YEARBOOK
ON
HUMAN RIGHTS
FOR 1963

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YEARBOOK ON HUMAN RIGHTS FOR 1963

INTRODUCTION

Like the 1962 and earlier volumes, the present *Yearbook on Human Rights for 1963* contains three parts dealing with States, Trust and Non-Self-Governing Territories, and International Agreements. Part I describes constitutional, legislative and judicial developments in ninety-two States; Part II describes such developments in two Trust Territories and three Non-Self-Governing Territories; and Part III contains the texts of, or extracts from, international agreements bearing on human rights.

Constitutional developments in 1963 include the adoption of new constitutions in Algeria, the Dominican Republic, Kenya, Togo, Yugoslavia and Zanzibar. Each of these constitutions clearly reflects certain of the principles set out in the Universal Declaration on Human Rights, and two of them refer specifically to the Declaration. Article 11 of the Constitution of the Democratic and Popular Republic of Algeria of 10 September 1963, for example, states that the "Republic declares its adherence to the Universal Declaration on Human Rights", while in the Preamble of the Constitution of the Togolese Republic of 5 May 1963, the Togolese people solemnly proclaim devotion "to the principles of democracy and of human rights as set out in the Universal Declaration of 10 December 1948". New constitutions have also been promulgated in the Bahamas and Swaziland.

Other constitutional developments during 1963 were the suspension of the Constitution of Guatemala of 1956 and the promulgation of the Fundamental Charter of Government in its place, and the drafting of new constitutions in Afghanistan, the Congo (Brazzaville) and the Congo (Democratic Republic of).

Amendments to the constitutions of the Central African Republic, Chile, Costa Rica, the Federation of Malaya, the Ivory Coast, Libya, Madagascar, the Netherlands, Senegal and Uganda were adopted during 1963.

The legislation, governmental decrees and administrative orders presented in this volume relate, *inter alia*, to the right to a nationality, freedom of movement and residence, the right to take part in the government of one's country and freedom of peaceful assembly and association.

Matters relating to the right to a nationality were dealt with in legislation adopted during 1963 in Algeria: Act No. 63-96 of 27 March 1963; the Federal Republic of Germany: Law of 19 December 1963; France: Ordinance No. 62-285 of 21 April 1962; and Tunisia: Legislative Decree of 28 February 1963.

Laws relating to freedom of movement and residence were promulgated in the Federation of Malaya: the Immigration Act of 26 August 1963; Ghana: the Foreign Travel (Exit Permits) Act, 1963; and Uganda: the Emergency Powers Act of 25 February 1963.

The right of everyone to participate in the government of his country was a matter of concern to many Governments in 1963, and new legislation on this subject was adopted by the Governments of the Central African Republic: the Organic Law No. 62-424 of 19 November 1963 concerning the election of the deputies to the National Assembly; the Congo (Brazzaville): the Ordinance No. 63-9 of 16 October 1963 concerning the organization of elections to the National Assembly; Kenya: the Kenya (Electoral Provisions) (Election) Regulations, 1963; Portugal: the Decree No. 45,408 of 6 December 1963 regulating the election of members of Legislative Councils in Overseas Provinces; the Republic of Korea: the Election Management Committees Law (No. 1255) of 16 January 1963, the National Assembly Election Law (No. 1256) of 16 January 1963 and the Presidential Election Law of 1 February 1963; and the Trust Territory of the Pacific Islands (under the administration of the United States of America): the Charter of the Truk District Legislature of 25 September 1963.

Electoral laws were amended in Ceylon, where the Local Authorities Elections (Amendment) Act No. 9 of 1963, *inter alia*, provided for the recognition of political parties for the purpose of local elections as in the case of Parliamentary elections; in Iran, where the Council

of Ministers, on 3 March 1963, promulgated a Legislative Decree repealing those provisions of the Electoral Law of the House of Representatives and that of the Senate which had deprived women of the right to vote and to be elected; in Ireland, where the Electoral Act 1963, as stated by the Government in its note, "modernizes and liberalizes the law relating to elections to *Dáil Eireann* and incorporates corresponding changes, whenever appropriate, in the law governing presidential and local elections"; and in Madagascar, where Acts Nos. 63-016 and 63-020 of 15 July 1963 respectively, amended certain provisions of Organic Law No. 3 of 6 June 1959 regulating the exercise of the franchise and of Organic Law No. 5 of 9 June 1959 concerning the number and election of members to, and the organization and functioning of, the National Assembly.

Since the promulgation of the Political Party Law (No. 1246) on 31 December 1962 and its entry into force on 1 January 1963, this law has governed the formation of political parties in the Republic of Korea. In Pakistan, the Political Parties Act, 1962, which provided for the formation of political parties, was amended; the amendment contained in the Political Parties (Amendment) Ordinance, 1963 (Ordinance I of 1963) was aimed at preventing disqualified persons from indulging in political activities by becoming a member of, or by associating with, any political party.

With reference to freedom of peaceful assembly and association, Act No. 171 of 10 February 1963, regulating rallies, meetings and demonstration marches, was adopted in Turkey. Laws relating to the activities of political parties were adopted in 1963, in the Republic of Korea, the Law for Settlement of State Emergency of 16 March 1963; and in Uganda, the Emergency Powers Act of 25 February 1963.

Constitutional guarantees of fundamental rights are normally complemented by detailed legislation. Examples of such legislation adopted in 1963 are to be found in the Korean Petition Act of 1963, further regulating the people's right to petition, and the various penal codes, codes of criminal procedure and codes of civil procedure, extracts from or summaries of which appear in this volume of the *Yearbook*, such as the Penal Code of Gabon, promulgated by Law No. 21-63 of 31 May 1963; the Penal Code of Morocco, promulgated by Dahir of 26 November 1962; the Code of Criminal Procedure of the Republic of the Congo (Brazzaville), promulgated by Law No. 1-63 of 13 January 1963; the Code of Criminal Procedure of Somalia of 1 June 1963; the Czechoslovak Act No. 99/1963, dealing with the Code of Civil Procedure; the Finnish Act No. 320 of 20 June 1963, defining anew the scope of the application of the Finnish criminal law; and the Civil Code and the Code of Civil Procedure of the Ukrainian Soviet Socialist Republic, promulgated on 18 July 1963, replacing the Civil Code of 1922 and the Code of Civil Procedure of 1929 with the object of keeping up with radical changes that "have taken place in the economy, social structure and political organization of the Ukrainian Soviet Socialist Republic."

The Governement of Colombia, in its contribution, reported that a judicial reform was carried out in this country affecting its penal code and the competence, as well as the organization, of its judiciary. Amendments were made in 1963 to the penal codes of Ghana and Uganda; to the codes of criminal procedure of Ceylon, Ghana, the Ivory Coast, Monaco and the Republic of Korea; and to the Statute concerning the Comrades' Courts in the Byelorussian Soviet Socialist Republic. Within this context, mention may be made also of the Norwegian Act of 8 February 1963, amending the rules under which a suspect or an accused person may be apprehended or taken into custody.

Some of the penal codes mentioned above, as well as amendments to existing codes and a number of new laws, specifically deal with the protection of young persons, such as, in China, the Peace Preservation Measures Enforcement Act of 1963, providing for reformatory education for juvenile delinquents; in Costa Rica, Legislative Decree No. 3260 of 21 December 1963, concerning the protection of juveniles; in Morocco, the Penal Code of 26 November 1962, embodying fundamental principles with regard to youth offenders; in Thailand, the Acts of 1963, establishing children's and juveniles' courts and the procedure governing these courts; in Ghana, the Amendment of 7 May 1963 to the Code of Criminal Procedure, introducing provisions in respect of juvenile delinquents; in Hungary, Decree No. 5 of 25 August 1963 of the Minister of Culture on measures of precaution applicable to children and adolescents and on the application of protective care; in the United Arab Republic, the amendment of 1963 to the Vagrant Minors Act No. 124 of 1949, making it a punishable offence to expose a minor to vagrancy or to assist him to be a vagrant; and in Western Samoa, the Samoan Crime, Amendment Act of 1963, amending the Crimes Ordinance of 1961 by laying down how a death sentence is to be carried out and by exempting from sentence of death persons under 18 years of age and pregnant women.

Judicial decisions relating to human rights, rendered by various courts in Austria, Belgium, Canada, Ceylon, Chile, the Federal Republic of Germany, India, Ireland, Israel, Italy, Jamaica, Japan, Nigeria, the Philippines, Romania, the United Kingdom of Great Britain and Northern Ireland and the United States of America, are summarized in the present volume. These court decisions are grouped according to the right to which each is related—namely, the right to freedom of association and assembly; the right to equality before the law; the right to fair

trial and hearing; the right to freedom of movement and residence; the right to freedom of opinion and expression; the right to security of person; the right to freedom of thought, conscience and religion; and the right to work and to the free choice of work.

Rules adopted in 1963 relating to the proper treatment of offenders and detainees are to be found in this volume of the *Yearbook*; they include the Prisons Act, adopted by the Government of Ghana of 12 December 1963; the Kenya Prisons Rules of 1963; the Prisoners Rules promulgated by the Government of the Republic of Korea in 1963; the Retreats and Rehabilitation Act, promulgated by the Government of South Africa on 28 June 1963; and the New Zealand Penal Institutions Amendment Act, No. 36, of 1963.

Press laws were adopted in 1963 in Ghana: the Newspaper Licensing Act, 1963; in Iraq: the Publications Act (No. 24) of 4 April 1963; in South Africa: the Publications and Entertainments Act of 28 March 1963; and in New Zealand: the Indecent Publications Act, 1963. Other 1963 legislation affecting freedom of opinion and expression are the Brazilian Decrees Nos. 52,286 of 23 July 1963 and 52,795 of 31 October 1963, respectively, approving the regulations concerning broadcasting services and regulating the activities of radio and television; and the Venezuelan Copyright Act of 1963.

Laws affecting marriage and family were promulgated in Czechoslovakia: Act No. 94/1963, containing provisions governing marriage and family in a socialist society; Canada: the Dissolution of Marriage Act of 1963, authorizing the Senate of Canada to dissolve a marriage by way of a resolution upon the petition of either party to the marriage; Gabon: Act No. 9/63 of 12 January 1963, on the maintenance obligation of the father of a child born out of wedlock, and Act No. 20/63 of 31 May 1963, on the prohibition of the bride price; India: the Special Marriage (Amendment) Act, 1963 (Act 32 of 1963) permitting, under a certain condition, marriage between persons within degrees of prohibited relationship as laid down in the principal Act; New Zealand: the Matrimonial Proceedings Act, No. 71, of 1963, consolidating and making substantial alterations in the existing legislation relating to matrimonial proceedings, and the Matrimonial Property Act, No. 72, of 1963, improving the provisions governing the settlement of property disputes between husband and wife; Sweden: the Amendment to the Act on Abortion, legalizing abortion in a specific case; and Western Samoa: the Divorce and Matrimonial Causes Amendment Act of 1963, involving the right given to either party in a divorce action to cross-examine the other party in open court and limiting the right of appeal against decisions of the court in divorce proceedings.

Labour legislation adopted in 1963 is well represented in the present volume. The Governments of El Salvador (by Decree No. 241 of 23 January 1963), Guatemala (by Legislative Decree No. 1 of 2 April 1963), Libya (by Royal Decree of 22 November 1963), Mali (by Act No. 62-67/AN-RM of 9 August 1962) and Mauritania (by Act No. 62-23 of 23 January 1963) adopted rules governing labour. The Governments of the Syrian Arab Republic (by Legislative Decree No. 218 of 20 October 1963) and Panama (by Act No. 29 of 29 January 1963) amended the labour codes in force in their respective countries. Other aspects of trade union rights were dealt within the laws adopted in 1963 in the following States: Argentina, Australia, Belgium, Brazil, Canada, Cuba, Cyprus, Finland, Gabon, Hungary, Iran, Iraq, Ireland, France, Italy, Liechtenstein, Luxembourg, Madagascar, Spain, Sweden, Switzerland and the United States of America.

Legislation adopted during 1963 in Italy and the United States of America deals with the role of women in labour. In Italy, Act No. 66 of 9 February 1963 relates to the admission of women to public office and to the professions, and Act No. 7 of 9 January 1963 abolishes the so-called marrying clause in labour contracts and prohibits the dismissal of women workers upon marriage. In the United States, the Federal Equal Pay Act of June 1963, which the Government adopted as an amendment to the Fair Labour Standards Act, assures women for the first time of equal pay for equal work on a national basis.

The above legislation, together with that adopted in Iran (Legislative Decree of 3 March 1963, amending the Electoral Law of the House of Representatives and the Electoral Law of the Senate, which had deprived women of the right to vote and to be elected) and in Libya (the Amendment of 26 April 1963 to the Constitution of the United Kingdom of Libya of 7 October 1951 according women the right to vote) are in line with the world-wide trend towards eliminating discrimination by reason of sex.

Reference may be made also to the provisions dealing with the prevention of discrimination and the protection of minorities in the new constitutions of Algeria, the Dominican Republic, Kenya, Togo, Yugoslavia and Zanzibar, and in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination.

Agrarian legislation was the concern of many countries during 1963. Laws, the majority dealing with the legal status of land, were promulgated in Cuba: Act of 3 October 1963, providing for the nationalization of rural landholdings; Honduras: Legislative Decree No. 127 of 14 June 1963, amending the Agrarian Reform Law; Nicaragua: Decree No. 797 of 3 April 1963, promulgating the Land Reform Act; The Philippines: The Republic Act No. 3844 of 1963, promulgating the Agricultural Land Reform Code; Tunisia: Act No. 63-17 of 27 May

1963, providing for encouragement for agricultural development and Act No. 63-19 of 27 May 1963 relating to co-operation in the agricultural field; the United Arab Republic: Act No. 15 of 14 January 1963, prohibiting foreigners from being owners of agricultural land; and Western Samoa: the Samoan Status Act of 1963, providing, *inter alia*, that only Samoans shall have certain rights over land.

Measures were taken and legislation was adopted during 1963 in the field of health in the Byelorussian Soviet Socialist Republic, Haiti, Poland, Portugal, Romania, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland.

With regard to the right to education, laws were promulgated in 1963 aimed at further developing vocational, secondary and higher education in Austria, the Byelorussian Soviet Socialist Republic, Hungary, Poland, Portugal, Romania, Spain, Thailand, Turkey, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics and the United States of America. Peru adopted specific legislation (Legislative Decree No. 14.491 of 1963) on the illiterates' obligation to attend literacy centres.

The information dealt with in Part II of the present volume of the *Yearbook* relates to Trust Territories under the administration of Australia (Trust Territory of Nauru and Trust Territory of New Guinea) and the United States of America (Trust Territory of the Pacific Islands), and to Non-Self-Governing Territories under the administration of Australia (Territory of Papua) and the United Kingdom of Great Britain and Northern Ireland (the Bahamas and Swaziland).

Part III contains the texts of, or extracts from, the following international agreements: the Convention on the Guarding of Machinery, adopted on 25 June 1963 by the International Labour Conference at its 47th session; the Charter of the Organization of African Unity of 25 May 1963; Protocols Nos. 2, 3 and 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe on 6 May and 16 September 1963; and the Agreement Concerning the Establishment of an African and Malagasy Industrial Property Office. Part III also contains a survey of the status of certain multilateral agreements in the field of human rights adopted since 1946.

In addition, Part III contains the text of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly at its 1261st meeting on 20 November 1963 [resolution 1904 (XVIII)]. The adoption of the Declaration marked an important new trend in the work of the United Nations in the field of human rights, and was accomplished during 1963 because the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights and the Economic and Social Council, as well as the General Assembly, gave this matter absolute priority. The Assembly, in resolution 1905 (XVIII), on publicity to be given to the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, *inter alia* requested the Secretary-General and the specialized agencies "to ensure the immediate and large-scale circulation of the Declaration, and to that end to publish and distribute texts in all languages possible."

The fifteenth anniversary of the Universal Declaration of Human Rights was celebrated in 1963 in accordance with plans prepared by a Special Committee and approved by the Commission on Human Rights and the Economic and Social Council.

The index to the present volume is arranged according to the rights—personal, civil, political, social, economic and cultural—enumerated in the Universal Declaration of Human 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]

In May 1963 the Afghan Government, on the instructions of His Majesty the King, appointed a Preparatory Committee of Experts to draw up the draft of the new Constitution of Afghanistan. The Committee's basic documentation included the United Nations Universal Declaration of Human Rights.

The text of the new Constitution of Afghanistan will be forwarded for publication in the *Yearbook* after its ratification and signature by the competent authorities.

[1] Note furnished by the Government of Afghanistan.

ALGERIA

CONSTITUTION OF THE DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA
of 10 September 1963 [1]

PREAMBLE

For more than a century, the Algerian people were engaged in a ceaseless armed, moral and political struggle against the invader and all his forms of oppression, since the aggression of 1830 against the Algerian State and the occupation of the country by the French colonialist forces.

On 1 November 1954, when the struggle for independence reached its final stage, the National Liberation Front called for the mobilization of all the energies of the nation.

The war of extermination waged by the French imperialists became more bitter still, and more than a million martyrs paid with their lives for their love of country and freedom.

In March 1962, the Algerian people emerged victorious from this struggle, conducted for seven and a half years by the National Liberation Front.

When it regained its sovereignty after 132 years of colonial domination and feudalism, Algeria set up new national political institutions.

Under the programme adopted by the National Council of the Algerian Revolution at Tripoli, the Democratic and Popular Republic of Algeria is concentrating on building up the country in accordance with the principles of socialism and genuine exercise of power by the people, with the peasants, the working masses and the revolutionary intellectuals in the vanguard.

Having attained the goal of national independence which the National Liberation Front had set itself on 1 November 1954, the Algerian people are pursuing the course of democratic and popular revolution.

The revolution takes the form of:

The carrying out of a land reform and creation of a national economy to be administered by the workers;

A social policy for the benefit of the people, designed to raise the level of living of the workers, speed the emancipation of women with a view to associating them in the management of public affairs and the development of the country, eliminate illiteracy, develop the national culture and improve housing and public health;

An international policy based on national independence, international co-operation, opposition to imperialism and solid support of movements fighting for the independence or liberation of their countries.

Islam and the Arabic language gave the Algerians strength to resist the attempt to the colonial régime to rob them of their identity.

It is the duty of Algeria to affirm that Arabic is the national and official language and that Islam is its basic source of spiritual strength; at the same time, the Republic guarantees to every person respect for his opinions and beliefs and freedom of worship.

The National Popular Army, formerly the National Liberation Army, was the spearhead of the liberation struggle; it remains at the service of the people. It participates, within the Party framework, in political activities and in the establishment of the new economic and social structure of the country.

The basic objectives of the Republic reflect the philosophical, moral and political traditions of the nation and are in line with the international political orientation chosen by the Algerian people.

The fundamental rights accorded to every citizen of the Republic enable him to do his full share in building up the country. They enable him to achieve harmonious development and fulfilment within the community, in accordance with the interests of the country and the choices of the people.

The basic principles which governed the choice of solutions to the various constitutional problems facing the Algerian State are that there must be a progressive party and that it must play a predominant role in the formulation and supervision of national policy.

The harmonious and efficient operation of the political institutions established by the Constitution is ensured by the National Liberation Front, which:

Mobilizes, organizes and educates the people for the attainment of socialism;

Ascertains and reflects the aspirations of the people by maintaining contact with them at all times;

[1] Approved by referendum on 8 September 1963 and published in the *Journal officiel de la République algérienne démocratique et populaire*, No. 64, of 10 September 1963.

Formulates and defines national policy and supervises its execution;

Is composed of and is inspired and led by the most enlightened and active revolutionary elements; and

Whose organization and structure are based on the principle of democratic centralism.

Only the party—a powerful motive force deriving its strength from the people—can succeed in wrecking the economic structures of the past and replacing them by economic power exercised democratically by the peasants and the working masses.

It is for the people to ensure that the political institutions of the country have that stability which is vitally necessary if the tasks of socialist construction facing the Republic are to be carried out.

The classic presidential and parlementary régimes cannot guarantee such stability, whereas a régime based on the paramountcy of a sovereign people and of a single party can effectively do so.

The National Liberation Front, which is the revolutionary force of the nation, will maintain such stability and be the best guarantor that the policy of the country meets the wishes of the people.

BASIC PRINCIPLES AND OBJECTIVES

Art. 1. Algeria is a democratic and popular Republic.

. . .

Art. 4. Islam shall be the religion of the State. The Republic shall guarantee to every person respect for his opinions and beliefs and freedom of worship.

Art. 5. Arabic shall be the national and official language of the State.

. . .

Art. 8. The National Army shall be an army of the people. Faithful to the traditions of the fight for national liberation, it shall be at the service of the people and at the orders of the Government.

It shall defend the territory of the Republic and participate in the political, economic and social activities of the country within the party framework.

. . .

Art. 10. The basic objectives of the Democratic and Popular Republic of Algeria are:

The safeguarding of national independence, territorial integrity and national unity;

The exercice of power by the people, with the peasants, workers and revolutionary intellectuals in the vanguard;

The construction of a socialist democracy, the struggle against the exploitation of man in any form;

The guarantee of the right to work and free education;

The elimination of all vestiges of colonialism;

The defence of freedom and respect for the dignity of the human person;

The struggle against all discrimination, particularly discrimination based on race or religion;

Peace in the world;

The condemnation of torture or any physical or moral threat to the integrity of the human person.

Art. 11. The Republic declares its adherence to the Universal Declaration of Human Rights. Convinced of the need for international co-operation, it will give its support to any international organization which fulfils the aspirations of the Algerian people.

FUNDAMENTAL RIGHTS

Art. 12. All citizens of both sexes shall have the same rights and the same duties.

Art. 13. Every citizen over nineteen years of age shall have the right to vote.

Art. 14. The inviolability of the home and secrecy of correspondence shall be guaranteed to all citizens.

Art. 15. No one may be arrested or prosecuted except in the cases specified, before the judges appointed, and in the conditions prescribed by law.

Art. 16. The Republic recognizes the right of every person to a decent living and to a share in the national income.

Art. 17. The family, that fundamental unit of society, shall be under the protection of the State.

Art. 18. Education shall be compulsory and access to culture shall be given to all, with no discrimination other than that resulting from the aptitudes of the individual or the needs of the community.

Art. 19. The Republic guarantees the freedom of the Press and other information media, freedom of speech and of public address and freedom of association.

Art. 20. The right to form trade unions, the right to strike and the participation of workers in the management of enterprises are recognized and shall be exercised in accordance with the law.

