured is implemented within the framework of social insurance communities (hereinafter called "communities"), which are the autonomous organizations of the insured in (1) municipalities, (2) socialist republics and (3) the Federation. Insured farmers practice self-government within the framework of communities set up especially for this purpose. The communities establish social insurance assemblies, as organs of self-government.

For the purpose of implementing social insurance, the communities establish social insurance institutes as independent bodies organized on the principle of self-government.

Funds for the implementation of rights deriving from social insurance accrue from contributions paid by the organizations in which the workers are employed and, in the case of self-employed persons, by the insured themselves.

In order to avoid certain risks in the implementation of social insurance, reinsurance has been established within the framework of communities in the socialist republics and in the Federation.

The organs of political-territorial units control the legality of the work of the organs of social insurance and exercise, with regard to these organs, the rights defined by this Act.

Organization of Social Insurance

The Community

Insured residents of the territory of a municipality (commune) make up the municipal community; those in a socialist republic make up the republic community, while those insured residing in the territory of the Federation make up the Yugoslav Community of Social Insurance. Communities of workers and farmers are separate units. Insured self-employed persons are included in the communities of workers.

The assemblies of communities decide upon the means of securing funds for individual communities and upon the organization of services for the implementation of social insurance. The assemblies are under obligation to secure and manage the funds and services in such a way as will enable the insured to enjoy their rights regularly and fully. The assemblies perform, in particular, the following functions: establish the programme of activities and take measures designed to promote the protection of the insured; decide upon policies regarding the utilization of funds; issue general provisions; establish, in accordance with the law, the rate of contributions and apply such contributions to the fund and to expenditures made in administration of social insurance; issue financial statements and adopt balance sheets; discuss annual reports of the institute; decide upon the bases, volume and manner for the implementation of reinsurance; decide upon the introduction and implementation of expanded insurance, etc.

The assemblies are elected by the electorate. The members of the assemblies are elected for a four-year term, with the understanding that one half of the members of the assemblies are re-elected every two years.

Municipal communities: Self-management with regard to health insurance and the securing of funds for those covered by regulations on health insurance for workers or covered by contracts is implemented, within the framework of municipal communities. Rehabilitation and employment of disabled persons is also carried out within the framework of municipal communities.

Assemblies of municipal communities are composed of members elected by the following: workers' councils of economic organizations, and competent bodies of other organizations whose workers carry insurance within that community; trade union organizations of workers employed by private firms; professional organizations of insured, self-employed persons; associations of pensioners and of the disabled.

Municipal communities may be established for one or more municipalities where conditions exist for the independent implementation of social insurance; these are established by municipal people's committees and, in the case of several municipalities, by agreement between the committees. If a community is set up for several municipalities, committees or councils of the insured may be set up in the territory of each individual municipality for the purpose of discussing the functions of funds in the territory of each municipality.

Republic communities: Within the framework of republic communities, self-management is implemented and means are secured for disability and pension insurance; funds are also secured for the reinsurance of certain health insurance risks. The assemblies of republic communities are composed of members elected by the assemblies of the municipal communities of each republic.

The Yugoslav community: Within the framework of this community, self-government is implemented with regard to matters of interest common to all communities and funds are secured for the implementation of reinsurance, for the joint reserve fund and for the needs of the administration of the Federal Office. The assembly of this community decides, among other things, upon the taking or proposing of measures, designed to develop insurance; it decides upon the basis and framework of contracts of social insurance for the self-employed, with whose professional organizations the Federal Office signs contracts. The assembly of this community is composed of members elected by the republic communities.

The social insurance of independent agricultural producers falls within the framework of communities which are separate from workers' communities. The self-government of insured farmers is government by laws of the republic.

Institutes

Insurance is implemented by the insurance Institutes. Municipal institutes are, as a rule, set up in two or more municipalities (communes); republic institutes cover the territory of a republic, and the Federal Institute covers the territory of the Federation. Each institute has a statute defining its functions, organization, composition and method of

management, etc. The institutes manage their funds independently, on the basis of the laws, decisions, and directives of the assemblies of communities. The institutes decide on the rights of the insured and make payments pursuant to such decisions.

An institute is operated by a managing board and a director, while certain of its functions are performed by the council of workers' collective.

The managing board of an insurance institute is set up jointly by assemblies from each community pertaining to it. It is composed of fixed members elected by the assemblies of communities from their own ranks and from other insured persons who are able to contribute to the work of the institute and of a fixed number of members elected by the work collective, provided that their number does not exceed one third of the total membership. The managing board protects the rights of the insured and submits proposals for the programme of activities to the assemblies.

The work of an institute is supervised by the director, who is elected by the managing board in agreement with the competent bodies of the political-territorial unit; the people's committee of the municipality, the executive council of the republic and the Federal Executive Council.

The council of the work collective is elected by the workers of the collective. The council issues regulations on employment relationships and on the distribution of the institute's income; issues regulations on the distribution of personal income and transmits it to the managing board and proposes measures for the improvement of the organization and work of the institute.

The municipal institutes decide on the rights deriving from health insurance and rights in the field of rehabilitation and employment of persons disabled at work as well as regarding other rights falling within their competence. For the purpose of a speedier and more direct implementation of the rights of the insured, the municipal institutes may set up branches. A branch, as a consultative body, may have a council composed of insured persons from its territory.

Disability and pension insurance as well as health reinsurance are implemented by the republic institutes; the latter rule on complaints against decisions brought by the municipal institutes and revise such decisions.

Financing of Social Insurance

Funds for social insurance are secured by contributions from each branch, in a manner that protects the rights of the insured, enables the forming of reserve funds and the defraying of expenditures incurred.

The contributions are divided into basic ones, paid by organizations and individuals, and supplementary contributions paid by organizations and individuals in certain branches and intended for health and disability insurance. The limit of the total of all contributions is determined by provisions of the Federal People's Assembly. The rates are fixed for each branch separately. The rates of the supplementary contribution may not be higher than half the rate of the basic contribution of a given branch.

Expanded insurance within the territory of a community may be introduced by decision of the assembly of that community, provided its operations have been balanced during the past three years; this decision determines the form of protection or rights and privileges provided for under the expanded insurance, as well as the amount of contributions. Expanded insurance, obligatory for all those insured in a community, may be introduced by referendum of insured persons.

For the purpose of securing direct participation by organizations in the implementation of health insurance, municipal communities cede to the organizations in which the persons insured with the community are employed a part of the contribution for health insurance. Out of these funds, the organizations make such direct payments to the workers employed by them as compensation for personal income for the first 30 calendar days of sick leave and medical care of dependents, and contribute to the fund for health insurance, the costs of health insurance for the first 30 days of medical treatment or workers injured at work or suffering from an occupational disease.

The republic institutes establish disability and pension insurance funds, out of which pensions and other expenses are paid, as well as contributions for health protection of pensioners and other beneficiaries. Safety and valorization reserves for protecting the value of pensions and other permanent payments in connexion with the cost of living trends and for adapting the value of such payments to rising standards of living are also established.

Procedure for the Implementation of Rights

The Act has codified the basic rules of procedure for the implementation of rights, which have been until now embodied in various legislation. The aim of this codification is to compile all the basic provisions regarding procedure, thus facilitating for the beneficiaries the acquisition of their rights.

The insured obtain the implementation of their rights as follows:

1. Rights deriving from health insurance are obtained at municipal institutes or their branches; certain rights deriving from this insurance (compensation for personal income for the first 30 days of sick-leave) are obtained directly from the organization in which they are employed;

2. The right to vocational rehabilitation and the right to employment on the basis of disability insurance, as well as the right to material provision and compensation in connexion with the implementation of the right to rehabilitation and employment is obtained at municipal institutes;

3. The right to disability pension and disability allowance, including benefits deriving from pension insurance is received at the municipal institutes designated by the republic institute.

A complaint may be lodged with the republic institute against a decision brought by a municipal institute, its branches or organizations in which those involved are employed.

The decision of the communal institutes on matters relating to disability and pension insurance is subject to an *ex officio* revision by the republic institute. The rulings of republic institutes on matters relating to disability and pension insurance made pursuant to international agreements, are subject to revision by the Federal Institute.

Both the ruling of the republic institute and its decisions made in the revising procedure are, if it changes the ruling of the communal institutes, acts against which an administrative court action can be instituted. Administrative court action can also be instituted by the republic institute, should the Federal Institutes revise the republic institute's decision.

Proceedings may be reinstituted at the request of the party concerned, or *ex officio*, in matters relating to disability and pension insurance, when certain circumstances have been disregarded in earlier proceedings.

A ruling may be changed if it has been unlawful and to the detriment of the party concerned, or if a subsequent ruling, more favourable to him has been made in regard to some legal matter. A new ruling will also be made if certain facts affecting the rights of the party concerned come to light after the ruling has been made.

The provisions of the Act on General Administrative Proceedings will be applied in rulings on the rights deriving from social insurance, unless otherwise provided for.

The Act especially regulates the manner in which rulings are to be made regarding the right to social insurance. This right is implemented when the municipal institute or an authorized branch acknowledges that the individual concerned is insured, on the basis of a registration submitted by an organization, employer or the insured individual himself.

A person not registered by an organization or employer for insurance purposes may request the municipal institute, or its authorized branch, to make a ruling giving him the status of an insured person. If the institute or its branch does not acknowledge his status as an insured person, it will issue a written ruling to that effect. A complaint may be lodged against such a ruling with the republic institute. The ruling of the republic institute is an administrative act against which administrative court action may be taken.

Relations of the Government Bodies to Communities and Institutes

The representative bodies of political-territorial units (municipalities, districts, republics and the Federation) exercise control over the operations of communities and the activities of their organs and offices. The assemblies of communities submit to the representative bodies annual reports on their work and on the policies applied in the execution of social insurance and the implementation of the rights of the insured in the territory of the community.

The administrative organ of the municipal people's committee in charge of social insurance controls the enforcement of this Act, the regulations issued on the basis of it, the general acts and decisions of the assemblies of the municipal community and the statute of the municipal institute. Should the administrative organ establish that a decision of the municipal assembly is contrary to the regulations or statutes of the institute, it is then obliged to suggest that they annul or cancel such a decision. The council of the municipal people's committee in charge of social insurance may, at the suggestion of the competent administrative body, temporarily stay the execution of a ruling, and it must do so, if it finds that the execution of its decision could diminish the community's funds or place and unjustifiable burden upon the insured or the organization. The municipal people's committee shall annul or cancel any ruling introduced outside of administrative proceedings, if it is contrary to the regulations in force.

Corresponding republic and federal bodies have similar rights in relation to the republic or federal organs of social insurance.

The assemblies of communities and the institutes established under this Act, started operating under the provisions of this Act on 1 January 1963.

A special chapter regulates the financing and paying of childrens' allowances. Funds for this purpose are kept at republic institutes. Decisions on the right to such allowances are made primarily by the municipal institutes or their authorized branches, and are subject to revisions. Complaints lodged against these decisions are ruled upon by the republic institute. Administrative court action can be instituted against such decisions.

2. Act on Health Insurance (*Official Gazette of the Federal People's Republic of Yugoslavia*, No. 22/62)

This Act constitutes an adjustment to the material and organizational changes which have taken place and to a codification of previously separated regulations. The fundamental rights have not been essentially altered, but the number of persons covered by social insurance schemes has been increased, in conformity with the general trend to provide health insurance for all working people.

The new act introduces health insurance for self-employed craftsmen, who now enjoy equal benefits in the social insurance system as other self-employed workers.

Social insurance is organized so as to accord with the new system, and aims at enabling insured persons and their employers to become active in the promotion, application and development of health insurance. For this purpose, funds have been placed at the disposal of places of employment, in order to enable them to pay compensation for salaries during a maximum period of 30 days sick leave. The right to health insurance is implemented through the municipal health insurance organizations. All these measures should improve health insurance by providing for greater participation by the insured in the implementation of their rights.

It is important to note that this Act permits the choice by preference by the insured of a physician

or a hospital, thus considerably improving this aspect of the implementation of human rights.

Working people and others engaged in specific occupations, or enjoying a special status, are eligible to health insurance under this Act. Health insurance is compulsory for these categories of workers, irrespective of their citizenship. Dependants of insured persons are eligible for health insurance in cases prescribed by this Act.

Self-employed persons, who are not eligible for health insurance under this Act, become eligible by contracts signed by the appropriate social insurance office and the professional organizations to which such persons belong.

Under this Act, the insured are eligible for health protection and financial assistance and compensation, in cases of preventive health protection, illness, injury, pregnancy and childbirth, as well as when the insured is unable to work.

Rights are guaranteed to all those insured. No one may reduce or restrict the rights to which the insured are entitled under this Act. These rights may be suspended only in cases defined by this Act. Rights may not be altered or transferred by contract, nor can they be inherited. However, pecuniary remittances made under the health insurance programme, and which have matured, but were not paid owing to the death of the beneficiary, may be inherited.

Insured Persons

The following enjoy all types of health insurance within the territory of Yugoslavia: (1) working people; (2) people's deputies and councillors on permanent duty, provided that they receive a regular monthly salary; those elected to permanent posts in social and co-operative organizations, professional associations, chambers, etc., provided that this is their sole or main occupation and that they receive a regular monthly salary for their work; (3) members of craft co-operatives (production, processing and services), and members of fishermen's co-operatives.

Since those regularly employed are considered to be employed at least one half of the normal prescribed working time, and thus include handicapped and disabled persons whose work corresponds to their disability, they enjoy the same benefits of social insurance. Yugoslav citizens living abroad are insured in the same manner under certain conditions.

The following persons remain insured after the termination of the employment for which they were insured:

1. Those receiving compensation for personal earnings;

2. Those receiving material assistance or temporary compensation under the provisions of the Disability Insurance Act;

3. Persons registered with the Employment Office, provided that they have registered within 30 days, and if prior to the termination of their employment, they were insured for nine months consecutively or intermittently for 18 months in the course of the past two years.

The following categories of persons remain insured under any circumstances:

1. Apprentices and pupils of vocational schools, doing practical work;

2. Students, trainees or post-graduate students who terminated their employment for that reason, and if during this period they receive a children's allowance;

3. Scholarship holders sent for training to other establishments;

4. Volunteers not paid during their voluntary work, provided that they work full time;

5. Persons registered with the Employment Office, provided that they have registered within 60 days:

(*a*) From the day of completion of their vocational training;

(*b*) From the day of the ending of voluntary practice; and

(*c*) From the day of completion of their military service in the Yugoslav People's Army.

In addition to this, the following remain insured under any circumstances:

1. Pupils in vocational schools and high schools and students doing productive work;

2. Those taking part in youth work drives;

3. Those taking part in organized public work drives; provided that they work at least six hours per day;

4. Those undergoing pre-military training in camps;

5. Beneficiaries of disability, personal and family pensions;

6. Beneficiaries of temporary disability allowances or pensions;

7. Persons benefitting from constant state assistance, including some other categories.

Foreign citizens are insured, when they reside in the territory of Yugoslavia and are:

1. Working for Yugoslav employers;

2. In a capacity or in circumstances under which Yugoslav citizens are also insured;

3. On assignments under special contracts on the exchange of experts, or under an agreement on international technical assistance;

4. In the service of international organizations, foreign firms, etc., if this is provided for by international agreements or if such an organization or office has insured its entire staff;

5. While in school, in vocational training, etc., provided that their country accords the same treatment to Yugoslav citizens, or if this is prescribed by international agreements.

The Act further specifies the categories of persons who are insured only for injury or illness caused by an accident at work, or in the case of contracting an occupational disease.

The following dependents are automatically insured under this Act:

1. Wife children (born in and out of wedlock,

adopted and step-children), under certain conditions;

2. Other members of the family such as grandchildren, brothers, sisters, parents, step-father and step-mother, grandfather and grandmother, provided that they are supported by the insured person and comply with other conditions.

Rights deriving from Health Insurance

This Act specifies each right in detail.

Health protection covers medical examinations and other medical assistance for establishing physical fitness and ability to work; preventive medicine such as vaccinations, the treatment of sick persons and their rehabilitation; dental treatment; medical assistance during child-birth; provision of medicaments and sanitary materials; dental equipment, protheses, and orthopedic and other aids.

Medicines and vaccinations, when not ordered by a physician, are provided at a minimum charge, borne by the insured. This price is established by the Assembly of Yugoslav Community of Social Insurance; it cannot exceed 20% of the average cost of all medicaments administered.

An insured person enjoys the benefits of health protection from the day he becomes employed, or when he becomes eligible for insurance on another basis, until 30 days have passed from the day on which his right to be insured is no longer in effect.

The dependants of an insured person are eligible to health protection under the same conditions as those he enjoys, while other members of the family derive their rights under certain conditions.

Regularly employed insured persons, apprentices and vocational school pupils with practical training (for the period of time they are entitled to pay) are eligible for compensation for personal income when not employed, if they are:

1. Temporarily unfit for work, due to illness or injury;

2. Prevented from working due to a medical examination or treatment which cannot take place after the normal working hours;

3. Referred for obligatory treatment under the regulations for war disabled;

4. Isolated as germ-carriers;

5. Taking care of a sick dependent; or

6. Assigned as an attendant to a sick person.

The average monthly income earned within a determined period of time prior to the entitlement of an insured person to compensation, is taken as a basis for establishing the amount of the compensation for personal income. The following are the amounts paid: 80% for the first seven days; 90% from the eighth to the sixtieth day; 100% after the sixtieth day, provided that the insured person has complied with the conditions stipulated by a previous insurance; if it has not been complied with, then the compensation amounts to 60% for the first seven days, 70% from the eighth to the sixtieth day, and 100% from the sixty-first day.

Compensation in the amount of 100% is paid from the first day to an insured person whose temporary disability has been caused by an accident or an occupational disease, to apprentices and pupils of vocational schools, while in training and to those who are assigned as permanent attendants to a sick person.

An insured person who is working part-time owing to a temporary disability, is entitled to compensation for personal income corresponding to the average he received for full working time.

In the case of pregnancy and childbirth, an insured woman is entitled to compensation for her pay during 105 days. An insured woman is entitled to a 100% compensation provided that she has worked at least 6 consecutive months or 12 months intermittently during two years prior to the childbirth, and 80% if she has not fulfilled the above conditions.

An insured woman who works part-time after the expiration of her confinement leave in order to nurse her child is entitled to a compensation during the period when she does not work, instead of the wages she would receive if she worked full time.

Compensation is paid to the insured for travelling expenses incurred in connexion with the payment of benefits accruing from health insurance.

In the case of childbirth, the insured are entitled under this Act to funds for the layette for each newborn child. The amount is determined by the Assembly of the Yugoslav Committee of Social Security.

In case of death of an insured person, the Act stipulates the following: in case of the death of a member of their family, the insured are eligible to a reimbursement of funeral expenses; in case of death of the insured, members of the family receive an indemnity for funeral expenses and posthumous aid.

Self-employed Professional Persons

Health insurance for self-employed professionals is established by the law or by contract. The contract may stipulate that the insurance will also cover certain independent members who do not belong to the organization with which the contract has been signed. The provisions of this Act also apply to them.

According to this Act, the health insurance scheme covers writers, painters, composers, performers, film actors and translators of scientific and literary works and all those whose basic occupation is independent artistic work. They are entitled to cash compensation as from the sixty-first day of temporary disability in the amount of 100% of the base pension.

This health insurance scheme covers also those who are engaged in crafts or other similar activities in conformity with the regulations on artisan workshops. If members of a workshop owner's family are also employed in his workshop they can be insured, at their own request, in their capacity as craftsmen, provided that they pay their contributions. Craftsmen become eligible to health insurance on the date of registration of their shops in the Register of Artisan Workshops. In order to determine the amount of contributions and cash compensation, craftsmen are classified in conformity with the regulations on pension insurance.

Implementation of Rights deriving from Health Insurance

The following participate in the implementation of health insurance and in the procedure for the payments accruing from health insurance: a physician, a medical commission and a commission of medical experts. This Act regulates in detail their competence. The filing of complaints is provided for, so that if the insured person is not satisfied with the physician's findings, he can file a complaint with the competent medical commission within the period of 48 hours upon the receipt of the physician's findings. Complaints can be lodged orally and in writing. The medical commission has the final word on complaints.

Complaints can be filed with the commission of medical experts against the findings of the medical commission, if they acted without a physician's report. The Commission of medical experts makes the final decision in connexion with complaints.

The Act regulates the competence and procedures for the implementation of the right to compensation instead of pay, the reimbursement of travel expenses and transportation costs, the layettes for new-born infants, funeral expenses and posthumous aid.

The right to compensation and assistance is decided on, as a rule, at the municipal social insurance institute. A complaint can be filed with the republic social insurance institute against any decision taken by that institute. In the proceedings instituted pursuant to a complaint it is obligatory to obtain the opinion of the physician, of the medical commission or of the commission of medical experts. Administrative court action may be instituted against a decision of the republic social insurance institute made in the second instance.

Penal provisions provide for sanctions against persons who withhold or restrict the rights or medical assistance from the insured or who prevent them from enjoying rights deriving from health insurance.

3. Act on Amnesty *(Official Gazette of the Federal People's Republic of Yugoslavia,* No. 12/62)

This Act grants a broad amnesty, particularly to persons who, during the war and enemy occupation, committed a number of grave criminal offences called war crimes. The Act grants amnesty to the following categories of persons:

1. Persons who committed during the war and enemy occupation criminal offences listed in chapter XI of the Criminal Code, i.e., criminal offences against humanity and international law (with the exception of articles 124 and 128);

2. Persons who committed criminal offences listed in chapter X of the Criminal Code (criminal offences against the people and the state) during the war and enemy occupation and since the end of the war up to the entry into force of this Act, as well as other offences such as the illegal crossing of state borders, failure to comply with a summons, evasion of military duty, wilful absenting and desertion from the Army, etc;

3. Persons serving sentence who were sentenced before the end of 1952 for criminal offences listed in chapter X and XI of the Criminal Code (with the exception of article 128).

The amnesty therefore affects persons who were sentenced for the above-mentioned criminal offences as well as persons against whom no criminal proceedings have been instituted. These are, in most cases, persons who went abroad to escape from justice. Therefore the Act prescribes that, if no criminal proceedings have been instituted against persons covered by the amnesty, no such proceedings will ever be instituted; if criminal proceedings are in process, they will be discontinued and those who have already been sentenced need not serve their sentence and will be released.

This amnesty excepts only a very few war criminals of the worst type who had committed particularly ruthless acts against their country, such as those who initiated and organized these acts and those who were engaged in activities against the constitutional order of Yugoslavia and who had at the same time committed murder, or those who had been sentenced several times.

The significance of this Act resides particularly in the fact that it consigns to oblivion the responsibility for war crimes and a number of post-war criminal offences. Moreover, it enables the war-time and post-war emigrés, i.e. persons who had for various reasons fled from the country or remained abroad, to regularize their status with regard to their Yugoslav citizenship and their enjoyment of the rights and protection enjoyed by other Yugoslav citizens who reside permanently abroad and to enable them to visit their country, to be reunited with their family and to permit the family to visit them, to be repatriated, to enjoy legal assistance, etc. This Act constitutes a part of a broader effort aimed at facilitating the regulation of the status of such persons with regard to Yugoslavia.

In this context, various administrative measures were adopted in 1962 and an Act was promulgated cancelling the Act depriving of citizenship the officers and N.C.O.'s of the pre-war Yugoslav Army who do not wish to return to their homeland, members of military groups who were in the service of the enemy and who fled abroad and persons who fled the country after the liberation (*Official Gazette of the Federal People's Republic of Yugoslavia,* 22/62).

PART II

TRUST AND NON-SELF-GOVERNING TERRITORIES

A. Trust Territories

AUSTRALIA

TRUST TERRITORY OF NEW GUINEA[1]

NOTE

Minimum Age (Sea) Ordinance 1962

This ordinance removes a provision in the *Minimum Age (Sea) Ordinance 1957–1962* which distinguished between indigenous and non-indigenous persons on the grounds of race in connection with proof of age.

Native Administration (New Guinea) Ordinance 1962

The effect of the amendment is to give juvenile offenders under the *Native Administration Ordinance 1921–1951* of New Guinea the benefits of the system established by the *Child Welfare Ordinance 1961*,[2] which deals with juvenile offenders generally.

Native Women's Protection Ordinance (Repeal) Ordinance 1962

This ordinance repeals previous legislation that, for protective reasons, placed restrictions on social intercourse between the indigenous and non-indigenous members of the community.

Explosives Ordinance 1962

The effect of this ordinance is to equalize the employment opportunities of suitably qualified indigenous persons in employment involving the use of explosives.

Industrial Organizations Ordinance 1962

This ordinance makes detailed provision for the registration and control of industrial organizations, and for matters related thereto.

Section 4 (1) contains the following definitions:

"Industrial organization" means a trade or other union, or branch of a union, or an organization or body —

(*a*) Composed of or representative of employers or employees; and

(*b*) One of the objects of which is, under its constitution, the regulation, in respect of industrial matters, of the relations between employees and employers, or between employees and employees, or between employers and employers, or for taking part in or in the settlement of industrial disputes on behalf of its members.

"Industrial dispute" means a dispute or difference between employers and employees or between employees and employees or between employers and employers, connected with an industrial matter, and includes a threatened, impending or probable dispute and a situation likely to give rise to a dispute.

The phrase "industrial dispute" is defined to mean all matters pertaining to the relations of employers and employees and to include, among other things, the following matters:

(i) The wages, allowances and remuneration of persons employed or to be employed;

(ii) The hours of employment, sex, age, qualifications and status of employees;

(iii) The employment of children or young persons, or of any person or class of persons;

(iv) Any claim that the same wage shall be paid to persons of either sex performing the same work or producing the same return or profit or value to their employer;

(v) The provision of first-aid equipment, medical attendance, ambulance facilities, rest rooms, sanitary and washing facilities, canteens, cafeteria, dining rooms and other amenities for employees;

(vi) All questions of what is right and fair in relation to an industrial matter having regard to the interests of the persons immediately concerned and of the Territory as a whole.

Part III makes provision for the registration of industrial organizations.

Part IV deals with their rights and liabilities. Section 30 incorporates organizations that are registered.

Sections 32 and 33 read as follows:

32. No suit or other legal proceeding shall be maintainable in a civil court against a registered industrial organization or an officer or member of a registered industrial organization in respect of an act done in contemplation or in furtherance of an industrial dispute to which a member of a re-

[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] The ordinance is described in the 1961 *Yearbook*, p. 407.

gistered industrial organization is a party on the ground only that the act —

(*a*) induces some other person to break a contract of employment; or

(*b*) is an interference with —

(i) The trade, business or employment of some other person; or

(ii) The right of some other person to dispose of his capital or of his labour as he wills.

33. The objects of a registered industrial organization shall not, by reason only of the fact that they are in restraint of trade —

(*a*) Be deemed to be unlawful so as to render a member of the organization liable to criminal prosecution for conspiracy or otherwise; or

(*b*) Be deemed to be unlawful so as to render void or voidable any agreement or trust.

Part V deals with the constitution of industrial organizations. In relation to membership, section 36 provides as follows:

36. A person who is —

(*a*) Engaged or usually engaged in an industry or occupation within the Territory; or

(*b*) Qualified to be engaged in an industry or occupation within the Territory and is desirous of being so engaged,

and is —

(*c*) A resident of the Territory; and

(*d*) Not otherwise disqualified,

is qualified for admission as a member of an industrial organization representative of his interests in that industry or occupation.

Grounds of disqualification include general bad character and membership of an unlawful association within the meaning of section 30A of the *Crimes Act 1914–1961* of the Commonwealth: see section 38.

Section 50(1) provides that the rules of an industrial organization shall provide for all the matters specified in the schedule to the ordinance. The matters specified include the taking of decisions by secret ballot in respect of the election of officers, and the right of any member to a reasonable opportunity to vote. Section 50(2) prohibits rules that impose upon applicants for membership, or members, of the organization, conditions, obligations or restrictions which are oppressive, unreasonable or unjust.

Part VI provides for the proper administration of the funds and accounts of industrial organizations.

Part VII deals with a number of miscellaneous matters. It includes section 66, which provides as follows:

66 (1) An employer shall not dismiss an employee or injure him in his employment, or alter his position to his prejudice, by reason of the circumstance that the employee —

(*a*) Is an officer, delegate or member of an industrial organization;

(*b*) Has appeared as a witness, or has given evidence, in a proceeding under this Ordinance; or

(*c*) Has absented himself from work without leave if —

(i) His absence was for the purpose of carrying out his duties or exercising his rights as an officer or delegate of an industrial organization; and

(ii) He applied for leave before he absented himself and leave was unreasonably refused or withheld.

Penalty: Fifty pounds.

(2) An employer shall not threaten to dismiss an employee, or to injure him in his employment, or to alter his position to his prejudice —

(*a*) By reason of the circumstance that the employee is or proposes to become an officer, delegate or member of an industrial organization, or that the employee proposes to appear as a witness or to give evidence in a proceeding under this ordinance; or

(*b*) With intent to dissuade or prevent the employee from becoming such an officer, delegate or member.

Penalty: Fifty pounds.

(3) An employee shall not cease work in the service of his employer by reason of the circumstance that the employer —

(*a*) Is an officer, delegate or member of an industrial organization; or

(*b*) Has appeared as a witness, or has given evidence, in a proceeding under this ordinance.

Penalty: Twenty-five pounds.

(4) In proceedings for an offence against this section, if all the facts and circumstances constituting the offence, other than the reason for the defendant's action, are proved, it lies upon the defendant to prove that he was not actuated by the reason alleged in the charge.

(5) Where an employer has been convicted of an offence against this section, the court by which the employer is convicted may order that the employee be reimbursed any wages lost by him, and may also direct that the employee be reinstated in his old position or in a similar position.

(6) Where the court making a direction under the last preceding subsection is a Court of Petty Sessions or a District Court, that court may, at the time of making the direction or upon subsequent application being made to it by the Registrar or the employee concerned, order that in default of compliance with the direction the employer —

(*a*) Being a natural person, be imprisoned for such time as the court thinks fit or, in the case of a continuing default, until the employer complies with the direction; or

(*b*) Being a corporation, be liable to a fine not exceeding one hundred pounds and, in the case of a continuing default, ten pounds for each day for which the default continues.

Industrial Relations Ordinance 1962

This ordinance relates to the better development of industrial relations and the prevention and settle-

ment of industrial disputes. Section 3 provides that it shall be incorporated and read as one with the *Industrial Organizations Ordinance 1962* referred to above.

Section 7(1) provides for the formation of Industrial Councils as follows:

"Any number of employers and employees in a trade or industry and any registered organizations representing those employers or employees may by agreement form an Industrial Council for the purpose of —

(*a*) Fostering the improvement of industrial relations between those employers and employees;

(*b*) Encouraging the free negotiation of the terms and conditions of employment of those employees; and

(*c*) Promoting the peaceful settlement of disputes or differences as to the terms and conditions of employment of those employees."

Section 8 provides that an Industrial Council may make arrangements for the settling of disputes or differences as to the terms and conditions of employment of the employees represented on the Council by free negotiation, conciliation or arbitration, or may itself agree as to those terms and conditions of employment. Any resulting agreement between employers and employees is to be registered and, upon registration, is to have the force of an award under the ordinance: see section 26.

The ordinance also provides for the establishment by the Administrator of arbitration tribunals with power to deal with industrial disputes by making an award binding on the employers and employees to whom it relates. The constitution of a tribunal is to be such as is specified by the Administrator in the instrument establishing the Tribunal: section 13(2). Sections 18–24 provide for the notification and investigation of industrial disputes, the settlement of disputes by negotiation and conciliation, and the reference of unsettled disputes to a Tribunal. The Tribunal is required to deal with the industrial dispute in question without delay and, in any case, within twenty-one days after the date of the reference or within such further time as the Administrator, in the circumstances of a particular case, allows: section 15. An award made by a Tribunal is to be registered, subject to section 31 which reads as follows:

"31. Where the Registrar is of the opinion that an award filed with him for registration under this ordinance is —

"(*a*) Inconsistent with a law in force in the Territory or a part of the Territory;

"(*b*) Contrary to public policy; or

"(*c*) Not in accordance with the best interests of the Territory,

"he shall immediately refer the award to the Administrator in Council for consideration, with details of the reasons for that opinion, and shall not register that award except with the approval of the Administrator in Council."

Section 36 provides that the Administrator in Council may, by notice in the *Gazette*, declare that the terms of a registered award shall be a common rule in relation to such employers or class of employers, or to such employees or class of employees, or to employment in such area, as he thinks fit. Persons to be affected by the proposed common rule are required to be given an opportunity to present objections to the Administrator in Council.

The ordinance contains the following provisions relating to the enforcement of awards:

"49. A person shall not contravene or fail to comply with a provision of a registered award or a common rule.

"Penalty: Fifty pounds and, in addition, in the case of a second or subsequent offence, where the offence is a continuing offence, five pounds for each day or part of a day for which the offence continues.

"50 (1) The Supreme Court is empowered —

"(*a*) To order compliance with an award proved to the satisfaction of the Court to have been broken or not observed; and

"(*b*) To enjoin an organization or person from committing or continuing a contravention of this Ordinance or a breach or non-observance of an award.

"(2) The Secretary, Department of Law, may, on behalf of the Administration, and in the public interest, apply to the Supreme Court for an order under paragraph (*a*) or (*b*) of the last preceding subsection, but this subsection does not prejudice any right which any other person has to apply for such an order."

Section 54 provides as follows:

54. (1) An employer shall not dismiss an employee or injure him in his employment, or alter his position to his prejudice, by reason of the circumstance that the employee —

(*a*) Is entitled to the benefit of an award;

(*b*) Has appeared as a witness or has given evidence in a proceeding under this Ordinance; or

(*c*) Being a member of an industrial organization which is seeking better industrial conditions, is dissatisfied with his conditions.

Penalty: Fifty pounds.

(2) An employee shall not cease work in the service of his employer by reason of the circumstance that the employer —

(*a*) Is entitled to the benefit of an award; or

(*b*) Has appeared as a witness or has given evidence in a proceeding under this Ordinance.

Penalty: Twenty-five pounds.

(3) In proceedings for an offence against this section, if all the facts and circumstances constituting the offence, other than the reason for the defendant's action, are proved, it lies upon the defendant to prove that he was not actuated by the reason alleged in the charge.

(4) Where an employer has been convicted of an offence against this section, the court by which the employer is convicted may order that the employee be reimbursed any wages lost by him, and

may also direct that the employee be reinstated in his old position or in a similar position.

(5) Where the court making a direction under the last preceding subsection is a Court of Petty Sessions or a District Court, that court may, at the time of making the direction or upon subsequent application being made to it by the Registrar or the employee concerned, order that in default of compliance with the direction the employer —

(*a*) Being a natural person, be imprisoned for such time, not exceeding twelve months, as the court thinks fit; or

(*b*) Being a corporation, be liable to a fine not exceeding one hundred pounds and, in the case of a continuing default, ten pounds for each day for which the default continues.

Criminal Code Amendment (New Guinea) Ordinance 1962

The effect of this amendment is to confirm the lawfulness of peaceful picketing by a person or persons in relation to an industrial dispute.

Liquor (Temporary Provisions) Ordinance 1962

This ordinance constitutes the first of a series of steps to place indigenous persons in the same position as non-indigenous persons with regard to the supply and consumption of liquor. The ordinance enables indigenous persons to consume beer on or off licensed premises and other intoxicating liquor on licensed premises.

B. Non-self-governing Territories

AUSTRALIA

TERRITORY OF PAPUA[1]

NOTE

Minimum Age (Sea) Ordinance 1962

Native Women's Protection Ordinance (Repeal) Ordinance 1962

Explosives Ordinance 1962

Industrial Organizations Ordinance 1962

Industrial Relations Ordinance 1962

Liquor (Temporary Provisions) Ordinance 1962

These enactments are described in the note on the Trust Territory of New Guinea.

Native Offenders Exclusion Ordinance (Papua) Repeal Ordinance 1962

This ordinance repealed the *Native Offenders Exclusion Ordinance 1930* of Papua, which provided for restriction of the movement of persons convicted of offences, usually of a sexual nature, after the completion of their term of sentence.

Native Regulation (Papua) Ordinance 1962

The effect of this amendment is to give juvenile offenders under the *Native Regulation Ordinance 1908–1952* of Papua the benefits of the system established by the *Child Welfare Ordinance 1961*,[2] which deals with juvenile offenders generally.

Criminal Code Amendment (Papua) Ordinance 1962

The effect of this ordinance is to confirm the lawfulness of peaceful picketing in relation to industrial disputes.

[1] This Territory and the Territory of New Guinea are governed under an administrative union by the name of the Territory of Papua and New Guinea.

[2] The ordinance is described in the 1961 *Yearbook*, p. 409.

NEW ZEALAND

COOK ISLANDS

NOTE[1]

Cook Islands Amendment Act 1962 — No. 40

The most important provisions in this Act are those which increase the participation of locally elected Members of the Legislative Assembly in the Executive Government of New Zealand's non-self-governing territory, the Cook Islands. An Executive Committee is set up to which powers and functions of the Resident Commissioner may be delegated. Seven out of the ten members of the Executive Committee are to be elected members of the Legislative Assembly of the Islands.

In addition, the Act changes the penalty imposed in the Cook Islands for murder from execution to imprisonment for life, and makes penalties for a number of other crimes the same as those imposed in metropolitan New Zealand.

The Amendment abolishes any discrimination in the penalties imposed for the offence of gambling.

The Act also provides for a system of probation in the Cook Islands for persons who return there after release on probation in metropolitan New Zealand.

[1] Note furnished by the Government of New Zealand.

PORTUGAL

TERRITORIES UNDER PORTUGUESE ADMINISTRATION

NOTE[1]

1. *Decree No. 44,159 of 18 January* permitted and regulated the creation, within the cadres of state or private education in the overseas provinces, of institutes of social education and services.

2. *Decree No. 44,240 of 17 March* set up in the overseas provinces schools for the training of teachers for service in the schools imparting primary education.

3. *Decree No. 44,309 of 27 April* approved the Rural Labour Code for the overseas provinces of Cape Verde, Guinea, S. Tomé and Príncipe, Angola, Mozambique and Timor. It repealed the Indigenous Labour Code approved by Decree No. 16,199 as well as all legislation implementating that decree.

4. *Decree No. 44,310 of 27 April* altered the structure of the labour tribunals of the overseas provinces, their respective powers and procedure applicable.

5. *Decree No. 44,321 of 2 May* provided for the regulation of execution of penalties in the overseas penal establishments.

6. *Decree No. 44,416 of 25 June* made provisions destined to regulate in definitive form the situation of the Indian Union subjects in the Portuguese overseas provinces and their properties existing or situated in those provinces.

7. *Notification No. 19,270 of 11 July* ordered the publication in the overseas provinces, for the purposes of execution, of various legal provisions relating to clandestine emigration.

8. *Notification No. 19,279 of 16 July* created the Institute of Labour, Security and Social Action in Guinea.

9. *Notification No. 19,297 of 24 July* extended to the overseas provinces, with alterations listed, Legislative Decree No. 44,304 which grants amnesty to violations of the law on the payment of contributions and taxes to the State.

10. *Legislative Decree No. 44,530 of 21 August* established in the provinces of Angola and Mozambique courses of general studies at university level, integrated into the Portuguese University.

[1] Information furnished by the Government of Portugal.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

ADEN

THE CONSTITUTION OF ADEN[1]

Part I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

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

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

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

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

the provisions of this Part 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.

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

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case —

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

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

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

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

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

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

(*a*) In execution of the sentence or order of a court, whether established for Aden or some other country or territory 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 under the law of Aden;

(*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;

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

(*j*) To such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Aden 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 Aden in which, in consequence of any

[1] The Constitution appears in Schedule 2 to the Aden (Constitution) Order in Council, 1962, published as *Statutory Instruments* 1962, No. 2177, by Her Majesty's Stationery Office, London. The Order entered into force on 9 October 1962.

such order, his presence would otherwise be unlawful.

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

(3) Any person who is arrested or detained —

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

(*b*) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Aden.

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.

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

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

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

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

(*b*) Labour required of any person while he is lawfully detained 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, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period, or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

5. — (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 Aden immediately before the coming into effect of this Constitution.

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

(*a*) The taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such a manner as to promote the public benefit; and

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

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

(ii) Securing to any person having an interest in or right over the property a right of access to 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 of Aden, 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 judgments 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; or

(*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 public moneys.

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

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

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

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

(*c*) That authorises an officer or agent of the Government of Aden, 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 inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government of Aden, that authority or that body corporate, as the case may be;

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

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown to be reasonably justifiable in a democratic society.

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

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

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

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

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

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

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

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

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

(3) When a person is tried for any criminal offence, the accused person or any person 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 judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

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

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

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

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

(8) 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; or

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

(12) In this section — "criminal offence" means a criminal offence under the law of Aden; "legal representative" means, in relation to a court or other adjudicating authority, a person entitled to appear before that court or authority as an advocate.

9. — (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.

10. — (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 in the interests of defence, public safety, public order, public morality or public health;

(*b*) That is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, the publication of written or pictorial matter, public exhibitions or public entertainments; or

(*c*) That imposes restrictions upon public officers,

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

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

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

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

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

(*c*) That imposes rectrictions upon public officers,

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

12. — (1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Aden, the right to reside in any part of Aden, the right to enter Aden and immunity from expulsion from Aden.

(2) Any restriction on a person's freedom of movement that is involved in any deprivation of his personal liberty that is permitted by section 3 of this

Constitution shall not be held to be inconsistent with or in contravention of this section.

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

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

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

(*c*) For the imposition of restrictions on the freedom of movement of any person who is not a person to whom this section applies;

(*d*) For the imposition of restrictions on the acquisition or use by any person of land or other property in Aden;

(*e*) For the imposition of restrictions upon the movement or residence within Aden of public officers; or

(*f*) For the removal of a person from Aden to undergo imprisonment in some other country or territory in execution of the sentence of a court in respect of a criminal offence under the law of Aden of which he has been convicted.

(4) This section applies to any person who is a British subject or a British protected person and —

(*a*) Who was born in Aden or whose father was born in Aden; or

(*b*) Who has obtained the status of a British subject by reason of the grant by the High Commissioner of a certificate of naturalization under the British Nationality and Status of Aliens Act 1914 or the British Nationality Act 1948; or

(*c*) Who is the wife of a person to whom any of the foregoing paragraphs applies not living apart from such person under a decree of a court or a deed of separation; or

(*d*) Who is the child, stepchild, or child adopted in a manner recognised by law under the age of eighteen years of a person to whom any of the foregoing paragraphs applies; or

(*e*) Who is a member of any other class of persons that may be prescribed by any law enacted under this Constitution.

13. — (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, 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 that are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision —

(*a*) For the appropriation of public revenues or other public funds;

(*b*) With respect to persons who are not persons to whom this section applies;

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

(*d*) For the application in the case of members of a particular race of customary law with respect to any matter to the exclusion of any law with respect to that matter that is applicable in the case of other persons; or

(*e*) Whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication 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 section 7, 9, 10, 11 and 12 of this Constitution, being such a restriction as is authorized by sections 7 (2), 9 (5), 10 (2), 11 (2) or section 12 (3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal pro-

ceedings in any court that is vested in any person by or under this Constitution or any other law.

(9) This section applies to any person who is a British subject or a British protected person and—

(*a*) Who was born in Aden or whose father was born in Aden; or

(*b*) Who has obtained the status of a British subject by reason of the grant by the High Commissioner of a certificate of naturalization under the British Nationality and Status of Aliens Act 1914 or the British Nationality Act 1948; or

(*c*) Who is the wife of a person to whom any of the foregoing paragraphs applies not living apart from such person under a decree of a court or a deed of separation; or

(*d*) Who 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 paragraphs applies; or

(*e*) Who is a member of any other class of persons that may be prescribed by any law enacted under this Constitution.