Art. 21. The Algerian Republic guarantees the right of asylum to all those who fight for freedom.

Art. 22. No person may make use of the rights and freedoms enumerated above to jeopardize the independence of the nation, the integrity of the territory, the national unity, the institutions of the Republic, the socialist aims of the people or the principle of the unity of the National Liberation Front.

THE NATIONAL LIBERATION FRONT

Art. 23. The National Liberation Front shall be the one and only progressive party in Algeria.

Art. 24. The National Liberation Front shall define national policy and inspire State action.

It shall supervise the activity of the National Assembly and the Government.

Art. 25. The National Liberation Front reflects the profound aspiration of the people.

It shall educate and organize them; it shall guide them towards the achievement of their aspirations.

Art. 26. The National Liberation Front shall achieve the objectives of the democratic and popular Revolution and build socialism in Algeria.

EXERCISE OF SOVEREIGNTY

THE NATIONAL ASSEMBLY

Art. 27. National sovereignty is vested in the people, who shall exercise it through their representatives to a National Assembly, nominated by the National Liberation Front and elected for five years by direct and secret universal suffrage.

Art. 28. The National Assembly shall express the will of the people; it shall enact laws and supervise Government action.

Art. 29. The manner of election of deputies to the National Assembly, their number, qualifications for eligibility and system of incompatibility of offices shall be fixed by law.

If the election of a deputy is challenged on grounds of irregularity, the Creditentials and Validation Commission provided for in the rules of procedure of the Assembly shall decide the matter by the procedure specified in the rules.

. . .

EXECUTIVE POWER

Art. 39. Executive power is entrusted to the Head of State, who shall have the title of President of the Republic.

He shall be elected for five years by direct and secret universal suffrage, after being nominated by the party.

Any Moslem of Algerian who is over thirty-five years of age and is in possession of his civil and political rights may be elected President of the Republic.

. . .

JUSTICE

Art. 60. Justice shall be dispensed on behalf of the Algerian people in the conditions laid down in the law organization of the judiciary.

Art. 61. In criminal matters, the right to defence is granted and guaranteed.

Art. 62. In the exercice of their functions, the judges shall be governed only by the law and the interests of the socialist Revolution.

Their independence shall be guaranteed by law and by the existence of a Higher Magistrates' Council.

. . .

AMENDMENT OF THE CONSTITUTION

Art. 71. Action to amend the Constitution shall be initiated jointly by the President of the Republic and an absolute majority of the members of the National Assembly.

Art. 72. The procedure for amending the Constitution shall comprise two readings and two votes by an absolute majority of the members of the National Assembly, at an interval of two months.

Art. 73. The draft legislation shall be submitted for the approval of the people by a referendum.

. . .

TRANSITIONAL PROVISIONS

. . .

Art. 76. Arabic shall be used throughout the territory of the Republic as soon as possible. Nevertheless, notwithstanding the provisions of this Constitution, as a transitional measure, French may be used simultaneously with Arabic.

. . .

ACT No. 63-96 OF 27 MARCH 1963 ESTABLISHING THE ALGERIAN NATIONALITY CODE [2]

Chapter I

GENERAL PROVISIONS

Art. 1. The requirements for the possession of Algerian nationality shall be determined by law and, in certain cases, buy duly ratified and published international treaties or agreements, in particular those signed on 18 March 1962 between the representatives of Algeria and the representatives of France.

In case of conflict, the provisions of the international treaties or agreements duly ratified and published shall override those of municipal law.

Art. 2. Provisions relating to the attribution of Algerian nationality as the nationality of origin shall apply to persons born before the date on which those provisions become operative.

Nevertheless, such application shall not affect the validity of instruments executed by the persons concerned under earlier legislative provisions, or the rights acquired by third parties under the same legislative provisions.

The conditions governing the acquisition or loss of Algerian nationality shall be those prescribed by the legislation in force on the date of occurrence of the events or acts entailing such acquisition or loss.

Art. 3. For the purpose of this Act, a person of either sex shall attain his or her majority on reaching the age of twenty-one years.

The ages and periods specified in this code shall be calculated on the basis of the Gregorian calendar.

[2] Text published in the *Journal officiel de la République algérienne démocratique et populaire*, No. 18, of 2 April 1963.

Art. 4. The expression "in Algeria" shall be understood to refer to the entire territory of Algeria, Algerian territorial waters and Algerian ships and aircraft.

Chapter II

NATIONALITY OF ORIGIN

Art. 5. The following shall be of Algerian nationality by filiation:

(1) A child born of an Algerian father;

(2) A child born of an Algerian mother and an unknown father.

Art. 6. The following shall be of Algerian nationality by birth in Algeria:

(1) A child born in Algeria of an Algerian mother and a stateless father;

(2) A child born in Algeria of unknown parents.

Nevertheless, a child born in Algeria of unknown parents shall be deemed never to have been an Algerian national if, during his minority, his filiation is equally [3] established with respect to an alien under the national law of such alien, he possesses the nationality of the latter.

A new-born child found in Algeria shall be presumed, until the contrary is proved, to have been born in Algeria.

(3) A child born in Algeria of an Algerian mother and an alien father himself born in Algeria, unless the child repudiates Algerian nationality during the two-years period preceding the attainment of his majority.

Art. 7. A child who is an Algerian national by virtue of articles 5 and 6 above shall be deemed to have been an Algerian national from birth, even if the statutory requirements for the attribution of Algerian nationality are established only subsequent to his birth. The attribution of Algerian nationality at birth and the deprivation or repudiation of such nationality in accordance with the provisions of paragraphs 2 and 3 of article 6 shall not affect the validity of instruments executed by the person concerned or the rights acquired by third parties based on the apparent nationality previously possessed by the child.

Chapter III

ACQUISITION OF ALGERIAN NATIONALITY

Paragraph 1

ACQUISITION BY APPLICATION OF THE LAW

Art. 8. Acquisition by participation in the struggle for liberation: Persons who took part in the struggle for national liberation and are resident in Algeria shall, unless the Minister for Justice objects, be entitled to Algerian nationality.

They shall submit a declaration to the Minister for Justice within the six months following the promulgation of this code.

Art. 9. Acquisition of Algerian nationality through the option provided for in the Evian Agreements.

The following shall acquire Algerian nationality by applying for registration or confirmation of their registration on the lectoral lists after a period of three years commencing on 1 July 1962:

(1) Persons born in Algeria and furnishing proof of ten years' habitual and regular residence in Algeria territory on the date of self-determination;

(2) Persons furnishing proof of ten years habitual and regular residence in Algerian territory on the date of self-determination and whose father or mother, born in Algeria, meet or could have met, the requirements for the exercise of Algerian civic rights;

(3) Persons furnishing proof of twenty years' habitual and regular residence in Algerian territory on the date of self-determination.

However, a child born prior to the date of acquisition by his father or his mother of Algerian nationality by virtue of the provisions of the three preceding sub-paragraphs shall retain his nationality of origin. On attaining his majority, he may acquire Algerian nationality by making a declaration in accordance with the administrative provisions laid down in chapter V, articles 27 and 28, of this Act.

Art. 10. Persons convicted of crimes against the Nation committed after 18 March 1962 may not benefit from the provisions of the preceding article.

Art. 11. Acquisition of Algerian nationality by birth and residence in Algeria.

Unless the Minister for Justice objects in accordance with article 28 hereunder, the following persons shall acquire Algerian nationality if, within the two years preceding attainment of their majority, they declare their desire to acquire such nationality and if at the time of making such declaration they are habitually and regularly resident in Algeria:

(1) A child born in Algeria of an Algerian mother and an alien father born outside Algerian territory;

(2) A child born in Algeria of alien parents who were themselves born in Algeria subsequent to the promulgation of this Code.

Silence on the part of the Minister for Justice after five months reckoned from the date of submission of the application shall imply consent.

Art. 12. An alien woman who marries an Algerian may acquire Algerian nationality through the effect of the marriage.

She must formally declare, before the marriage is solemnized, that she repudiates her nationality of origin.

[3] The word "equally" was corrected by Act No. 63-96 of 27 March 1963 establishing the Algerian Nationality Code (amendment), published in the *Journal officiel de la République algérienne démocratique et populaire*, No. 21, of 12 April 1963, being replaced by the word "legally".

Such declaration may be made without authorization, even if the woman is a minor.

The application shall be addressed to the Minister for Justice, who may reject it.

Failing rejection within a period of six months, Algerian nationality shall be acquired and shall take effect from the date of the marriage, provided that the marriage has not been annulled or dissolved at the date of the express or tacit consent of the Minister for Justice.

Instruments executed by the woman in accordance with her previous national legislation shall remain valid.

The same provisions shall apply to an alien woman who married an Algerian national prior to the promulgation of this Code.

Paragraph 2

NATURALIZATION

Art. 13. An alien who so requests may acquire Algerian nationality, provided that:

(1) He has resided in Algeria for at least five years at the date of his request;

(2) He is resident in Algeria at the time of signature of the decree granting the naturalization;

(3) He has attained his majority;

(4) He is of good conduct and moral character and has not been convicted of an infamous crime;

(5) He can provide evidence of adequate means of support;

(6) He is sound in body and mind.

The request shall be addressed to the Minister for Justice, who may, however, reject it under the terms of article 28 hereunder.

Art. 14. — Exceptions

The Government may choose to disregard a criminal conviction handed down in a foreign country.

Notwithstanding the provisions of article 13, paragraph 6, an alien whose infirmity or illness was contracted in the service of or in furthering the interests of Algeria may be naturalized.

Notwithstanding the conditions specified in the preceding article, an alien who has rendered outstanding services to Algeria or whose naturalization would be of exceptional interest to Algeria may be naturalized. The wife and the children of a deceased alien who in his lifetime could have been included in the category referred to in this paragraph may request his posthumous naturalization at the same time as they apply for their own naturalization.

Art. 15. Naturalization shall be granted by decree.

The instrument of naturalization may, at the request of the person concerned, change his surname and first names.

Upon mere presentation of the instrument of naturalization, the civil registry officer shall amend in his records all entries relating to the naturalization and, where applicable, the surname and first names.

Art. 16. The privilege of naturalization may, however, be withdrawn from the beneficiary if it is found, two years after publication of the naturalization decree, that he did not meet the statutory requirements, or that the naturalization was obtained by fraudulent means.

The withdrawal shall be effected by the same procedure as the grant of naturalization. The person concerned shall, however, after having been duly warned, have the right to produce, within a period of two months after, evidence and documents in support of his case.

Where the validity of instruments executed prior to the publication of the revocation order was dependent on the possession by the person concerned of Algerian nationality, such validity may not be contested on the ground that the person concerned has not acquired Algerian nationality.

Paragraph 3

RECOVERY

Art. 17. Algerian nationality may be restored by decree to any person who, having had that nationality as his nationality of origin and having lost it, requests such restoration after at least eighteen months' habitual residence in Algeria.

Paragraph 4

EFFECTS OF ACQUISITION

Art. 18. Individual effect: a person acquiring Algerian nationality shall, from the date of acquisition, enjoy all the rights inherent in the status of an Algerian national.

Art. 19. However, during the period of five years following his naturalization, an alien who becomes a naturalized Algerian may not be appointed to elective functions. He may be relieved of this disability by the decree of naturalization.

Art. 20. Collective effect: the minor children of persons acquiring Algerian nationality under article 11 of this Code shall acquire Algerian nationality at the same time as their parent.

Unmarried minor children of a person who has recovered Algerian nationality, if actually residing with such person, shall recover or acquire Algerian nationality as of right.

The instrument of naturalization may confer Algerian nationality on the minor children of a naturalized alien. They shall nevertheless have the right to renounce Algerian nationality between their eighteenth and twenty-first years.

Chapter IV

LOSS AND DEPRIVATION

Paragraph 1

Loss

Art. 21. The following shall lose Algerian nationality:

(1) An Algerian national who has voluntarily acquired, in a foreign country, a foreign nationality and is authorized by decree to give up his Algerian nationality;

(2) An Algerian national, even if a minor, who has a foreign nationality of origin and is authorized by decree to give up his Algerian nationality;

(3) An Algerian woman who by marriage with an alien effectively acquires the nationality of her husband by the fact of her marriage and has been authorized by decree, prior to the solemnization of the marriage, to give up her Algerian nationality;

(4) An Algerian national who declares that he renounces Algerian nationality in the circumstances described in the third paragraph of article 20;

(5) An Algerian national who holds a post in a public service of a foreign State or in a foreign army and retains that post six months after the date of the direction to resign it which the Algerian Government shall serve on him.

Art. 22. Loss of nationality shall take effect:

(1) In the cases referred to in paragraphs 1 and 2 of article 21, from the date of publication of the decree authorizing the person concerned to give up his Algerian nationality;

(2) In the case referred to in paragraph 3, from the date of solemnization of the marriage;

(3) In the case referred to in paragraph 4, from the date of the declaration, duly signed by the person concerned and addressed to the Minister for Justice;

(4) In the case referred to in paragraph 5, from the date of publication of the decree stating that the person concerned has lost his Algerian nationality.

This decree shall be issued not less than six months after the date of the direction to resign the post in the foreign country and only if the person concerned has had an opportunity to submit his observations. The decree may be revoked if it is shown that the person in question has, during the time allowed, been unable to resign his post in the foreign country.

Art. 23. Loss of Algerian nationality shall extend its effect, without further formality to the unmarried minor children of the person incurring the loss who actually reside with him, in the cases referred to in paragraphs 1, 2 and 4 of article 21 above.

In the case referred to in paragraph 5, loss of nationality shall not extend to the minor children unless the decree expressly so provides.

Paragraph 2

DEPRIVATION

Art. 24. Any person who has acquired Algerian nationality may be deprived of it if:

(1) He is convicted and sentenced for an act constituting a crime or offence (*délit*) against the internal or external security of the Algerian State;

(2) He is convicted in Algeria or in a foreign country of an act constituting a crime and sentenced therefor to a term of more than five years' imprisonment;

(3) He has wilfully evaded his military obligations;

(4) He has performed, for the benefit of a foreign State, acts incompatible with Algerian nationality and detrimental to the interests of the Algerian State.

Deprivation shall not be incurred unless the acts with which the person concerned is charged occured within the ten years following the date on which he acquired Algerian nationality.

Deprivation may be ordered only within a period of five years following the commission of the said acts.

Art. 25. Deprivation shall be ordered by decree after the party concerned has been given an opportunity to submit his observations.

For this purpose, he shall be allowed a period of two months.

Art. 26. Deprivation of nationality may be extended to the wife and minor children of the person concerned.

Provided that it may not be extended to his minor children unless it is also extended to their mother.

. . .

Chapter VII

SPECIAL PROVISIONS

Art. 43. Those persons shall be deemed to be Algerian nationals who fulfil the requirement set forth in article 5 above but who, prior to the promulgation of this Code, possessed a foreign nationality acquired by a voluntary act on their own part or on the part of their parents under the provisions relating to naturalization or the acquisition of civil rights, which applied to Algerian nationals prior to 1 July 1962.

However, such persons may repudiate Algerian nationality, provided that they notify the Minister for Justice of such repudiation within the six months following the promulgation of this Code by submitting a declaration in writing either to the Minister for Justice, or to diplomatic and consular representatives abroad, such declaration being lodged in exchange for a formal receipt.

ARGENTINA

LEGISLATIVE DECREE No. 6676 OF 9 AUGUST 1963 TO ISSUE REGULATIONS RESPECTING WORK IN PORTS

SUMMARY

The text of the Legislative Decree was published in *Boletin Oficial*, No. 20198, of 19 August 1963.

Section 1 of the Legislative Decree reads as follows:

"In the jurisdiction of the ports of the Nation the co-ordination of the tasks assigned to State bodies, the methodical systematisation of the services provided by private persons, the regulation of port activities, the promotion of their technological improvement and mechanisation, the settlement of industrial disputes arising out of such activities and the inspection of labour in ports shall be the responsibility of a co-ordinating committee presided over by an executive director. The combined committees for the entire country shall form the General Administration of Ports".

Other provisions of the Legislative Decree deal with the composition and the terms of reference of a co-ordinating committee; labour regulations; the tripartite tribunal set up under the jurisdiction of the co-ordinating committee; inspection of labour in ports; the dockworkers' placement centre; and the dockworkers' fund.

The text of the Legislative Decree in Spanish and translations into English and French have been published by the International Labour Office as *Legislative Series* 1963 - Arg. 1.

AUSTRALIA

HUMAN RIGHTS IN 1963 [1]

I. Legislation

1. Right to Social Security

The *Disabled Persons Accommodation Act,* 1963 (Commonwealth) provides for assistance by the Commonwealth towards the provision of residential accommodation for certain disabled persons. There already exist in Australia establishments known as "sheltered workshops" that provide employment for disabled people. The purpose of this Act is to enable the Commonwealth to make grants to religious, benevolent and other approved welfare organizations to assist them in providing accommodation for disabled persons working in sheltered workshops so that they may reside near their places of employment.

2. Right of Aborigines

The Aborigines Protection (Amendment) Act, 1963 (New South Wales) amends the Aborigines Protection Act, 1900-1943 (New South Wales) by omitting all protective provisions of a restrictive character.

The *Native Welfare Act, 1963* (Western Australia) consolidates and amends the law relating to and providing for the welfare of the Aborigines of that State. Section 5 of the Act estabished the Department of Native Welfare, which is to be under a Minister of State and to be charged with the duty of promoting the welfare of Aborigines. The duties of the Department are specified in section 7 and include the following:

"to exercise such general supervision and care in respect to all matters affecting the interests and welfare of natives as the Minister in his discretion considers most fit to assist in their economic and social assimilation by the community of the State, and to protect them against injustice, imposition and fraud".

II. Court Decisions

1. RIGHT OF FAIR TRIAL

Regina *v.* Doolan

(1962) Queensland Reports 449

Queensland Court of Criminal Appeal

The appellant was charged jointly with two other persons with robbery in company and all three were convicted of that crime. At the trial, the appellant was not legally represented, but the other defendants were.

Evidence was given that one of the other defendants, Tallis, made a written statement to the police which might be said to implicate the appellant. Evidence was also given that a copy of the statement was handed to the appellant who read it and then said that he thought that Tallis had more sense than to give the police a statement, adding: "He has dobbed us all in".

At the close of the prosecution's case, the two other defendants gave evidence on oath. When their evidence concluded, the trial judge asked the appelant whether he wished to give evidence but did not ask whether the appellant desired to call other witnesses. The appellant replied that he did not wish to say anything to the jury and did not wish to make a statement from the dock.

Section 618 of the Queensland Criminal Code provides, among other things, that "At the close of the evidence for the prosecution the proper officer of the Court is required to ask the accused person whether he intends to adduce evidence in his defence...".

Held that it is necessary that an accused person —particularly when he has no legal representation—should be informed of his right to "adduce evidence", i.e., to give evidence himself or to call witnesses, and although it did not clearly appear that the appellant did desire to call evidence at his trial, it also did not appear that he did not desire to do so. In the circumstances there had been a mistrial and the conviction of the appellant should be quashed.

Held also that the appellant's comments on Tallis's statement were strictly admissible, but it was a matter for the exercise of the discretion of the trial judge whether he should refuse to admit them in evidence. The comments were not capable of amounting clearly to an admission of the truth

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

of Tallis's statement, and the jury were not justified in acting on them as evidence against the appellant.

REGINA *v.* JUSTICES OF RANKINE RIVER

Ex parte Sydney; Ex parte Pluto

3 Federal Law Reports 215

Supreme Court of Northern Territory of Australia

Two Aborigines were summarily tried for assault in proceedings before two justices, the first of whom was manager of the cattle station on which the Aborigines and the complainant were employed. The proceedings were challenged for bias in the Supreme Court on the grounds

(1) that the first justice was disqualified from sitting by reason of his position as over all superior of each of the parties in their working lives; and

(2) that the second justice's statements and behaviour during and between the summary trials indicated bias on his part.

Held that the challenge, in so far as it concerned the second justice, succeeded, and the convictions should be quashed.

Bridge, J., dealing with the remarks of the second justice (Mr. Richardson), said that he was satisfied that most of Mr. Richardson's admitted performances as a justice on the day of the summary proceedings called for some censure. He considered that the form in which Mr. Richardson chose to couch his comments was, to say the least of it, beneath the dignity of a court of justice. A judicial officer should observe the standards of expression demanded by the dignity of his office. He criticized one comment as lacking this dignity and more particulary as hinting at a discrimination between Black and White.

Another remark made by the justice was described by *Bridge, J.*, as "highly indiscreet". It could well have led any reasonable person hearing it and attending the trials to suppose that Mr. Richardson was making a disciplinary rather than a judicial approach to the summary proceedings. Such an approach would clearly be a serious departure from the proper course of justice. There was a justifiable suspicion that in each trial there had been an improper interference with the course of justice due to a real likelihood of bias on the part of M. Richardson. *Bridge, J.*, was satisfied that the justice unconsciously, but effectively, allowed discriminatory and disciplinary leanings against the two accused before him to displace judicial impartiality in his mental process.

2. RIGHTS OF ACCUSED PERSON POLICE INTERROGATION

REGINA *v.* EVANS

(1962) South Australia State Reports 303

Supreme Court of South Australia

This case was mainly concerned with the admissibility of an unsworn statement as evidence, but in the course of their joint judgment, *Napier, C. J., Mayo and Chamberlain, J. J.* said (at pp. 306-307):

"In this connexion, it should be pointed out that case, it is apparent that there are police officers who are under some misapprehension as to their duty, and we think that the time has come for this Court to say, quite bluntly, that it is not permissible for a police officer to persist in interrogating persons in custody beyond the point at which they intimate the desire to say nothing or no more. It is, we think, *a fortiori*, that the questioning ought to stop when the suspect declines to speak save in the presence of his solicitor. This is, in our opinion, *a fortiori* in that police officers —and for that matter Crown Prosecutors— ought to realize that, apart from advising his client, the presence of a solicitor may be the client's security against misinterpretation or distortion of his answers.

"In this connexion, it should be pointed out that —as it is now practised—the business of interrogating persons in custody is apt to be one-sided. The suspect is taken to a police station and questioned by two more officers. The questions and answers are not, usually, recorded at the time, but are subsequently—it may be the next day or even later—recorded by one of the officers, according to the best of his recollection, and the note so made is thereafter treated as the authentic record of the interrogation (cf. per *Sholl J.* in *R.* v. *The Governor of the Metropolitan Gaol; Ex parte Molinari* (1962) V.R. 156.[2]

"It seems to us that it is a tribute to the reputation and integrity of the Police Force in this State that this usage should be generally accepted as a matter of course; but we think that an accused person is not to be blamed if he declines to trust this method of preparing the record, and prefers to have some check on it. We can understand the impatience of a detective who meets with an obstacle of this kind, when he wants to get on with the business; but the answer is that the caution is not a mere form of words. The fact is that the suspect is not obliged to say anything, and, if he declines to speak save in the presence of his solicitor, the police officer who allows zeal to outrun discretion, or who tries to brow-beat or trick the suspect into answering, may be doing a grave disservice to the Force to which he belongs, and to the administration of justice.