14. — (1) Subject to the provisions of subsection (5) of this section, if any person alleges that any of the provisions of sections 1 to 13 (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 that is lawfully available, that person may apply to a superior court.

(2) A superior court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of sections 1 to 13 (inclusive) of this Constitution to the protection of which the person concerned is entitled:

Provided that the 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) Any person aggrieved by any determination of a superior court under this section may appeal therefrom to such court as may be prescribed by any Order of Her Majesty in Council.

(4) No appeal shall lie from any determination under this section that any application is merely frivolous or vexatious.

(5) During the period of one year 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 provisions of this Part other than section 2, 3, 4, 5, 8 and 13 of this Constitution; 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.

15. — (1) Nothing contained in or done under the authority of any law to which this section applies shall be held to be inconsistent with or in contravention of section 3, section 6 (1) (*a*), any provision of section 8 other than subsection (4) thereof, or any provision of sections 7, 9, 10, 11, 12 or 13 of this Constitution to the extent that the law in question makes in relation to any period of public emergency provision, or authorizes the doing during any such period of anything that is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

(2) Where any person who is lawfully detained in pursuance only of such a law as is referred to in subsection (1) 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.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(4) This section applies to such laws as may be prescribed by any Order of Her Majesty in Council.

16. — . . .

. . .

(2) In this Part "a period of public emergency" means —

(*a*) Any period during which a state of war exists; or

(*b*) Such other period as may be defined by any Order of Her Majesty in Council.

. . .

Part III

LEGISLATIVE COUNCIL

29. — (1) There shall be a Legislative Council in and for Aden, constituted in accordance with the provisions of this Constitution.

(2) Subject to the provisions of this Constitution, the Legislative Council shall consist of —

(*a*) A Speaker;

(*b*) Sixteen Elected Members;

(*c*) Six Nominated Members; and

(*d*) The Attorney General.

. . .

32. The Elected Members of the Legislative Council shall be persons qualified for election in accordance with the provisions of this Constitution and elected in the manner provided by, or in pursuance of, any law for the time being in force in Aden.

. . .

34. Subject to the provisions of section 35 of this Constitution, a person shall be qualified to be elected a member of the Legislative Council and shall not be qualified to be so elected unless he —

(*a*) (i) Is a British subject born in Aden, or

(ii) Not being born in Aden, is a British subject or British protected person and

has resided in Aden for a period of seven years out of the ten years immediately before the date of his nomination for election; and

(*b*) Is a male person of not less than twenty-one years of age; and

(*c*) (i) Is the owner of immovable property in Aden of a value of not less than one thousand five hundred shillings, or

(ii) Has been, for twelve months out of the twenty-four months immediately preceding the date of his nomination for election, in occupation of residential or business premises in Aden of an annual value of not less than two hundred and fifty shillings, or

(iii) Has been in receipt of an average monthly income of not less than one hundred and fifty shillings during the twelve months immediately before the date of his nomination for election.

35. — (1) No person shall be qualified to be appointed as a Nominated Member or elected as an Elected Member of the Legislative Council who —

(*a*) Is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state; or

(*b*) In the case of an Elected Member, holds, or is acting in, any public office;

(*c*) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law for the time being in force in any part of the Commonwealth;

(*d*) Is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Aden;

(*e*) Is under sentence of death imposed on him by a court in any part of the Commonwealth, or under sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

(*f*) In the case of an Elected Member, is disqualified for election by any law for the time being in force in Aden 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; or

(*g*) Is disqualified for membership of the Legislative Council by any law for the time being in force in Aden relating to offences connected with elections.

(2) For the purpose of paragraph (*e*) of the last foregoing subsection two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

. . .

Part VII

MISCELLANEOUS

. . .

79. — (1) In this Constitution, unless the context otherwise requires —

"Aden" means the territory that immediately before the commencement of his Constitution was comprised in the Colony of Aden, exluding Perim and the Kuria Muria Islands;

. . .

THE GAMBIA

THE GAMBIA (CONSTITUTION) ORDER IN COUNCIL, 1962

Made on 18 April 1962[1]

Part I

INTRODUCTORY

. . .

2. — (1) In this Order, unless the context otherwise requires —

. . .

"the Gambia" means the Colony and Protectorate of the Gambia;

. . .

Part IV

HOUSE OF REPRESENTATIVES

25. There shall be a House of Representatives for the Gambia which, subject to the provisions of this Order, shall consist of a Speaker, the Attorney-General (ex officio), thirty-six elected members, and not more than two nominated members.

. . .

28. — (1) The elected members of the House shall be persons qualified for election as such in accordance with the provisions of this Order, and shall be elected in the manner provided by any law for the time being in force in the Gambia.

(2) Of the elected members of the House —

(*a*) Seven shall be elected for electoral districts in the Colony;

(*b*) Twenty-five shall be elected for electoral districts in the Protectorate; and

(*c*) Four shall be elected by the head chiefs from among their number.

. . .

30. Subject to the provisions of the next follow-

[1] Published as *Statutory Instruments* 1962, No. 826, by Her Majesty's Stationery Office, London. The Order entered into force on 27 April 1962.

The Gambia is due to attain independence on 18 February 1965.

ing section, a person shall be qualified to be elected an elected member or appointed a nominated member of the House if, and shall not be so qualified unless, —

(*a*) He is a British subject or a British protected person;

(*b*) He has attained the age of twenty-one years;

(*c*) He can speak English well enough to take an active part in the proceedings of the House; and

(*d*) Save in the case of an elected member to be elected by the head chiefs from among their number, or in the case of a nominated member, he is qualified for registration and is registered as a voter in an electoral district for electing an elected member or elected members of the House.

31. — (1) No person shall be qualified to be elected an elected member or appointed a nominated member of the House who —

(*a*) Is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state;

(*b*) Holds, or is acting in, any public office;

(*c*) Is a party to, or is a partner in a firm or a director or manager of a company which is a party to, any subsisting contract (the amount or value of the consideration for which exceeds one hundred pounds, or which forms part of a larger transaction or series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds one hundred pounds) with the Government of the Gambia for or on account of the public service, and —

(i) In the case of an elected member, has not, within one month before the day of the election, published in English in the Gazette and in a newspaper circulating in the electoral district for which he is a candidate, a notice setting out the nature of the contract and his interest, or the interest of the firm or company, therein; or

(ii) In the case of a nominated member, has not disclosed to the Governor the nature of the contract and his interest, or the interest of the firm or company, therein;

(*d*) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law for the time being in force in any part of the Commonwealth;

(*e*) Is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in the Gambia;

(*f*) Is under sentence of death imposed on him by a court in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) for a term of or exceeding six months, other than a sentence in lieu of a fine, but including a suspended sentence, imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

(*g*) Is disqualified for membership of the House under any law for the time being in force in the Gambia relating to offences connected with elections; or

(*h*) In the case of an elected member, holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register.

(2) For the purpose of paragraph (*f*) of the last foregoing subsection two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

. . .

NORTHERN RHODESIA

THE CONSTITUTION OF NORTHERN RHODESIA[1]

Part III

THE LEGISLATIVE COUNCIL

20. — (1) There shall be a Legislative Council for Northern Rhodesia.

(2) The members of the Legislative Council shall be —

(*a*) A Speaker;

(*b*) The ex-officio members of the Executive Council;

(*c*) Such elected members as may be elected in accordance with the provisions of Part IV of this Constitution;

(*d*) Such nominated members as may be appointed by the Governor by instrument under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State; and

(*e*) Such temporary members as may be appointed under section 27 of this Constitution.

. . .

23. — (1) Subject to the provisions of section 24 of this Constitution, a person shall be qualified to be elected as an elected member of the Legislative Council if, and shall not be qualified to be so elected unless, he —

(*a*) Is qualified for registration as a voter and is so registered; and

(*b*) Satisfies the appropriate authority that he can speak, write and understand English well enough to take an active part in the proceedings of the Council.

(2) For the purpose of subsection (1) of this section —

(*a*) A person shall be deemed to have the required knowledge of English if —

[1] The Constitution appears in Schedule 2 to the Northern Rhodesia (Constitution) Order in Council 1962, published as *Statutory Instruments* 1962, No. 1874, by Her Majesty's Stationery Office, London. The Order entered into force on 1 September 1962.

Northern Rhodesia became the independent State of Zambia on 24 October 1964.

(i) English is his native tongue;

(ii) He has completed a full course of primary education of the prescribed standard; or

(iii) He has been a member of the Legislative Council of Northern Rhodesia (whether established under this Constitution or otherwise);

(*b*) "the appropriate authority" means the returning officer for the constituency in which the candidate seeks election or, if the returning officer decides that the candidate does not possess the qualification required by that subsection and the candidate appeals against the decision in such manner as may be prescribed, the Speaker.

(3) A person shall be qualified to be elected a member of the Legislative Council —

(*a*) For a higher franchise constituency, only if he is registered as a voter under the higher franchise;

(*b*) For a lower franchise constituency, only if he is registered as a voter under the higher franchise or the lower franchise;

(*c*) For a national constituency, only if he is registered as a voter under the higher franchise or under the lower franchise and —

(i) In the case of the seat of a member representing that constituency that is reserved, by virtue of the provisions of section 34 of this Constitution, for Europeans, he is a European; or

(ii) In the case of a seat of a member representing that constituency that is reserved by virtue of the provisions of section 34 of this Constitution for Africans, he is an African; and

(*d*) For the special national constituency, only if he is registered as a voter for the purpose of returning to the Council the member for that constituency.

24. — (1) No person shall be qualified to be elected or appointed a member of the Legislative Council who —

(*a*) Is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state;

(*b*) Has been adjudged or otherwise declared bankrupt or insolvent under any law in force in any part of the Commonwealth, in the Republic of Ireland or in South Africa and has not been discharged or has made a composition with his creditors and has not paid his debts in full;

(*c*) Is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Northern Rhodesia or is detained as a criminal lunatic under any such law;

(*d*) Is under sentence of death imposed on him by a court in any part of the Commonwealth, in the Republic of Ireland or in South Africa or is under a sentence of imprisonment (by whatever name called) imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

(*e*) Is detained under a detention order, or is subject to a restriction order, under any law for the time being in force in Northern Rhodesia; or

(*f*) Is disqualified for election or appointment, as the case may be, as a member of the Council or for registration as a voter under any law for the time being in force in Northern Rhodesia relating to offences connected with elections.

(2) No person who is, or is a partner in a firm that is, or is a director or manager of a company that is, a party to any contract with the Government of Northern Rhodesia or of the Federation for or on account of the service of the public within Northern Rhodesia for which the consideration exceeds one hundred pounds shall be qualified to be elected or appointed a member of the Legislative Council unless —

(*a*) In the case of an elected member, he has within one month before the day of the election at which he is a candidate published in the English language in the Gazette and in a newspaper circulating in the constituency for which he is a candidate a notice setting out the nature of such contract and his interest, or the interest of any such firm or company, therein; or

(*b*) In the case of a nominated member, he has, before his appointment, disclosed to the Governor the nature of that contract and the interest that he, or as the case may be, that firm or company, has therein.

(3) No person shall be qualified to be elected a member of the Legislative Council who —

(*a*) Subject to the provisions of this Part of this Constitution, holds or is acting in, any public office; or

(*b*) Holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register.

. . .

Part IV

ELECTIONS OF MEMBERS OF LEGISLATIVE COUNCIL

. . .

34. — (1) Of the elected members of the Legislative Council —

(*a*) One shall be elected to represent each higher franchise constituency by voters registered under the higher franchise in every electoral area that is within or coterminous with that constituency;

(*b*) One shall be elected to represent each lower franchise constituency by voters registered under the lower franchise in every electoral area that is within or coterminous with that constituency;

(*c*) Two shall be elected to represent each national constituency by the voters registered under the higher franchise or under the lower franchise in every electoral area that is within or coterminous with that constituency who are —

(i) Europeans;

(ii) Africans; or

(iii) Coloured persons who have declared, in the manner prescribed, that they wish to vote for the purposes of returning members for the national constituencies; and

(*d*) One shall be elected to represent the special national constituency by the voters registered in

Northern Rhodesia under the higher franchise or under the lower franchise who are —

(i) Asian; or

(ii) Coloured persons who have not declared, in the manner prescribed, that they wish to vote for the purposes of returning members for the national constituencies.

(2) Where a declaration is made under section 33 (1) (*c*) of this Constitution in respect of a national constituency, the seat in the Legislative Council of one member representing that constituency shall be reserved for a European and of one such member shall be reserved for an African.

35. For the purposes of the election of members of the Legislative Council, there shall be two classes of voters, that is to say, voters qualified and registered under the higher franchise and voters qualified and registered under the lower franchise.

36. — (1) Subject to the provisions of this section, a person shall be qualified for registration as a voter under the higher franchise or as a voter under the lower franchise, as the case may be, if, and shall not be qualified to be so registered unless —

(*a*) He is a citizen of the United Kingdom and Colonies or of the Federation or is a British protected person by virtue of his connection with Northern Rhodesia;

(*b*) He has attained the age of twenty-one years;

(*c*) He has been resident in the Federation for any continuous period of two years;

(*d*) He is able to complete in his own handwriting, in English and without assistance, such form of application for registration as may be prescribed or, if he is unable so to do by reason only of some physical incapacity —

(i) Is determined in such manner as may be prescribed to have an adequate knowledge of the English language; or

(ii) If no such manner of determination has been prescribed, has sufficient knowledge of the English language to give the necessary instructions for the completion of that form on his behalf by the registering officer:

Provided that a person who possesses any of the qualifications specified in sub-paragraphs (*d*) to (*n*) inclusive of paragraph 2 of schedule 3 to this Constitution shall, for the purposes of registration as a voter under the lower franchise, be deemed to possess the qualifications required by this paragraph if he is able, without assistance, to complete in his own handwriting the prescribed form of application for registration in any of the following languages, that is to say, Bemba, Nyanja, Lozi, Tonga, Lunda, Lovale, Gujerati or Urdu or, if he is unable so to do by reason only of some physical incapacity, is determined in such manner as may be prescribed to have an adequate knowledge of one of the said languages or, if no such manner of determination has been prescribed, has a sufficient knowledge of one of the said languages to give the necessary instructions for the completion of that form on his behalf by the registering officer;

(*e*) If it is so prescribed, he has made a declaration of allegiance to Her Majesty in such form and manner as may be prescribed; and

(*f*) He is not disqualified for registration as a voter under the provisions of subsection (4) of this section.

(2) A person shall be qualified for registration as a voter under the higher franchise if he possesses, in addition to the qualifications required by subsection (1) of this section, the qualifications specified in paragraph 1 of schedule 3 to this Constitution.

(3) A person shall be qualified for registration as a voter under the lower franchise if he possesses, in addition to the qualifications required by subsection (1) of this section, the qualifications specified in paragraph 2 of schedule 3 to this Constitution:

Provided that no person shall be qualified for registration as a voter under the lower franchise if he is qualified for registration as a voter under the higher franchise.

(4) No person shall be qualified to be registered as a voter under the higher franchise or as a voter under the lower franchise 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 certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Northern Rhodesia or is detained as a criminal lunatic under any such law; or

(*c*) Is disqualified for registration as a voter under any law for the time being in force in Northern Rhodesia relating to offences connected with elections.

(5) Any person who, being then duly qualified, was registered immediately before the commencement of this Constitution as a voter under the provisions of the Northern Rhodesia (Electoral Provisions) Order in Council 1962 shall be deemed thereafter to possess the qualifications required by paragraphs (*a*) to (*e*) of subsection (1) of this section.

(6) Any person who, being then duly qualified, was registered immediately before the commencement of this Constitution as a voter under the provisions of the Northern Rhodesia (Electoral Provisions) Order in Council 1962 or who, being then duly qualified, has at any time registered as a voter under this Part of this Constitution shall, if so registered under the higher franchise, be deemed thereafter to possess the qualifications required by subsection (2) of this section or, if so registered under the lower franchise, be deemed thereafter to possess the qualifications required by subsection (3) of this section.

37. — (1) There shall be a register of voters for each electoral area.

(2) Any person who has fulfilled such conditions relating to residence in an electoral area as may be prescribed and who considers that he is qualified for registration as a voter may apply to be so registered in that electoral area.

(3) When an Asian or a coloured person applies for registration as a voter he shall state that he is an Asian or a coloured person, as the case may be.

(4) When any coloured person applies for registration as a voter in an electoral area and that person does not wish to vote for the purpose of returning to the Legislative Council the member from the special national constituency, he may declare that he wishes to vote for the purposes of returning to the Legislative Council members to represent the national constituency in which that electoral area is included, in which case he shall elect whether, for the purposes of section 38 of this Constitution, he wishes his vote to be counted among the votes of the voters who are Europeans or to be counted among the votes of the voters who are Africans:

Provided that —

(*a*) A coloured person who has no European ancestry may not elect to have his vote counted among the votes of the voters who are Europeans; and

(*b*) A coloured person who has no African ancestry may not elect to have his vote counted among the votes of the voters who are Africans.

(5) No person shall be registered as a voter in more than one electoral area.

(6) Every registered voter who is an Asian or who, being a coloured person, has not declared that he wishes to vote for the purpose of returning to the Legislative Council the members to represent one of the national constituencies shall be distinguished in the register of voters for the electoral area in which he is so registered in such manner as may be prescribed.

(7) Every registered voter who is a coloured person and who has declared that he wishes to vote for the purpose of returning to the Legislative Council the members to represent one of the national constituencies shall be distinguished in the register of voters for the electoral area in which he is so registered in such manner as may be prescribed so as to show whether, for the purposes of section 38 of this Constitution, his vote should be counted among the votes of the voters who are Europeans or among the votes of the voters who are Africans.

(8) Subject to the provisions of this Constitution, a person who is registered as a voter in an electoral area shall, unless disqualified, be entitled to vote at elections in that electoral area in such manner as may be prescribed:

Provided that no person who is under sentence of death imposed on him by a court in any part of the Commonwealth, in the Republic of Ireland or in South Africa or is serving a sentence of imprisonment (by whatever name called) imposed on him by such a court or substituted by a competent authority for some sentence imposed on him by such a court or is detained under a detention order under any law for the time being in force in Northern Rhodesia shall be entitled to vote.

(9) Any question whether the vote of a person (other than a coloured person) who is registered as a voter should be counted as that of a European or as that of an African, as the case may be, shall be determined before that person casts his vote by such officer as may be prescribed and the decision of that officer shall be conclusive.

. . .

Schedule 3 to the Constitution

ADDITIONAL QUALIFICATIONS FOR VOTERS

Additional qualifications for voters registered under the higher franchise

1. Subject to paragraphs 3 to 8 of this schedule, the additional qualifications required for registration as a voter under the higher franchise are that the person applying therefor either —

(*a*) Has an income qualification of not less than seven hundred and twenty pounds;

(*b*) Has a property qualification of not less than fifteen hundred pounds;

(*c*) Has completed a full course of primary education of the prescribed standard or possesses any prescribed alternative educational qualifications, and in either case has either —

(i) An income qualification of not less than four hundred and eighty pounds; or

(ii) A property qualification of not less than one thousand pounds;

(*d*) Has completed the first four years of a course of secondary education of the prescribed standard or possesses any prescribed alternative educational qualifications and in either case has either —

(i) An income qualification of not less than three hundred pounds; or

(ii) A property qualification of not less than five hundred pounds;

(*e*) Is a Chief;

(*f*) Is a Tribal Councillor;

(*g*) Is a member of a Native Authority or a member of a Native Court;

(*h*) Is a member of a Municipal Council or a member of a Township Management Board or a member of an Area Housing Board;

(*i*) Is a minister of religion;

(*j*) Is a member of a prescribed religious body or order who has attended the first two years of a course of secondary education of the prescribed standard or possesses any prescribed alternative educational qualification;

(*k*) Is a university graduate;

(*l*) Is the holder of a Certificate of Honour or a decoration for gallantry or other award from Her Majesty;

(*m*) Is the holder of a letter of exemption issued under the African Exemption Ordinance (*a*) before 1st July 1961;

(*n*) Is a pensioner;

(*o*) Has an income qualification of not less than three hundred pounds and has been in the service of the same employer or in the service of the same firm or business for a continuous period of ten years immediately preceding the date of his application for registration as a voter:

Provided that service under the Government of Northern Rhodesia, the Government of the Federation or a Native Authority shall be regarded as service under the same employer; or

(*p*) Is the wife of a person who for the time being possesses any of the qualifications specified in the foregoing sub-paragraphs of this paragraph.

Additional qualifications for voters registered under the lower franchise

2. Subject to paragraphs 3 to 8 of this schedule, the additional qualifications required for registration as a voter under the lower franchise are that the person applying therefor either —

(*a*) Has an income qualification of not less than one hundred and twenty pounds;

(*b*) Has a property qualification of not less than two hundred and fifty pounds;

(*c*) Is the wife of a person who for the time being possesses either of the qualifications specified in sub-paragraph (*a*) or sub-paragraph (*b*) of this paragraph;

(*d*) Is a Tribal Councillor;

(*e*) Is a member of a Native Authority or a member of a Native Court;

(*f*) Is a member of a Municipal Council or a member of a Township Management Board or a member of an Area Housing Board;

(*g*) Is a Headman;

(*h*) Is a pensioner;

(*i*) Is an ex-serviceman;

(*j*) Is a person who has been registered as an Individual or Peasant Farmer or as an Improved Farmer for the two years immediately preceding his application for registration as a voter;

(*k*) Is a member of a prescribed religious body or order;

(*l*) Is the holder of a Certificate of Honour or a decoration for gallantry or other award from Her Majesty;

(*m*) Is the holder of a letter of exemption issued under the African Exemption Ordinance before 1st July 1961; or

(*n*) Is the wife of a person who, for the time being, possesses any of the qualifications specified in sub-paragraphs (*d*) to (*m*) inclusive of this paragraph.

. . .

SOUTHERN RHODESIA

NOTE

During 1962, the remainder of the Constitution of Southern Rhodesia, 1961, was brought into operation, including chapters VI and VII, which contain the Declaration of Rights and provide the machinery for protection against the infringement thereof.

By the Native Education Amendment Act, 1962, provision was made for the admission into, and attendance and instruction at, registered African schools, of persons who are not Africans. The Land Apportionment Act, 1941, was amended by the Land Apportionment Amendment Act, 1962, making it possible for non-Africans to attend African private schools and for Africans to attend non-African private schools.

There were also enacted the Unlawful Organisations Amendment Act, 1962, and the Law and Order (Maintenance) Amendment Act, 1962. The first-mentioned of these statutes makes it possible for the Governor of Southern Rhodesia to take action to prevent the Resurgence under a different name of an organization which has been declared to be unlawful. The Law and Order (Maintenance) Amendment Act, 1962, to a great extent remedies defects which experience revealed in the principal Act. It provides a more satisfactory provision to deal with intimidation. It also makes temporary provision for the control of the movements of persons where such control is necessary for the purpose of maintaining law and order.

The General Administration Act, 1962, was passed in order to make it possible to implement the policy of separating judicial and administrative functions and transferring all administrative functions of government to a single department, thereby eliminating the need for the Native Affairs Department which has, in the past, been specially concerned with administering the affairs of Africans.[1]

The word "Parliament", where it occurs in sections 3, 5 and 14 of the Unlawful Organisations Act[2] and in sections 16 (1), 16 (7) and 52 of the Law and Order (Maintenance) Act,[3] has been omitted and replaced by "the Legislative Assembly" by Act No. 24 of 1962.

In 1963 the Unlawful Organisations Act, 1959 was further amended by Acts Nos. 9 and 21, and the Law and Order (Maintenance) Act, 1960 was amended by Act. No. 12 of 1963 and Southern Rhodesia Government Notices Nos. 18 and 801 of 1963. In the Revised Edition of the Southern Rhodesia Statute Law the Unlawful Organisations Act has been consolidated and incorporates the amendments referred to above in what is now chapter 81. The Revised Law and Order (Maintenance) Act (now chapter 39) has only incorporated the amendments in Act No. 12 of 1963 and Southern Rhodesia Government Notice No. 18 of 1963.

During 1964 the Law and Order (Maintenance) Act has been further amended by Act No. 12 of 1964 and the Constitution has been amended by Act No. 13 of 1964 and Southern Rhodesia Notice No. 1038 of 1964. The operation of sections 3 to 13 and section 16 of the Unlawful Organisations Act have been extended for a further five years by Southern Rhodesia Government Notice No. 340 of 1964.[4]

[1] Information furnished by the Minister of External Affairs of the former Federation of Rhodesia and Nyasaland.

[2] See *Yearbook on Human Rights for 1959*, p. 244.

[3] See *Yearbook on Human Rights for 1960*, p. 283.

[4] Information furnished by the Government of Southern Rhodesia.

THE CONSTITUTION OF SOUTHERN RHODESIA, 1961[1]

CHAPTER II
THE LEGISLATURE

Part I
COMPOSITION

6. The Legislature of Southern Rhodesia shall consist of Her Majesty and a Legislative Assembly.

7. — (1) The Legislative Assembly for Southern Rhodesia shall consist of such persons as are qualified for election and are duly elected thereto in accordance with any law for the time being in force relating to the election of members to the Legislative Assembly.

(2) There shall be one member of the Legislative Assembly for each constituency and one for each electoral district established in accordance with the provisions of Chapter III of this Constitution.

. . .

9. — (1) No Bill which, if enacted, would vary the qualifications or disqualifications of voters at elections for the Legislative Assembly shall be deemed to be passed by the Assembly unless at the final vote thereon it receives the affirmative votes of not less than two-thirds of the total authorship of the Assembly, and no such Bill shall be presented to the Governor for assent unless it is accompanied by a certificate under the hand of the Speaker to that effect.

(2) Where any such Bill as is mentioned in subsection (1) of this section contains any provision which would, if enacted, have the effect of rendering ineligible for inclusion in the "A" Roll or "B" Roll, as the case may be, any person possessing the qualifications for that Roll set out in the Second Schedule, that Bill shall be dealt with in all respects as if it were a constitutional Bill to amend a specially entrenched provision of this Constitution within the meaning of section 107 and shall not be presented to the Governor for assent unless the requirements of either subsection (2) or (3) of section 110 have been complied with, in addition to those of subsection (1) of this section:

Provided that this subsection shall not apply to a provision of a Bill which, if enacted, would have the effect of rendering eligible for the "A" Roll any person possessing the qualifications for the "B" Roll set out in the Second Schedule.

. . .

CHAPTER III
DELIMITATION OF CONSTITUENCIES AND ELECTORAL DISTRICTS

35. In this Chapter, unless the context otherwise requires —

"'A' roll of voters" means an "A" Roll prepared and kept under the electoral law in accordance with the provisions of the Second Schedule and includes any roll which may replace it under the electoral law for the time being in force, whether described in such law as an "A" Roll or by any other such distinguishing expression;

"'B' roll of voters" means a "B" Roll prepared and kept under the electoral law in accordance with the provisions of the Second Schedule and includes any roll which may replace it under the electoral law for the time being in force, whether described in such law as a "B" Roll or by any other such distinguishing expression;

. . .

37. — (1) For the purpose of electing the Members of the Legislative Assembly, the whole of Southern Rhodesia shall be divided into fifty constituencies and also into fifteen electoral districts, the limits of which shall be determined, from time to time, by the Delimitation Commission in accordance with the provisions of this Chapter.

(2) Of the fifty constituencies, not less than eighteen shall be rural constituencies.

38. — (1) The boundaries of the constituencies shall be such that, at the time of delimitation, there are in each such constituency as nearly as may be an equal number of voters who are registered on the "A" roll of voters.

(2) The boundaries of the electoral districts shall be such that, at the time of delimitation, there are in each such electoral district as nearly as may be an equal number of voters who are registered on the "B" roll of voters.

. . .

CHAPTER VI
THE DECLARATION OF RIGHTS

Whereas it is desirable to ensure that every person in Southern Rhodesia enjoys, the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin, political opinions, colour or creed, 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 following provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms subject to the limitations of that protection contained in those provisions.

57. — (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

[1] The Constitution is annexed to the Southern Rhodesia (Constitution) Order in Council, 1961, published as *Statutory Instruments 1961*, No. 2314, by Her Majesty's Stationery Office, London. The Constitution came fully into force on 1 November 1962. Text furnished by the Government of the former Federation of Rhodesia and Nyasaland.

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 of dispersing an unlawful gathering; or

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

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

(3) It shall be sufficient justification for the purposes of subsection (2) of this section in any case to which that subsection applies if it is shown that the force used did not exceed that which might lawfully have been used in the circumstances of that case under the law in force immediately before the appointed day.

58. — (1) No person shall be deprived of his personal liberty save as may be authorized by law.

(2) No law shall authorize any person to be deprived of his liberty save in the following cases, that is to say —

(*a*) In consequence of his unfitness to plead to a criminal charge;

(*b*) In execution of the sentence or order of a court, whether in Southern Rhodesia or elsewhere, in respect of a criminal offence of which he has been convicted;

(*c*) In execution of the order of a court of record in Southern Rhodesia punishing him for contempt of that court or of a court inferior to it;

(*d*) In execution of the order of a court made in order to secure the fulfilment of an obligation imposed on him by law (including any African customary law);

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

(*f*) Upon reasonable suspicion of his having committed or being about to commit a criminal offence;

(*g*) Under the order of a court or with the consent of his parent or guardian, for the purpose of his education of welfare during a period beginning before he attains the age of twenty-one years and ending not later than the date when he attains the age of twenty-three years;

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

(*i*) If he is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care, treatment or rehabilitation or the protection of the community;

(*j*) For the purpose of preventing the unlawful entry of that person into Southern Rhodesia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Southern Rhodesia, or the taking of proceedings relating thereto;

(*k*) To such extent as may be necessary for the execution of a lawful order requiring that person to remain within a specified area within Southern Rhodesia or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable —

(i) For the taking of proceedings against that person relating to the making of such an order; or

(ii) For restraining that person during any visit which he is permitted to make to any part of Southern Rhodesia in which, in consequence of such an order, his presence would otherwise be unlawful.

(3) 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.

(4) Any person who is arrested or detained —

(*a*) For the purpose of bringing him before a court in execution of the order of a court or an officer 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 which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

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

59. — (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 "forces 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 —

(i) Is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained; or

(ii) If he is detained for the purpose of his care, treatment, rehabilitation, education or welfare, is reasonably required for that purpose;

(*c*) Any labour required of a person who is a member of any naval, military or air force, or who is otherwise subject to any disciplinary law in pursuance of his duties as a member of that force or under that law, or any labour required of any person by

virtue of a written law in lieu of service as a member of such a force;

(*d*) Any labour required by virtue of a written law during a period of public emergency or in the event of any other emergency or calamity which threatens the life or well-being of any section of the community; or

(*e*) Any labour which forms part of normal communal or other civic obligations.

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

(2) No treatment reasonably justifiable in the circumstances of the case to prevent the escape from custody of a person who has been lawfully detained shall be held to be in contravention of this section on the ground that it is degrading.

(3) Nothing contained in or done under the authority of any written law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the doing of anything by way of punishment or other treatment which might lawfully have been so done in Southern Rhodesia immediately before the appointed day.

61. — (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 conditions hereinafter mentioned are satisfied.

(2) The conditions referred to in the foregoing subsection are that —

(*a*) The taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of that or other property in such a manner as to promote the benefit of the public generally or of the inhabitants generally of a particular area; and

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

(i) For the payment of proper compensation within a reasonable time; and

(ii) Securing to any person claiming to have an interest in or right over the property a right of access to a court or other adjudicating authority for the determination of his interest or right, if any, 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 payment of that compensation within a reasonable time.

(3) If, in any proceedings by virtue of section 71, it is alleged that the condition specified in paragraph (*a*) of subsection (2) of this section is not satisfied and a certificate in writing is produced to the court signed by a Minister of the Government of Southern Rhodesia (or, if the certificate states that the taking of possession or acquisition is on behalf of the Federal Government, by a Minister of that Government) that in the opinion of that Minister the taking of possession or acquisition is necessary on such of the grounds mentioned in the said paragraph (*a*) as is specified in the certificate, it shall be deemed to be so necessary unless the court decides as the result of hearing the complainant that, in the circumstances of the case, it would not be reasonable to accept without proof to the satisfaction of the court the necessity of the taking of possession or acquisition on the grounds stated in the certificate.

(4) 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 of, or the acquisition of any interest in or right over, property—

(*a*) In satisfaction of any tax, rate or due;

(*b*) By way of penalty for breach of any law (including any African customary law) whether under civil process or after conviction of an offence;

(*c*) Upon the attempted removal of the property in question out of or into Southern Rhodesia in contravention of any law;

(*d*) As an incident of a contract (including a lease or mortgage) or of a title deed to land;

(*e*) For the purpose of its administration, care or custody on behalf and for the benefit of the person entitled to the beneficial interest therein;

(*f*) By way of the vesting of enemy property, or for the purpose of the administration of such property;

(*g*) As an incident of —

(i) A composition in insolvency accepted or agreed to by a majority in number of creditors who have proved claims and by a number of creditors whose proved claims represent in value more than fifty per centum of the total value of proved claims; or

(ii) A deed of assignment entered into by a debtor with his creditors;

(*h*) In the execution of judgments or orders of courts;

(*i*) By reason of the property in question being in a dangerous state or prejudicial to the health or safety of human beings, animals or plants;

(*j*) In consequence of any law with respect tot he limitation of actions, acquisitive prescription or derelict land;

(*k*) As a condition in connexion with the granting of permission for the utilization of that or other property in any particular manner;

(*l*) For the purpose of, or in connection with, the prospecting for or exploitation of minerals belonging to the Crown on terms which provide for the respective interests of the persons affected;

(*m*) In pursuance of provision for the marketing of property of that description in the common interests of the various persons otherwise entitled to dispose of that property;

(*n*) By way of the taking of a sample for the purposes of any law;

(*o*) By way of the acquisition of the shares, or a class of shares, in a body corporate on terms agreed to by the holders of not less than nine-tenths in value of those shares or that class thereof;

(*p*) Where the property consists of an animal, upon its being found trespassing or straying;

(*q*) For so long only as may be necessary for the purpose of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon —

(i) Of work for the purpose of the conservation of natural resources of any description; 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.

(5) 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 in which no moneys are invested other than moneys provided by the Legislature.

62. — (1) Except with his own consent or by way of parental discipline, no person shall be subjected to the search of his person or to entry into or the search of his dwelling-house.

(2) Nothing contained in, and nothing reasonably 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 necessary —

(*a*) For the enforcement of the law in a case where there are reasonable grounds to suspect that a criminal offence has been, is being, or is about to be committed by the person or in the dwelling-house in question, or that a person who has committed a criminal offence, or evidence relating to such an offence, is to be found in that dwelling-house;

(*b*) Otherwise in the interests of defence, public safety, public order, public morality, public health or town and country planning;

(*c*) To enable any public authority or any body corporate established directly by law to enter the dwelling-house in question in order to carry out work connected with any property of that authority or body which is lawfully in that dwelling house;

(*d*) For the purpose of the valuation of the dwelling-house in question in connection with any tax, rate or due; or

(*e*) For the purpose of protecting the rights and freedoms of other persons.

(3) If, in any proceedings by virtue of section 71, it is alleged that anything contained in or done under the authority of any law is inconsistent with or in contravention of subsection (1) of this section and a certificate in writing is produced to the court signed by a Minister of the Government of Southern Rhodesia that in the opinion of that Minister the law in question is necessary on such of the grounds mentioned in subsection (2) of this section as is specified in the certificate, that law shall be deemed to be so necessary unless the court decides as the result of hearing the complainant that, in a society which has a proper respect for the rights and freedoms of the individual, the necessity of that law on the grounds specified in the certificate cannot reasonably be accepted without proof to the satisfaction of the court.

63. — (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 which 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 require and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission 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.

(5) No person who shows that he has been tried by a competent court for a criminal offence upon a good indictment, summons or charge upon which a valid judgment could be entered, and either convicted or acquitted on the merits in fact or in law and not on a technicality, 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 —

(*a*) Where a conviction and sentence of a court subordinate to the High Court are set aside on appeal or review on the ground that evidence was admitted which should not have been admitted or that evidence was rejected which should have been admitted

or on the ground of any other irregularity or defect in the procedure; or

(*b*) Otherwise upon the order of a superior court in the case 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 subsection (9) of this section shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority —

(*a*) May consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory civil proceedings; or

(*b*) May be empowered 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;

and notwithstanding anything in the said subsection (9) or in subsection (3) of this section, if in any proceedings before such a court or other adjudicating authority as is referred to in subsection (1) or (8) of this section (including any proceedings by virtue of section 71) a certificate in writing is produced to the court or other authority signed by a Minister of the Government of Southern Rhodesia (or, if the proceedings relate to anything done on behalf of the Federal Government, by a Minister of that Government) that it would not be in the public interest for any matter to be publicly disclosed, the court or other authority shall make arrangements for evidence relating to that matter to be heard in camera and shall take such other action as may be necessary or expedient to prevent the disclosure of that matter.

(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 which 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 appropriate disciplinary law, 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;

(*d*) Subsection (7) of this section to the extent that the law in question authorizes the cross-examination or recall of any person being tried for a criminal offence after he has been called as a witness with his own consent.

(12) In this section, the expression "legal representative" means a person entitled to practise in Southern Rhodesia as an advocate or, except in relation to proceedings before a court in which an attorney has no right of audience, as an attorney.

64. — (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, that is to say, freedom of thought and of religion, freedom to change his religion or belief, and freedom, whether alone or in community with others, and whether in public or in private, to manifest and propagate his religion or belief through 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) Nothing contained in, and nothing reasonably done under the authority of, any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision which is necessary —

(*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 other persons.

(5) If, in any proceedings by virtue of section 71, it is alleged that anything contained in or done under the authority of any law is inconsistent with or in contravention of subsection (1) of this section and a certificate in writing is produced to the court signed by a Minister of the Government of Southern Rhodesia that in the opinion of that Minister the law in question is necessary on such of the grounds mentioned in subsection (4) of this section as is specified

in the certificate, that law shall be deemed to be so necessary unless the court decides as the result of hearing the complainant that, in a society which has a proper respect for the rights and freedoms of the individual, the necessity of that law on the grounds specified in the certificate cannot reasonably be accepted without proof to the satisfaction of the court.

65. — (1) Except with his own consent or by way of parental discipline, 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, and nothing reasonably done under the authority of, any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision —

(*a*) Which is necessary —

(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

(iii) In the case of correspondence, for the purpose of preventing the unlawful despatch therewith of other matter; or

(*b*) Which imposes restrictions upon public officers which are necessary in the public interest.

(3) If, in any proceedings by virtue of section 71, it is alleged that anything contained in or done under the authority of any law is inconsistent with or in contravention of subsection (1) of this section and a certificate in writing is produced to the court signed by a Minister of the Government of Southern Rhodesia that in the opinion of that Minister the law in question is necessary on such of the grounds mentioned in paragraph (*a*) of subsection (2) of this section as is specified in the certificate or, as the case may be, any restrictions imposed by the law in question upon public officers are necessary in the public interest, that law or, as the case may be, those restrictions shall be deemed to be so necessary unless the court decides as the result of hearing the complainant that, in a society which has a proper respect for the rights and freedoms of the individual, the necessity of that law on the grounds specified in the certificate or, as the case may be, the necessity of those restrictions cannot be reasonably accepted without proof to the satisfaction of the court.

66. — (1) Except with his own consent or by way of parental discipline, 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, and nothing reasonably done under the authority of, any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision —

(*a*) Which is necessary —

(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 public officers which are necessary in the public interest.

(3) If, in any proceedings by virtue of section 71, it is alleged that anything contained in or done under the authority of any law is inconsistent with or in contravention of subsection (1) of this section and a certificate in writing is produced to the court signed by a Minister of the Government of Southern Rhodesia that in the opinion of the Minister the law in question is necessary on such of the grounds mentioned in paragraph (*a*) of subsection (2) of this section as is specified in the certificate or, as the case may be, that any restrictions imposed by that law upon public officers are necessary in the public interest, that law or, as the case may be, those restrictions shall be deemed to be so necessary unless the court decides as a result of hearing the complainant that in a society which has a proper respect for the rights and freedoms of the individual, the necessity of that law on the grounds specified in the certificate or, as the case may be, the necessity of those restrictions cannot reasonably be accepted without proof to the satisfaction of the court.

67. — (1) No written law shall contain any discriminatory provision.

(2) For the purposes of this section a provision shall be regarded as discriminatory if by or as an inevitable consequence of that provision persons of a particular description by race, tribe, colour or creed are prejudiced —

(*a*) By being subjected to a condition, restriction or disability to which persons of another such description are not made subject; or

(*b*) By the according to persons of another such description of a privilege or advantage which is not accorded to persons of the first-mentioned description,

and the imposition of that condition, restriction, or disability or the according of that privilege or advantage is wholly or mainly attributable to the description by race, tribe, colour or creed of the persons concerned.

(3) Subsection (1) of this section shall not apply to any law to the extent that it relates to any of the following matters, that is to say —

(*a*) Any matter such as is mentioned in any of paragraphs (*a*) to (*f*) of the definition of a Money Bill contained in section 83;

(*b*) Adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

(*c*) The application in the case of Africans of a particular race or tribe indigenous to Southern

Rhodesia of their 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;

(*d*) Restrictions on entry into or employment in Southern Rhodesia or on the acquisition of, or of interests in or rights over, immovable property in Southern Rhodesia, or on the enjoyment of services provided out of Southern Rhodesian public funds, in the case of persons who are neither citizens of the Federation by virtue of their connection with, nor regarded by virtue of a written law as permanently resident in, Southern Rhodesia;

(*e*) Qualifications (not being qualifications by way of race, tribe, colour or creed) for service as a public officer or as a member of a disciplined force or for the service of any public authority or of any body corporate established directly by a law,

or to the extent that it makes provision with respect to persons of a particular description relating to a matter in the case of which the Federal Legislature has legislated with respect to persons of other descriptions but not that description or has, or is entitled to assume, exclusive power so to legislate.

(4) Subsection (1) of this section shall not apply to any law to the extent that it makes provision whereby persons of a particular description are subjected to any condition, restriction or disability or are accorded any privilege or advantage which, having regard to such of the following matters as are relevant to the circumstances of the case, that is to say —

(*a*) The nature of the condition, restriction, disability, privilege or advantage, as the case may be;

(*b*) Any special circumstances appertaining to persons of that or any other description;

(*c*) The stage of social or economic development for the time being reached by the various descriptions of persons affected; and

(*d*) The state for the time being of the economy of Southern Rhodesia,

is reasonably justifiable either in the interests of Southern Rhodesia as a whole or in order to secure the protection, in an equitable manner as between the various descriptions of persons affected, of their respective interests:

Provided that his subsection shall not apply to the extent that the law in question results in the laws with respect to the matter in question affording greater difference of treatment of different descriptions of persons than immediately before the date of the making of the law in question.

(5) No provision which is held by virtue of paragraph (*b*) or (*e*) of subsection (2) of section 62, subsection (4) of section 64, subsection (2) of section 65 or subsection (2) of section 66, not to be inconsistent with the said section 62, 64, 65 or 66, as the case may be, shall be held to contravene subsection (1) of this section.

68. — (1) No person acting by virtue of any written law in the capacity of a public officer or officer of any public authority shall perform any executive or administative act in such a manner that any person of a particular description by race, tribe, colour or creed is prejudiced —

(*a*) By being subjected to a condition, restriction or disability to which a person of another such description is not made subject; or

(*b*) By the according to a person of another such description of a privilege or advantage which is not accorded to that person,

where the imposition of that condition, restriction or disability or the according of that privilege or advantage is wholly or mainly attributable to the description by race, colour or creed of the persons concerned.