"In the case before us, it appears that the trial judge was put into a difficult position by the intransigence of the parties. The question that he proposed to put to the witness McCallum was quite proper. There can be no objection to a police officer saying to a person in custody 'So and so tells me such and such, do you wish to say anything about that?' But when objection was taken to the detective being asked a general question, whether anything had geen said by way of explanation for the appellant's possession of the goods, we think that the learned judge might have overruled the objection, but, whether he did so or not, we think that it would have been better if he had rejected the evidence of the further questioning. It is obvious that the police officer was trying to make capital out of the appellant's refusal to speak until he has seen his solicitor, and that is something that the Court ought not to countenance."

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[2] Noted in the Australian contribution to the *Yearbook on Human Rights for 1962*, pp. 10-11.

AUSTRIA

PROTECTION OF HUMAN RIGHTS IN LEGISLATION AND JUDICIAL DECISIONS, 1963 [1]

It may first be mentioned that Austria, as already repeatedly emphasized, possesses a system of civil liberties with a history of development extending over a period of about one hundred years. Consequently, there is no special need to mention the fact that Austrian constitutional law fully meets the requirements set forth in international proposals in this field, such as those expressed in the draft International Covenant on Civil and Political Rights. Austria's efforts in this connexion are therefore mainly directed towards maintaining and strengthening public awareness of the fundamental rights which have been incorporated in the Austrian system of law in order to protect the individual against the power of the State. This objective has been largely achieved by the institution of a constitutional jurisdiction, charged by the constitution with ensuring the observance of the constitutionally guaranteed fudamental rights and freedoms, not only by the Administration but also by the Legislature.

The safeguarding of human rights in the international field also occupies a particularly important place within the framework of fundamental rights and freedoms at the present time. In addition to participating actively in United Nations efforts in this connexion during the year under review, Austria also prepared, in co-operation with the other member States of the Council of Europe, for the purpose of safeguarding human rights at the regional level within the framework of the Council of Europe, Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which was signed on 16 September 1963 at Strasbourg. With this additional Protocol, the prohibition of imprisonment for debt, the right to freedom of movement, the right to leave any country, the prohibition of expulsion from one's country, the right to return to one's country at any time and the prohibition of collective expulsion have now been incorporated in the series of freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is anticipated that this Additional Protocol will be ratified by Austria during 1964.

The following specific developments are reported.

[1] Note furnished by the Government of Austria.

A. Legislation (Acts and Ordinances)

I. FUNDAMENTAL FREEDOMS

1. Right to a Fair Hearing

(*a*) Federal Act, *BGBl.* (*Bundesgesetzblatt*) No. 66/193, established the possibility of renewing certain criminal appeal proceedings to safeguard the right to equality of defences.

(*b*) An Ordinance of the Federal Ministry of of Justice, *BGBl* No. 39, provided for the transfer to Kapfenberg of the Aflenz notary public office, thus taking into account the actual distribution of population in that area and providing better facilities for members of the public seeking legal remedy.

2. Right to the Free Choice of Employment

Federal Act, *BGBl.* No. 35/1963, amended the Order Promulgating the Industrial Code.

3. Right to participate in the Formation of National Policy

(*a*) Under the Popular Initiative (Volksbegehren) Act, *BGBl.* No. 197/1963, the procedure for initiation and submission of such proposal has been regulated on the basis of the Federal Constitution. This has served greatly to strengthen those aspects of the Federal Constitution which call for a direct form of democracy.

(*b*) Under Federal Act, *BGBl.* No. 286/1963 provision is made for a contribution towards the expenses of local branches of parties seeking electoral representation in the National Council, in order to facilitate them in the exercise of their parliamentary functions.

II. CULTURAL RIGHTS

1. Under the Educational Assistance Act, *BGBl.* No. 249/1963, generous provisions has been made for study grants to university students and art academy students, thus guaranteeing the widest possible access to education for all sections of the population, irrespective of income.

2. In this connexion, Ordinances *BGBl.* Nos. 135, 136, 137, 142, 143, 153, 154, 155, 156, 157, 162 and 207/1963 may also be mentioned.

Under these Ordinances, new curricula were established for a number of different types of school.

B. Judicial Decisions

Of the numerous decisions handed down by the Constitutional Court during the year under review, in fulfilment of its role as guardian of human rights, the following may be mentioned:

1. By its decisions of 12 March 1963, B 132/1962, the Constitutional Court ruled that unconstitutional denial of a statutory tax benefit represents a violation of the constitutionally guaranteed right to own property.

2. According to the decision of the Constitutional Court of 25 March 1963, B 182/1962, a violation of the constitutionally guaranteed right to free choice of employment occurs if the practice or exercise of a particular gainful occupation is prohibited by a ruling of an administrative authority, the prohibition being based on an unconstitutional law or taking place illegally; in such cases, the impossibility of applying the law is to be regarded as equivalent to illegality.

3. The decision of the Constitutional Court of 7 December 1962, B 14-17/1962, which was published only in the year under review, is also significant. By that decision, the Constitutional Court ruled that generally binding legislative provisions which have not been publicly promulgated are at variance with the Austrian people's sense of justice.

4. By its decision of 29 June 1963, B 233/1962, the Constitutional Court held that the constitutional right to free choice of employment extends also to civil servants.

BELGIUM

NOTE[1]

I. Legislation

The act of 28 January 1963 amends the Act of 20 September 1948 making provision for the organization of the economic life of the country and the Act of 10 June regarding the health and safety of workers and sanitary working conditions and workplaces (*Moniteur belge* of 8 February 1963).

This Act is intended to consolidate the legislation respecting work councils and committees for safety, hygiene and improvement of workplaces. It initiates the representation of young workers under the age of twenty-one years. The executory provisions of the Act allow young workers to take part in the election of their representatives as soon as they have attained the age of sixteen years, and adjust the electoral conditions for foreign workers to the provisions of the Treaty of Rome (a detailed commentary on this Act and its executory provisions appears in the *Revue du Travail,* March 1963, pp. 172-180).

The Act of 16 April 1963 respecting the resettlement of handicapped persons (*Moniteur belge* of 23 April 1963) and the royal order of 5 July 1963 respecting the resettlement of handicapped persons (*Moniteur belge* of 13 July 1963) have the effect of recasting legislation dating from 1958 (Act of 28 April 1958, *Moniteur belge* of 14 May 1958), which it had not proved possible to apply really effectively (a detailed commentary on these new provisions appeared in the *Revue du Travail,* April 1963, pp. 350-357, and July 1963 pp. 629-650).

The Act of 25 April 1963 relating to the administration of public agencies for social security and state insurance (*Moniteur belge* of 25 July 1963) regulates the joint administration, by representatives of employers' and workers' organizations, of a number of public agencies controlling the various branches of social security. (The *Revue du Travail* of July 1963 published a detailed commentary on the provisions of this Act, pp. 661 and 662.)

The Act of 10 June 1963 amending the Act of 19 August 1948 respecting public welfare benefits in peace time (*Moniteur belge* of 2 July 1963) allows the King himself to decide, in certain circumstances, which measures, benefits or services it is essential to provide in order to meet urgent requirements, when the joint committees have failed to do so or when no appropriate joint committee exists (a fuller commentary was published by the *Revue du Travail* of July 1963, pp. 659 and 660).

The Act of 1 July 1963 provides for the establishment of grants for professional advancement (*Moniteur belge* of 17 July 1963). The purpose of this Act is to provide grants for professional advancement to: young workers attending courses in order to complete their intellectual, mental and social training; and workers who have successfully completed a full course of evening or Sunday instruction enabling them to improve their professional qualifications. (Fuller details of this Act were published in the *Revue du Travail,* July 1963, pp. 628 and 629.)

The Act of 30 July 1963 regulates the status of commercial representatives (*Moniteur belge* of 7 August 1963). This Act puts an end to the controversy regarding the existence or non-existence of a dependent relationship by establishing a presumption according to which, unless it is demonstrated to the contrary, commercial representatives are always employed under the terms of an employment contract. It establishes the granting of compensation for dismissal on account of loss of customers and determines the rules applicable to the right to and the calculation of commission, and to the clauses relating to non-competition, insolvency of customers and arbitration. (A detailed commentary on this Act appeared in the *Revue du Travail,* August 1963, pp. 767-776.)

The royal order of 28 August 1963 relating to the maintenance of normal remuneration for labourers, employees and workers in the service of vessels on inland waterways in respect of days of absence for family events or for the purpose of complying with civic obligations or civil assignments (*Moniteur belge* of 11 September 1963) is designed to extend to employees and crewmen the right to absence with pay which was already legally recognized in the case of labourers. (A commentary on this regulation appeared in the *Revue du Travail,* August 1963, pp. 782 and 783.)

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

II. Judicial Decisions

1. The Second Chamber of the Supreme Court of Appeal, on 25 March 1963, dismissed an appeal against the decision of the Court of Appeals of Brussels of 26 January 1963 involving the violation of the right of defence of an accused. In this case, the accused was denied the right of access to certain files in order to know the reasons of his being served a warrant of arrest. The Supreme Court of Appeal did not consider this an infringement upon article 10.4° of the Organic Law on the Rights of Defence of 25 March 1876 and upon article 6 (3) (b) of the European Convention on the Protection of Human Rights and Fundamental Freedoms, approved by Belgium by the Act of 13 May 1955. In connexion with article 6 (3) (b) of the European Convention, the Supreme Court ruled that this article concerned the rights of defence in Court and did not apply to cases of arrests or preventive detentions.

2. The Third Chamber of the Court of First Instance at Brussels, on 5 February 1963, declared unfounded the action instituted against the Belgian State by five Belgians who had been arrested in France for bringing in political publications dealing with the war in Algeria. The Court held that the transmission of information from police to police—in this case from the Belgian to the French police of data concerning the political activities of the people arrested—did not violate article 11 of the Act of 15 March 1874 on extradition since that article in fact did not prohibit the execution of a request made by one Court to another (*commission rogatoire)* to investigate political offences, except when the investigation involved the search of homes, the arrest of offenders or the seizure of evidence. The Court was also of the opinion that the Belgian State had not infringed upon article 14 of the Constitution guaranteeing freedom of opinion since plaintiffs, in exercising this right, had committed an offence which endangered not only the security of France but that of Belgium as well.

3. The Military Court at Brussels, on 13 December 1962, dismissed an appeal against the decision of the War Council at Brussels of 26 November 1962 refusing the postponement of an accused's case. It was held that this was not at variance with the rights of defence of the accused guaranteed by the European Convention on Human Rights and Fundamental Freedoms since from the time he was detained until he had to appear before the judge he had had the opportunity to prepare his defence.

In connexion with this case, the Military Court, on 13 December 1962, also dimissed the accused's appeal against the decision of the War Council concerning his being detained preventively. The Court ruled that the constitutional right of the accused to individual liberty, guaranteed also by the above-mentioned Convention, was not violated. The gravity of the case—namely, insubordination—justified the detention.

BRAZIL

DECREE No. 52,286 OF 23 JULY 1963 TO REGULATE THE ACTIVITIES OF RADIO AND TELEVISION STATIONS IN BRAZIL [1]

Art. 1. All radio and television stations in Brazil including those of the Union, the States and the Municipalities, must transmit live programmes daily.

(1) A live programme is one that includes the physical presence of one of the categories of professional staff specified in the decree regulating the profession of broadcasting.

(2) Live programmes broadcast by radio and television stations shall be subservient to educational and cultural objectives conducive to the higher interests of the country.

(3) The Ministry of Education and Culture shall be responsible for establishing the general standards and criteria governing educational and cultural broadcasting.

. . .

Art. 9. Any form of recorded radio and television programmes shall be considered live programmes only when broadcast for the first time by the broadcasting station producing them in conjunction with the professionnal staff connected therewith and in conformity with the labour legislation.

Art. 10. Programmes recorded on video tape which have been produced by another Brazilian television station shall be considered live programmes up to a maximum of one hour per period except in the case of complete television plays, when the broadcast shall be as long as the text requires.

Art. 11. The transmission of a programme taken directly from another television station shall be considered a live programme up to a maximum of thirty minutes per period.

Sole paragraph. The transmission of a radio programme taken directly from another broadcasting station shall not be considered a live programme.

Art. 12. Programmes of the Radio School and TV School type shall be considered live only when duly approved and authorized by the Ministry of Education and Culture or by the office of a Secretary of Education.

Art. 13. Newsreels and documentary films shall be considered live programmes on condition that they do not run longer than ten minutes and are dubbed or narrated in Portuguese.

Art. 14. Animated cartoons shall be considered live programmes up to a maximum, per day, of ten minutes, exclusive of dubbing or sub-titles in Portuguese, on condition that they are not presented in conjunction with advertising.

Art. 15. Inter-programme advertising on television and radio stations shall be considered a live programme.

Sole paragraph. The time allowed between programmes for advertising shall not exceed five minutes on television stations, and three minutes on radio stations.

Art. 16. The time allotted to all kinds of advertising on radio and television stations may not exceed 25 per cent of the total daily broadcasting time.

Art. 17. In order to meet their obligation to provide information, radio broadcasting stations shall devote at least 5 per cent of their time to the transmission of news.

Art. 18. All foreign films shown on television, with the exception of those dealt with in article 14, must be dubbed in Portuguese.

Art. 19. Television station shall each week present one Brazilian film produced for television of not less than twenty-five minutes' duration on condition that such films are available on the market and that their price does not exceed by more than 50 per cent the average price of television films of the relevant category.

Art. 20. The proportion of live programmes shall be calculated weekly but only in relation to the compulsory periods and time-table.

Art. 21. The National Telecommunications Board shall be responsible for supervising the application of this decree.

Art. 22. The trade-union organizations shall report to the National Telecommunications Board any contravention of this decree.

Art. 23. If the existence of an irregularity is confirmed, the National Telecommunications Board shall issue an opinion on the matter and recommend the appropriate penalty to the Minister of Justice and Internal Affairs.

Art. 24 An appeal from a ministerial decision shall lie to the Minister of Justice in person.

[1] Extracts from this Decree published in the Secretary-General's "Annual Report on Freedom of Information 1963-1964" (E/CN.4/878), pp. 19-21

Art. 25. The time-limit for appeals shall be three days from the date on which the decision is published in the *Diario Oficial.*

Art. 26. As from 1 January 1964, the exhibition of any film on television or the broadcasting of any television or radio play having any kind of detective-story, wild-West or sex theme shall be absolutely prohibited before 10.30 p.m.

DECREE No. 52,795 OF 31 OCTOBER 1963 APPROVING THE REGULATIONS CONCERNING BROADCASTING SERVICES [2]

TITLE I

Introduction

Chapter I

GENERAL

Art. 1. The broadcasting services, comprising the transmission of sound (radio broadcasting) and the transmission of sound and pictures (television) intended for direct and free reception by the general public, shall be governed by the provisions of Act No. 4,117 of 27 August 1962, the Brazilian Telecommunications Code,[3] the general Regulations of that Code—Decree No. 52,026 of 20 May 1963, the present Regulations, and the Rules laid down by the National Telecommunications Council (CONTEL).

Sole paragraph. The broadcasting services shall also be governed by the rules laid down in the international instruments in force or which may be concluded in the future and which are ratified by the National Congress.

Art. 2. Decisions relating to any matter connected with the broadcasting services shall lie within the exclusive competence of the Union.

Chapter II

PURPOSE OF THE SERVICES

Art. 3. The purpose of the broadcasting services shall be educational and cultural, even in the matter of information and entertainment; they shall be considered to be of national interest and their commercial exploitation shall be permitted only so far as it does not prejudice these interests and this purpose.

Sole paragraph. In order to achieve this purpose, CONTEL shall provide in accordance with the legislation in force, the necessary facilities for the installation and operation of broadcasting stations on the national territory.

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TITLE IV

Competence

Chapter I

LICENSING

Art. 6. The Union alone shall be competent to authorize the operation of broadcasting services throughout the national territory, including the territorial waters and air space.

1. The President of the Republic shall be competent to grant concessions for the operation of regional and national television and radio broadcasting services.

2. CONTEL shall be competent to:

(*a*) Grant licences for the operation of local radio broadcasting services;

(*b*) Grant licences for the installation of radio relay and repeater stations.

Chapter II

OPERATION

Art. 7. The following shall be competent to operate broadcasting services:

(*a*) The Union;

(*b*) The State and territories;

(*c*) The municipalities;

(*d*) The universities;

(*e*) Brazilian registered stock companies or limited liability companies, provided that the share (or stock) are held exclusively by native Brazilians;

(*f*) Foundations.

Sole paragraph. Legal persons under domestic public law, including universities, shall have priority as regards the operation of broadcasting services.

Art. 8. The directors and managers of enterprises which operate broadcasting services must be native Brazilians.

Chapter III

SUPERVISION

Art. 9. The Union, acting through CONTEL, shall have exclusive responsibility for supervising of the broadcasting services in all matters relating to compliance with the laws, regulations and international instruments in force in Brazil, the rules laid down by CONTEL, and the obligations assumed by concessionaires and licensees which derived from the deed of concession or the licence.

Sole paragraph. Supervision shall be carried out by the regional authorities within their respective jurisdictions, or by persons accredited by CONTEL.

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[2] Extracts from this Decree published in the Secretary-General's "Annual Report on Freedom of Information, 1963-1964" (E/CN.4/878), pp. 21-23.

[3] For extracts from the Brazilian Telecommunications Code, see *Yearbook on Human Rights for 1962*, pp. 18-21.

TITLE VII

Broadcasting

Chapter I

Expression of Opinion

Art. 62. The freedom of broadcasting does not preclude the punishment of persons who abuse it.

Art. 63. No authority shall restrict or impede the freedom of broadcasting except as provided by law.

Art. 64. In the interest of national security, the operation of broadcasting services throughout the national territory shall be subject, during a state of siege or a national emergency, to such regulations as may be promulgated.

Art. 65. Speeches made in the National Congress and the votes and opinions of members shall enjoy parliamentary privilege so far as broadcasting is concerned.

Sole paragraph. During a state of siege, no speeches, votes or opinions shall be broadcast except those that are expressly authorized by the Officers of the Chamber to which the member of Congress belongs.

Art. 66. Criticism and unfavourable views, even if strong, may be freely expressed, and true facts, including the actions of any of the State authorities, may be freely reported, subject only to the restriction laid down by law.

Chapter II

Programming

Art. 67. In view of the educational character of the broadcasting services, holders of broadcasting concessions or licensees shall comply with the following requirements in organizing their programmes:

1. They shall maintain high moral and civic standards and shall not permit the broadcasting performances, singing, sketches, anecdotes or words which are contrary to family morality and public decency;

2. The amount of time devoted to commercial advertising shall not exceed 25 per cent of their daily programmes;

3. They shall devote at least 5 per cent of their daily programmes to the transmission of news bulletins.

Art. 68. Broadcasting stations, excluding television stations, shall transmit the official information programme of the Government authorities daily from 7 p.m. to 8 p.m., except on Saturdays, Sundays and holidays.

Sole paragraph. Thirty minutes of this programme shall be reserved for the executive and judicial authorities and the other minutes for the two Chambers of the Legislature.

Art. 69. Concessionaires and licensees shall keep the scripts of the programmes, including news programmes, duly signed by the persons responsible, on file for a period of ten days.

Sole paragraph. Except the broadcasts required by law, the programmes of debates for which there are no scripts shall be taped and kept on file for five days after transmission by the concessionaires and licensees of stations of 1 kW or less and ten days in all other cases.

Chapter III

Electioneering and Political Campaigning

Art. 70. During the ninety-day period preceding the general national elections, or local elections wherever these are held, broadcasting stations shall reserve two hours daily free of charge for campaigning, one 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 various parties.

2. Where parties have applied for permission to campaign jointly, the time mentioned in the preceding paragraph 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 Tribunal shall settle any disputes that may arise from the application of this article.

Art. 71. Radio broadcasting stations shall publicize sixty days before the elections mentioned in the preceding article the announcements of the Electoral Tribunal for a maximum of thirty minutes.

Art. 72. Broadcasting and television stations shall not charge for political campaigning higher than those charged during the previous six months for ordinary publicity.

Art. 73. No broadcasting station owned by the Union, the States, Territories, or municipalities, or in which any of these bodies in public law is the major shareholder shall be used for political campaigning or to publicize views in favour of or against any political party or its organs, representatives or candidates, except as provided by the electoral law.

Art. 74. Except for the transmissions required by law, political programmes and similar statements not recorded in script shall be taped and concessionaires and licensees shall keep these recordings on file for five days after transmission, in the case of transmitters of 1 kW or less, and for ten days in the case of all others.

Chapter IV

Broadcasts in Foreign Languages

Art. 75. Only short-wave stations may, subject to prior authorization by CONTEL, broadcast programmes in foreign languages.

1. Persons wishing to broadcast such programmes shall submit them for prior approval to the Ministry of Foreign Affairs.

2. For the purpose of control, CONTEL shall not authorize the broadcasting of any such programmes until the formality specified in the preceding paragraph has been complied with.

3. The following shall be exempt from the requirements of this article: courses in foreign languages, and occasional chats and interviews which should be followed by a translation whenever possible.

Art. 76. The Ministry of Foreign Affairs shall be responsible for organizing the special programmes in foreign languages for the dissemination in foreign countries of information of concern to Brazil, to be transmitted by the National Agency and the official transmitting stations.

Chapter V

RETRANSMISSIONS

Art. 77. No broadcasting station shall transmit or utilize, in whole or in part, the broadcasts of similar national or foreign stations without the prior authorization of the station concerned.

Sole paragraph. During the transmission, the station shall announce that it is a retransmission or an adaptation of a broadcast from another station, and shall indicate its own identity and location and also those of the station of origin.

Art. 78. The retransmission of a broadcast programme by means of space systems (satellites) shall, in every case, require the express authorization of CONTEL.