(2) Subsection (1) of this section shall not apply to anything which —

(*a*) Be expressly or by necessary implication authorized to be done by any law to which subsection (3), (4) or (5) of section 67 applies; or

(*b*) Is done under the authority of any other law in such circumstances that, if the doing of that thing in those circumstances had been expressly or by necessary implication authorized by that law, subsection (4) of the said section 67 would have applied thereto.

(3) Nothing in this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court vestied in any person by or under this Constitution or any other law.

69. — (1) Nothing contained in any law shall be held to be inconsistent with or in contravention of any of the following provisions of this Chapter, that is to say, sections 58, 61, 62, 63 (other than subsection (4) thereof) 64, 65, 66, 67 or 68 to the extent that the law in question makes provision with respect to the taking during any period of public emergency of action for the purpose of dealing with any situation arising during that period; and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions unless it is shown that the action taken exceeded anything which, having due regard to the circumstances prevailing at the time, could reasonably have been thought to be required for the purpose of dealing with the situation in question.

(2) If any person who is lawfully detained only by virtue of such a law as is mentioned in subsection (1) of this section so requests at any time during the period of that detention not earlier than twelve months after he last made such a request during that period, his case shall be submitted to a tribunal for their recommendations concerning the necessity or expediency of continuing his detention but, unless it is otherwise provided by law, the authority by whom the detention was ordered shall not be obliged to act in accordance with any such recommendations.

(3) Any such tribunal as aforesaid shall be established by law and include among its members at least one person who holds or has held high judicial office in Southern Rhodesia or elsewhere or who is an advocate or attorney of the High Court of not less than seven years' standing.

70. — (1) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of any of the provisions of sections 57 to 68 —

(*a*) If the law in question was one with respect to which the requirements of section 107 were applicable and were complied with; or

(*b*) If the law in question was in force immediately before the appointed day and has continued in force at all times since that day; or

(*c*) In the case of a written law, to the extent that it repeals and re-enacts any provision which has been contained in a written law at all times since immediately before that day.

(2) In relation to any person who is a member of a disciplined force (including any visiting force which is lawfully present in Southern Rhodesia) or who is otherwise subject to a disciplinary law, nothing contained in or done under the authority of the appropriate disciplinary law shall be held to be inconsistent with or in contravention of any of the provisions of the said sections 57 to 68 other than section 59 or 60.

(3) For the avoidance of doubt it is hereby declared that nothing contained in or done under the authority of any Federal law shall be held to be inconsistent with or in contravention of any of the provisions of the said sections 57 to 68.

71. — (1) If any person alleges that any of the provisions of sections 57 to 68 has been or is being contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, but subject to subsection (3) of this section, that person may apply to the High Court for redress.

(2) If in any proceedings in any court subordinate to the High Court any question arises as to the contravention of any of the provisions of the said sections 57 to 68, the person presiding in that court may, and if so requested by any party to the proceedings shall, refer the question to the High Court, so, however, that he shall not be required to comply with any such request which in his opinion is merely frivolous or vexatious.

(3) Where in any proceedings such as are mentioned in subsection (2) of this section any such question as is therein mentioned is not referred to the High Court, then, without prejudice to the right to raise that question on any appeal from the determination of the court in those proceedings, no application for the determination of that question shall lie to the High Court under subsection (1) of this section.

(4) Subject to the provisions of article 53 of the Federal Constitution, the High Court shall have original jurisdiction —

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

(*b*) To determine any question arising in the case of any person which is referred to it in pursuance of subsection (2) thereof,

and for the purposes of that jurisdiction or of the determination on such an appeal as is mentioned in subsection (3) of this section of any question such as is therein mentioned, the High Court 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 the said sections 57 to 68 to the protection of which the person concerned is entitled:

Provided that the 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.

(5) Any person aggrieved by any determination of the High Court under this section may appeal therefrom to Her Majesty in Council:

Provided that —

(*a*) This subsection shall not have effect during any period during which the Federal Constitution provides for an appeal from any determination of the High Court under this section to the Federal Supreme Court;

(*b*) No appeal shall lie by virtue of this subsection from any determination that any application, or the raising of any question, is merely frivolous or vexatious.

(6) Where any person —

(*a*) Makes an application to the High Court under subsection (1) of this section with respect to, or to a provision contained in, a written law and that law or provision is one in the case of which the Constitutional Council has made an adverse report; or

(*b*) Raises any question with respect to such a law or provision which is referred to the High Court in pursuance of subsection (2) of this section; or

(*c*) Appeals from the determination of the High Court on any such application or reference with respect to such a law or provision,

then, if he obtains from the Constitutional Council a certificate in writing that in the opinion of the Council the application, question or appeal, as the case may be, constitutes a proper and suitable test case for determining the validity of that law or provision, any costs certified by the court determining the application, question or appeal, as the case may be, as having been reasonably incurred by that person in connexion therewith shall be refunded to that person by the Constitutional Council; and any sums required by that Council for the purposes of this subsection shall be charged on and paid out of the Consolidated Revenue Fund.

(7) If in any proceedings by virtue of this section, it falls to be determined whether any law is inconsistent with any of the provisions of the said sections 57 to 68, the Attorney-General shall be entitled to be heard by the court on that question and if in any such proceedings any law is determined by the court to be so inconsistent, then, whether or not he has exercised his right to be heard in those proceedings, the Attorney-General shall have the like right with respect to an appeal from that determination as if he had been a party to the proceedings.

(8) Where any provision of any law is held by a competent court to be inconsistent with any of the provisions of the said sections 57 to 68, any person detained in custody under that provision shall be entitled as of right to make an application to a competent superior court for the purpose of ques-

tioning the validity of his further detention, notwithstanding that he may have previously appealed against his conviction or sentence or that any time prescribed for the filing of such an appeal may have expired.

(9) A law of the Legislature may make provision with respect to the practice and procedure of the High Court for the purposes of this section and may confer upon that court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(10) Rules of court making provision with respect to the practice and procedure of the High Court for the purposes of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of that court generally.

72. — (1) In this Chapter, save where the context otherwise requires, the following expressions have the following meanings respectively, that is to say —

"African customary law" means the customary law of Africans of a particular race or tribe indigenous to Southern Rhodesia;

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means any court of law in Southern Rhodesia other than a court established under a disciplinary law;

"disciplinary law" means a written law providing for the regulation of the discipline —

(*a*) Of any disciplined force; or

(*b*) Of persons serving prison sentences;

"disciplined force" means —

(*a*) A naval, military or air force; or

(*b*) A police force: or

(*c*) A prison service; or

(*d*) Any other body established for public purposes by a written law providing for the regulation of the discipline of that body and declared by that law to be a disciplinary force for the purposes of this Chapter;

"law" means —

(*a*) Any provision of any law passed by the Legislature of Southern Rhodesia;

(*b*) Any provision of any instrument having the force of law made in the exercise of a power conferred by that Legislature;

(*c*) Any unwritten law in force in Southern Rhodesia other than African customary law,

and "lawful" and "lawfully" shall be construed accordingly;

"member" in relation to a disciplined force, includes any person who, under a written law relating to the discipline of that force, is subject to that discipline;

"parental discipline" includes school or other quasi-parental discipline.

(2) In this Chapter, the expression "period of public emergency" means —

(*a*) Any period during which Her Majesty is at war and the period immediately following thereon until such date as may be declared by the Governor by proclamation as the end of the period of public emergency caused by that war; or

(*b*) Any period not exceeding three months during which a state of emergency is declared to exist in Southern Rhodesia or in any part thereof by virtue of a proclamation issued in terms of any law for the time being in force relating to emergency powers, the reasons for the issue thereof having been communicated to the Legislative Assembly as soon as possible after the issue thereof, or by virtue of a further proclamation so issued on a resolution of the Assembly; or

(*c*) Any period with respect to which the Assembly have passed a resolution declaring such a period to have existed from such date as may be specified in the resolution, which may be a date before that of the passing of the resolution;

and a period of emergency declared by a resolution under paragraph (*c*) of this subsection shall end on the expiration of the period of three months beginning with the date of the passing of the resolution or on such earlier date as may be specified in the resolution, but may be extended from time to time for a further period not exceeding three months, or may be terminated at any time, by a further resolution of the Assembly.

(3) Any proclamation or resolution under subsection (2) of this section declaring a period of public emergency to be terminated and any resolution under that subsection extending such a period may provide for the termination or extension of the period either for all purposes or for such purposes only as may be specified in the proclamation or resolution.

. . .

CHAPTER IX

AMENDMENT OF THE CONSTITUTION

. . .

107. — (1) For the purposes of this Constitution, all the provisions thereof enumerated in the Third Schedule shall be specially entrenched provisions of the Constitution together with any other provision which may hereafter be declared by any future amendment of the Constitution to be such a provision.[1]

(2) Any constitutional Bill which contains any provision for amending, adding to or repealing any specially entrenched provision of the Constitution and which is passed by the Legislative Assembly in accordance with the requirements of section 106, shall not become law unless either —

(*a*) Such provision is approved in a referendum by a majority of those voting in each of the four

[1] The provisions of the present Constitution enumerated in the third schedule and reproduced in this *Yearbook* are the following: Chapter II, sec. 9 (2); chapter VI, secs. 57–72; chapter IX, secs. 107, 108 (1), (2), (3) and (5) and 110 (1) and (2). The second and third schedules are also entrenched.

principal racial groups in Southern Rhodesia in accordance with the provisions of section 108 of this Constitution; or

(*b*) An Address is presented to the Governor praying him to submit the Bill to Her Majesty for assent in pursuance of section 109.

108. — (1) When a constitutional Bill to which subsection (2) of section 107 applies has been passed by the Legislative Assembly in accordance with section 106, the Bill or every such provision thereof as amends, adds to or repeals any of the specially entrenched provisions may be submitted for the opinion of those entitled to vote thereon by means of a referendum held in accordance with the provisions of this section.

(2) Those entitled to vote in a referendum shall be those persons who, at the material time, are duly registered voters for the purpose of voting in any election for members of the Legislative Assembly:

Provided that, until such time as there are 50,000 or more registered African voters, every African who —

(*a*) Is a citizen of Rhodesia and Nyasaland; and

(*b*) Is ordinarily resident in Southern Rhodesia; and

(*c*) Is of the age of twenty-one years or over; and

(*d*) Has completed a course of primary education of the standard prescribed by or under the law for the time being in force relating to the election of members to the Legislative Assembly,

shall be entitled to vote in a referendum.

(3) Subject to the other provisions of this Constitution, a law of the Legislature may make provision for carrying out a referendum in pursuance of this section:

Provided always that, without prejudice to the generality of the foregoing, any such law shall make provision for —

(*a*) The manner in which a constitutional Bill shall be submitted to those who are entitled to vote in the referendum;

(*b*) The method by which the votes of those persons entitled to vote are to be cast and counted so as to ascertain how many such persons approve and how many such persons do not approve of the Bill or any specified provisions of it in each of the four principal racial communities in Southern Rhodesia, that is to say, the European, African, Asian and Coloured communities; and

(*c*) A prescribed officer to be appointed to conduct the referendum who shall certify the result thereof in writing to the Speaker.

(4) Any law of the Legislature under this section relating to the conduct of a referendum may empower any specified person or persons to decide the racial community to which any person shall be deemed to belong for the purposes of such referendum and may provide that the decision of such person or persons shall be final and not open to question in any court.

(5) Where a Bill or any provision of a Bill is submitted to a referendum, such Bill or provision, as the case may be, shall not be deemed to be approved for the purposes of paragraph (*a*) of subsection (2) of section 107, unless a majority of those voting in each of the four main racial communities enumerated in the proviso to subsection (3) of this section vote in favour of such Bill or provision, as the case may be.

109. Where, in the case of a constitutional Bill to which the provisions of subsection (2) of section 107 apply, the Legislative Assembly, by the affirmative votes of not less than two-thirds of the total membership of the Assembly, passes a motion to present an Address to the Governor praying him to submit the Bill to Her Majesty for assent, it shall not be necessary to submit the Bill or any provision of it to a referendum under the provisions of section 108, but instead the Bill may be submitted forthwith to the Governor in accordance with the provisions of section 110:

Provided that a motion for an Address under the provisions of this section may be moved only by a Minister of the Government after the Governor in pursuance of Instructions from Her Majesty has signified to the Assembly that Her Majesty has consented to the moving thereof.

110. — (1) No constitutional Bill shall be submitted to the Governor for assent unless it is accompanied by a certificate under the hand of the Speaker that at the final vote thereon in the Legislative Assembly the Bill received the affirmative votes of not less than two-thirds of the total membership of the Assembly.

(2) A constitutional Bill to which subsection (2) of section 107 applies and which has been approved in a referendum within the meaning of subsection (5) of section 108 shall not be presented to the Governor for assent unless, in addition, it is accompanied by a certificate addressed to the Speaker to that effect under the hand of the officer appointed to conduct the referendum.

(3) A constitutional Bill to which subsection (2) of section 107 applies that has not been submitted to a referendum shall not be presented to the Governor for assent unless in addition to the certificate referred to in subsection (1) of this section, it is accompanied by an Address from the Legislative Assembly in terms of section 109 and also by a certificate under the hand of the Speaker that the motion for the Address was passed by the affirmative votes of not less than two-thirds of the total membership of the Assembly after signification to the Assembly that Her Majesty had consented to the moving thereof.

. . .

SECOND SCHEDULE

Section 9 (2), (3) and (4)

THE FRANCHISE

1. Two electoral rolls to be known as an "A" Roll and a "B" Roll shall be prepared and kept for each constituency and each electoral district.

2. The "A" Roll shall comprise registered voters who have the appropriate qualifications for such roll described in paragraphs 5, 6, 7 and 8 of this Schedule.

3. The "B" Roll shall comprise registered voters who have the appropriate qualifications for such roll described in paragraphs 5, 6, 7 and 8 of this Schedule.

4. No person shall be registered on both an "A" Roll and a "B" Roll and no person who has the qualifications for registration on an "A" Roll shall be registered on a "B" Roll.

5. The following requirements shall be common to both an "A" Roll and a "B" Roll.

(*a*) *Citizenship:* Citizen of Rhodesia and Nyasaland.

(*b*) *Age:* 21 years or over.

(*c*) *Residence:* Two years' continuous residence in the Federation and three months' residence in the constituency and electoral district concerned immediately preceding application for enrolment.

(*d*) *Language:* Adequate knowledge of the English language and ability to complete and sign the prescribed form for registration (except in the case of duly appointed Chiefs and Headmen).

6. The following additional qualifications respectively shall be required: —

"A" Roll

(*a*) Income of not less than £720 during each of two years preceding date of claim for enrolment, *or* ownership of immovable property of value of not less than £1,500.

OR

(*b*) (i) Income of not less than £480 during each of two years preceding date of claim for enrolment, *or* ownership of immovable property of value of not less than £1,000; *and*

(ii) completion of a course of primary education of a prescribed standard.

OR

(*c*) (i) Income of not less than £300 during each of two years preceding date of claim for enrolment, *or* ownership of immovable property of value of not less than £500; *and*

(ii) four years' Secondary education of a prescribed standard.

OR

(*d*) Appointment to the office of Chief or Headman.

"B" Roll

(*a*) Income at the rate of not less than £240 per annum during the six months preceding date of claim for enrolment, or ownership of immovable property of value of not less than £450.

OR

(*b*) (i) Income at the rate of not less than £120 per annum during the six months preceding date of claim for enrolment, *or* ownership of immovable property of value of not less than £250; *and*

(ii) two years' secondary education of a prescribed standard.

OR

(*c*) Persons over 30 years of age with —

(i) Income at the rate of not less than £120 per annum during the six months preceding date of claim for enrolment or ownership of immovable property of value of not less than £250; *and*

(ii) completion of a course of primary education of a prescribed standard.

OR

(*d*) Persons over 30 years of age with —

Income at the rate of not less than £180 per annum during the six months preceding the date of claim for enrolment, *or* ownership of immovable property of value of not less than £350.

OR

(*e*) All kraal heads with a following of 20 or more heads of families.

OR

(*f*) Ministers of Religion.

. . .

THE UNLAWFUL ORGANIZATIONS AMENDMENT ACT, 1962

No. 28 of 1962[1]

2. Section 3 of the Unlawful Organizations Act, 1959, is amended as follows —

(*a*) By the insertion of the following subsection after subsection (1) —

"(1*a*) If the Governor is of the opinion that an organization —

"(*a*) Is the parent organization of an unlawful organization; or

"(*b*) Is derived from the same parent organization as an unlawful organization; or

"(*c*) Is the successor of an unlawful organization; or

"(*d*) Is composed substantially though not necessarily predominantly of, or directed or controlled, directly or indirectly, by, persons who have been or are office-bearers or officers of an unlawful organization;

the Governor may by proclamation in the *Gazette* declare such first mentioned organization to be an unlawful organization.

"For the purposes of this subsection, the expression "unlawful organization" does not include an organization which was declared to be an unlawful organization before the 14th August, 1962."

(*b*) In subsection (2) by the insertion after the words "subsection (1)" of the words "or (1*a*)".

[1] Text, printed separately, furnished by the Government of the former Federation of Rhodesia and Nyasaland.

LAW AND ORDER (MAINTENANCE) AMENDMENT ACT, 1962

No. 35 OF 1962[1]

2. Section 2 of the Law and Order (Maintenance) Act, 1960 (hereinafter called the principal Act), is amended by the repeal of the definition of "public gathering" and by the substitution of the following definition in place thereof —

"'public gathering' means a gathering of twelve or more persons in a public place, and in Part I of this Act includes —

(*a*) A public meeting;

(*b*) Any gathering of more than two hundred persons, whether or not such gathering takes place in a public place and whether or not it is confined to persons who are members of a particular organization, association or other body or to persons who have been invited to attend gathering;"

. . .

4. Section 6 of the principal Act is amended as follows —

(*a*) By the addition of the following subsection after subsection (3) —

"(3*a*) A direction issued in terms of this section shall have effect immediately it is issued and may be published —

(*a*) In a newspaper circulating in the area to which it applies; or

(*b*) By notices distributed among the public or affixed upon public buildings in the area to which it applies; or

(*c*) By oral announcement of a police officer;

and shall in any event be published in the *Gazette.*";

(*b*) By the addition of the following subsections —

"(7) A police officer may order the persons taking part in any public procession to disperse if any condition of a permit issued under subsection (2) of this section has been violated.

"(8) Any person who fails to comply with an order given in terms of subsection (7) of this section shall be guilty of an offence and may be arrested without warrant, and shall be liable to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months."

5. Section 7 of the principal Act is repealed and the following section is substituted in place thereof —

"7. (1) A regulating authority may issue directions for the purpose of controlling public gatherings within his area, and for the maintenance of law and order and the preservation of public safety and the prevention of intimidation at such gatherings.

"(2) Directions in terms of subsection (1) of this section may be issued in respect of — (*a*) all public gatherings or any class of public gatherings specified in the directions; or (*b*) any public gathering specified in the directions; and such directions may relate to public gatherings in the whole of the area for which the regulating authority is appointed or in any part thereof specified in such directions.

"(3) Different directions may be given in respect of different public gatherings or different classes of public gatherings or public gatherings in different parts of the area for which the regulating authority is appointed.

"(4) A direction issued in terms of this section shall have effect immediately it is issued and may be published — (*a*) in a newspaper circulating in the area or in the part thereof to which it applies; or (*b*) by notices distributed among the public or affixed upon public buildings in the area or in the part thereof to which it applies; or (*c*) by oral announcement of a police officer;

and shall in any event be published in the *Gazette.*

"(5) The person who is convening a public gathering shall, at the request of the regulating authority, grant adequate facilities to the satisfaction of such authority for the recording of the proceedings of the gathering in such manner and by such person or class of persons as such authority may specify:

"Provided that the convenor shall not be required to provide equipment.

"(6) Any person who opposes, disobeys or fails to comply with any direction issued under subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months.

"(7) Any person who fails to comply with the provisions of subsection (5) of this section shall be guilty of an offence and liable to a fine not exceeding twenty-five pounds or to imprisonment for a period not exceeding three months.

"(8) A police officer may order the persons present at a gathering to disperse if any direction issued by a regulating authority which is applicable to such gathering has not been complied with.

"(9) Any person who fails to comply with an order given in terms of subsection (8) of this section shall be guilty of an offence and may be arrested without warrant, and shall be liable to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months."

6. The principal Act is amended by the addition of the following section after section 7 —

"7A. (1) No person shall in any public place use any loudspeaker, public address sytem or other instrument or device for the purpose of calling persons together or of addressing a public gathering unless the permission of the regulating authority for the area concerned has first been obtained.

"(2) Any person who contravenes the provisions of subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding fifty pounds

[1] Text, printed separately, furnished by the Government of the former Federation of Rhodesia and Nyasaland.

or to imprisonment for a period not exceeding six months."

7. Section 8 of the principal Act is amended by the addition of the following subsection after subsection (1) —

"(1*a*) The Minister may, in confirming any such order, vary it, and any order so varied and confirmed shall be deemed to be the order of the magistrate who made the original order."

8. Section 9 of the principal Act is amended as follows —

(*a*) In subsection (1) by the insertion after the words "specified in such order," of the words "the convening of a specified public gathering or";

(*b*) By the addition of the following subsection after subsection (1) —

"(1*a*) The Minister may, in confirming any Such order, vary it, and any order so varied and confirmed shall be deemed to be the order of the magistrate who made the original order."

9. Section 10 of the principal Act is amended by the repeal of subsection (1) and by the substitution of the following subsections in place thereof —

"(1) If at any time the Minister considers that it is desirable for the maintenance of law and order to do so, he may by order exercise any of the following powers —

"(*a*) Prohibit the assembly of a particular public gathering;

"(*b*) Prohibit all public gatherings for such period, not exceeding three months, as may be specified in the order;

(*c*) Prohibit all public gatherings on any particular day or days of the week specified in the order during such period, not exceeding three months, as may be specified in the order;

"(*d*) Prohibit the convening by all organizations or by any specified organization of a public gathering for such period, not exceeding three months, as may be specified in the order;

"(*e*) Prohibit the convening by any specified organization or specified person of a public gathering on any particular day or days of the week specified in the order for such period, not exceeding three months, as may be specified in the order;

"(*f*) Restrict the hours during which public gatherings or public gatherings convened by any specified organization or specified person or public gatherings in any specified place or area may be held on any day;

"(*g*) Impose conditions relating to the maintenance of public order or safety to which all organizations or any specified organization or specified person shall be subject in convening a public gathering.