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TITLE XVI

Offences and Penalties

Chapter I

OFFENCES

Section I — *Nature of the Offences*

Art. 122. For the purposes of these Regulations the following acts committed by concessionaires or licensees shall be deemed to constitute offences in the operation of broadcasting services:

1. Incitement to disobey laws or judicial decisions;

2. Divulgation of State secrets of matters prejudicial to national defence;

3. Insult to the national honour;

4. Propaganda inciting to war or to acts of violence designed to subvert the political or social order;

5. Promotion of discrimination on the grounds of class, colour, race or creed;

6. Incitement to rebellion or mutiny in the armed forces or in the law enforcement services;

7. Acts jeopardizing Brazil's international relations;

8. Offences against family and public morality and decency;

9. Slander, libel or defamation of the Legislative, Executive or Judiciary power or the members thereof;

10. Dissemination of false information constituting a threat to the public, economic and social order;

11. Transmitting or utilizing, in whole or in part, the transmissions of similar national or foreign stations without prior authorization;

12. Failure to state during a retransmission that a retransmitted programme is involved or to mention the call-sign and location of the transmitting station which authorized the retransmission;

13. Failure to comply with the requirement that the directors and managers must always be native Brazilians;

14. Failure to comply with the requirement that the technicians responsible for the operation of the transmitting equipment must be resident exclusively in Brazil, whether they are Brazilians or aliens, except for the personnel specified in article 58 hereof;

15. Amending their statutes or acts of association without the approval of the Federal Government;

16. Transferring concessions or licences directly or indirectly without the prior authorization of the Federal Government;

17. Transferring stock or shares without the prior authorization of the Federal Government, except as provided in article 105 hereof;

18. Failure to organize its programmes in accordance with article 67 of these Regulations;

19. Accepting as a director or manager a person who already belongs to the management of another concessionaire or licensee engaged in the same type of broadcasting in the same area, or who enjoys parliamentary immunity or special status;

20. Failure to transmit the official programmes of the authorities of the Republic, as provided herein;

21. Failure to comply with the requirements regarding electoral campaigning;

22. Destroying the scripts of duly authorized programmes, including news programmes, before expiration of the period of ten days from the date of transmission;

23. Failure to keep the recordings of programmes of debates or political programmes, and of similar programmes for which there are no scripts, except for the mandatory transmissions prescribed herein:

(*a*) For a period of five days from the date of transmission, for stations of 1 kW or less;

(*b*) For a period of ten days from the date of transmission for stations of more than 1 kW;

24. Failure to keep the scripts or recordings of programmes pending a conclusive decision by a court, if they have been notified by the plaintiff,

through judicial or extra-judicial channels, that he is instituting proceedings to obtain redress for moral damage;

25. Refusing the right of reply after it has been granted by a judicial decision;

26. Creating a situation liable to result in loss of life;

27. Interrupting the operation of their services for more than thirty consecutive days, except for justifiable reasons duly recognized as such by CONTEL;

28. Failure to comply with decisions of a legal, technical or economic character, thereby displaying incompetence to operate the services for which the concession or licence is held;

29. Allowing any authority, individual, body or news agency legally operating in Brazil to use their transmitters to commit the offences mentioned in paragraphs 1 to 10 of this article, or failure to prevent them from doing so, even if the concessionaire or licensee is not responsible for the programme;

30. Failure to abide by the time-table laid down in articles 34, 35 and 36 hereof;

31. Continuing to transmit, pending a decision by the Minister of Justice, any programme concerning which representations have been made, after having been notified by that Minister;

32. Failure to retract the offending transmission, within the period specified by the Minister of Justice in his notification, or to make amends by means of announcements refuting it;

33. Modifying or replacing the equipment or installations approved by CONTEL without CONTEL's prior authorization;

34. Operating broadcasting services in violation of the licence or failing to respect the regulations and conditions laid down for such operation;

35. Refusal to discontinue broadcasting or to refute news which is contrary to the electoral law.

Art. 123. If the false information mentioned in paragraph 10 of the preceding article has been broadcast as a result of misinformation and is immediately refuted, the concessionaire or licensee shall not be liable to any penalty.

Sole paragraph. For the purpose of this article, "misinformation" shall mean wrong information furnished to the concessionaire or licensee by a news agency which has been duly authorized to operate in Brazil, or by a government department.

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TITLE XVII

Right of Reply

Art. 154. Any person who considers that he has been the subject of a defamatory statement in a broadcast shall have the right of reply.

Art. 155. The right of reply shall consist in the transmission of the written reply of the offended person, within twenty-four hours of its receipt, at the same hour, on the same programme, and by the station over which the defamatory broadcast was transmitted.

1. If the above provisions of this article cannot be complied with because the programme is not repeated within twenty-four hours, the station shall transmit the reply at the same hour in its daily programme.

2. If the defendant is not responsible to or under contract with the licensed or concession holding enterprise, the cost of the reply shall be paid either by the defendant or by the plaintiff depending on the ruling of the court in its decision on the application to exercise the right of reply.

3. In the case mentioned in the preceding paragraph, the station shall transmit the reply twenty-four hours after the plaintiff has shown proof that he has applied to the court to exercise his righ of reply.

4. If the station does not broadcast the reply within the period mentioned in the preceding paragraph, even where a third party is guilty of the offence, it shall forfeit the right to the payment provided for in paragraph 2 of this article.

Art. 156. The right of reply may be exercised by the injured party in person, or by his authorized attorney or legal representative.

Sole paragraph. Where the offence is committed against a deceased person, the right of reply may be exercised by his spouse, ascendants, descendants or collaterals.

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Art. 160. The reply shall not be transmitted:

(*a*) When the facts mentioned bear no relation to the broadcast which is the subject of the complaint;

(*b*) When the reply contains slanderous, libellous or defamatory remarks regarding the concessionaire or licensee;

(*c*) When official acts of publications are involved;

(*d*) When reference is made to third persons, which might entitle them also to a reply;

(*e*) When more than thirty days have elapsed between the allegedly defamatory broadcast and the application for a reply.

Art. 161. Except when the reply is transmitted spontaneously, the fact that a reply has been broadcast shall not prevent the injured party from seeking redress of the injury.

TITLE XVIII

Redress of Moral Damage

Art. 162. Independently of the penal proceedings, a person who is the victim of a slanderous, libellous or defamatory broadcast may institute proceedings in the civil court for redress of moral damage; in this case, the defendants shall be, jointly, the person who committed the offence, the concession-holding or licensed enterprise, if judged culpable by its acts or through negligence, and any person who benefits from the offence and is an accessory thereto.

1. The proceedings shall follow the normal procedure laid down in the Code of Civil Procedure.

2. The proceedings shall lapse, if they are not instituted within thirty days from the date of the slanderous, libellous or defamatory broadcast.

3. If the damaged person wishes to exercise his right of redress, he must notify the concessionaire or licensee, through judicial or extra-judicial channels, that he must not erase the recording or destroy the script referred to in articles 69 and 74 of these Regulations; notification must be made within five days in the case of stations of 1 kW or less, and within ten days in the case of all other stations.

4. The concessionaire or licensee shall not erase the recording or destroy the script, regarding which he has received the notification mentioned in this article, until the court has pronounced final judgement on the application for redress of moral damage.

TITLE XIX

Abuse of Authority

Art. 169. Any authority which obstructs or impedes the freedom of radio or television broadcasting, except in the cases authorized by law, shall be liable to the penalty specified in article 322 of the Penal Code, in so far as this penalty applies.

Art. 170. A concessionaire or licensee whose rights are infringed in any way may institute proceedings for redress, including proceedings designed to protect the economic viability of his enterprise if it is affected by administrative requirements which place it in jeopardy, other than those prescribed by law and relevant regulations.

. . .

ACT No. 4214 OF 2 MARCH 1963 RESPECTING THE STATUS OF RURAL WORKERS

SUMMARY

The text of this Act was published in the *Diario Oficial,* No. 52, of 18 March 1963.

Section 1 of the Act reads as follows:

"This Act shall govern the employment relation between rural employers and rural workers; any provision purporting to limit or to enable a worker to waive any advantages expressly provided for in this Act shall be *ipso jure* null and void".

The Act further deals with occupational identity books (to be issued throughout the national territory to all persons who are fourteen years of age or over, without distinction as to sex or nationality and are engaged in agricultural activity); rural hours of work; remuneration and minimum wage; paid weekly rest; annual paid leave; industrial health and safety; women's work; the employment of minors in rural work; the organization of trade unions; and social services.

Translations of the Act into English and French have been published by the International Labour Office in *Legislative Series* 1963 - Bra. 1.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC[1]

REPORT OF THE CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR ON THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE BYELORUSSIAN SSR IN 1963 (EXTRACTS)

In 1963 the population of the Republic received out of social consumption funds grants and benefits in the amount of about 980 million roubles, or 6 per cent more than in 1962, in pensions, allowances, students' grants, paid vacations, free education and free medical care. More than 127,000 public health workers and 217,000 workers in education and culture were paid out of social consumption funds. Over 750,000 persons in the Byelorussian SSR were receiving pensions from the State and collective farms.

More than 176,000 students of higher, specialized secondary and vocational-technical educational establishments, and schoolchildren, received grants and dormitory accommodation. Over 190,000 children were cared for in kindergartens, crèches and nurseries.

More than 200,000 working people and their children rested and received medical treatment in sanatoria, rest homes and pioneer camps, all or part of the cost being defrayed by social insurance and collective farms.

The average number of manual and non-manual workers employed in the Byelorussian SSR in 1963 was about 2,170,000, an increasse of 77,000 over the previous year.

There was a further rise in individual deposits in savings banks, which by the end of 1963 totalled more than 344 million roubles and had increased by 42 million roubles, or 14 per cent, over the previous year; the number of depositors reached 1,328,000, an increase of 57,000 in 1963. Over the last five years, individual deposits in savings banks have increased by 145 million roubles, or 73 per cent.

The volume of State and co-operative retail trade in 1963 amounted to 2,652 million roubles, an increase of 8 per-cent over 1962 in comparable prices. The retail turn-over of consumer co-operatives trading in rural areas rose by 9 per cent in the same period.

In five years of the seven-year plan, the volume of State and co-operative retail trade increased by 48 per cent in comparable prices.

The plan for 1963 for retail turn-over in State and co-operative shops was fulfilled by 101 per cent; in particular, the Ministry of Trade of the Byelorussian SSR fulfilled the plan by 101 per cent, and the Byelorussian Union of Co-operatives by 100.8 per cent.

In 1963, the number of retail trade and public catering establishments in the Republic increased.

More than 2 million persons, or almost one-third of the population of the Republic (excluding children of pre-school age), received education of one type or another. In general education schools alone, there are 1,649,000 students, or 31 per cent more than at the beginning of the academic year 1958/59 and 71,000 more than last year.

The transition to universal compulsory eight-year education has been carried out throughout the Republic. In the past year, 142,700 persons completed eight years of schooling and 40,700 completed ten or eleven years of schooling. At the beginning of the current academic year, the enrolment in boarding schools and extended-day schools and classes totalled more than 88,000 students, or 15,600 more than in the previous academic year.

There are 180,300 persons receiving education in higher and specialized secondary educational establishments, 86,300 of these in higher educational establishments. Of the students enrolled in day courses at higher educational establishments, 5,200 (or 48 per cent) had completed a period of practical work of not less than two years.

One hundred and ninety-nine thousand persons are studying without interruption of employment, including 110,000 in schools for young workers and rural youth, and about 89,000 in higher and specialized educational establishments. The number of persons studying without interruption of employment has almost doubled in comparison with the academic year 1958/59.

In 1963, 8,400 specialists, including 2,600 engineers, graduated from higher educational establishments, while 17,500 specialists graduated from technical colleges and other specialized secondary educational establishments.

In the past year, more than 27,000 young workers were trained in trade schools and vocational-technical schools, and were recruited by enterprises and organizations.

Scientific workers in scientific institutes, higher educational establishments and other institutions at the end of 1963 numbered more than 11,000.

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

There was an increase in the number of cinema installations. Attendance at cinema performances in 1963 totalled about 117 million. Over 5 million persons attended theatres and concerts.

There was large-scale construction of housing and public amenities. During the past year, a total of 2,210,000 square metres of housing, financed both by the State and by the population from its own resources and with the help of State loans, were brought into occupancy in towns and workers' settlements, including 1,430,000 square metres of housing brought into occupancy State and co-operative undertakings and organizations. Furthermore, 103,000 square metres were built by the housing co-operatives.

In addition, 18,000 dwellings were built in rural areas by collective farmers and the rural intelligentsia.

In the past year alone, 343,000 persons in the Republic received new apartments or improvements in the apartments they occupied.

In the last ten years, 468,000 apartments have been built in towns and workers' settlements, and 215,000 dwellings in rural areas. During the decade, more than 3 million persons moved into new houses or improved their old dwellings.

Large-scale capital investment has been made in the construction of educational, cultural and health institutions. Twelve per cent more general education schools and 5 per cent more children's preschool institutions were brought into use in 1963 from funds allocated under the State plan than in 1962.

Much work has been carried out to provide dwellings with gas. The number of apartments with gas rose during the year by 55,600, or 45 per cent. The consumption of gas by the population and by enterprises and institutions for non-industrial purposes rose by 70 per cent compared with 1962.

The volume of passenger traffic carried by all kinds of urban transport increased by 13 per cent. New tramcars, trolleybuses and buses were added to urban rolling-stock.

Medical services to the population were further improved in the Byelorussian SSR in 1963. The network of hospitals was expanded and the number of hospital beds increased by 4,000 over the year.

The mortality rate of the population decreased during the past year.

The population of the Byelorussian SSR increased by more than 70,000 during the year and on 1 January 1964 was about 8.5 million (*Soviet Byelorussia,* No. 21, 26 January 1964).

ACT CONCERNING THE STATE BUDGET OF THE BYELORUSSIAN SSR FOR 1963, ADOPTED ON 20 DECEMBER 1962 AT THE EIGHTH SESSION OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR, FIFTH CONVOCATION (EXTRACTS)

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

Art. 1. To approve the State budget of the Byelorussian SSR for 1963 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 1,476,561,000 roubles.

Art. 2. To establish the revenue from State and co-operative undertakings and organizations —turn-over tax, tax on profits, income tax and other revenues from the Socialist economy—under the State budget of the Byelorussian SSR for 1963 at the sum of 1,369,646,000 roubles.

Art. 3. To appropriate a total of 686,212,000 roubles under the State budget of the Byelorussian SSR for 1963 for the financing of the national economy—continued development of heavy industry, construction, light industry, the foodstuffs industry, agriculture, transport, housing and municipal services and other branches of the national economy.

Art. 4. To appropriate a total of 704,399,000 roubles under the State budget of the Byelorussian SSR for 1963, including 120,761,000 roubles under the State social insurance budget, for social and cultural development—general education schools, specialized secondary schools, higher educational establishments, scientific and research institutions, workshop and factory training schools, libraries, clubs, theatres, the Press, broadcasting, and other educational and cultural activities; hospitals, crèches, sanatoria and other health and physical culture establishments; pensions and allowances.

(*Acts and decrees of the Presidium of the Supreme Soviet of the Byelorussian SSR and decisions and orders of the Council of Ministers of the Byelorussian SSR,* No. 40 (999), 24 December 1962.)

DECISION CONCERNING THE IMPROVEMENT OF COMMUNAL AND PERSONAL SERVICES TO THE POPULATION OF THE REPUBLIC, ADOPTED ON 29 MARCH 1963 AT THE FIRST SESSION OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR, SIXTH CONVOCATION (EXTRACTS)

The programme of the Communist Party of the Soviet Union recognizes that one of the most important tasks in the construction of Communism is the radical improvement of the everyday living conditions of the Soviet people, so that the needs of the population for communal and personal services may be fully met in the near future.

The Supreme Soviet of the Byelorussian SSR notes that as a result of the growth of industrial and agricultural production, the material well-

being and the living conditions of the working people of our Republic are steadily improving.

In the last four years, the volume of work in communal and personal services to the population has increased by almost 90 per cent. Over 4,000 specialized factories, workshops, ateliers, studios and reception centres were opened.

Large-scale construction of housing and public amenities is being carried out. In the last six years alone, some 7 million square metres of housing built with State funds has been made available to the working people of the Republic. In addition, 262,500 houses were built by the rural population and by manual and non-manual workers in towns and urban settlements from their own resources and with the help of State loans. The system of public baths, laundries, water supply and sewerage was expanded, and the working of public transport improved.

Between 1958 and 1962, sales to the population in State and co-operative shops of meat and meat products rose by 42 per cent; milk and dairy products, 51 per cent; sugar, 53 per cent; ready-made clothes, 50 per cent; leather footwear, 40 per cent; television sets and washing-machines, 250 per cent; motorcycles and motor scooters, 120 per cent; and refrigerators, 140 per cent.

In this period 2,160 shops with a staff of 11,000, including 1,641 shops with a staff of 7,000 under the consumers' co-operatives system, were built in the Republic, and 1,607 public catering establishments with 59,900 places were opened.

There was considerable development in the Byelorussian SSR of all forms of transport and communications. Bus services now connect the towns and regional centres, and also 68 per cent of the rural Soviets and 3,400 populated areas. The population is making increased use of hired cars, and public transport excursion services are expanding.

The number of radio and television receivers in use by the population is rising rapidly, and the postal, telephone and telegraph services are being improved.

Nevertheless, the Supreme Soviet of the Byelorussian SSR considers that the ministries and departments, and the local Soviets of Working People's Deputies and their executive committees are still not giving sufficient attention to the provision of communal and personal services to the population.

In order further to improve communal and personal services to the population, the Supreme Soviet of the Byelorussian SSR resolves:

1. To change the Council of Ministers of the Byelorussian SSR, the Council of National Economy of the Byelorussian SSR, the State Planning Committee of the Byelorussian SSR, the ministries and departments of the Byelorussian SSR and the Soviets of Working People's Deputies and their executive committees to take energetic measures to remedy short-comings in communal and personal services and to ensure complete fulfilment of the norms set for the provision of such services to the population.

2. The executive committees of regional, city and district Soviets of Working People's Deputies and the ministries and departments of the Republic shall ensure the implementation of measures provided for in the plan for expanding the network of communal and personal service establishments, providing them with modern equipment and the necessary supplies, and developing forms of public use of domestic machines and other appliances, domestic and cultural articles and household utensils. They shall establish, as part of communal and personal services, widespread hire to the public of domestic machines and other articles for home use, installation of self-service automatic laundries and expansion of the activities of service bureaux and other forms of meeting public needs and demands for communal facilities.

They shall study the possibilities and carry out the work of enlarging small workshops and setting up high-grade mechanized service establishments with a wide network of local units providing minor repairs of clothing, footwear, domestic and cultural articles and household utensils in the customer's presence; create in towns and large settlements communal service centres, in which working people could obtain basic communal services near their homes; take steps to lower the cost of services provided by these establishments and to increase their profitability.

3. To charge the regional, city and district Soviets of Working People's Deputies to give greater attention to organizing and effecting control over the work of communal service establishments, and to enlist for this purpose the broad participation of standing commissions, deputies of local Soviets and independent public organizations. They shall institute regular presentation of reports by the managers of communal service establishments at meetings of working people in undertakings, organizations, collective farms, State farms and residential areas. They shall educate the workers of communal service establishments in the spirit of the Communist approach to labour, and promote among them Socialist competition for the title of shock workers and brigades of Communist labour, high standards of workmanship and a responsible attitude.

4. To charge the Ministry of Trade of the Byelorussian SSR, the Byelorussian Co-operatives Union and the executive committees of regional, city and district Soviets of Working People's Deputies to ensure broader use of new progressive methods in trace and public catering, and to improve the quality of services to the population.

5. To charge the Ministry of Communications of the Byelorussian SSR, the Central Administration of Automobile Transport of the Council of Ministers of the Byelorussian SSR and the executive committees of regional, city and district Soviets of Working People's Deputies to take steps to improve the work of transport and communications organizations, and to ensure their efficient and regular operation.

6. To charge the executive committees of regional and district Soviets of Working People's Deputies to give greater attention to the provision of communal and personal services to the rural population, improvement of the organization of

public amenities and water-supply of rural populated areas, construction and repair of dwellings for collective farmers and State farm workers, and the development of a network of communal utilities, especially public baths.

The Supreme Soviet of the Byelorussian SSR expresses its confidence that the local Soviet of Working People's Deputies and their executive committees, the Council of National Economy of the Byelorussian SSR, the ministries and departments, and the general public in the Byelorussian SSR will make efforts speedily to raise communal and personal services to the population to the level required under the historic decisions of the Twenty-Second Congress of the Communist Party of the Soviet Union and its programme.

(*Acts and decrees of the Presidium of the Supreme Soviet of the Byelorussian SSR and decisions and orders of the Council of Ministers of the Byelorussian SSR*, No. 11 (1011), 2 April 1963.)

REPORT OF THE CENTRAL ELECTORAL COMMISSION FOR ELECTIONS TO THE SUPREME SOVIET OF THE BYELORUSSIAN SSR ON THE RESULTS OF THE ELECTIONS TO THE SUPREME SOVIET OF THE BYELORUSSIAN SSR OF 3 MARCH 1963 (EXTRACTS)

Elections to the Supreme Soviet of the Byelorussian Soviet Socialist Republic were held in the Byelorussian SSR on Sunday, 3 March 1963.

On that day elections were also held to regional, district, city, rural and settlement Soviets of Working People's Deputies.

Voting commenced everywhere at 6 a.m., ended at 12 midnight, and was carried out in strict accordance with electoral law.

The elections took place in an orderly manner, with a high turn-out of voters, and in an atmosphere of great political and labour enthusiasm, aroused by the historic decisions of the Twenty-Second Congress of the Communist Party of the Soviet Union and the November Plenary Session of the Central Committee of the Communist Party of the Soviet Union. The elections were a nation-wide festival, providing a clear demonstration of the unity of the Communist Party, the Soviet Government and the people.

On 4 and 5 March, the Central Electoral Commission received from all the district electoral commissions full details on the results of the elections to the Supreme Soviet of the Byelorussian SSR. The total number of electors in the Republic was 5,335,853, of whom 5,333,954, or 99.96 per cent, voted in the election for deputies to the Supreme Soviet of the Byelorussian SSR.

In all electoral districts for elections to the Supreme Soviet of the Byelorussian SSR, 5,324,954 persons, or 99.83 per cent of the total of those voting, voted for the candidates of the people's Communist and non-Party bloc, while 8,984 persons voted against them. Under article 79 of the Regulations for Elections to the Supreme Soviet of the Byelorussian SSR, sixteen ballot papers were declared invalid.

After examining the returns from each electoral district, the Central Electoral Commission registered the deputies elected by each electoral district to the Supreme Soviet of the Byelorussian SSR, in accordance with article 38 of the Regulations for Elections to the Supreme Soviet of the Byelorussian SSR.

In all, 421 deputies were elected to the Supreme Soviet. These included 151 women, or 35.87 per cent; 292 members or candidates for membership of the Communist Party of the Soviet Union, or 69.36 per cent; 129 non-Party members, or 30.64 per cent; and 195 industrial and collective farm workers, or 46.32 per cent. Of the total number of deputies elected, 343 (or 81.47 per cent) had not served at the previous session.

(*Acts and decrees of the Presidium of the Supreme Soviet of the Byelorussian SSR and decisions and orders of the Council of Ministers of the Byelorussian SSR*, No. 8 (1008), 9 March 1963.)

REPORT OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR ON THE RESULTS OF THE ELECTIONS TO REGIONAL, DISTRICT, CITY, RURAL AND SETTLEMENT SOVIETS OF WORKING PEOPLE'S DEPUTIES

Elections to regional, district, city, rural and settlement Soviets of Working People's Deputies, ninth convocation, were held in the Byelorussian Soviet Socialist Republic on Sunday, 3 March 1963.

Voting commenced everywhere at 6 a.m., ended at 12 midnight, and was carried out in strict accordance with electoral law.

The elections took place in an orderly manner, with a high turn-out of voters, and in an atmosphere of great patriotic enthusiasm, aroused by the historic decisions of the Twenty-Second Congress of the Communist Party of the Soviet Union and the November Plenary Session of the Central Committee of the Communist Party of Soviet Union.

As a result of the elections, deputies were elected to six regional (industrial) Soviets, six regional (rural) Soviets, seventy-seven district Soviets, seventy-one city Soviets, thirteen urban district Soviets, 1,541 rural Soviets and 126 settlement Soviets.

At the election to regional, district, city, rural and settlement Soviets of Working People's Deputies, the percentage of electors voting was as follows:

Regional (industrial) Soviets	99.94
Regional (rural) Soviets	99.93
District Soviets	99.98
City Soviets	99.90
Urban district Soviets	99.85
Rural Soviets	99.99
Settlement Soviets	99.98

Or the total number of ballots cast, the votes for candidates of the people's Communist and non-Party bloc were as follows (in percentages):

Regional (industrial) Soviets	99.73
Regional (rural) Soviets	99.91
District Soviets	99.85
City Soviets	99.73
Urban district Soviets	99.66
Rural Soviets	99.77
Settlement Soviets	99.69

Under article 99 of the Regulations for elections to regional, district, city, rural and settlement Soviets of Working People's Deputies, forty-two ballot papers were declared invalid.

These results of elections to the local Soviets of Working People's Deputies of the Byelorussian SSR are convincing of the triumph of Soviet socialist democracy, and the unity and solidarity of the workers of the Republic with Communist Party of the Soviet Union and its Leninist Central Committee.

In all, 80,783 deputies were elected to the local Soviets of Working People's Deputies. All the deputies elected were canditates of the people's Communist and non-Party bloc.

Of the deputies, 33,818, or 41.86 per cent, are women; 34,437, or 42.63 per cent, are members or candidates for membership of the Communist Party of the Soviet Union; 46,346, or 57.37 per cent, are non-Party members; and 51,641, or 63.93 per cent, are industrial and collective farm workers. Of all the deputies elected, 46,556, or 57.63 per cent, had not served at the previous session.

In seven electoral districts for rural Soviets, no candidate received an absolute majority of votes and none was elected. In one electoral district for a regional Soviet and in two electoral districts for district Soviets, no elections were held. In accordance with the Regulations for elections to regional, district, city, rural, and settlement Soviets of Working People's Deputies, new elections will be held in all these electoral districts.

(*Acts and decrees of the Presidium of the Supreme Soviet of the Byelorussian SSR and decisions and orders of the Council of Ministers of the Byelorussian SSR*, No. 8 (1008), 9 March 1963.)

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR OF 4 DECEMBER 1963 INTRODUCING ADDITIONS AND AMENDMENTS IN THE STATUTE CONCERNING THE COMRADES' COURTS (EXTRACTS)

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

To introduce the following additions and amendments in the Statute concerning the Comrades' Courts:

1. A fifth paragraph shall be added to article 2 of the Statute, as follows:

"In exceptional cases, with the agreement of the superior trade union organ or the executive committee of the appropriate local Soviet of Working People's Deputies, comrades' courts may be established in collectives of fewer than fifty persons."

2. Comrades' courts shall henceforth be elected for a term of two years.

Accordingly, in the first paragraph of article 3 of the Statute the words "for a term of one year" shall be replaced by the words "for a term of two years".

3. The first paragraph of article 4 of the Statute shall be amended to read as follows:

"Comrades' courts shall report on their activities to general meetings of working people's collectives not less than once a year."

4. Paragraphs 1 (*a*), 1 (*b*) and 8 (*a*) shall be added to article 5 of the Statute, as follows:

"1 (*a*). Unauthorized use for private purposes of means of transport, agricultural or industrial machinery, raw materials or other property belonging to a State undertaking, institution, organization, collective farm or other co-operative or public organization, if such acts did not cause material damage to the said undertaking, institution or organization;

"1 (*b*). First offences of minor hooliganism, minor speculation, minor misappropriation of State or public property or theft of consumer and domestic articles of minor value privately owned by citizens, where the guilty party and the victim are members of the same collective.

"*Note:* The cases mentioned in this paragraph are referred to comrades' courts by the militia, the procurator's office and the courts. Where there is no comrades' court for the place of work or residence of the offender, or if the personal circumstances of the offender or the circumstances of the case make it inadvisable to refer the case to a comrades' court, the case shall be examined in a district or city people's court as provided by the law;

"8 (*a*). Disputes over arrangements for the use of buildings owned jointly by two or more citizens, division of property of a collective farm household and assignment of property upon leaving a collective farm household, or division of property between spouses, if the parties in dispute agree to refer the matter to the comrades' court."

The following amendements shall be introduced in article 5, paragraph 1, 2, 4, 6, 7 and 8 of the Statute:

In paragraph 1, the words " damage to stocks, tools and materials resulting from negligence" shall

be replaced by the words "destruction, loss or damage to stocks, tools, materials and other State or public property, resulting from an irresponsible attitude on the part of a worker to his duties, if the damage caused is not substantial";

In paragraph 2, after the words "or at work", the following words shall be added: "making, keeping or acquiring home-brewed alcohol, without intent to sell and in small quantities, where these acts are first offences";

In paragraph 4, after the words "falsehoods defamatory to another member of the collective", the words "and beatings and minor bodily injuries not harmful to health" shall be added;

In paragraph 6, after the words "minor damage to dwellings and other buildings and to communal equipment", the words "failure to observe fire safety regulations" shall be added;

In paragraph 7, after the words "payment for communal services", the words "payment of expenses for current repairs to communal property" shall be added;

In paragraph 8, the words "belonging to the same collective" shall be deleted.

Article 5, paragraph 10 of the Statute shall be amended to read: "Administrative offences, if the organs and officials empowered to impose administrative fines see to refer such cases to a comrades' court;

"Lawlessness, refusal to help a sick person, unauthorized practice of medicine, receiving property known to have been acquired by unlawful means, and other criminal acts, if they do not constitute any great danger to the public, and if the militia, procurator's office or the courts see fit to refer such cases to a comrades' court."

Accordingly, article 5 of the Statute shall read as follows:

"*Article 5.* Comrades' courts shall consider cases relating to:

"1. Infringements of labour discipline, such as absence from work without good reason; arriving at work late or leaving early; producing substandard work, or an irresponsible attitude on the part of a worker to his duties; failure to observe safety or other labour protection regulations, with the exception of cases entailing criminal responsibility; and destruction, loss or damage to stocks, tools, materials and other State or public property, resulting from an irresponsible attitude on the part of a worker to his duties, if the damage caused is not substantial;

"1 (*a*). Unauthorized use for private purpose of means of transport, agricultural or industrial machinery, tools, raw materials or other property belonging to a State undertaking, institution, organization, collective farm or other co-operative or public organization, if such acts did not cause material damage to the said undertaking, institution or organization;

"1 (*b*). First offences of minor hooliganism, minor speculation, minor misappropriation of State or public property or theft of consumer and domestic articles of minor value privately owned by citizens, where the guilty party and the victim are members of the same collective.

"*Note:* The cases mentioned in this paragraph are referred to comrades' courts by the militia, the procurator's office and the courts. Where there is no comrades' court for the place of work or residence of the offender, or if the personal circumstances of the offender or the circumstances of the case make it inadvisable to refer the case to a comrades' court, the case shall be examined in a district or city people's court as provided by the law;

"2. Drunkenness or unseemly behaviour in public places or at work; making, keeping or acquiring home-brewed alcohol, without intent to sell and in small quantities, where these acts are first offences;

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

"4. Insults and the spreading of falsehoods defamatory to another member of the collective, and beatings and minor bodily injuries not harmful to health, where these acts are first offences; foul language;

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

"6. Minor damage to dwellings and buildings and to communal equipment; failure to observe fire safety regulations;

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

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

"8 (*a*). Disputes over arrangements for the use of buildings owned jointly by two or more citizens, division of property of a collective farm household and assignment of property upon leaving a collective farm household, or division of property between spouses, if the parties in dispute agree to refer the matter to the comrades' court;

"9. Other anti-social acts not entailling criminal responsibility;

"10. Administrative offences, if the organs and officials empowered to impose administrative fines see fit to refer such cases to a comrades' court;

"Lawlessness, refusal to help a sick person, unauthorized practice of medecine, receiving property known to have been acquired by unlawful means, and other criminal acts, if they do not constitute any great danger to the public, and if the militia, procurator's office or the courts see fit to refer such cases to a comrades' court."

5. In article 9 of the Statute, after the words "after its submission", the following words shall be added: "Cases of minor hooliganism and minor

speculation shall be considered by comrades' courts not later than seven days after their submission".

6. At the end of article 10 of the Statute, after the words "and witnesses summoned", the following paragraph shall be added:

"When considering a case at the place of residence of the offender, a comrades' court shall, where necessary, take steps to ensure participation in the session of the comrades' court of representatives of the collective in which the offender works."

7. Article 11, second paragraph, of the Statute shall be amended to read as follows:

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

8. At the end of article 13 of the Statute, the following words shall be added: "If the case has been examined at the place of residence of the offender, the comrades' court may in addition bring its decision to the knowledge of public organizations and officials at the place of work of the person concerned."

In article 15, paragraph 7, the words "or persistently failed to pay the rent" shall be deleted.

A second paragraph shall be added to article 15, paragraph 8 of the Statute, as follows:

"In cases of minor speculation, the comrades' courts shall decide whether the articles concerned shall be transferred to State revenue."

(*Acts and decrees of the Presidium of the Supreme Soviet of the Byelorussian SSR and decisions and orders of the Council of Ministers of the Byelorussian SSR*, No. 36 (1036), 4 December 1963.)

CAMBODIA

NOTE

The Minister of Foreign Affairs of the Kingdom of Cambodia has informed the Secretary-General of the United Nations that the Royal Government had no texts suitable for publication in the *Yearbook on Human Rights for 1963*.

CANADA

NOTE[1]

I. FEDERAL LEGISLATION

1. Dissolution of Marriage

The Dissolution and Annulment of Marriages Act[2] provides a speedy alternative to petitioning Parliament for a Bill of Divorce, previously the only remedy to residents of Newfoundland and Quebec, which have no divorce courts. It authorizes the Senate of Canada to dissolve or annul a marriage by way of resolution, upon the petition of either party to the marriage. The Senate may adopt a resolution only after a hearing before an Officer of the Senate. An appeal by either party from a resolution for dissolution or annulment lies to the Parliament of Canada.

This new remedy is not restricted to residents of Newfoundland and Quebec, but it is expected that the practice will be similar to that presently followed with respect to applications for bills of divorce.[3] In such cases, petitioners domiciled in provinces with divorce courts are generally referred to their provincial courts, unless there is real doubt as to domicile.

2. Employment and Manpower Development Program

A new Employment and Manpower Development Program,[4] designed to reduce unemployment, promote manpower development and increase employment security, co-ordinated and strengthened earlier measures and introduced some new features. As one step in the implementation of this programme, the Technical and Vocational Training Assistance Act[5] was amended to provide for a larger federal contribution to the provincial costs of the providing training allowances for unemployed persons, for an increase in the federal contribution towards the provincial costs of training in industry, and to authorize the continuation of the federal contribution to capital expenditures incurred by the provinces on training facilities. To assist older workers to return to gainful jobs, the Older Worker Employment and Training Incentive Program[6] was introduced, under which incentive payments were made to employers who hired eligible older workers during the winter months and gave them job training. Another new feature was the Winter House Building Program,[7] which provided for a winter house building incentive to stimulate winter employment. Further to encourage a higher level of winter employment, payments to municipalities under the Municipal Winter Works Incentive Program were increased.[8]

A third new feature was the establishment in the Department of Labour of a manpower consultative service[9] to assist labour and management to meet the employment problems caused by technological and other industrial changes. Provision was also made for financial assistance to employers and unions for research on manpower development in advance of technological changes.

3. Loans to Municipalities

Another measure to promote increased employment, particularly during the winter months, the Municipal Development and Loan Act,[10] authorized federal loans to municipalities to enable them to augment or accelerate their capital works programmes.

4. The Economic Council of Canada

The Economic Council of Canada[11] was established to promote full employment and national development. Composed of representatives of all sectors of the economy—business, industry, farm organizations, trade unions and the general public—the basic duty of the Council is to "advise and recommend ... how Canada can achieve the highest possible levels of employment and efficient production in order that the country may enjoy a high and consistent rate of economic growth and that all Canadians may share in rising living

[1] Note furnished by the Government of Canada.

[2] Statutes of Canada, 1963, c. 10.

[3] Debates of the Senate of Canada, 1 August 1963, p. 470.

[4] Canada, *Debates of House of Commons*, 10 June 1963, pp. 821-823.

[5] *Statutes of Canada*, 1963, c. 22.

[6] *Ibid.*, c. 42; SOR/63-439, gazetted 27 November 1963.

[7] *Ibid.*; SOR/64-66, gazetted 26 February 1964.

[8] *Ibid.*

[9] *Ibid.*

[10] *Ibid.*, c. 13.

[11] *Ibid.*, c. 11.

standards . . ." In particular, it is required to study the medium-term and long-term prospects of the economy and to recommend policies that will best help to realize the potentialities of growth of the economy. So that the objectives of the Act may be realized, it must encourage maximum consultation and co-operation between management and labour. The Council is also instructed "for the purpose of promoting and expediting advances in efficiency of production in all sectors of the economy (to) foster and promote . . . the maintenance of good human relations in industry (and) the use of training programs at all levels of industry, and the use of retraining programs to meet changing manpower requirements. . ."

5. Old-Age Security

The rate of the old-age security pension was increased to $75 a month, effective 1 October 1963.[12]

6. Old-Age Assistance and Allowances for Disabled Persons

The federal legislation was amended, effective 1 December 1963,[13] to raise from $65 and $75 a month the amount of assistance in which the federal government will share. At the same time, the total allowable income for an unmarried person was raised to $1,260 a year. For a married couple, the allowable income was raised to $2,220 a year, or when the spouse is blind, to $2,580. By April 1964, all ten provinces were participating in these increased limits.

7. Allowances for Blind Persons

The federal legislation was amended, effective 1 December 1963,[14] to raise from $65 to $75 a month the maximum allowance in which the federal government would share. At the same time, the total allowable income for an unmarried person was raised to $1,500 a year; for a person with no spouse but with one or more dependent children, to $1,980 a year; for a married couple, $2,580. When the spouse is also blind, the income of the couple may not exceed $2,700. The increased allowance and the increased income limits were effective in all provinces by April 1964.

II. PROVINCIAL LEGISLATION

1. Anti-Discrimination Measures

New anti-discrimination measures were adopted in two provinces. Nova Scotia enacted the Human Rights Act,[15] which consolidated and strengthened three earlier anti-discrimination laws—the Fair Employment Practices Act, the Equal Pay Act and the Fair Accommodation Practices Act. One important new principle was introduced, the prohibition of discriminatory practices in the rental of apartments. The new Act makes it an offence for any person to deny occupancy of any apartment in any building with more than four self-contained dwelling units on grounds of race, religion, religious creed, colour or ethnic or national origin. Discrimination with respect to any term or condition of occupancy of an apartment on any of these grounds is also prohibited.

In Quebec, a new Hotels Act[16] prohibits discrimination in hotels, restaurants or camping grounds. It forbids the owner or keeper of any such establishment to refuse to provide any person with food, lodging or any other services available to the public, or to discriminate with regard to the services provided, on grounds of race, belief, colour, nationality, ethnic origin or place of birth.

2. Political Rights

In Ontario, an amendment to the Public Service Act[17] gave Crown employees, except deputy ministers and other senior management, the right to seek elective office, subject to certain restrictions. Employees of the Ontario Government had been denied this right in 1897, when a Resolution of the Legislature barred officers and clerks of the public service from actively participating in federal or provincial elections or running for a municipal council. As a result of the amendment, any Crown employee (other than a person in a restricted category) may now engage in municipal politics without his having to obtain permission or leave of absence. Subject to certain restrictions, he may be a candidate for election to any elective municipal office, serve in such office or actively support a candidate for municipal office.

A Crown employee who wishes to run in a federal or provincial election must apply for leave of absence through his minister to the Lieutenant Governor in Council, who is obliged to grant the request. If elected to Parliament or to a provincial legislature, the Crown employee must resign immediately, but has certain rights to re-appointment for a specified period. His pension rights are also protected.

A new election law in Prince Edward Island[18] established uniform qualifications for electors and abolished the property franchise and plural voting. The previous Act had provided for a property franchise to elect half of the thirty-member Legislative Assembly and permitted a voter to cast a ballot in any districts in which he owned property. A property qualification was also one of the alternative requirements for voters for the other fifteen representatives.

In Quebec, an amendement to the Legislature Act[19] provided that members of the Legislative Council appointed after 1 July 1963 would hold office until the age of seventy-five, instead of being appointed for life.

A new Election Act[20] in Quebec reduced the minimum age of voters from 21 years to 18, making Quebec the second province, after Sas-

[12] *Ibid.*, c. 16.
[13] *Ibid.*, c. 26.
[14] *Ibid.*, c. 26.
[15] *Statutes of Nova Scotia*, 1963, c. 5.
[16] *Statutes of Quebec*, 1963, c. 40.
[17] *Statutes of Ontario*, 1962-63, c. 118.
[18] *Statutes of Prince Edward Island*, 1963, c. 11.
[19] *Statutes of Quebec*, 1963, c. 12.
[20] *Ibid.*, c. 13.

katchewan, to extend the franchise to eighteen-year-olds. The minimum voting age is nineteen in Alberta and British Columbia twenty-one in the other provinces.

The new Quebec election law also introduced a number of other changes designed to increase protection of voting rights and to improve procedures. The Chief Returning Officer is to be appointed by the Legislative Assembly rather than by the Lieutenant Governor in Council and a candidate's party affiliation is now to be shown on the ballot paper. Other innovations are the limitation on election expenses by parties and candidates and the provision for partial reimbursement of such expenses to candidates.

3. Proceedings against the Crown

The Proceedings Against the Crown Act, 1962-63 [21] adopted in Ontario removed all the immunities and privileges heretofore enjoyed by the Crown, and enables any person to sue the Crown and its servants in the courts as of right in the same manner as he may sue a person. Previously, no action in tort could be brought against the Crown and no other type of action could be brought except with consent and by way of a petition of right.

4. Expropriation Procedures

To remedy the disparities resulting from some thirty enactments dealing with expropriation and compensation, and to give additional protection to individual property rights, Ontario passed the Expropriation Procedures Act, 1962-63.[22] The new Act not only established uniform procedures for all expropriating authorities in the province but also prescribed new publicity requirements and imposed time limits on expropriation procedures. Also, in each case, the individual may now apply for a hearing, a right, which under some of the earlier laws, was reserved only to the expropriating authority. To help the small-holder, the expropriating tribunal or the tribunal hearing the expropriating proceedings was empowered to award costs.

One other province, Alberta, reformed its expropriation law in recent years, enacting the Expropriating Procedure Act in 1961.[23] This statute divided expropriation authorities into four classes and prescribed a procedure for each class, with certain general provisions applicable to all. A similar Act has been in force in Manitoba [24] for some time.

5. General Assistance

Ontario

Regulations issued in Ontario [25] governing provincial assistance to widows and unmarried women introduced a new programme which provides for allowances of up to $75 per month to widows and unmarried woman sixty years of age or more. The definition of "unmarried woman" includes a wife whose husband is a patient in a mental hospital, a sanatorium, a hospital for the chronically ill or a nursing home or is a resident in a home for the aged for at least six months or more; a wife whose husband is imprisoned for six months or more; a woman who is divorced and has not remarried; and a wife who is living separate and apart from her husband and has been so living for a continued period of seven years or more.

The allowance is payable on a means test basis to women in this category who have resided in Ontario for at least one year. An applicant may have liquid assets of up to $1,000, and if she is in one of the first three groups of "unmarried" women mentioned above, her husband's assets may not exceed $1,000. The Regulations set out items to be considered in computing income, which may not exceed $1,260 a year, including the allowance. Recipients of government allowances under other programmes and patients in mental hospitals, private hospitals, sanatoria, psychiatric hospitals, public hospitals and homes for the aged or nursing homes are not eligible for an allowance under these Regulations.

A recipient is entitled to receive medical services without cost under any agreement in writing in force from time to time between the Province of Ontario and the Ontario Medical Association.

Alberta

An amendment to the Public Welfare Act [26] made several important changes. In addition to authorizing the Minister of Public Welfare to provide aid to a destitute person who is a transient or a resident of the province, the Act now authorizes him also to provide aid to a "person who is in need of immediate or urgent assistance".

The amendment removes from the Act the requirement that an unemployed person, who has applied for or is receiving material aid, perform unemployment relief work if requested to do so by the municipality or by the Department of Public Welfare. It also deletes the clause which absolves a municipality or the Department from any obligation to continue to aid any person who has refused to perform any unemployment relief work in the municipality.

6. Mothers' Allowances

Prince Edward Island

Changes in the Mother's Allowances Regulations [27] raised gross income limits for a mother and one child from $900 a year to $1,800; (the permissible limit, as formerly, is increased by $100 a year for each additional child up to six or more children). The maximum monthly income for a mother and one child was raised from $35 a month to $70 a month.

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[21] *Statute of Ontario,* 1962-63, c. 109.

[22] *Ibid.,* c. 43.