"(1*a*) An order made in terms of this section may be subject to such exceptions as may be specified therein."

10. Section 11 of the principal Act is amended by the repeal of subsection (1) and by the substitution of the following subsections in place thereof —

"(1) If at any time the Minister considers that it is desirable for the maintenance of law and order to do so, he may by notice under his hand, addressed and delivered or tendered to a particular person, prohibit such person from attending any public gathering within the Colony or any part thereof and during a period, not exceeding three months, specified in such notice, subject to such exceptions, if any, as may be specified. Such notice shall have effect immediately it is so delivered or tendered, but shall contain a statement informing the person of his right to object and to make representations in writing to the Minister within seven days therefrom. If any representations in writing are received within seven days of the delivery or tender of the notice, the Minister shall consider the case and either revoke the notice or notify the person to whom it relates of his refusal to do so.

"(1*a*) The Minister may vary or revoke any notice issued by him in terms of this section."

. . .

13. Section 19 of the principal Act is amended as follows —

. . .

(*b*) In subsection (4) by the addition of the words "and any other thing which the Minister may by notice in the *Gazette* declare to be a uniform for the purposes of this section" at the end thereof;

(*c*) By the addition of the following subsection —

"(5) In any prosecution for a contravention of paragraph (*a*) of subsection (1) of this section it shall be presumed, unless and until the contrary is proved, that a uniform alleged to have been worn by the person named in the indictment, summons or charge is a uniform associated with a political organization or with the promotion of a political object".

. . .

15. Section 25 of the principal Act is amended by the repeal of subsection (2).

. . .

25. Section 39 of the principal Act is amended as follows —

(*a*) In paragraph (*a*) of subsection (1) —

(i) By the repeal of sub-paragraph (v) and by the substitution of the following sub-paragraph in place thereof —

"(v) To engender or promote feelings of hostility to, or expose to contempt, ridicule or disesteem, any group, section or class in or of the community on account of race, religion or colour;";

(ii) By the omission in sub-paragraph (vi) of the words "to offer passive resistance to any law" and by the substitution of the words "to resist, either actively or passively, any law or lawful administrative measure" in place thereof;

(iii) By the addition of the following sub-paragraph —

"(viii) To lead to public disorder or to the disturbance, disruption, hindering of or interfering with, any undertaking, industry, trade or occupation, or the carrying on thereof;";

(*b*) in subsection (2) —

(i) By the insertion in paragraph (*d*) after the word "plays" of the words", otherwise than in the course of the investigation of an offence or of proceedings in a court of law";

(ii) By the addition of the following paragraph after paragraph (*d*) —

"(*dd*) Makes a subversive statement which is recorded, otherwise than as provided in section *seven*, by means of a recording apparatus or otherwise than as provided in section *seven*, records by means of a recording apparatus a subversive statement made by any other person;"

. . .

28. Section 43 of the principal Act is amended as follows —

(*a*) By the insertion after the words "person who" of the word "makes";

(*b*) By the omission of the word "publication" and by the substitution of the words "making publication or reproduction, as the case may be," in place thereof.

29. The principal Act is amended by the addition of the following sections after section 44 —

44A. (1) If at any time the Minister considers that for the purpose of maintaining law and order in any part of the Colony it is desirable to do so, he may, subject to the provisions of section *forty-four C*, make an order against any person for all or any of the purposes mentioned in subsection (2) of this section.

(2) An order may be made in terms of subsection (1) of this section for all or any of the following purposes, that is to say —

(*a*) For securing that, except in so far as may be permitted by the order or by a written permit issued by the Minister, the person named in the order shall not be in the area in the Colony specified in the order during such period, not exceeding three months, as may be specified;

(*b*) For securing that, except in so far as may be permitted by the order or by a written permit issued by the Minister, the person named in the order shall remain in such area within the Colony as may be specified in the order during such period, not exceeding three months, as may be specified;

(*c*) For requiring the person named in the order to notify his movements in such manner, at such times, to such authorities and during such period, not exceeding three months, as may be specified in the order.

(3) An order may be made in terms of paragraph (*a*) of subsection (2) of this section against any person who is outside the specified area.

(4) The Minister may at any time vary or revoke an order made in terms of this section.

(5) A permit mentioned in paragraph (*a*) or (*b*) of subsection (2) of this section may be issued subject to such terms and conditions as may be determined by the Minister, and any person who contravenes any such term or condition shall be guilty of an offence and liable to a fine not exceeding two hundred pounds or to imprisonment for a period not exceeding one year.

(6) An order made in terms of this section shall come into force immediately it is delivered or tendered to the person to whom it relates, and if at the time of such delivery or tender such person —

(*a*) In the case of an order mentioned in paragraph (*a*) of subsection (2) of this section, is within the area specified in the order, he may be removed therefrom; or

(*b*) In the case of an order mentioned in paragraph (*b*) of subsection (2) of this section, is outside the area specified in the order, he may be removed thereto;

by any police officer and shall while being so removed be deemed to be in lawful custody.

Such order shall contain a statement informing the person of his right to object and to make representations in writing to the Minister within seven days from the date of the delivery or tender thereof. If any representations in writing are received within seven days of the delivery or tender of the order, the Minister shall consider the representations and either revoke the order or notify the person to whom it relates of his refusal to do so.

(7) Any person who in contravention of an order made in terms of this section —

(*a*) Enters or is found in any area;

(*b*) Leaves any area; or

(*c*) Fails to notify his movements;

shall be guilty of an offence and liable to a fine not exceeding five hundred pounds or to imprisonment for a period not exceeding three years or to both such fine and imprisonment.

(8) Without prejudice to any proceedings which may be taken against a person in respect of whom an order has been made in terms of this section, any such person who is at any time within or outside any area in contravention of the provisions of any such order or of the terms and conditions of a permit mentioned in subsection (2) of this section may be removed from or to such area, as the case may be, by any police officer and shall while being so removed be deemed to be in lawful custody.

44B. (1) Subject to the provisions of section *forty-four C*, the Minister may at any time make an order for all or any of the purposes mentioned in subsection (2) of this section against any person who is convicted —

(*a*) Of an offence under this Act or the Unlawful Organizations Act, 1959; or

(*b*) An offence under the common law committed in circumstances which, in the Minister's opinion, are associated with public violence, unlawful gatherings, riots, tumults or other public disorder;

and sentenced to pay a fine exceeding twenty-five pounds or to be imprisoned for a period exceeding three months.

(2) An order may be made in terms of subsection (1) of this section for all or any of the following purposes, that is to say —

(*a*) For securing that, except in so far as may be permitted by the order or a written permit issued by the Minister, the person named in the order shall not convene, attend or address any public gathering in the Colony during such period, not exceeding five years, as may be specified in the order;

(*b*) For securing that, except in so far as may be permitted by the order or a written permit issued by the Minister, the person named in the order shall not be in any area within the Colony specified in the order during such period, not exceeding five years, as may be specified;

(*c*) For securing that, except in so far as may be permitted by the order or by a written permit issued by the Minister, the person named in the order shall remain in such area within the Colony as may be specified in the order, during such period, not exceeding five years, as may be specified;

(*d*) For requiring the person named in the order to notify his movements in such manner, at such times, to such authorities and during such period, not exceeding five years, as may be specified in the order.

(3) The provisions of subsections (3) and (4) of section *forty-four A* shall, *mutatis mutandis*, apply in respect of an order made under this section.

(4) A permit mentioned in paragraph (*a*), (*b*) or (*c*) of subsection (2) of this section may be issued subject to such terms and conditions as may be determined by the Minister, and any person who contravenes any such term or condition shall be guilty of an offence and liable to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding one year.

(5) An order made in terms of this section shall come into force immediately it is delivered or tendered to the person to whom it relates and if at the time of such delivery or tender such person —

(*a*) In the case of an order mentioned in paragraph (*b*) of subsection (2) of this section, is within the area specified in the order, he may be removed therefrom; or

(*b*) In the case of an order mentioned in paragraph (*c*) of subsection (2) of this section, is outside the area specified in the order, he may be removed thereto;

by any police officer and shall, while being so removed, be deemed to be in lawful custody.

(6) An order made in terms of subsection (1) of this section shall not be subject to any proceedings in any court of law on the ground that the person against whom it was made was not afforded an opportunity of making representations to the Minister before it was made, but the Minister may, in his discretion, permit such person to make representations in regard thereto within such period as he may determine and may, after considering the representations, either alter or revoke the order or refuse to do so.

(7) Any person who, in contravention of an order made in terms of this section —

(*a*) Convenes, attends or addresses a public gathering;

(*b*) Enters or is found in any area;

(*c*) leaves any area; or

(*d*) fails to notify his movements;

shall be guilty of an offence and liable to imprisonment for a period not exceeding five years.

(8) The provisions of subsection (8) of section *forty-four A* shall, *mutatis mutandis*, apply in respect of a person against whom an order has been made in terms of this section.

(9) For the purposes of this section —

"address" includes the making of a statement which is recorded by means of a recording apparatus and is played to or at a public gathering;

"public gathering" means a gathering of twelve or more persons in a public place, and includes —

(*a*) A public meeting;

(*b*) Any gathering of more than two hundred persons, whether or not such gathering takes place in a public place and whether or not it is confined to persons who are members of a particular organization, association or other body or to persons who have been invited to attend such gathering.

44C. (1) The powers conferred upon the Minister by subsection (1) of section *forty-four A* and subsection (1) of section *forty-four B* shall not be exercised after the 1st September, 1964, unless the Governor has by proclamation in the *Gazette* extended the period during which those powers may be exercised pursuant to a resolution of the Legislative Assembly.

(2) Nothing in subsection (1) of this section contained shall affect the validity or operation of any order made under section *forty-four A* or *forty-four B* on or before the 1st September, 1964.

44D. (1) In any prosecution for a contravention of section *seventeen* or *thirty-nine* where it is proved that a prohibited publication or any extract therefrom or any subversive statement has been published, the following persons shall be deemed to have published such publication, extract or statement, as the case may be —

(*a*) In the case of a publication, extract therefrom or statement of an organization, the office bearers of the organization;

(*b*) Any person referred to in the publication as being the editor, assistant editor or author thereof or the author of the statement;

(*c*) Any person who is proved to be the editor of the publication;

(*d*) Any person who is proved to have published the publication, extract or statement:

Provided that it shall, in the case of any person mentioned in paragraph (*a*), (*b*) or (*c*) of this subsection, be a sufficient defence if he proves to the satisfaction of the court that the publication, extract or statement was published without his authority, consent or knowledge and that the publication thereof did not arise from want of due care or caution on his part.

(2) A publication or statement shall be deemed, unless the contrary is proved, to be the publication or statement of an organization if — (*a*) it professes by name or otherwise to be a publication or statement of or under the sponsorship of the organiza-

tion; or (*b*) it is published by or under the direction or guidance of the organization or by any person as an office bearer of the organization.

(3) In any prosecution for a contravention of section *seventeen* or *thirty-nine*, publication by or under the sponsorship of any branch, section or committee of an organization or any local, regional or subsidiary body forming part of the organization shall be deemed to be a publication by the main organization and by any headquarters branch of the organization.

(4) For the purposes of this section —

"office bearer", in relation to any organization, means a member of the governing body of —

(*a*) The organization;

(*b*) Any branch, section or committee of the organization; or

(*c*) Any local, regional or subsidiary body forming part of the organization;

"prohibited publication" means a publication prohibited under the provisions of section *sixteen;*

"published" includes —

(*a*) In relation to a prohibited publication or an extract therefrom, printed, disseminated, distributed, sold, offered for sale or reproduced;

(*b*) In relation to a subversive statement, written, printed, caused to be printed, distributed, circulated, supplied or displayed;

and any grammatical variation thereof shall be construed accordingly;

"subversive statement" has the meaning assigned to it by paragraph (*a*) of subsection (1) of section *thirty-nine*.".

UNITED STATES OF AMERICA

DEVELOPMENTS IN NON-SELF-GOVERNING TERRITORIES

See page 333 concerning American Samoa and the Virgin Islands.

PART III

INTERNATIONAL AGREEMENTS

UNITED NATIONS

CONVENTION ON CONSENT TO MARRIAGE, MINIMUM AGE FOR MARRIAGE AND REGISTRATION OF MARRIAGES

Opened for Signature and Ratification on 10 December 1962[1]

The Contracting States,

Desiring, in conformity with the Charter of the United Nations, to promote universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Recalling that article 16 of the Universal Declaration of Human Rights states that:

"(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

"(2) Marriage shall be entered into only with the free and full consent of the intending spouses",

Recalling further that the General Assembly of the United Nations declared, by resolution 843 (IX) of 17 December 1954, that certain customs, ancient laws and practices relating to marriage and the family were inconsistent with the principles set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights,

Reaffirming that all States, including those which have or assume responsibility for the administration of Non-Self-Governing and Trust Territories until their achievement of independence, should take all appropriate measures with a view to abolishing such customs, ancient laws and practices by ensuring, *inter alia,* complete freedom in the choice of a spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary and establishing a civil or other register in which all marriages will be recorded,

Hereby agree as hereinafter provided:

Article 1

1. No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.

2. Notwithstanding anything in paragraph 1 above, it shall not be necessary for one of the parties to be present when the competent authority is satisfied that the circumstances are exceptional and that the party has, before a competent authority and in such manner as may be prescribed by law, expressed and not withdrawn consent.

Article 2

States parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

Article 3

All marriages shall be registered in an appropriate official register by the competent authority.

Article 4

1. The present Convention shall, until 31 December 1963, be open for signature on behalf of all States Members of the United Nations or members of any of the specialized agencies, and of any other State invited by the General Assembly of the United Nations to become party to the Convention.

2. The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 5

1. The present Convention shall be open for accession to all States referred to in article 4, paragraph 1.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 6

1. The present Convention shall come into force on the ninetieth day following the date of deposit of the eighth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the eighth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article 7

1. Any Contracting State may denounce the present Convention by written notification to the Se-

[1] The Convention is annexed to resolution 1763 (XVII) of the General Assembly, adopted on 7 November 1962.

cretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. The present Convention shall cease to be in in force as from the date when the denunciation which reduces the number of parties to less than eight becomes effective.

Article 8

Any dispute which may arise between any two or more Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of all the parties to the dispute, be referred to the International Court of Justice for decision, unless the parties agree to another mode of settlement.

Article 9

The Secretary-General of the United Nations shall notify all States Members of the United Nations and the non-member States contemplated in article 4, paragraph 1, of the present Convention of the following:

(*a*) Signatures and instruments of ratification received in accordance with article 4;

(*b*) Instruments of accession received in accordance with article 5;

(*c*) The date upon which the Convention enters into force in accordance with article 6;

(*d*) Notifications of denunciation received in accordance with article 7, paragraph 1;

(*e*) Abrogation in accordance with article 7, paragraph 2.

Article 10

1. The present Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of the Convention to all States Members of the United Nations and to the non-member States contemplated in article 4, paragraph 1.

INTERNATIONAL LABOUR ORGANISATION

SOCIAL POLICY (BASIC AIMS AND STANDARDS) CONVENTION, 1962

Convention No. 117, adopted on 22 June 1962 by the International Labour Conference at its Forty-sixth session[1]

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-sixth Session on 6 June 1962, and

Having decided upon the adoption of certain proposals concerning the revision of the Social Policy (Non-Metropolitan Territories) Convention, 1947, which is the tenth item on the agenda of the Session, primarily with a view to making its continued application and ratification possible for independent States, and

Considering that these proposals must take the form of an international Convention, and

Considering that economic development must serve as a basis for social progress, and

Considering that every effort should be made, on an international, regional or national basis, to secure financial and technical assistance safeguarding the interests of the population, and

Considering that, in appropriate cases, international, regional or national action should be taken with a view to establishing conditions of trade which would encourage production at a high level of efficiency and make possible the maintenance of a reasonable standard of living, and

Considering that all possible steps should be taken by appropriate international, regional and national measures to promote improvement in such fields as public health, housing, nutrition, education, the welfare of children, the status of women, conditions of employment, the remuneration of wage earners and independent producers, the protection of migrant workers, social security, standards of public services and general production, and

Considering that all possible steps should be taken effectively to interest and associate the population in the framing and execution of measures of social progress,

adopts this twenty-second day of June of the year one thousand nine hundred and sixty-two the following Convention, which may be cited as the Social Policy (Basic Aims and Standards) Convention, 1962:

[1] Published in International Labour Office: *Official Bulletin*, Vol. XLV, No. 3, Supplement I, of July 1962.

Part I
General Principles

Article 1

1. All policies shall be primarily directed to the well-being and development of the population and to the promotion of its desire for social progress.

2. All policies of more general application shall be formulated with due regard to their effect upon the well-being of the population.

Part II
Improvement of Standards of Living

Article 2

The improvement of standards of living shall be regarded as the principal objective in the planning of economic development.

Article 3

1. All practicable measures shall be taken in the planning of economic development to harmonise such development with the healthy evolution of the communities concerned.

2. In particular, efforts shall be made to avoid the disruption of family life and of traditional social units, especially by —

(*a*) close study of the causes and effects of migratory movements and appropriate action where necessary;

(*b*) the promotion of town and village planning in areas where economic needs result in the concentration of population;

(*c*) the prevention and elimination of congestion in urban areas;

(*d*) the improvement of living conditions in rural areas and the establishment of suitable industries in rural areas where adequate manpower is available.

Article 4

The measures to be considered by the competent authorities for the promotion of productive capacity and the improvement of standards of living of agricultural producers shall include —

(*a*) the elimination to the fullest practicable extent of the causes of chronic indebtedness;

(*b*) the control of the alienation of agricultural land to non-agriculturalists so as to ensure that such

alienation takes place only when it is in the best interest of the country;

(*c*) the control, by the enforcement of adequate laws or regulations, of the ownership and use of land and resources to ensure that they are used, with due regard to customary rights, in the best interests of the inhabitants of the country;

(*d*) the supervision of tenancy arrangements and of working conditions with a view to securing for tenants and labourers the highest practicable standards of living and an equitable share in any advantages which may result from improvements in productivity or in price levels;

(*e*) the reduction of production and distribution costs by all practicable means and in particular by forming, encouraging and assisting producers' and consumers' co-operatives.

Article 5

1. Measures shall be taken to secure for independent producers and wage earners conditions which will give them scope to improve living standards by their own efforts and will ensure the maintenance of minimum standards of living as ascertained by means of official inquiries into living conditions, conducted after consultation with the representative organisations of employers and workers.

2. In ascertaining the minimum standards of living, account shall be taken of such essential family needs of the workers as food and its nutritive value, housing, clothing, medical care and education.

Part III

PROVISIONS CONCERNING MIGRANT WORKERS

Article 6

Where the circumstances under which workers are employed involve their living away from their homes, the terms and conditions of their employment shall take account of their normal family needs.

Article 7

Where the labour resources of one area are used on a temporary basis for the benefit of another area, measures shall be taken to encourage the transfer of part of the workers' wages and savings from the area of labour utilisation to the area of labour supply.

Article 8

1. Where the labour resources of a country are used in an area under a different administration, the competent authorities of the countries concerned shall, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Convention.

2. Such agreements shall provide that the worker shall enjoy protection and advantages not less than those enjoyed by workers resident in the area of labour utilisation.

3. Such agreements shall provide for facilities for enabling the worker to transfer part of his wages and savings to his home.

Article 9

Where workers and their families move from low-cost to higher-cost areas, account shall be taken of the increased cost of living resulting from the change.

Part IV

REMUNERATION OF WORKERS AND RELATED QUESTIONS

Article 10

1. The fixing of minimum wages by collective agreements freely negotiated between trade unions which are representative of the workers concerned and employers or employers' organisations shall be encouraged.

2. Where no adequate arrangements exist for the fixing of minimum wages by collective agreement, the necessary arrangements shall be made whereby minimum rates of wages can be fixed in consultation with representatives of the employers and workers, including representatives of their respective organisations, where such exist.

3. The necessary measures shall be taken to ensure that the employers and workers concerned are informed of the minimum wage rates in force and that wages are not paid at less than these rates in cases where they are applicable.

4. A worker to whom minimum rates are applicable and who, since they became applicable, has been paid wages at less than these rates shall be entitled to recover, by judicial or other means authorised by law, the amount by which he has been underpaid, subject to such limitation of time as may be determined by law or regulation.

Article 11

1. The necessary measures shall be taken to ensure the proper payment of all wages earned and employers shall be required to keep registers of wage payments, to issue to workers statements of wage payments and to take other appropriate steps to facilitate the necessary supervision.

2. Wages shall normally be paid in legal tender only.

3. Wages shall normally be paid direct to the individual worker.

4. The substitution of alcohol or other spirituous beverages for all or any part of wages for services performed by the worker shall be prohibited.

5. Payment of wages shall not be made in taverns or stores, except in the case of workers employed therein.

6. Unless there is an established local custom to the contrary, and the competent authority is satisfied that the continuance of this custom is desired by the workers, wages shall be paid regularly at such intervals as will lessen the likelihood of indebtedness among the wage earners.

7. Where food, housing, clothing and other essential supplies and services form part of remuneration, all practicable steps shall be taken by the competent authority to ensure that they are adequate and their cash value properly assessed.

8. All practicable measures shall be taken —

(*a*) to inform the workers of their wage rights;

(*b*) to prevent any unauthorized deductions from wages; and

(*c*) to restrict the amounts deductible from wages in respect of supplies and services forming part of remuneration to the proper cash value thereof.

Article 12

1. The maximum amounts and manner of repayment of advances on wages shall be regulated by the competent authority.

2. The competent authority shall limit the amount of advances which may be made to a worker in consideration of his taking up employment; the amount of advances permitted shall be clearly explained to the worker.