[23] *Statutes of Alberta,* 1961, c. 30.

[24] *Revised Statutes of Manitoba,* 1954, c. 78.

[25] O. Reg. 111/63, gazetted 18 May 1963, as amended by O. Reg. 337/63, gazetted 28 December 1963.

[26] *Statutes of Alberta,* 1963, c. 52.

[27] Regulations gazetted 29 June 1963.

New Brunswick

Under an amendment to the Social Assistance Act (Part I, Provincial Assistance),[28] the maximum monthly allowance which may be paid to any needy mother or foster mother dependent children was raised from $90 to $115. By regulation,[29] the maximum monthly assistance payable on behalf of a mother and one dependent child was raised from $35 to $60.

7. Child Welfare

Ontario

Through an amendment to the Child Welfare Act[30] the minimum age for adoptive parents was lowered from twenty-five to twenty-one years.

Manitoba

An amendment to the Child Welfare Act[31] permits the Director of Welfare or a children's aid society to apply to a judge of a County Court to waive the requirement that a child be placed with a family or in an institution of his own religious faith, if no suitable home is available. Notice of application to do so must be given by mail or public advertisement of such persons as the judge may require. When the judge is satisfied that it is in the best interests of the child that the religious requirement be waived, he may make an order to this effect.

Alberta

An amendment to the Child Welfare Act[32] revised the definition of a neglected child to include a general statement defining a neglected child as one in need of protection and specifying a number of circumstances under which a child may be considered neglected.

New clauses consider as being in need of protection under the Act; a child born out of wedlock whose mother consents to him being brought before the court for purpose of transferring his guardianship to the Superintendent of Child Welfare; a child whose proper physical, mental, moral, or emotional development is endangered by ill-treatment, indifference or neglect or from grave misconduct of the parents or other persons in whose charge he may be; a child who is being cared for by and at the expense of an institution or nursery or a person other than his parents in circumstances which indicate that his parents are not performing their parental duties.

8. Medical Care

In Alberta, a government-subsidized prepaid Medical Insurance Plan went into force on 1 October 1963.[33] Under this plan, comprehensive medical services are available to residents of the province through the doctor of their choice and through an insurance firm of their own selection under a government-established maximum allowable premium, with provision for financial contributions by the Government towards premium payments for persons in defined income levels. One other province, Saskatchewan, has a medical care insurance programme, which went into force on 1 July 1962.[34]

9. Workmen's Compensation

Amendments to workmen's compensation laws were adopted in five provinces,[35] some of which not only provided for higher compensation awards to the disabled and for increased death benefits, but also recognized the need to improve rehabilitation services to help injured workmen re-establish themselves in gainful employment. Quebec provided for an expansion of coverage, and Ontario widened the definition of accident to permit compensation to be paid for any work-caused injury or disablement. The maximum annual earnings on which compensation is based were increased in Ontario, the waiting period was reduced in Ontario and Quebec, and the minimum payment for total disability was raised in Quebec. Manitoba raised the ceiling on annual expenditures for vocational training and Quebec removed the annual limit on rehabilitation expenditures. Pensions to dependent children were increased in Ontario, and in Prince Edward Island the dollar limits on the monthly compensation to a widow and children or to a family of orphans were removed. Prince Edward Island raised the age limit for payment to children who are attending school from eighteen to twenty-one, and a Quebec amendment permitted payments to be continued as long as a child is attending school regularly.

10. Labour Relations

Amendments to the British Columbia Labour Relations Act[36] designed to reduce industrial unrest and work stoppages, provided for improvements in the grievance procedure. A speedier, less expensive alternative to arbitration was introduced, permitting the parties to refer grievances arising from the provisions of a collective agreement to the Labour Relations Board for settlement. Another amendment made it mandatory for every collective agreement to include a provision governing the dismissal and suspension of an employee bound by the agreement, thereby making disputes over dismissals or suspensions subject to the grievance procedure. A third amendment gave the Labour Relations Board or other body to whom a grievance has been referred express authority to direct an employer to reinstate and reimburse an

[28] *Statutes of New Brunswick*, 1963, c. 20.

[29] O.C. 63-324, gazetted 21 May 1963.

[30] *Statutes of Ontario*, 1962-63, c. 12.

[31] *Statutes of Manitoba*, 1963, c. 10.

[32] *Statutes of Alberta*, 1963, c. 7.

[33] *Ibid.*, c. 70. Alta. Reg. 280/63, gazetted 15 July 1963, as amended by Alta. Reg. 452/63, gazetted 15 October 1963 and Alta. Reg. 463/63, gazetted 31 October 1963.

[34] See *Yearbook on Human Rights for 1962*, p. 31.

[35] *Statutes of Manitoba*, 1963, c. 98; Statutes of *New Brunswick*, 1963, c. 44; *Statutes of Ontario*, 1962-63, c. 145; *Statutes of Prince Edward Island*, 1963, c. 38; *Statutes of Quebec*, 1963, c. 41.

[36] *Statutes of British Columbia*, 1963, c. 20

employee who has been improperly discharged or "to make such order as it considers fair and reasonable, having regard to the terms of the collective agreement".

Newfoundland repealed a controversial section adopted in 1959 that provided for the dissolution of a trade union by the Supreme Court, if it appeared that a substantial number of its superior officers outside the province had been convicted of heinous crimes and still retained their positions in the union. Another Newfoundland amendment dealing with hospital services provided for the replacement of normal dispute settlement procedures by emergency measures under special circumstances.[37]

An amendment to the Ontario Public Service Act [38] authorized the establishment of negotiating machinery for provincial civil servants, making Ontario the second province, after Saskatchewan, to give civil servants negotiating rights. The amendment provided for the establishment of a Joint Council, which is empowered to negotiate any matter concerning the terms of employment of public servants, including working conditions, remuneration, leaves and hours of work, and for the appointment of a civil service arbitration board with authority to make a binding decision in the event of a stalemate in negotiations.

11. Education and Training

A number of provinces adopted measures to help workers obtain the best possible training to enable them to meet the requirements of an expanding technological economy. A Manitoba amendment [39] raised the compulsory school attendance age to fifteen and made provision for it to be raised to sixteen in 1965. Ontario [40] removed the upper age limit for apprentices, thereby making it possible for older workers to undergo apprenticeship training, and Prince Edward Island passed the Apprenticeship and Tradesmen's Qualification Act,[41] which provided for the training of apprentices and the certification of tradesmen. British Columbia amendments [42] provided for the enlargement and improvement of apprenticeship training programmes and for the introduction of compulsory certification to give due and proper recognition to qualified tradesmen.

III. JUDICIAL DECISIONS

In the case of Robertson and Rosetanni *v.* The Queen,[43] decided by the Supreme Court of Canada in October 1963, the issue was whether the Lord's Day Act [44] infringes on freedom of religion and whether the Act was rendered inoperative by the Canadian Bill of Rights.[45]

The appellants were convicted on the charge that they operated a bowling alley on a Sunday contrary to the Lord's Day Act. The conviction was attacked on the ground that the purpose and the effect of the Lord's Day Act are to compel, under the penal sanctions of the criminal law, the observance of Sunday as a religious holy day by all the inhabitants of Canada, which is an infrigement of religious freedom, and on the ground that the Canadian Bill of Rights [46] has in effect repealed Section 4 [47] of the Lord's Day Act, which forbids the carrying on of business activities on Sundays.

The Supreme Court, by a majority decision (one judge dissenting), ruled that, although the Lord's Day Act supports a Christian religious tenet, it does not abrogate, abridge or infringe "freedom of religion" as guaranteed by the Canadian Bill of Rights and therefore it is not rendered inoperative by virtue of the latter Act. Further, the Court held that the freedoms specified in the Bill of Rights were those as they existed immediately before that statute was enacted, and the Supreme Court has recognized that complete liberty of religious thought and untrammelled affirmation of religious beliefs existed in Canada before the Bill of Rights was enacted and notwithstanding the Lord's Day Act. Historically, legislation such as the Lord's Day Act has never been considered as an interference with the kind of freedom of religion guaranteed by the Bill of Rights and nothing in the Lord's Day Act in any way affects the liberty of religious thought and practice of any citizen. Its practical effect on those whose religion requires them to observe a day of rest other than Sunday is purely secular and financial in having to abstain from business on Sunday.

In January 1963, the Quebec Court of Queen's Bench in Guay *v.* Lafleur [48] upheld the judgement of the Superior Court [49] regarding the right of an individual to a fair hearing for the determination of his rights and obligations before an administrative tribunal.

The case concerned a commission of inquiry set up under the Income Tax Act to make a formal inquiry concerning a taxpayer. The taxpayer claimed that he had the right to be present at this enquiry, together with his counsel. The Superior Court granted an injunction in 1961 to prevent the commission from proceeding about its inquiry without admitting the taxpayer.

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[37] *Statutes of Newfoundland,* 1963, c. 82.

[38] *Statutes of Ontario,* 1962-63, c. 118.

[39] *Statutes of Manitoba,* 1963, c. 74.

[40] *Statutes of Ontario,* 1962-63, c. 4.

[41] *Statutes of Prince Edward Island,* 1963, c. 1.

[42] *Statutes of British Columbia,* 1963, c. 3.

[43] (1964) 41 D.L.R. (2d), p. 485.

[44] R.S.C. 1952, c. 171.

[45] 1960 (Can.), c. 44.

[46] The relevant section reads: "2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgement or infringement of... (freedom of religion)."

[47] Section 4 reads: "S. 4. It is not lawful for any person on the Lord's Day, except as provided herein, or in any provincial Act or law now or hereafter in force, to sell or offer for sale or purchase any goods, chattels, or other personal property, or any real estate, or to carry on or transact any business of his ordinary calling, or in connection with such calling, or for gain to do, or employ any other person to do, on that day, any work, business, or labour."

[48] (1963) R.J.B.R. No. 7, p. 623.

[49] (1962) 31 D.L.R. (2d), Part 8, p. 575, reported in *Yearbook on Human Rights for* 1961, p. 48.

On appeal, the Court of Queen's Bench held, by a majority decision, that in virtue of a fundamental principle of justice and inquiry or investigation, even if it is purely administrative, must be conducted fairly and impartially. Consequently, a taxpayer has the right to attend and to be represented by counsel at the sittings of a commission of inquiry instituted to investigate into his affairs under the provisions of the Income Tax Act.

The decision of the Court was appealed to the Supreme Court of Canada.

CENTRAL AFRICAN REPUBLIC

NOTE

CONSTITUTIONAL ACT OF 28 DECEMBER 1962

AMENDING THE CONSTITUTION [1]

Art. 1. The last paragraph of article 2 of the Constitution is repealed and replaced by the following text:

"The people shall exercise sovereignty freely and democratically within a single national political movement: the 'Social Evolution Movement of Black Africa' MESAN."

. . .

ORGANIC LAW NO. 63-424 OF 19 NOVEMBER 1963 CONCERNING THE ELECTION OF THE DEPUTIES TO THE NATIONAL ASSEMBLY [2]

Chapter I

General Provisions

Art. 1. The deputies shall be elected by direct and universal suffrage on a single ballot and on a complete single national roll with no splitting of votes or preferential voting.

The deputies shall be fifty in number.

. . .

Chapter II

Conditions of Eligibility and Incompatibility of Offices

Art. 7. Every citizen of the Central African Republic who has the right to vote may be elected to the National Assembly upon the conditions and subject only to the reservations set forth in the following articles.

Art. 8. No person may be elected to the National Assembly unless he has reached the age of twenty-three years.

Art. 9. A convicted person may not stand for election if the conviction permanently or temporarily bars his registration on the electoral roll.

A person deprived by the decision of a court of his right to stand for election shall also be ineligible.

Art. 10. Employees of the State or of public bodies, whether or not they are civil servants, may not stand as candidates unless they have relinquished their post.

These provisions shall not apply to officials who are former members of the Government or of the National Assembly of the Central African Republic.

Art. 11. The registration of a national list drawn up in violation of the provisions of the foregoing articles is prohibited.

Art. 12. Any person whose ineligibility comes to light after the declaration of election and the expiration of the period during which the election can be disputed, or who during his period of office shall be found to be in one of the cases of ineligibility enumerated in this Law, shall be disqualified as a member of the National Assembly.

Any deputy who, during his term of office, has been convicted of an offence endangering the internal or external security of the State shall also be disqualified as a member of the National Assembly.

The disqualification shall be confirmed by the Constitutional Council at the request of the President of the Republic or of the President of the National Assembly.

Art. 13. The office of deputy shall be incompatible with the following offices:

1. President of the Republic.
2. Minister.
3. Any non-elective public office, wether civilian or military, or any office for which remuneration is paid by a foreign State or an international organization. Deputies entrusted by the Government or the Assembly a mission of not more than six months' duration may combine that mission with their parliamentary duties.
4. Chairman, manager, deputy manager, member of the board of directors or permanent adviser of a national public institution, unless the deputy in question is appointed, in that capacity, as a member of the board of directors of a national public institution under the instruments establishing the said institution.

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[1] Text published in the *Journal officiel de la République centrafricaine*, No. 1, of 1 January 1963.

[2] Text published in the *Journal officiel de la République centrafricaine*, No. 23, of 1 December 1963.

5. Head of an undertaking, chairman of the board of directors, managing director, manager, deputy manager, or permanent adviser of a private company subsidized by the State or by a public body.

Art. 14. Any barrister holding the office of deputy is forbidden to perform, either directly or indirectly, any act in connexion with his profession in matters in respect of which penal proceedings are in progress before the courts dealing with crimes or offences against the public interest, those affecting the Press or those prejudicial to credit and savings; he is likewise forbidden to plead or to engage in consultation on behalf of any of the companies, undertakings or institutions referred to in article 13 which he did not normally represent as counsel before his election.

Art. 15. Deputies are forbidden to cause or allow their names to be followed by a reference to their office in any advertising matter relating to a financial, industrial, or commercial undertaking.

Infringement of the terms of this article will be punishable by imprisonment for a term of one month and one day to six months and a fine of from 50,001 francs to 500,000 francs, or by one only of these two penalties.

Art. 16. A deputy who, at the time of his election, holds one of the incompatible offices referred to in this chapter must, within eight days after assuming his functions, furnish evidence that he has resigned from the office which is incompatible with his functions, or, if he holds a government post, that he has applied to be given the special status provided for by the regulations governing that post. If he fails to do so, he shall be declared to have resigned his office as deputy automatically.

A deputy who during his term of office has accepted a function which is incompatible with it, or who has disregarded the provisions of article 13 above, shall likewise be declared to have resigned his office as deputy automatically, unless he does so voluntarily.

In all cases, the automatic declaration of resignation is pronounced by the Constitutional Council at the request of the President of the Republic or of the President of the National Assembly.

. . .

Chapter IV

MISCELLANEOUS PROVISIONS

. . .

Art. 20. The Electoral Code [3] shall apply in all matters for which no provision is made in the present Law...

[3] For extracts from this Code, see *Yearbook on Human Rights for 1961*, pp. 58-59.

CEYLON

NOTE[1]

I. LEGISLATION

(A) Constitutional Provisions

Local Authorities Elections (Amendment) Act No. 9 of 1963

This Act provides for the recognition of political parties for the purpose of local elections as in the case of Parliamentary elections, amends the law relating to the definition of undue influence and prohibits certain acts such as canvassing for votes, soliciting the vote of any voter, persuading any voter not to vote for any particular candidate, persuading any voter not to vote at the election and distributing or exhibiting handbills, placards, posters or notices relating to the election within a distance of fifty yards of the entrance of a polling station. It also prohibits the user of vehicles for the purpose of conveying voters to or from the poll. An exception is, however, made in the case of an owner of the vehicle conveying himself or any member of his household to or from the poll and in the case of public transport.

(B) Judicial Procedure

1. *Criminal Procedure Code (Amendment) Act No. 10 of 1963*

This provides for an interim amendment to section 444A(8) of the Criminal Procedure Code and is in the following terms:

"(8) (i) The trial of any person before the Supreme Court under this section may commence or continue in the absence of such person if the Court is satisfied:

(*a*) that such person is evading arrest or absconding; or

(*b*) that such person is unable to attend or remain in Court by reason of illness and has consented to the commencement or continuance of the trial in his absence; or

(*c*) that such person is unable to attend or remain in court by reason of illness and no prejudice will be caused to such person by the commencement or continuance of the trial in his absence.

(ii) The commencement or continuance of the trial of any person before the Supreme Court under this section in the absence of such person shall not be deemed or construed to affect or prejudice the right of such person to be defended by a pleader at such trial."

This amendment will cease to be in force on the conclusion of the trial of any person before the Supreme Court under Section 440A which commenced before, and is pending on, the date of the coming into operation of this Act.

2. *Conciliation Boards (Amendment) Act No. 12 of 1963*

This amends the law in regard to the constitution of Conciliation Board.

(C) Economic Rights

1. *Ceylon Petroleum Corporation (Amendment) Act No. 5 of 1963*

In terms of this Act the exclusive rights, *inter alia,* of importing, exporting, sale, supply and distribution of petroleum of certain classes is vested in the Ceylon Petroleum Corporation.

2. *Manufacture of Matches (Regulation) Act No. 6 of 1963*

This Act provides for the regulation of standards to which every manufacturer of matches must conform, the determination of maximum prices, the inspection of factories and stores and the creation of certain offences in relation thereto.

3. *Finance Act No. 11 of 1963*

Part III of the Act prohibits certain categories of persons from carrying on the business of a pawnbroker and money-lending in Ceylon. Section 50 of this Act also amends the Insurance Corporation Act No. 2 of 1961 and makes the Ceylon Insurance Corporation to be the sole insurer authorized to transact insurance business of any class whatsoever in Ceylon on and after 1 January 1964.

Part VIII of the Act empowers the People's Bank, set up under Act No. 29 of 1961, to acquire upon payment of compensation, any agricultural, residential or business premises if such premises had been sold or transferred in execution of a mortgage debt and to let such premises to certain persons.

[1] Note furnished by the Government of Ceylon.

II. JUDICIAL DECISIONS

(A) Constitutional Provisions

1. *The Queen* v. *Liyanage,* 65 N.L.R. 73

On 23 June 1962, the Attorney-General filed in the Supreme Court an information against the defendants under the provisions of the Criminal Law (Special Provisions) Act No. 1 of 1962. Summons was issued on the defendants under the hand of the Registrar of the Supreme Court and was served on each of them. The order for the issue of summons was made by the three judges who were nominated by the Minister of Justice to constitute the Bench. On 3 October 1962, the Bench made order that it had no jurisdiction to hold the trial for the reason that the Minister's power to nominate the judges was *ultra vires* the Constitution. The Bench did not make any order of discharge of the defendants, and the defendants were thereafter held in custody in pursuance of detention orders made under the Emergency Regulations.

On 21 November 1962, the Attorney-General filed a second information against the defendants by virtue of the provisions of the Criminal Law Act No. 31 of 1962, which was enacted by Parliament on 14 November 1962 in order, partly, to meet the difficulties created by reason of the order made by the Bench on 2 October 1962. Section 6 of Act No. 31 of 1962 enacted *inter alia* that the first information of 23 June 1962 should be deemed, for all purposes, to have had, and to have, no force or effect in law.

It was contented on behalf of the defendants (1) that the first information of 23 June 1962 was still pending before the Supreme Court, and that the Court, or the present Bench of that Court, must hold trial on that information and had no jurisdiction to hold trial on the second information of 21 November 1962; (2) that Acts No. 1 of 1962 and No. 31 of 1962 were invalid because they were not framed in Sinhala which was by law declared the one official language.

Held: (1) that, inasmuch as the Minister's nomination of the judges of the first Bench was *ultra vires,* that Bench had not the legal power to order summons. There was therefore no exercise of the judicial power of the Supreme Court on the first information of 23 June 1962. It followed that there was no judicial act with which Parliament could be said to have unconstitutionally interfered in enacting Act No. 31 of 1962;

(2) that in the absence of clear provision in the Official Language Act No. 33 of 1956 requiring all legislation to be enacted in Sinhala, it is not imperative that all Acts of Parliament enacted after 1 January 1961 must be written in Sinhala. And even if it can be said that section 2 of the Official Language Acts manifests some intention that Acts of Parliament must be written in Sinhala, Parliament has the undoubted power to legislate inconsistently with the provisions of pre-existing legislation. In the case, therefore, of Acts No. 1 of 1962 and No. 31 of 1962 and all other Acts enacted after 1 January 1961, Parliament has merely exercised its right to override any such intention as to the language of the law which may have been entertained at the time of the passing of the Official Language Act.

2. *Ceylon Transport Board* v. *Samastha Lanka Motor Sevaka Samithiya,* 65 N.L.R. 185

The provisions of the Industrial Disputes Act vest the Labour Tribunals with arbitral power only and not with judicial power. Accordingly, a decision of the Labour Tribunal cannot be regarded as invalid merely because the Tribunal was not apointed by the Judicial Service Commission under Article 55 of the Ceylon Constitution.

3. *Ibralebbe* v. *The Queen,* 65 N.L.R. 433

The jurisdiction to entertain appeals from Ceylon before the Judicial Committee of the Privy Council in criminal matters still exists and has not been abrogated by Ceylon's attainment of independence.

The structure of Courts for dealing with legal matters and the system of appeals existing at the time of Ceylon's attainment of independence have not been affected by any of the instruments that conferred that status. While the legislative competence of the Parliament of Ceylon includes power at any time, if it thinks right, to modify or terminate the Privy Council appeal from its Courts, true independence is not in any way compromised by the continuance of that appeal, unless and until the Sovereign Legislative body decides to end it.

(B) Ex post facto Law

The Queen v. *Liyanage,* 65 N.L.R. 73

The provisions of section 19 of the Courts Ordinance, sections 2, 69 and 72 of the Penal Code, Section 36 of the Contitution and Article 11 of the United Nations Universal Declaration of Human Rights do not bar the trial and punishment, in Ceylon, of offences retroactively created by statute. Accordingly, section 19, read with sections 18 and 21 of the Criminal Law (Special Provisions) Act No. 1 of 1962 manifests Parliament's intention that the new offences stated in section 115 of the Penal Code, as amended by section 6 of the Act, should be offences *ex post facto* as from 1 January 1962.

(C) Right to a Fair Trial

1. *Hemapala* v. *The Queen,* 65 N.L.R. 121

Where, in a trial before the Supreme Court, the accused elects to be tried by an English-speaking jury under section 165 B, sections 224(1), 225(*c*) and 229 of the Criminal Procedure Code, contemplate that the trial will be conducted throughout in the English language.