3. Any advance in excess of the amount laid down by the competent authority shall be legally irrecoverable and may not be recovered by the withholding of amounts of pay due to the worker at a later date.

Article 13

1. Voluntary forms of thrift shall be encouraged among wage earners and independent producers.

2. All practicable measures shall be taken for the protection of wage earners and independent producers against usury, in particular by action aiming at the reduction of rates of interest on loans, by the control of the operations of money lenders, and by the encouragement of facilities for borrowing money for appropriate purposes through co-operative credit organisations or through institutions which are under the control of the competent authority.

Part V

NON-DISCRIMINATION ON GROUNDS OF RACE, COLOUR, SEX, BELIEF, TRIBAL ASSOCIATION OR TRADE UNION AFFILIATION

Article 14

1. It shall be an aim of policy to abolish all discrimination among workers on grounds of race, colour, sex, belief, tribal association or trade union affiliation in respect of —

(*a*) labour legislation and agreements which shall afford equitable economic treatment to all those lawfully resident or working in the country;

(*b*) admission to public or private employment;

(*c*) conditions of engagement and promotion;

(*d*) opportunities for vocational training;

(*e*) conditions of work;

(*f*) health, safety and welfare measures;

(*g*) discipline;

(*h*) participation in the negotiation of collective agreements;

(*i*) wage rates, which shall be fixed according to the principle of equal pay for work of equal value in the same operation and undertaking.

2. All practicable measures shall be taken to lessen, by raising the rates applicable to the lower-paid workers, any existing differences in wage rates due to discrimination by reason of race, colour, sex, belief, tribal association or trade union affiliation.

3. Workers from one country engaged for employment in another country may be granted in addition to their wages benefits in cash or in kind to meet any reasonable personal or family expenses resulting from employment away from their homes.

4. The foregoing provisions of this Article shall be without prejudice to such measures as the competent authority may think it necessary or desirable to take for the safeguarding of motherhood and for ensuring the health, safety and welfare of women workers.

Part VI

EDUCATION AND TRAINING

Article 15

1. Adequate provision shall be made to the maximum extent possible under local conditions, for the progressive development of broad systems of education, vocational training and apprenticeship, with a view to the effective preparation of children and young persons of both sexes for a useful occupation.

2. National laws or regulations shall prescribe the school-leaving age and the minimum age for and conditions of employment.

3. In order that the child population may be able to profit by existing facilities for education and in order that the extension of such facilities may not be hindered by a demand for child labour, the employment of persons below the school-leaving age during the hours when the schools are in session shall be prohibited in areas where educational facilities are provided on a scale adequate for the majority of the children of school age.

Article 16

1. In order to secure high productivity through the development of skilled labour, training in new techniques of production shall be provided in suitable cases.

2. Such training shall be organised by or under the supervision of the competent authorities, in consultation with the employers' and workers' organisations of the country from which the trainees come and of the country of training.

Part VII

FINAL PROVISIONS

Article 17

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 18

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 19

The coming into force of this Convention shall not involve the *ipso jure* denunciation of the Social Policy (Non-Metropolitan Territories) Convention, 1947, by any Member for which that Convention continues to remain in force, nor shall it close that Convention to further ratification.

Article 20

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 21

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 22

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 23

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall consider the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 24

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(*a*) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 20 above, if and when the new revising Convention shall have come into force;

(*b*) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 25

The English and French versions of the text of this Convention are equally authoritative.

EQUALITY OF TREATMENT (SOCIAL SECURITY) CONVENTION, 1962

Convention No. 118, adopted on 28 June 1962 by the International Labour Conference at its Forty-sixth session[1]

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-sixth Session on 6 June 1962, and

Having decided upon the adoption of certain proposals with regard to equality of treatment of nationals and non-national in social security, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-eighth day of June of the year one thousand nine hundred and sixty-two the following Convention, which may be cited as the Equality of Treatment (Social Security) Convention, 1962:

Article 1

In this Convention —

(*a*) the term "legislation" includes any social security rules as well as laws and regulations;

(*b*) the term "benefits" refers to all benefits, grants

[1] Published in International Labour Office: *Official Bulletin*, Vol. XLV, No. 3, Supplement I, of July 1962.

and pensions, including and supplements or increments;

(*c*) the term "benefits granted under transitional schemes" means either benefits granted to persons who have exceeded a prescribed age at the date when the legislation applicable came into force, or benefits granted as a transitional measure in consideration of events occurring or periods completed outside the present boundaries of the territory of a Member;

(*d*) the term "death grant" means any lump sum payable in the event of death;

(*e*) the term "residence" means ordinary residence;

(*f*) the term "prescribed" means determined by or in virtue of national legislation as defined in subparagraph (*a*) above;

(*g*) the term "refugee" has the meaning assigned to it in Article 1 of the Convention relating to the Status of Refugees of 28 July 1951;

(*h*) the term "stateless person" has the meaning assigned to it in Article 1 of the Convention relating to the Status of Stateless Persons of 28 September 1954.

Article 2

1. Each Member may accept the obligations of this Convention in respect of any one or more of the following branches of social security for which it has in effective operation legislation covering its own nationals within its own territory:

(*a*) medical care;

(*b*) sickness benefit;

(*c*) maternity benefit;

(*d*) invalidity benefit;

(*e*) old-age benefit;

(*f*) survivors' benefit;

(*g*) employment injury benefit;

(*h*) unemployment benefit; and

(*i*) family benefit.

2. Each Member for which this Convention is in force shall comply with its provisions in respect of the branch or branches of social security for which it has accepted the obligations of the Convention.

3. Each Member shall specify in its ratification in respect of which branch or branches of social security it accepts the obligations of this Convention.

4. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office that it accepts the obligations of the Convention in respect of one or more branches of social security not already specified in its ratification.

5. The undertakings referred to in paragraph 4 of this Article shall be deemed to be an integral part of the ratification and to have the force of ratification as from the date of notification.

6. For the purpose of the application of this Convention, each Member accepting the obligations thereof in respect of any branch of social security which has legislation providing for benefits of the type indicated in clause (*a*) or (*b*) below shall communicate to the Director-General of the International Labour Office a statement indicating the benefits provided for by its legislation which it considers to be —

(*a*) benefits other than those the grant of which depends either on direct financial participation by the persons protected or their employer, or on a qualifying period of occupational activity; or

(*b*) benefits granted under transitional schemes.

7. The communication referred to in paragraph 6 of this Article shall be made at the time of ratification or at the time of notification in accordance with paragraph 4 of this Article; as regards any legislation adopted subsequently, the communication shall be made within three months of the date of the adoption of such legislation.

Article 3

1. Each Member for which this Convention is in force shall grant within its territory to the nationals of any other Member for which the Convention is in force equality of treatment under its legislation with its own nationals, both as regards coverage and as regards the right to benefits, in respect of every branch of social security for which it has accepted the obligations of the Convention.

2. In the case of survivors' benefits, such equality of treatment shall also be granted to the survivors of the nationals of a Member for which the Convention is in force, irrespective of the nationality of such survivors.

3. Nothing in the preceding paragraphs of this Article shall require a Member to apply the provisions of these paragraphs, in respect of the benefits of a specified branch of social security, to the nationals of another Member which has legislation relating to that branch but does not grant equality of treatment in respect thereof to the nationals of the first Member.

Article 4

1. Equality of treatment as regards the grant of benefits shall be accorded without any condition of residence: Provided that equality of treatment in respect of the benefits of a specified branch of social security may be made conditional on residence in the case of nationals of any Member the legislation of which makes the grant of benefits under that branch conditional on residence on its territory.

2. Notwithstanding the provisions of paragraph 1 of this Article, the grant of the benefits referred to in paragraph 6 (*a*) of Article 2 — other than medical care, sickness benefit, employment injury benefit and family benefit — may be made subject to the condition that the beneficiary has resided on the territory of the Member in virtue of the legislation of which the benefit is due, or, in the case of a survivor, that the deceased had resided there, for a period which shall not exceed —

(*a*) six months immediately preceding the filing of claim, for grant of maternity benefit and unemployment benefit;

(*b*) five consecutive years immediately preceding the

filing of claim, for grant of invalidity benefit, or immediately preceding death, for grant of survivors' benefit;

(*c*) ten years after the age of 18, which may include five consecutive years immediately preceding the filing of claim, for grant of old-age benefit.

3. Special provisions may be prescribed in respect of benefits granted under transitional schemes.

4. The measures necessary to prevent the cumulation of benefits shall be determined, as necessary, by special arrangements between the Members concerned.

Article 5

1. In addition to the provisions of Article 4, each Member which has accepted the obligations of this Convention in respect of the branch or branches of social security concerned shall guarantee both to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention in respect of the branch or branches in question, when they are resident abroad, provision of invalidity benefits, old-age benefits, survivors' benefits and death grants, and employment injury pensions, subject to measures for this purpose being taken, where necessary, in accordance with Article 8.

2. In case of residence abroad, the provision of invalidity, old-age and survivors' benefits of the type referred to in paragraph 6 (*a*) of Article 2 may be made subject to the participation of the Members concerned in schemes for the maintenance of rights as provided for in Article 7.

3. The provisions of this Article do not apply to benefits granted under transitional schemes.

Article 6

In addition to the provisions of Article 4, each Member which has accepted the obligations of this Convention in respect of family benefit shall guarantee the grant of family allowances both to its own nationals and to the nationals of any other Member which has accepted the obligations of this Convention for that branch, in respect of children who reside on the territory of any such Member, under conditions and within limits to be agreed upon by the Members concerned.

Article 7

1. Members for which this Convention is in force shall, upon terms being agreed between the Members concerned in accordance with Article 8, endeavour to participate in schemes for the maintenance of the acquired rights and rights in course of acquisition under their legislation of the nationals of Members for which the Convention is in force, for all branches of social security in respect of which the Members concerned have accepted the obligations of the Convention.

2. Such schemes shall provide, in particular, for the totalisation of periods of insurance, employment or residence and of assimilated periods for the purpose of the acquisition, maintenance or recovery of rights and for the calculation of benefits.

3. The cost of invalidity, old-age and survivors' benefits as so determined shall either be shared among the Members concerned, or be borne by the Member on whose territory the beneficiaries reside, as may be agreed upon by the Members concerned.

Article 8

The Members for which this Convention is in force may give effect to their obligations under the provisions of Articles 5 and 7 by ratification of the Maintenance of Migrants' Pension Rights Convention, 1935, by the application of the provisions of that Convention as between particular Members by mutual agreement, or by any multilateral or bilateral agreement giving effect to these obligations.

Article 9

The provisions of this Convention may be derogated from by agreements between Members which do not affect the rights and duties of other Members and which make provision for the maintenance of rights in course of acquisition and of acquired rights under conditions at least as favourable on the whole as those provided for in this Convention.

Article 10

1. The provisions of this Convention apply to refugees and stateless persons without any condition of reciprocity.

2. This Convention does not apply to special schemes for civil servants, special schemes for war victims, or public assistance.

3. This Convention does not require any Member to apply the provisions thereof to persons who, in accordance with the provisions of international instruments, are exempted from its national social security legislation.

Article 11

The Members for which this Convention is in force shall afford each other administrative assistance free of charge with a view to facilitating the application of the Convention and the execution of their respective social security legislation.

Article 12

1. This Convention does not apply to benefits payable prior to the coming into force of the Convention for the Member concerned in respect of the branch of social security under which the benefit is payable.

2. The extent to which the Convention applies to benefits attributable to contingencies occurring before its coming into force for the Member concerned in respect of the branch of social security under which the benefit is payable thereafter shall be determined by multilateral or bilateral agreement or in default thereof by the legislation of the Member concerned.

Article 13

This Convention shall not be regarded as revising any existing Convention.

Article 14

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 15

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 16

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 17

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 18

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 19

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 20

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(*a*) The ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force;

(*b*) As from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 21

The English and French versions of the text of this Convention are equally authoritative.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

PROTOCOL INSTITUTING A CONCILIATION AND GOOD OFFICES COMMISSION TO BE RESPONSIBLE FOR SEEKING THE SETTLEMENT OF ANY DISPUTES WHICH MAY ARISE BETWEEN STATES PARTIES TO THE CONVENTION AGAINST DISCRIMINATION IN EDUCATION

Adopted by the General Conference at its twelfth session, Paris, 10 December 1962[1]

The General Conference of the United Nations Educational Scientific and Cultural Organization, meeting in Paris from 9 November to 12 December 1962, at its twelfth session,

Having adopted, at its eleventh session, the Convention against Discrimination in Education,

Desirous of facilitating the implementation of that Convention, and

Considering that it is important, for this purpose, to institute a Conciliation and Good Offices Commission to be responsible for seeking the amicable settlement of any disputes which may arise between States Parties to the Convention, concerning its application or interpretation,

Adopts this Protocol on the tenth day of December 1962.

Article 1

There shall be established under the auspices of the United Nations Educational, Scientific and Cultural Organization a Conciliation and Good Offices Commission, hereinafter referred to as the Commission, to be responsible for seeking the amicable settlement of disputes between States Parties to the Convention against Discrimination in Education, hereinafter referred to as the Convention, concerning the application or interpretation of the Convention.

Article 2

1. The Commission shall consist of eleven members who shall be persons of high moral standing and acknowledged impartiality and shall be elected by the General Conference of the United Nations Educational, Scientific and Cultural Organization, hereinafter referred to as the General Conference.

2. The members of the Commission shall serve in their personal capacity.

Article 3

1. The members of the Commission shall be elected from a list of persons nominated for the purpose by the States Parties to this Protocol. Each State shall, after consulting its National Commission for UNESCO, nominate not more than four persons. These persons must be nationals of States Parties to this Protocol.

2. At least four months before the date of each election to the Commission, the Director-General of the United Nations Educational, Scientific and Cultural Organization, hereinafter referred to as the Director-General, shall invite the States Parties to the present Protocol to send within two months, their nominations of the persons referred to in paragraph 1 of this Article. He shall prepare a list in alphabetical order of the persons thus nominated and shall submit it, at least one month before the election, to the Executive Board of the United Nations Educational Scientific and Cultural Organization, hereinafter referred to as the Executive Board, and to the States Parties to the Convention. The Executive Board shall transmit the aforementioned list, with such suggestions as it may consider useful, to the General Conference, which shall carry out the election of members of the Commission in conformity with the procedure it normally follows in elections of two or more persons.

Article 4

1. The Commission may not include more than one national of the same State.

2. In the election of members of the Commission, the General Conference shall endeavour to include persons of recognized competence in the field of education and persons having judicial experience, or legal experience particularly of an international character. It shall also give consideration to equitable geographical distribution of membership and to the representation of the different forms of civilization as well as of the principal legal systems.

Article 5

The members of the Commission shall be elected for a term of six years. They shall be eligible for re-election if re-nominated. The terms of four of the members elected at the first election shall, however, expire at the end of two years, and the terms of three other members at the end of four years. Immediately

[1] Text, printed separately, furnished by the secretariat of UNESCO.

after the first election, the names of these members shall be chosen by lot by the President of the General Conference.

Article 6

1. In the event of the death or resignation of a member of the Commission, the Chairman shall immediately notify the Director-General, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

2. If, in the unanimous opinion of the other members, a member of the Commission has ceased to carry out his functions for any cause other than absence of a temporary character or is unable to continue the discharge of his duties, the Chairman of the Commission shall notify the Director-General and shall thereupon declare the seat of such member to be vacant.

3. The Director-General shall inform the Member States of the United Nations Educational, Scientific and Cultural Organization, and any States not members of the Organization which have become Parties to this Protocol under the provisions of Article 23, of any vacancies which have occurred in accordance with paragraphs 1 and 2 of this Article.

4. In each of the cases provided for by paragraphs 1 and 2 of this Article, the General Conference shall arrange for the replacement of the member whose seat has fallen vacant, for the unexpired portion of his term of office.

Article 7

Subject to the provisions of Article 6, a member of the Commission shall remain in office until his successor takes up his duties.

Article 8

1. If the Commission does not include a member of the nationality of a State which is party to a dispute referred to it under the provisions of Article 12 or Article 13, that State, or if there is more than one, each of those States, may choose a person to sit on the Commission as a member *ad hoc*.

2. The State thus choosing a member *ad hoc* shall have regard to the qualities required of members of the Commission by virtue of Article 2, paragraph 1, and Article 4, paragraphs 1 and 2. Any member *ad hoc* thus chosen shall be of the nationality of the State which chooses him or of a State Party to the Protocol, and shall serve in a personal capacity.

3. Should there be several States Parties to the dispute having the same interest they shall, for the purpose of choosing members *ad hoc*, be reckoned as one party only. The manner in which this provision shall be applied shall be determined by the Rules of Procedure of the Commission referred to in Article 11.

Article 9

Members of the Commission and members *ad hoc* chosen under the provisions of Article 8 shall receive travel and *per diem* allowances in respect of the periods during which they are engaged on the work of the Commission from the resources of the United Nations Educational, Scientific and Cultural Organization on terms laid down by the Executive Board.

Article 10

The Secretariat if the Commission shall be provided by the Director-General.

Article 11

1. The Commission shall elect its Chairman and Vice-Chairman for a period of two years. They may be re-elected.

2. The Commission shall establish its own Rules of Procedure, but these rules shall provide, *inter alia*, that:

(*a*) Two-thirds of the members, including the members *ad hoc*, if any, shall constitute a quorum.

(*b*) Decisions of the Commission shall be made by a majority vote of the members and members *ad hoc* present; if the votes are equally divided, the Chairman shall have a casting vote.

(*c*) If a State refers a matter to the Commission under Article 12 or Article 13:

(i) such State, the State complained against, and any State Party to this Protocol whose national is concerned in such matter may make submissions in writing to the Commission;

(ii) such State and the State complained against shall have the right to be represented at the hearings of the matter and to make submissions orally.

3. The Commission, on the occasion when it first proposes to establish its Rules of Procedure, shall send them in draft form to the States then Parties to the Protocol who may communicate any observation and suggestion they may wish to make within three months. The Commission shall re-examine its Rules of Procedure if at any time so requested by any State Party to the Protocol.

Article 12

1. If a State Party to this Protocol considers that another State Party is not giving effect to a provision of the Convention, it may, by written communication, bring the matter to the attention of that State. Within three months after the receipt of the communication, the receiving State shall afford the complaining State an explanation or statement in writing concerning the matter, which should include, to the extent possible and pertinent, references to procedures and remedies taken, or pending, or available in the matter.

2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Commission, by notice given to the Director-General and to the other State.

3. The provisions of the preceding paragraphs shall not affect the rights of States Parties to have recourse, in accordance with general or special international agreements in force between them, to other

procedures for settling disputes including that of referring disputes by mutual consent to the Permanent Court of Arbitration at The Hague.

Article 13

From the beginning of the sixth year after the entry into force of this Protocol, the Commission may also be made responsible for seeking the settlement of any dispute concerning the application or interpretation of the Convention arising between States which are Parties to the Convention but are not, or are not all, Parties to this Protocol, if the said States agree to submit such dispute to the Commission. The conditions to be fulfilled by the said States in reaching agreement shall be laid down by the Commission's Rules of Procedure.

Article 14

The Commission shall deal with a matter referred to it under Article 12 or Article 13 of this Protocol only after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law.

Article 15

Except in cases where new elements have been submitted to it, the Commission shall not consider matters it has already dealt with.

Article 16

In any matter referred to it, the Commission may call upon the States concerned to supply any relevant information.

Article 17

1. Subject to the provisions of Article 14, the Commission, after obtaining all the information it thinks necessary, shall ascertain the facts, and make available its good offices to the States concerned with a view to an amicable solution of the matter on the basis of respect for the Convention.

2. The Commission shall in every case, and in no event later than eighteen months after the date of receipt by the Director-General of the notice under Article 12, paragraph 2, draw up a report in accordance with the provisions of paragraph 3 below which will be sent to the States concerned and then communicated to the Director-General for publication. When an advisory opinion is requested of the International Court of Justice, in accordance with Article 18, the time-limit shall be extended appropriately.

3. If a solution within the terms of paragraph 1 of this Article is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached. If such a solution is not reached, the Commission shall draw up a report on the facts and indicate the recommendations which it made with a view to conciliation. If the report does not represent in whole or in part the unanimous opinion of the members of the Commission, any member of the Commission shall be entitled to attach to it a separate opinion. The written and oral submissions made by the parties to the case in accordance with Article 11, paragraph 2 (*c*), shall be attached to the report.

Article 18

The Commission may recommend to the Executive Board, or to the General Conference if the recommendation is made within two months before the opening of one of its sessions, that the International Court of Justice be requested to give an advisory opinion on any legal question connected with a matter laid before the Commission.

Article 19

The Commission shall submit to the General Conference at each of its regular sessions a report on its activities, which shall be transmitted to the General Conference by the Executive Board.

Article 20

1. The Director-General shall convene the first meeting of the Commission at the Headquarters of the United Nations Educational, Scientific and Cultural Organization within three months after its nomination by the General Conference.

2. Subsequent meetings of the Commission shall be convened when necessary by the Chairman of the Commission to whom, as well as to all other members of the Commission, the Director-General shall transmit all matters referred to the Commission in accordance with the provisions of this Protocol.

3. Notwithstanding paragraph 2 of this Article, when at least one-third of the members of the Commission consider that the Commission should examine a matter in accordance with the provisions of this Protocol, the Chairman shall on their so requiring convene a meeting of the Commission for that purpose.

Article 21

The present Protocol is drawn up in English, French, Russian and Spanish, all four texts being equally authentic.

Article 22

1. This Protocol shall be subject to ratification or acceptance by States Members of the United Nations Educational, Scientific and Cultural Organization which are Parties to the Convention.

2. The instruments of ratification or acceptance shall be deposited with the Director-General.

Article 23

1. This Protocol shall be open to accession by all States not Members of the United Nations Educational, Scientific and Cultural Organization which are Parties to the Convention.