2. *The Queen* v. *Liyanage,* 65 N.L.R. 837

In a criminal case tried in the Supreme Court on information filed by the Attorney-General under section 440 A of the Criminal Procedure Code as enacted by the Criminal Law Act No. 31 of 1962, held, that the defendants were entitled to the following information before they tendered their general plea and prior to the commencement of the trial proper:

(*a*) Lists of the prosecution witnesses and documents;

(*b*) Copies of the statements which were made to the investigating officers by the prosecution witnesses or the defendants and which the Attorney-General intended to produce in evidence; and

(*c*) Copies of the documents on which the prosecution relied.

Held, further, that although in England the procedure by way of information is restricted to misdemeanour, under our law there has been no such restriction since 1915.

3. *The Queen* v. *Vincent Fernando,* 65 N.L.R. 265

In a trial before the Supreme Court, the recording of evidence at the place where the offence was committed is illegal and not warranted by the provisions of section 238 of the Criminal Procedure Code. Nor is it proper for the jury to be taken from place to place during the inspection.

By section 32 of the Penal Code:

"When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone".

Held that, to be liable under section 32, a mental sharing of the common intention is not sufficient; the sharing must be evidenced by a criminal act or illegal omission manifesting the state of mind.

4. *The Queen* v. *Punchi Banda,* 65 N.L.R. 342

Where, in a trial before the Supreme Court, the jury, after retiring to consider their verdict, are divided four to three, neither section 247(2) nor any other provision of the Criminal Procedure Code empowers the presiding judge to direct the jury to retire for further consideration. In such a case, the only course open to the judge is to discharge the jury under section 250.

5. *The Queen* v. *Brampy Appuhamy,* 65 N.L.R. 361

The question whether on the facts of a given case an accused person has exceeded his right of private defense is a question of fact for the decision of the jury.

6. *The Queen* v. *Santin Singho,* 65 N.L.R. 445

In a case of circumstantial evidence, a direction given by the trial judge, in his summing up, that the accused must explain each and every circumstance established by the prosecution is wrong and would completely negative a direction given earlier by him that the circumstances must not only be consistent with the accused person's guilt but should also be inconsistent with his innocence. The direction that if a *prima facie* case is made out the accused is bound to explain, is wrong and misleading.

7. *The Queen* v. *Siripina,* 65 N.L.R. 545

Once the judge has elected to take the statement of a person as evidence, he has no option but to administer either an oath or affirmation to such person as the case may require. Section 9 of the Oaths Ordinance, which provides that evidence is not invalidated by omission of oath, applies only to cases of accidental omission to administer the oath and not to cases of deliberate omission.

8. *De Jong* v. *Dematagoda Police,* 65 N.L.R. 165

It is not open to a magistrate to assume summary jurisdiction under section 152(3) of the Criminal Procedure Code after non-summary proceedings have already commenced and evidence of witnesses has been taken as part of the non-summary inquiry.

Evidence recorded by a magistrate to enable him to decide whether he should exercise summary jurisdiction under section 152(3) of the Criminal Procedure Code cannot be taken into consideration by him at the trial, unless it is recorded *de novo.*

9. *Murugiah* v. *Outschoorn,* 65 N.L.R. 372

Where in a summary trial counsel for the defence wishes to address the Court at the conclusion of the case for the defence, the magistrate is not entitled to tell him that he has no right to do so.

10. *The Queen* v. *Liyanage,* 65 N.L.R. 289

Where in a Trial at Bar the defendants applied to be enlarged on bail pending the trial of the case, held, that bail should not be granted having regard to the nature of the offences charged and the penalty fixed by law and the fact that the trial had already begun.

Observations on the desirability of using the relevant regulations framed under the Prisons Ordinance as a guide for civilized and human treatment of persons arrested on detention orders issued under Emergency Regulations framed under the Public Security Act.

11. *The Queen* v. *Ibralebbe,* 65 N.L.R. 470

Where several accused were indicted on thirteen charges, seven of which were based on the allegation that were members of an unlawful assembly, and the remainder of which could have resulted in a conviction of two or more of the accused only if the offences charged had been committed in pursuance of a common intention, held, that the joinder of the two sets charges was lawful.

12. *John* v. *Perera,* 65 N.L.R. 382

When an appellant has failed to pay an additional fee due from him in respect of the copy of the brief, extended time may be given to him, under section 4(1) of the Supreme Court Appeals (Special Provisions) Act, to pay the fee, if no material prejudice will be caused to the respondent to the appeal.

(D) Economic Rights

1. *Suptd. Walapane Estate* v. *Walapane Sri Lanka Watu Kâmkaru Sangamaya,* 65 N.L.R. 8

Section 23 of the Estate Labour (Indian)) Ordinance affords authority to an employer who law-

fully terminates the contract of service of a labourer to terminate the contract of service of the labourer's spouse at the same time.

2. *Stanley J. Perera* v. *Yoosoof-Sah,* 65 N.L.R. 193

Although, under section 33 of the Industrial Disputes Act, an Industrial Court can order a workman to be reinstated in service and, as an alternative to his reinstatement, payment of compensation to him, it has no power to order the payment of compensation without a decision as to reinstatement. Payment of compensation being an alternative to reinstatement, the former cannot exist independently. It can only exist as an alternative to the latter.

3. *Ceylon Transport Board* v. *Samastha Lanka Motor Sewaka Samithiya,* 65 N.LR. 566

A workman employed by the Ceylon Transport Board was dismissed because he had broken a rule which provided that any employee who removed a vehicle belonging to the Board, either without authority or without a driving licence, would be dismissed. Held, that the punishment of dismissal was not too severe. In considering whether an order of dismissal is "just and equitable", the judicial discretion must be exercised reasonably, not arbitrarily.

4. *Stratheden Tea Co. Ltd.* v. *R.R. Selvadurai,* 66 N.L.R. 6

Although the power conferred by section 17(1) of the Industrial Disputes Act on an arbitrator is a wide one, it must be exercised in accordance with justice and equity, not arbitrarily. As between two innocent parties, one of whom has sustained a loss, there is no ground in justice or equity for shifting the burden of the loss to the other party. The rule in such a case is that the loss must lie where it falls.

CHILE

NOTE[1]

I. LEGISLATION

Act No. 15177, 6 March 1963 (*Diario Oficial* No. 25449, 22 March 1963).

Establishes the *Confederación Mutualista de Chile,* to be composed of the mutual aid institutions of the country. Its purpose will be to examine and solve the problems of Chilean mutual aid and represent it before the public authorities.

Act No. 15295, 1 October 1963 (*Diario Oficial* No. 25660, 8 October 1963).

Amends article 10 (10) of the Political Constitution of the State.[2] A report on this constitutional reform is reproduced below.

Supreme Decree No. 116, Under-Secretariat of Transport, 26 February 1963 (*Diario Oficial* No. 25481, 11 March 1963).

Provides that primary, secondary, technical and university students shall pay a single fare of 0.02 escudo on mass transport services.

Supreme Decree No. 382, Ministry of Justice, 29 January 1963 (*Diario Oficial* No. 25486, 7 March 1963).

Establishes a Juvenile Court in Concepción, which will try all cases arising from the application of Acts Nos. 14907 and 14908 on the protection of minors, family desertion and payment of maintenance.

Supreme Decree No. 249, Under-Secretariat of Economics, 7 March 1963 (*Diario Oficial* No. 25487, 8 March 1963).

Defines as primary needs the educational services provided by special educational bodies, such as registration fees, educational expenses or any other form of payment required in order to enter an educational institute and complete the academic year, including the cost of full board, half-board or day attendance, i.e., lodging, food, transport, etc.

Supreme Decree No. R.R.A. 20, 23 February 1963 (*Diario Oficial* No. 25511, 5 April 1963).

Establishes the revised text, bringing up-to-date and systematizing Legislative Decree No. 326 of 1960 on co-operatives, defining the latter as non-profit, non-political institutions whose purpose is the mutual aid of their members in their respective fields.

Supreme Decree No. S 2-136, 19 March 1963 (*Diario Oficial* No. 25519, 17 April 1963).

Approves the statutes of the Chilean Red Cross.

Supreme Decree No. 91, Ministry of Foreign Affairs, 15 February 1963 (*Diario Oficial* No. 25521, 19 April 1963).

Promulgates an agreement with the Argentine Republic on the exchange of teachers, publicists, artists, scientists, technicians, journalists and university students.

Supreme Decree No. 92, Ministry of Foreign Affairs, 15 February 1963 (*Diario Oficial* No. 25521, 19 April 1963).

Promulgates an agreement with the Argentine Republic on the processing of judicial letters rogatory.

Supreme Decree No. 158, Ministry of Foreign Affairs, 9 April 1963 (*Diario Oficial* No. 25549, 25 May 1963).

Extends to the Ford Foundation the provisions of the Agreement to facilitate the activities of voluntary agencies engaged in relief and rehabilitation in Chile.

II. JUDICIAL DECISIONS

The Supreme Court of Justice delivered a judgement refusing the extradition of the German citizen Walther Rauff (trial of responsible participants in the German nazi régime).

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[1] Note furnished by Mr. Julio Arriaga Augier, former Under-Secretary for Public Education, government appointed correspondent of the *Yearbook on Human Rights.*

[2] Extracts from the Political Constitution of the State appear in the *Yearbook on Human Rights for 1946,* pp. 58-60.

REPORT ON THE CONSTITUTIONAL REFORM OF 1 OCTOBER 1963

The constitutional guarantee relating to the right of property is contained in article 10 (10) of the Fundamental Statute, which reads as follows:

"*Article 10.* The Constitution ensures to all the inhabitants of the Republic:

. . .

"10. Inviolability of all property, without any distinction.

"No one may be deprived of property under his control, or of any part thereof, or of the right he may have to it, except by virtue of a judicial decision or of an expropriation by reason of public interest, ordered by a law. In this case, indemnification, as may be agreed on, or as may be fixed by a corresponding judicial decision, shall be paid to the owner beforehand.

"The exercise of the right of property is subject to the limitations or rules that the maintenance and advancement of the social order demand, and in this sense the law may impose obligations or servitudes for public benefit in favour of the general interests of the State, of the health of the citizens, and of the public welfare."

The legal provision quoted above represents a fundamental principle of the institutional system and at the same time establishes respect for one of the fundamental rights of the person, confirmed in the Political Constitution of Chile. According to the second paragraph of the governing provision, one of the forms of deprivation of control is expropriation by reason of public interest, ordered by a law, and the provision adds that in this case indemnification, as may be agreed on, or as may be fixed by a corresponding judicial decision, shall be paid to the owner beforehand. As the purpose of the indemnification is to grant to the person whose property is expropriated an amount equivalent to the value of the property of which he is deprived, it has been the unanimous view of the legislature and of our courts that this indemnification should be paid in cash, which enables the person whose property has been expropriated to replace such property by other property.

Article 1 of Land Reform Act No. 15020 of 15 November 1962 provides that:

"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 national economic development 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, to 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."

In accordance with these provisions, article 15 of the same Act provides that, for the purposes of land reform, the expropriation of the following types of landed property is authorized and declared to be in the public interest:

"(*a*) Abandoned land and also land that is obviously badly worked at levels below those of normal productivity in relation to the economic conditions prevailing in the area for land of equal promise."

The objective of this constitutional reform is to make it easier to carry out the Land Reform Act, the fundamental purposes of which were to promote agricultural development and to encourage the necessary division of rural land holdings; to this end indemnification in deferred form is permitted, but only in respect of abandoned land or land that is obviously badly worked at levels below those of normal productivity in relation to the economic conditions prevailing in the area for land of equal promise—a rule identical with that laid down in paragraph (*a*) of Act No. 15020, article 15, quoted above.

The first sub-paragraph of paragraph (*b*) of the constitutional reform provides that 10 per cent of the indemnification shall be paid to the owner beforehand, and that the balance shall be paid in equal yearly instalments within a period not exceeding fifteen years, together with the interest which is fixed by law.

The second and third sub-paragraphs of paragraph (*b*) established some safeguards with respect to this system of indemnification with deferred payment. Thus, it is provided that a Special Tribunal shall be established to hear appeals against expropriations, and that there may be appeals from its decisions to the appropriate Court of Appeal. The Special Tribunal was established by article 29 *et seq.* of the said Act No. 15020.

Immediately thereafter, there was an attempt to consider the possible depreciation in the value of currency and, to that end, it was decreed that the law should establish a system for annual readjustment of the indemnification balance, with a view to maintaining its value; this is obviously just, when it is borne in mind that indemnification for expropriation should not involve any loss for the person whose property is expropriated.

The provision under discussion, aimed at safeguarding in the best possible way the principle of the inviolability of the right of property, provides that new expropriations which are to be indemnified on an instalment basis may not be initiated or carried out if there is a delay in the payment of the liabilities arising from previous expropriations affecting land holdings which meet the conditions described above; and the final sub-paragraph adds that in the Budget Act the item required for the service of those liabilities will always be deemed to have been established—in other words, that an item shall be created to pay for those expropriations.

Moreover, the instalments paid as a result of indemnification of expropriation will effectively cancel any class of obligation on the part of the Treasury, and the General Treasury of the Republic shall pay the instalments at maturity, plus readjustments and interest, upon presentation of the appropriate document of title.

The constitutional reform under analysis provides in paragraph (*a*) for the addition of a sentence to the second sub-paragraph of article 10 (10), the purpose of which is to permit actual possession to be taken of property which is to be expropriated, even before the expropriation action is completed. The provision gives the judge the power to authorize the taking of actual possession after the decision in first instance is pronounced, in two cases only: first, with respect to expropriations for public works which must be completed urgently, that is, where delay in obtaining possession of the land may cause injury; and secondly, with respect to rural land holdings. For both cases, two restrictions are established: the first is that this procedure may be adopted only in the event that the aggrieved person's appeal relates solely to the amount of the indemnification and not to the merits of the expropriation and the second is that the owner should be paid beforehand the whole indemnification or the part of the indemnification referred to in the third sub-paragraph of the amended text of article 10 (10). These provisions also tend to safeguard the concept of the inviolability of the right of property.

ACT No. 15295 OF 1 OCTOBER 1963 AMENDING THE POLITICAL CONSTITUTION OF THE STATE

Sole article. The following modifications are introduced into article 10 (10) of the Political Constitution of the State: [3]

(*a*) Add to the second paragraph the following final sentence:

"The judge may, after judgement has been pronounced in the Court of First Instance, authorize the physical occupation of the expropriated property when it is a case of expropriation for the execution of urgent works or concerns rural landholdings, provided that only the amount of compensation is disputed and that the owner has been paid the total amount awarded or the part thereof referred to in the succeeding paragraph."

(*b*) Insert after the second paragraph the following new paragraphs:

"If, however, with a view to promoting an advantageous division of rural property, expropriation measures are taken in the public interest in respect of abandoned rural holdings that are obviously badly managed or are below the normal conditions prevailing in the area for land with similar characteristics, the owner shall first be paid ten per cent of the compensation, the remainder being paid in equal annual instalments over a period of not more than fifteen years, at such rate of interest as may be laid down by law.

"This type of compensation may be used only in the manner laid down in the Act permitting the filing of complaints against the expropriation with a Special Tribunal. Appeals shall lie from decisions of this tribunal to the competent Court of Appeal. The use of this type of compensation shall also be subject to the establishment of an annual readjustment system for the outstanding amount of compensation so as to maintain its real value. No further expropriation proceedings for which compensation is payable by instalment may be initiated if there is delay in the payment of the credits from earlier expropriations made under the provisions of the foregoing paragraph.

"The Budget Act shall always include an appropriation sufficient to service the said credits, and the instalment payments due thereon shall be used for extinguishing all types of obligation in favour of the Tax Authorities. The General Treasury of the Republic shall pay the instalments due plus any readjustment payment and interest on the presentation of the relevant property title."

[3] Translations into English and French of article 10 (10) of the Political Constitution of the State as amended have been published by the United Nations Food and Agriculture Organization in *Food and Agricultural Legislation*, Vol. XIII—No. 2,V/1b.

CHINA

MEASURES TAKEN IN 1963 TO STRENGTHEN THE SAFEGUARDING OF HUMAN RIGHTS [1]

I. Introduction

The Republic of China has always attached great importance to the safeguarding of human rights. Various freedoms and rights of the people are explicitly stipulated in and guaranteed by the Constitution. Other Acts and statutes connected with the safeguarding of human rights—such as the Habeas Corpus Act, the Detention and Custody Act, the Compensation for Wrongful Detentions and Executions Act, and the Statute on Publicly Provided Advocates—have also been promulgated and put into effect, with a view to co-ordinating the efforts made in this direction.

Since no racial discrimination or slavery exists in China, all the measures taken to safeguard human rights are mainly concerned with the equity and fairness of court proceedings and the punishment of crime. During the past years, the various branches of the Judiciary have made great efforts in this direction, thereby ensuring social stability and the proper administration of justice. When the nation on 11 January 1963 celebrated, as was customary, its eighteenth Justice Day, the President issued a statement exhorting State officials of the Judiciary "to safeguard human rights through the establishment of legal systems, and to consolidate self-government by the people through the rule of law", and making this an objective of all the measures taken by the Chinese Government to safeguard human rights.

II. The Adoption and Promulgation of the Peace Preservation Measures Enforcement Act [2]

Peace preservation measures are taken in order to prevent, through appropriate corrective steps, the commission of crime. As compared with purely punitive measures, they have assumed the additional implication of education or reformation. During 1963, the Chinese Government took steps to draft a Peace Preservation Measures Enforcement Act, which was passed by legislative process and was promulgated on 3 July of that year by Presidential decree. This Act expressly provides for reformatory education for juvenile delinquents, and proper treatment for narcotic addicts and habitual criminals, and for the place and manner in which such measures are to be enforced. The appropriate organs of the Ministry of Justice have also taken steps to establish various ancillary rules and regulations, with a view to the Act being put into effect in 1964.

III. Preparation for the Enforcement of the Statute on the Handling of Juvenile Cases

In the Chinese province of Taiwan, juvenile delinquency has not yet, generally speaking, constituted a major problem. Nevertheless, the Chinese Government had taken preventive measures in this field, and in order to protect the interests of juvenile delinquents had drafted and published, in 1962, a Statute on the Handling of Juvenile Cases. During 1963, further positive steps were taken in preparation for the enforcement of this Statute: the drafting of the Regulations for the Juvenile Detention House, of the Regulations for the Juvenile Reformatory Institute and of other relevant supplementary rules and regulations was completed, and all these draft regulations were submitted to the appropriate organs for discussion, in the expectation that the legislative process could be completed in the following year. In the meantime, detailed programmes on the training of judges for Juvenile Courts and of personnel for the Juvenile Detention House were worked out, in order that all the relevant rules and regulations could be enforced in a comprehensive manner.

IV. Decrees on the Enjoinment of Strict Observance of Detention Procedure and on the Prohibition of the Use of Physical Force in the Extracting of Confessions [3]

In recent years, the number of detainees in the detention quarters of the various local courts has increased, partly because of broadened contacts and expanded activities in a more highly developed society. Fearing that even minor negligence in the enforcement of regulations with respect to detention might endanger human rights, the Ministry of Justice on 30 October 1963 issued a

[1] Information furnished by the Government of China.

[2] Extracts from this Act appear below.

[3] The text of these decrees appears below.

Decree, reaffirming a previous order, in which judges and procurators were warned to exercise every care in determining whether a defendant, having been questioned, did in fact meet the conditions prescribed for detention, and whether such detention was necessary. It should also be noted that, in investigations and trials conducted by Chinese courts, the use of physical force in the extracting of confessions from the accused has long been prohibited. However, there have been instances in which the accused alleged that during the investigation certain judicial police organs had, in questioning them, used physical force. Although such charges were, after official investigation, found to be baseless, the Ministry of Justice, in order to reaffirm its consistent policy of insisting on the safeguarding of human rights, again, on 19 August 1963, issued a decree ordering all courts and procurator's offices to enforce a strict prohibition of such practices.

DECREE OF THE MINISTRY OF JUSTICE ON THE ENJOINMENT OF STRICT OBSERVANCE OF DETENTION PROCEDURE

(Decree: Tai(52)/Hsin(II) 6243, 30 October 1963, the Fifty-second Year of the Republic of China)

1. The enforcement of detention procedure is of vital importance for the defendant's freedom of the person. Accordingly, when it is a matter of determining whether the prescribed conditions have been met in detaining, and whether it is necessary to detain, a defendant in a criminal case, article 101 of the Code of Criminal Procedure shall apply and must be strictly observed. In determining whether a defendant who has been detained should be paroled, or released subject to restriction of his domicile and movement, regard must be had to the provisions of articles 107, 109, 115, 116 and 120 of that Code. Cases involving the detention of a defendant must be handled with the greatest care, in order that human rights may not be impaired. This Ministry has repeatedly issued decrees to this effect; yet the List of Detained Defendants in Criminal Cases recently submitted by the above-named President and Chief Procurator, has shown that the number of detainees has so increased as to create serious congestion in the detention quarters. It is hereby decreed that judges and procurators of all courts shall henceforth, in handling cases involving a defendant who has already been questioned, exercise every care in determining whether the prescribed conditions have been met in detaining, and whether it is necessary to detain, the defendant, and that any negligence in this respect shall not be countenanced.

2. The decrees issued previously in this connexion are hereby reaffirmed. You are expected to communicate this Decree to all State officials under your jurisdiction, and to ensure that it is strictly observed. You are also expected to make inspections from time to time.

DECREE OF THE MINISTRY OF JUSTICE ON THE REAFFIRMATION OF THE PROHIBITION OF THE USE OF PHYSICAL FORCE IN THE EXTRACTING OF CONFESSIONS, AND POINTS TO WHICH ATTENTION SHOULD BE CALLED

(Decree: Tai(52)/Hsin(II) 4666, 19 August 1963, the Fifty-second Year of the Republic of China)

1. This Ministry received on 8 August of this year, from the Executive Yuan, the Decree: Tai 52/Fa 5262, reading as follows:

"1. The use of physical force in the extracting of confessions, or the use of force, threat, inducement, fraud or other improper methods in questioning and in the taking of depositions, not only constitutes violation of humanitarian principles, but is also illegal. The Executive Yuan has repeatedly ordered that such practices be strictly prohibited. The Control Yuan has also, time and again, introduced Bills with a view to correcting such malpractices. 2. In order that such decrees may be scrupulously implemented and that measures may be taken to prevent any violation of them, this Yuan hereby reaffirms all previous decrees on this subject, and expect you to communicate this Decree to all State officials under your jurisdiction. The following are points to which special attention should be called: during the investigation or trial of criminal cases, if it is found that physical force or any other improper method has in fact been used in the extracting of confessions or the taking of depositions, the State officials involved should be delivered forthwith to the proper authorities for investigation and, if found guilty, for punishment; if the procurator, judge or trial magistrate of the military or judicial organs in charge of the case takes no action with regard to such malpractices, or delays action in delivering such persons to the proper authorities, the appropriate officer or official in charge must make investigation and take disciplinary action against such procurator, judge or trial magistrate in accordance with the law; if, however, defendants in criminal cases or members of their families are found, in alleging the use of physical force in the extracting of confessions, to have resorted to such allegations merely as a means of creating public excitement and in the hope of evading criminal responsibility, they too must be dealt with according to law, in order that the rule of law may be maintained. 3. This Decree has

been issued to all State organs concerned. You are expected to comply, and to communicate its contents to all State officials under your jurisdiction, for their guidance and action in accordance with it."