2. Accession shall be effected by the deposit of an instrument of accession with the Director-General.

Article 24

This Protocol shall enter into force three months after the date of the deposit of the fifteenth instrument of ratification, acceptance or accession, but only with respect to those States which have depo-

sited 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 25

Any State may, at the time of ratification, acceptance or accession or at any subsequent date, declare, by notification to the Director-General, that it agrees, with respect to any other State assuming the same obligation, to refer to the International Court of Justice, after the drafting of the report provided for in Article 17, paragraph 3, any dispute covered by this Protocol on which no amicable solution has been reached in accordance with Article 17, paragraph 1.

Article 26

1. Each State Party to this Protocol may denounce it.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General.

3. Denunciation of the Convention shall automatically entail denunciation of this Protocol.

4. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation. The State denouncing the Protocol shall, however, remain bound by its provisions in respect of any cases concerning it which have been referred to the Commission before the end of the time-limit stipulated in this paragraph.

Article 27

The Director-General shall inform the States Members of the United Nations Educational, Scientific and Cultural Organization, the States not Members of the Organization which are referred to in Article 23, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in Articles 22 and 23, and of the notifications and denunciations provided for in Articles 25 and 26 respectively.

Article 28

In conformity with Article 102 of the Charter of the United Nations, this Protocol shall be registered with the Secretariat of the United Nations at the request of the Director-General.

RECOMMENDATION CONCERNING TECHNICAL AND VOCATIONAL EDUCATION

Adopted by the General Conference at its twelfth session, Paris, 11 December 1962[1]

I. Scope and Definitions

3. Technical and vocational education, being part of the total educative process, is included in the term "education" as defined in the Convention and Recommendation against Discrimination in Education adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its eleventh session and the provisions of that Convention and Recommendation are therefore applicable to it.

. . .

[1] Text furnished by the secretariat of UNESCO.

OTHER INTERNATIONAL AGREEMENTS

GENERAL CONVENTION ON CO-OPERATION IN MATTERS OF JUSTICE

Signed at Tananarive on 12 September 1961[1]

The Government of the Republic of Cameroon,
The Government of the Central African Republic,
The Government of the Republic of Chad,
The Government of the Republic of the Congo,
The Government of the Republic of Dahomey,
The Government of the Gabon Republic,
The Government of the Republic of the Ivory Coast,
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, and
The Government of the Republic of the Upper Volta,

Considering the similarity of the general principles on which the High Contracting Parties, faithful to the same ideal of justice and freedom, have based their legislation and judicial systems,

Considering their common desire to maintain and strengthen the ties between them, particularly in legal and judicial matters,

Have agreed as follows:

GENERAL PROVISIONS

Art. 1. — The High Contracting Parties shall arrange for a regular exchange of information concerning judicial systems, legislation and jurisprudence.

. . .

TITLE I

ACCESS TO THE COURTS

Art. 4. — Nationals of each High Contracting Party shall enjoy, in the territory of the other Parties, free and easy access to both the administrative and the judicial courts for the purpose of enforcing or defending their rights. In particular, they shall not be required to deposit security, in any form, on the ground that they are aliens or have no domicile or residence in the country.

The foregoing paragraph shall apply, subject to the public policy (*dispositions d'ordre public*) of the country in which the proceedings are instituted, to bodies corporate constituted or authorized in accordance with the laws of one the signatory countries.

Art. 5. — Lawyers who have been called to the Bar of one of the States signatory to this Convention may plead before the courts of the other States in a given case, provided that they act in conformity with the laws of the State in which the court involved exists.

Art. 6. — Nationals of each High Contracting Party shall enjoy, in the territory of the other Parties, the benefit of the same legal assistance as that enjoyed by the nationals of those other Parties, provided that they observe the laws of the country in which such assistance is requested.

Art. 7. — The certificate of indigence shall be issued to the applicant by the authorities of the place in which he usually resides, if he is a resident of one of the countries parties to this Convention.

If the applicant resides in a third country, the certificate shall be issued by the consular authorities of his district in his country of residence.

If the applicant resides in the country in which the application is made, information may be obtained from the authorities of the country of which he is a national.

. . .

TITLE III

TRANSMISSION AND EXECUTION OF COMMISSIONS ROGATORY

. . .

Art. 16. — Persons whose evidence is requested shall be invited to appear by administrative notification; if they refuse to comply, the authority applied to shall bring to bear the means of enforcement provided by the law of its own country.

. . .

TITLE IV

APPEARANCE OF WITNESSES IN CRIMINAL PROCEEDINGS

Art. 19. — If a witness is required to appear in criminal proceedings, the Government of the State in which he resides shall urge him to comply with the invitation to do so. In that event, the travel and subsistence allowances, computed as from the residence of the witness, shall be not less than those granted under the scales and regulations of the State in which the witness is to be heard; all or part of the travel costs shall be paid to the witness in advance, at his request, through the consular authorities of the State of the requiring authority.

A witness summoned in one of the States and appearing voluntarily before the judges of another

[1] Text published in the *Journal officiel* of the Republic of the Ivory Coast on 8 November 1962 and transmitted by the Government of the Ivory Coast.

State may not be prosecuted or held in custody in that State because of acts committed or of sentences passed prior to his departure from the territory of the State of the authority applied to. This immunity shall cease thirty days after the date on which testimony shall have been completed and the return of the witness shall have become possible.

. . .

TITLE VIII
SIMPLIFIED EXTRADITION

Art. 41. — The High Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons in the territory of any signatory State who shall be prosecuted or convicted by the judicial authorities of another State.

Art. 42. — The High Contracting Parties shall not extradite their own nationals; nationality shall be determined at the time of the offence for which extradition is requested.

Nevertheless, the Party applied to undertakes, to the extent that it is competent to try them, to prosecute those of its own nationals who have committed acts punishable as serious or correctional offences under its own laws in the territory of another State when the latter shall transmit a request for it to do so, accompanied by files, documents, exhibits and information in its possession. The applicant State shall be kept informed of the result of its request.

Art. 43. — Extradition shall be granted in respect of:

1. Persons prosecuted for serious or correctional offences punishable, under the laws of the State applied to, by a sentence of at least two year's imprisonment;

2. Persons who are sentenced by the courts of the applicant State, after full argument on both sides or by default, to a term of at least two months' imprisonment for serious or correctional offences punishable under the laws of the State applied to.

Art. 44. — Extradition may be refused if the offence in respect of which it is requested is regarded by the State applied to as a political offence or as an offence connected with a political offence.

Art. 45. — Subject to the provisions of defence agreements, extradition may not be granted if the offence for which it is requested consists solely in the violation of military obligations.

Art. 46. — Wilful homicide and poisoning shall not be regarded as political offences.

Art. 47. — Extradition shall be granted, in accordance with the provisions of this Convention, for offences in connexion with taxes, duties, customs and exchange to the extent that it has been so decided, by an exchange of letters, in respect of any such offence or category of offences specifically designated.

Art. 48. — Extradition shall not be granted:

1. If the offences in respect of which it is requested have been committed in the State applied to;

2. If final judgement has been passed in the State applied to in respect of the offences;

3. If the person claimed has, according to the law of the applicant State or of the State applied to, acquired exemption from prosecution or punishment by reason of lapse of time when the request is received by the State applied to;

4. If the offences have been committed outside the territory of the applicant State by a person alien to that State and the law of the State applied to does not authorize prosecution for the same offences when committed outside its own territory by an alien;

5. If an amnesty has been granted in the applicant State or if an amnesty has been granted in the State applied to, provided that, in the latter case, the offence comes within the category of offences which may be the subject of prosecution in that State when they have been committed outside its territory by an alien.

Extradition may be refused if the offences are currently the subject of prosecution proceedings in the State applied to or sentence has been passed in respect of them in a third State.

. . .

TITLE X
FINAL PROVISIONS

. . .

Art. 68. — This Convention shall remain in force for a period of five years beginning on 30 January 1962, irrespective of the date of deposit of the instruments of ratification.

The Convention shall be renewed automatically for successive periods of five years, provided that it has not been denounced.

Any High Contracting Party may denounce this Convention by giving notice, at least six months before expiry of the period specified in the first paragraph of this article, to the Government of the Republic of Dahomey, which shall notify the other Parties. Denunciation shall have effect only in respect of the State which has given such notice.

The Convention shall remain in force for the other High Contracting Parties.

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)

This Convention entered into force on 12 January 1951.

No States became parties to the Convention during 1962.

2. *Convention relating to the Status of Refugees (Geneva, 1951)* (see *Yearbook on Human Rights for 1951*, pp. 581–8)

This Convention entered into force on 22 April 1954.

During 1962, the following became parties to the Convention, by instruments of ratification or accession deposited on the dates indicated: Central African Republic (4 September),[2] Congo (Brazzaville) (15 October),[2] Dahomey (4 April),[2] Togo (27 February)[2] and Turkey (30 March).

The Government of Denmark, on 23 August 1962, informed the Secretary-General of its decision to withdraw as from 1 October 1961 its reservation to article 14 of the Convention.

3. *Convention on the Political Rights of Women (New York, 1952)* (see *Yearbook on Human Rights for 1952*, pp. 375–6)

This Convention entered into force on 7 July 1954.

During 1962, Central African Republic,[2] Congo (Brazzaville)[2] and Sierra Leone[2] became parties to the Convention, by instruments of ratification or accession deposited on 4 September, 15 October and 25 July respectively.

4. *Convention on the International Right of Correction (New York, 1952)* (see *Yearbook on Human Rights for 1952*, pp. 373–5)

This Convention entered into force on 24 August 1962.

During 1962, France and Sierra Leone became parties to the Convention, by instruments of ratification or accession deposited on 16 November and 25 July respectively.

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)

This Convention, as amended, entered into force on 7 July 1955.

During 1962, the following became parties to the Convention, by instruments of ratification or accession deposited on the dates indicated: Belgium (13 December), Guinea (12 July), Sierra Leone (13 March)[2] and Tanganyika (28 November).

6. *Convention on the Status of Stateless Persons (New York. 1954)* (see *Yearbook on Human Rights for 1954*, pp. 369–375)

This Convention entered into force on 6 June 1960.

During 1962, the following became parties to the Convention, by instruments of ratification or accession deposited on the dates indicated: Guinea (21 March), Ireland (17 December), Italy (3 December), Madagascar (20 February), Netherlands (12 April) and Republic of Korea (22 August).

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)

This Convention entered into force on 30 April 1957.

During 1962, the following became parties to the Convention, by instruments of ratification or accession deposited on the dates indicated: Belgium (13 December), Cyprus (11 May),[2] Dominican Republic (31 October), New Zealand (26 April), Sierra Leone (13 March)[2] and Tanganyika (28 November).

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[1] Concerning the status of these agreements at the end of 1961, see *Yearbook on Human Rights for 1961*, pp. 455–7. 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 1962*, of the International Committee of the Red Cross. With the exception of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character and the Agreement on the Importation of Educational, Scientific and Cultural Materials and Protocol thereto (for which the Secretary-General of the United Nations acts as depository), the information concerning agreements under the auspices of UNESCO was furnished by the secretariat of UNESCO.

[2] This State recognized itself as being bound 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.

8. *Convention on the Nationality of Married Women (New York, 1957)* (see *Yearbook on Human Rights for 1957*, pp. 301–2)

This Convention entered into force on 11 August 1958

During 1962, Czechoslovakia, Sierra Leone[1] and Tanganyika became parties to the Convention, by instruments of ratification or accession deposited on 5 April, 13 March and 28 November respectively.

9. *Convention on the Reduction of Statelessness (New York, 1961)* (see *Yearbook on Human Rights for 1961*, pp. 427–430)

This Convention had not entered into force by the end of 1962.

No States ratified or acceded to the Convention during 1962.

10. *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (New York, 1962)* (see above, pp. 389–90)

This Convention had not entered into force by the end of 1962.

No States ratified or acceded to the Convention during 1962.

II. International Labour Organisation

1. *Social Policy (Non-Metropolitan Territories) Convention, 1947* (see *Yearbook on Human Rights for 1948*, pp. 420–5)

This Convention entered into force on 19 June 1955.

No States became parties to the Convention during 1962.

2. *Right of Association (Non-Metropolitan Territories) Convention, 1947* (see *Yearbook on Human Rights for 1948*, pp. 420–5)

This Convention entered into force on 1 July 1953.

No States became parties to the Convention during 1962.

3. *Freedom of Association and Protection of the Right to Organize Convention, 1948* (see *Yearbook on Human Rights for 1948*, pp. 427–430)

This Convention entered into force an 4 July 1950.

During 1962, the ratifications of Cameroon,[2] Liberia and Paraguay were registered on 3 September, 24 May and 28 June respectively.

4. *Right to Organize and Collective Bargaining Convention, 1949* (see *Yearbook on Human Rights for 1949*, pp. 291–2)

This Convention entered into force on 18 July 1951.

During 1962, the ratifications of the following were registered on the dates indicated: Algeria (19 October),[2] Cameroon (3 May),[2] China (11 October), Upper Volta (16 April), Iraq (27 November), Jamaica (26 December),[2] Liberia (25 May), and Libya (20 June).

5. *Equal Remuneration Convention. 1951* (see *Yearbook on Human Rights for 1951*, pp. 469–470)

This Convention entered into force on 23 May 1953.

During 1962, the ratifications of the following were registered on the dates indicated: Algeria (19 October),[2] Libya (20 June), Madagascar (10 August), Senegal (22 October) and Sweden (20 June).

6. *Social Security (Minimum Standards) Convention, 1952* (see *Yearbook on Human Rights for 1952*, pp. 377–389)

This Convention entered into force on 27 April 1955.

The ratification of the Netherlands as regards parts II, VII and X and that of Senegal as regards parts VI, VII and VIII of the Convention were registered on 22 October and 12 October 1962 respectively.

In addition to its previous ratification, Sweden also ratified part VIII of the Convention on 12 October 1962.

7. *Maternity Protection (Revised) Convention, 1952* (see *Yearbook on Human Rights for 1952*, pp. 389–392)

This Convention entered into force on 2 September 1955.

The ratification of Ecuador was registered on 5 February 1962.

8. *Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955* (see *Yearbook on Human Rights for 1955*, pp. 435–7)

This Convention entered into force on 7 June 1958.

During 1962, the ratifications of the following were registered on the dates indicated: Liberia (25 May), Libya (20 June), Nigeria (25 October) and Tunisia (18 December).

9. *Abolition of Forced Labour Convention, 1957* (se) *Yearbook on Human Rights for 1957*, pp. 303–4e

This Convention entered into force on 17 January 1959.

The ratifications of Cameroon,[2] Liberia, Mali and Rwanda were registered on 3 September, 25 May, 28 May and 18 September 1962 respectively.

10. *Discrimination (Employment and Occupation) Convention, 1958* (see *Yearbook on Human Rights for 1958*, pp. 307–8)

This Convention entered into force on 15 June 1960.

[1] This State recognized itself as being bound 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.

[2] Confirming the obligations under the Convention which had been accepted on its behalf by the State previously responsible for the conduct of its foreign relations.

During 1962, the ratifications of Ecuador, Upper Volta and Sweden were registered on 10 July, 16 April and 20 June respectively.

11. *Social Policy (Basic Aims and Standards) Convention, 1962* (see above, pp. 391–4)

No States ratified to the Convention during 1962. The Convention had therefore not entered into force by the end of 1962.

12. *Equality of Treatment (Social Security) Convention, 1962* (see above, pp. 394–7)

No States ratified to the Convention during 1962. The Convention had therefore not entered into force by the end of 1962.

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)

This Convention entered into force on 12 August 1954.

During 1962, Brazil and Madagascar became parties to the Convention, by instruments of acceptance or accession deposited on 15 August and 23 May respectively.

2. *Agreement on the Importation of Educational, Scientific and Cultural Materials (Lake Success, 1950)* (see *Yearbook on Human Rights for 1950*, pp. 411–415)

This Convention entered into force on 21 May 1952.

During 1962, the following became parties to the Convention, by instruments of ratification or acceptance deposited on the dates indicated: Congo (Leopoldville) (3 May), Gabon (4 September), Italy (26 November), Madagascar (23 May), New Zealand (29 June) and Sierra Leone (13 March).

3. *Universal Copyright Convention and Protocols thereto (Geneva, 1952)* (see *Yearbook on Human Rights for 1952*, pp. 398–403)

This Convention entered into force on 16 September 1955.

During 1962, Canada became a party to the Convention and Protocol 3 by instrument of ratification deposited on 10 May and the following parties to the Convention and Protocols 1–3 by instruments of ratification or accession deposited on the dates indicated: Ghana (22 May), Panama (17 July) and Norway (22 October).

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)

The Convention and protocol entered into force on 7 August 1956.

Cambodia and Switzerland became parties to the Convention and Protocol, by instruments of ratification or accession deposited on 4 April and 15 May 1962 respectively; Panama became a party to the Convention, by instrument of accession deposited on 17 July 1962.

5. *Convention concerning the International Exchange of Publications (Paris, 1958)* (see *Yearbook on Human Rights for 1960*, p. 434)

This Convention entered into force on 23 November 1961.

During 1962, the following became parties to the Convention, by instruments of ratification or acceptance deposited on the dates indicated: Panama (17 July), U.S.S.R. (8 October), United Arab Republic (22 October), Byelorussian S.S.R. (10 December), Hungary (10 December) and Ukrainian S.S.R. (19 December).

6. *Convention concerning the Exchange of Official Publications and Government Documents between States (Paris, 1958)* (see *Yearbook on Human Rights for 1960*, p. 434)

This Convention entered into force on 30 May 1961.

During 1962, the following became parties to the Convention, by instruments of ratification or acceptance deposited on the dates indicated: Panama (17 July), U.S.S.R. (8 October), United Arab Republic (22 October), Byelorussian S.S.R. (10 December), Hungary (10 December) and Ukrainian S.S.R. (19 December).

7. *Convention against Discrimination in Education (Paris, 1960)* (see *Yearbook on Human Rights for 1961*, pp. 437–9.)

This Convention entered into force on 22 May 1962.

During 1962, the following became parties to the Convention, by instruments of ratification or acceptance deposited on the dates indicated: Central African Republic (22 February), United Kingdom (14 March), United Arab Republic (28 March), Liberia (17 May), U.S.S.R. (1 August), Cuba (2 November), Bulgaria (4 December), Byelorussian S.S.R. (12 December) and Ukrainian S.S.R. (19 December).

8. *Protocol Instituting a Conciliation and Good Offices Commission to be Responsible for Seeking the Settlement of Any Disputes which May Arise between States Parties to the Convention Against Discrimination in Education (Paris, 1962)* (see above, pp. 398–401)

No States ratified or acceded to the Protocol during 1962. The Protocol had not therefore entered into force by the end of 1962.

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*)

This Convention entered into force on 14 April 1947.

No States became parties to the Convention during 1962.

2. *Inter-American Convention on the Granting of Political Rights to Women (Bogotá, 1948)* (see *Yearbook on Human Rights for 1948*, pp. 438–9)

This Convention entered into force on 22 April 1949.

No States became parties to the Convention during 1962.

3. *Inter-American Convention on the Granting of Civil Rights to Women (Bogotá, 1948)* (see *Yearbook on Human Rights for 1948*, pp. 439–440)

This Convention entered into force on 22 April 1949.

No States became parties to the Convention during 1962.

4. *Convention on Diplomatic Asylum (Caracas, 1954)* (see *Yearbook on Human Rights for 1955*, pp. 330–2)

This Convention entered into force on 29 December 1954.

Peru became a party to the Convention, by instrument of ratification deposited on 2 July 1962.

5. *Convention on Territorial Asylum (Caracas, 1954)* (see *Yearbook on Human Rights for 1955*, pp. 329–330).

This Convention entered into force on 29 December 1954.

No States became parties to the Convention during 1962.

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. 418–426)

This Convention entered into force on 3 September 1953.

Cyprus became a party to the Convention, by instrument of ratification deposited on 6 October 1962.

2. *Protocol (Paris, 1952) to the Convention for the Protection of Human Rights and Fundamental Freedoms* (see *Yearbook on Human Rights for 1952*, pp. 411–412)

This Protocol entered into force on 18 May 1954.

Cyprus became a party to the Protocol, by instrument of ratification deposited on 6 October 1962.

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. 355–357)

The Agreement entered into force on 1 July 1954 and the Protocol on 1 October 1954.

No States became parties to the Agreement or the Protocol during 1962.

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)

The Agreement entered into force on 1 July 1954 and the Protocol on 1 October 1954.

No States became parties to the Agreement or the Protocol during 1962.

5. *European Convention on Social and Medical Assistance and Protocol thereto (Paris, 1953)* (see *Yearbook on Human Rights for 1953*, pp. 359–361)

The Convention and the Protocol both entered into force on 1 July 1954.

No States became parties to the Convention or the Protocol during 1962.

6. *European Convention on Establishment (Paris, 1955)* (see *Yearbook on Human Rights for 1956*, pp. 292–7)

This Convention had not entered into force by the end of 1962.

Belgium deposited an instrument of ratification on 12 January 1962.

7. *European Social Charter (Turin, 1961)* (see *Yearbook on Human Rights for 1961*, pp. 442–450)

The Charter had not entered into force by the end of 1962.

During 1962, Norway, Sweden and the United Kingdom deposited instruments of ratification on 26 October, 17 December and 11 July respectively.

VI. Other Instruments

1. *Geneva Conventions of 12 August 1949* (see *Yearbook on Human Rights for 1949*, pp. 299–309)

These Conventions entered into force on 21 October 1950.

In 1962, the following became parties to the Conventions: Cyprus (accession), Dahomey (declaration of continuity), the Federation of Malaya (accession), Ireland (ratification), Mauritania (declaration of continuity) and Togo (declaration of continuity).

2. *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961)* (see *Yearbook on Human Rights for 1961*, pp. 452–4)

This Convention had not entered into force by the end of 1962.

Congo (Brazzaville) and Sweden deposited instruments of accession or ratification on 29 June and 13 July respectively.

INDEX

When the item on a particular page to which reference is made in this index is not readily identifiable, a further reference is given in parentheses after the page number.

E

F

G

N

O

P

R