2. This Ministry has dispatched the above Decree to the various courts, for their guidance and action in accordance with it. You are expected to communicate its contents to all State officials under your jurisdiction, for the same purposes.

PEACE PRESERVATION MEASURES ENFORCEMENT ACT

(Promulgated by Presidential Decree, 3 July 1963, the Fifty-second Year of the Republic of China)

Chapter I

General Provisions

Art. 1. Peace preservation measures shall be enforced in accordance with this Act, unless otherwise provided in related legislation.

Art. 2. (i) Peace preservation measures shall be enforced in: (1) an institution for reformatory education and compulsory labour, or (2) an institution for the effecting of cure under protective custody and compulsory treatment.

(ii) Institutions for the enforcement of peace preservation measures as prescribed in the preceding paragraph shall be set up by the Ministry of Justice, or by the highest local administrative organ at the request of the Ministry of Justice.

(iii) The Ministry of Justice shall direct and supervise the enforcement of peace preservation measures.

Art. 3. (i) The Ministry of Justice shall dispatch officials to inspect institutions for the enforcement of peace preservation measures at least once a year, and may also authorize any provincial High Court to dispatch officials for such inspection.

(ii) The Procurator shall inspect the enforcement of peace preservation measures, and may suggest any necessary improvements; he may also submit special reports in this connexion to the Ministry of Justice.

Art. 4. (i) Peace preservation measures shall be executed in accordance with the decision of the court.

(ii) In handling cases involving persons who are to be committed to protective custody for the effecting of cure or for compulsory treatment, the court may, in case of need and emergency, order the execution of the peace preservation measures by a ruling, prior to the delivery of a judgement.

(iii) In handling cases involving persons who are to be committed to protective custody for the effecting of cure or for compulsory treatment, the Procurator may also, if during the investigation it is found necessary to enforce peace preservation measures without delay, ask the court for a ruling to that effect.

(iv) An interlocutory appeal may be lodged against a ruling made in accordance with the two preceding paragraphs, within five days after the serving of such a ruling.

(v) An interlocutory appeal shall not have the effect of suspending execution of the ruling. Nevertheless, the original court or the court with which the interlocutory appeal has been lodged may make a ruling for the suspension of such execution.

Art. 5. (i) For the execution of peace preservation measures, the Procurator shall order a member of the Judicial Police to send the accused, together with the written judgement and all relevant documents, to an institution for the enforcement of such measures.

(ii) The provisions of article 473 of the Code of Criminal Procedure shall apply, *mutatis mutandis*, to the execution of peace preservation measures other than reformatory education.

Art. 6. (i) If the accused, after medical examination, is found to suffer from an acute contagious disease or a major illness, the Procurator shall not order the accused to be sent to an institution for the enforcement of peace preservation measures; he shall, if the circumstances so warrant, send the accused to a hospital for treatment, or consign him to a proper person for custody. If the accused is found to be physically deformed or disabled or to have an incurable disease, and is therefore unfit for compulsory labour, the Procurator may request of the court a ruling for the remission of the measures prescribed.

(ii) The provisions of the first part of the preceding paragraph shall apply, *mutatis mutandis*, to an accused female who has been pregnant for more than five months or who has given birth less than two months previously.

Art. 7. An institution for the enforcement of peace preservation measures may refuse to execute such measures if the accused who is being sent there falls within the categories mentioned in the preceding article. In such a case, the accused shall first be sent to a hospital for treatment or consigned to a proper person for custody, and the Procurator shall be so advised.

. . .

Art. 10. Accused who are committed for reformatory education or compulsory labour shall be graded and accorded treatment of a progressive nature, with a view to encouraging repentance and promoting a sense of self-respect.

Art. 11. (i) When the accused is admitted to an institution for the enforcement of peace preservation measures, an examination shall be conducted with regard to his person and any funds or personal effects which he may be carrying.

. . .

Art. 12. If the accused dies, his next of kin, members of his family or other persons so

entitled shall be notified and asked to claim any funds and personal effects left by the accused; if no such claim is made within one year after the death of the accused, such funds and personal effects shall revert to the State. These provisions shall also apply in the event of the accused escaping and not being recaptured within one year after his escape.

. . .

Art. 14. (i) If the accused takes exception to the decision or arrangement made by the institution for the enforcement of peace preservation measures, he may appeal to the higher supervisory organ through the officer in charge of the institution.

(ii) When the officer in charge of an institution for the enforcement of peace preservation measures receives an appeal as mentioned in the preceding paragraph, he shall transmit such appeal without delay to the appropriate supervisory organ.

Art. 15. (i) Institutions for the enforcement of peace preservation measures shall be empowered to take such appropriate disciplinary and protective measures as may be required.

(ii) The rules and regulations on the application of disciplinary and protective measures by such institutions shall be laid down by the Ministry of Justice.

. . .

Art. 17. . . .

(ii) No tobacco or alcoholic beverage shall be allowed in institutions for the enforcement of peace preservation measures.

Art. 18. (i) In case of illness of the accused, medical attention shall be given without delay, and the necessary protection accorded, by the institution concerned; if the physician deems it necessary to suspend work undertaken by the accused, such work shall be suspended.

. . .

Art. 21. Institutions for the enforcement of peace preservation measures shall regulate the conduct of the accused in such a way that the development of his personality is not prejudiced. Nevertheless, measures shall be taken to prevent escape, suicide, violence or other unlawful activities.

Art. 22. (i) Institutions for the enforcement of peace preservation measures shall permit the accused to receive visits from his family, relatives and friends.

. . .

Art. 25. Outgoing and incoming mail of the accused shall be inspected. If the contents are found to be detrimental to the maintenance of order in the institution for the enforcement of peace preservation measures, permission for the forwarding or delivery, as the case may be, of such mail may be withheld, or the accused or his correspondent may be ordered to make necessary deletions before permission for the forwarding or delivery of such mail is granted.

Art. 26. (i) An accused person shall be released from the institution for the enforcement of peace preservation measures before noon on the day following the date of completion of the prescribed measures, unless otherwise provided by law.

(ii) Protective measures to be taken upon the release of the accused shall be established and shall after his admission to the institution, be checked and reviewed before his release. Close contact shall be maintained with protective organizations or groups at all times, with a view to making timely and appropriate arrangements for employment, vocational guidance, clothing, food, lodging, transportation and other related matters on behalf of the accused.

(iii) The judicial protective organizations shall be responsible for taking the protective measures prescribed in the preceding paragraph, except for those undertaken by organizations which the institutions for the enforcement of peace preservation measures shall designate, or by the next of kin of the accused.

. . .

Art. 29. If the accused dies during the period of execution of the measures prescribed, or if those measures have been completed, a report to that effect shall be made to the Procurator of the court directing such execution. If the accused escapes during the period of execution of such measures, a report to that effect shall be made immediately to the Procurator, who shall order the arrest of the fugitive.

Chapter II

REFORMATORY EDUCATION

Art. 30. (i) Reformatory education shall be dispensed within the framework of a school under military supervision; for an accused person who has not yet completed his fourteenth year of age, it may also be dispensed as in a family.

. . .

Art. 32. In the dispensing of reformatory education, emphasis shall be placed on the cultivation of moral character and on development of the knowledge and skills required for self-maintenance.

Art. 33. The inmates may conduct services, pray or perform other appropriate rituals in accordance with their religion, provided that such services or rituals do not prejudice the maintenance of order.

. . .

Art. 42. (i) If an inmate performs work during the period of reformatory education, he shall receive monthly payments in accordance with the quality of his work.

(ii) One-half of such monthly payments may be used by the inmate for his personal needs. The remaining portion shall be held by the institution for reformatory education and shall be returned to the inmate upon his release from the institution.

Art. 43. If an accused person who is on bail fails to report for reformatory education when notified by the Procurator that he should do so, measures may be taken to compel his compliance with such order. The period of reformatory education shall commence on the day on which the accused has reported for such education.

Art. 44. (i) A warrant of arrest shall be required in order to compel an accused person to report for reformatory education.

. . .

Chapter III

PROTECTIVE CUSTODY

Art. 46. If the accused is committed to protective custody because of insanity, feeble-mindedness or deafness and dumbness, the Procurator shall undertake to designate a mental institution hospital, charity organization, next of kin of the accused, or other appropriate quarter to provide custody, as the case may require.

Art. 47. The mental institution or hospital to which an accused person is committed for protective custody because of insanity or feeble-mindedness shall provide him with treatment and supervise his activities, as the case may require.

. . .

Chapter IV

EFFECTING OF CURE UNDER DETENTION

Art. 49. The institution for the effecting of cure under detention shall be supplied with physicians and with the appropriate medical equipment and facilities.

Art. 50. The institution for the effecting of cure under detention shall make every effort to dispense proper treatment and see to the physical health of the accused.

. . .

Chapter V

COMPULSORY LABOUR

Art. 52. (i) Institutions for the administration of compulsory labour shall establish various workshops and farms, due regard being had to local social conditions.

(ii) An institution for the administration of compulsory labour may, if necessary, request the approval of its supervisory organ for the permission of the inmates to engage in work in public or private workshops, farms or other places outside the institution.

. . .

Art. 55. Inmates performing compulsory labour shall be given instruction which will enable them to acquire common knowledge related to daily life and to learn the responsibilities of good citizenship.

. . .

Art. 58. An inmate shall receive commendation or awards for:

(1) excellence in work performance;

(2) exemplary conduct;

(3) information given with regard to an attempt at escape, or violence, on the part of another inmate; or

(4) other activities deserving of commendation.

Art. 59. Commendation and awards shall take the form of:

(1) public citation;

(2) merit scroll or prizes; or

(3) other appropriate methods of encouragement.

Art. 60. (i) If an inmate persists in bad behaviour or commits a breach of discipline, the officer in charge of the institution for the enforcement of peace preservation measures may take disciplinary action in one or more of the following forms:

(1) oral reprimand;

(2) suspension of outdoor activities for a period of one to five days;

(3) deduction of credit points;

(4) suspension of visiting rights on from one to three occasions;

(5) suspension of mail privileges on from one to three occasions;

(6) increase of work by two hours per day, for one day to a maximum of five days.

(ii) Before the action prescribed in sub-paragraphs (2) and (6) of paragraph (i) above is taken, the advisory opinion of the medical staff shall be obtained.

Art. 61. Before any of the actions prescribed in the preceding article is taken, the inmate concerned shall be given an opportunity to defend himself; if his defence is deemed valid, no such action shall be taken.

Art. 62. If an inmate dies as a result of injuries suffered or illness contracted during work, an appropriate death benefit may be paid.

Art. 63. (i) In case of death of an inmate, accrued monthly payments or death benefits shall be paid to the next of kin of the deceased, to the members of his family or to other parties so entitled.

. . .

Chapter VI

PROTECTIVE CONTROL

Art. 64. (i) Protective control shall be exercised by a police organ, local self-government body or charitable organization, or by the next of kin of the accused, by the members of his family or by any other appropriate person, at the place of residence of the accused or elsewhere.

(ii) The Ministry of Justice may appoint to a district court a special officer to perform the duties of protective control.

Art. 65. The Procurator shall supervise persons invested with the duties of protective control, and shall conduct monthly inspections of their work.

Art. 66. A person invested with the duties of protective control may prescribe certain rules of conduct for observance by the accused, and may rebuke the accused, or restrict his freedom, if he refuses to obey.

. . .

Art. 69. In case of death of the accused, the person invested with the duties of protective control shall report the occurrence immediately to the Procurator.

. . .

Chapter VII

COMPULSORY TREATMENT

Art. 78. Compulsory treatment shall be administered in a venereal disease clinic, home for lepers or public hospital.

Art. 79. Institutions for the administering of compulsory treatment shall give effective treatment to, and see to the physical health of, the accused.

. . .

Chapter VIII

DEPORTATION

Art. 82. An alien whose deportation has been ordered shall be delivered by the Procurator to the Judicial Police organ for deportation.

Art. 83. The Procurator shall notify the Judicial Police organ of the deportation order, either one month before the alien concerned has completed his sentence, or after the penalty imposed upon him has been remitted.

Art. 84. The Procurator shall make to the Ministry of Foreign Affairs a complete report on the circumstances in which the alien is ordered to be deported; and the Ministry of Foreign Affairs shall, when necessary, serve notice on the Embassy or Consulate, in the Republic of China, of the country of origin of the alien deported.

Art. 85. (i) Where an alien deportee holds a passport of his country of origin valid for passage to such country, or holds a permit for entry to some other place, the public or private carriers operating ships, trains, buses or aircraft which make stops in such country or place shall not deny passage to such alien deportee.

(ii) Where the carriers operating ships, trains, buses or aircraft as described in the preceding paragraph deny passage to an alien deportee, the local Judicial Police organ may impose a penalty in accordance with article 54, paragraph 11 of the Punishment of Police Offences Act.

Art. 86. (i) If an alien deportee who has completed his sentence or whose penalty has been remitted is unable to find ships, trains, buses or aircraft that are available to transport him and experiences difficulty in maintaining himself, he may be provided with food and lodging until such means of transport become available to him.

(ii) During the waiting period referred to in the preceding paragraph, the Police organ shall keep the alien's movements under surveillance but may not, save for some important reason, restrict the freedom of his person.

Art. 87. An alien deportee must pay for his own passage; if he is destitute and unable to bear the cost, the organ responsible for execution of the deportation order may request special funds, to the end that the order may be carried out.

Chapter IX

SUPPLEMENTARY PROVISIONS

Art. 88. (i) The organization of the institution for the enforcement of peace preservation measures shall be laid down by law.

(ii) A staff of technical experts shall be recruited for the service of the institution for the enforcement of peace preservation measures.

Art. 89. The date of entry into force of the present Act, and the areas to which it applies, shall be specified in a decree to be issued by the Executive Yuan.

COLOMBIA

ASPECTS OF THE JUDICIAL REFORM [1]

I. BACKGROUND

The final decision that the country needed a thorough reform of its administration of justice through statutory channels was reached neither unexpectedly nor capriciously.

The judicial organization of the 1934-1938 period may perhaps have been in accord with the needs of that time, but, having been subjected to temporal restrictions and to the attrition that every static form of law, such as legislation, can suffer, it was not in harmony with a developed and different country. Those legal systems—it is distressing to note—served the Republic for a very short period. The dynamics of court decisions and later profound social, economic and cultural changes overtook the predictions of the Codes half-way. Later there came a severe dislocation, accompanied by a lessening of respect for constitutional principles, disregard of the written law, and uncertainty about the economic future, the evident consequences of which become arguments favouring reform.

The story of the historical phase of the judicial reform, which began in earnest with the advent of the National Front Government in 1958, has already been told.[2] It should be repeated, however, that the arguments invoked in those days by the sponsors of the proposals retain their full force.

We shall not attempt to deal exhaustively with the subject but shall simply describe first the situation of justice in the 1958-1964 period:

(a) *Inadequacy of the Codes in present circumstances.* There are those who maintain that, generally speaking, both the Criminal Code and the Criminal Procedure Code are masterly works and that these learned texts must not be changed. That may be a correct assertion, but the parade of theoretical respect for the letter of the Codes contrasts with ineffectiveness in applying them. Admittedly, the integral application of those provisions might have produced different results; yet many of them not only have not been applied but cannot be applied until certain administrative institutions are established or sufficient funds are available or technical staff is trained. Those preliminary steps were not taken for twenty-five years, and the monument of learning in the Codes is a mute accusation of the legislators. We have lived since 1938 in that stage of transition between a system created but not applied and another system improvised and applied under very difficult conditions.

In the meantime, the national population has doubled, commercial, industrial and banking activities achieved unusual growth, labour legislation was born and began its juridical existence, the country's institutional life experienced profound disturbance, and violence—one of the most terrible scourges—acquired its naturalization papers. These social and economic, juridical and political phenomena were reflected in the functioning of justice. The number of civil, criminal, labour and administrative cases increased fivefold, proceedings began to be complicated and casuistic: the new criminal procedures did not find a place in the penal statute, and the grandiose legislative work of 1936 to 1938 was shaken by the scepticism of the people.

(b) *Inadequacy of the judicial systems.* In order to keep the overwhelming approaching problem within limits, our legislators made great efforts aimed in almost every case at combating the congesting in the judges' chambers by creating new posts. Shortly after the Criminal Procedure Code entered into force, efforts were already being made to increase the number of judges by readjusting the higher courts and organizing new circuits; later, the Ministry of Justice was created, and one of its sections—Criminal Investigation— grew so large that there were 350 examining judges.

Those remedies, however, were not the most appropriate. After such measures had been adopted, the country still had half a million criminal cases at a standstill, an annual figure of approximately 150,000 persons charged with offences, not less than 500,000 civil, labour, administrative and police cases abandoned, and more than 80 per cent of all criminal cases terminated by the easy and demoralizing course of time limitation.

One of the serious defects of the system in force was the glaring inequality in the work of the various officials. Some very overburdened courts can be accused of delay, and others with little

[1] Note prepared by Mr. Gabriel Gutiérrez Tovar, Chief of the Office of Criminological Studies, Ministry of Justice, and forwarded by the Government of Colombia.

[2] Report of Dr. Lisandro Martínez Zuñiga at the second Congreso de Abogados Javerianos, University, June 1964, pp. 125-134.

traffic pride themselves on keeping affairs up-to-date. While seventy-five higher courts pile up 80,000 cases, most of which are to be tried with juries, 300 municipal courts have been accorded the luxury of handling no more than ten cases yearly. The examining judges and the police authorities were responsible for investigations: the former failed for lack of understanding, continuity, and stimulus in their difficult work, and the latter for lack of training.

Various Decrees changing jurisdictions, establishing penalties for dilatory officials, and simplifying some rules of criminal procedure were enacted in 1950 and 1951 as a partial remedy for those disastrous features of the judicial system. To the same end, a campaign of penal terrorism was begun: penalties were increased, provisional release was restricted, and in many cases pardons and substituted penalties were eliminated. A customs court was organized, and subsequently examining officials were even appointed subordinate to the Colombian Intelligence Service. In 1955, with a view to replacing the initial legislation on vagabonds, rogues and pickpockets, the so-called "conditions of special dangerousness" were introduced into the laws through the very inadvisable and controversial Decree 0014.

(c) *Inability of judges and judicial officers to ensure a permanent and effective judicial service.* An extreme interpretation was to be given to the uneasiness created by that strong impression of impunity, rapacity and insecurity—namely, that the judges did not have the support of the citizenry, they lacked training, they showed a deformed moral constitution, and they were very poorly paid.

This interpretation was certainly foolish and gravely unjust when applied generally to the whole judicial branch. Fortunately, the majority of the Colombian judicial officers and judges met the demands of a task requiring so much self-sacrifice. They were faced by an avalanche of crimes for which they were not responsible and they attempted to cut their way through a forest of difficulties.

The others, an unhappy minority, contributed to the good judges' loss of prestige and created an atmosphere of venality, corruption and temporizing with crime; and they could not be punished as an example, in view of the relative powerlessness of the *Ministerio Público* in our legislation.[3]

(d) *Lack of means and institutions.* This not very attractive picture is part of an uncertain policy in regard to the staffing and equipment, administration and modernization of auxiliary judicial services and of institutions for the correction and observation of children and for the detention and punishment of adults. Forensic medicine is the work of a few enlightened men; a technical criminal police force is a mere hope; the treatment of abandoned children in moral or physical danger and delinquents barely covers a small and poorly serviced area; the national prisons house 32,000 men, of whom scarcely 6,500 are convicted and more than 80 per cent are completely idle. Escapes, not always the greatest problem for prisons, have become commonplace.

(e) *Lack of moral solidarity.* Such a prolonged and sterile disorganization, the realization by the citizenry that the systems and procedures in force were absolutely powerless to punish crimes promptly and to re-establish the rule of law, and the increasingly pronounced decline in the moral standard of some officials led to a dangerous state of scepticism concerning the legal apparatus and the exemplary and educational authority of the laws. Those old principles of solidarity in the face of injustice, which inspired people with the determination to repulse those who dared to violate the law, were shattered to pieces. Open violence was tolerated, the value of testimony was destroyed by fear or by an immoral desire to do evil, dealing in stolen goods became general, and the most regrettable practice of taking justice into one's own hands and imposing the arbitrary rule of personal considerations came into being.

Citizens, shocked by the cruel crowding of men into prisons, forgot that pity should be extended also—and first—to the victims of crime. As if it were nothing at all, an anti-Christian materialist agitation overran the drawing-rooms of society, increasing greediness for gain and unrestrained by honour, freedom, security, integrity or the lives of others. It has reached the extreme of shamelessly and wickedly defending the brutality set up as a principle of government in a Caribbean island; each day, a homicide committed for the possession of a few pennies or to satisfy a carnal appetite is reported; and we reverse the logical value of things by invoking habeas corpus on behalf of vicious persons while we forget the brutal sacrifice of the humble peasants.

The fault certainly lies in the community, and punishment of the guilty person can have very little significance if first an effort is not made to combat illness, unemployment, poverty and ignorance and to elevate the feelings and to increase the economic opportunities of the people. But the rule of punitive justice cannot be evaded on the excuse that there is no social justice. The former will prevent insecurity. The absence of the latter can retard progress. However, it is better to have security without progress than progress without security. In punitive justice, action is principally the State's responsibility. In social justice, the whole community is concerned.

We shall see how the Government has fulfilled its duty to ensure the finest administration of justice.

II. SUBSTANCE OF THE JUDICIAL REFORM

(a) *Criminal questions.* In making use of the extraordinary powers granted to it by Congress under Act 27 of 1963, the Government endeavoured first to solve a long-standing question which was important simply from the standpoint of judicial interpretation—the application of penalties in the case where the same person has committed simultaneously two or more offences, whether sim-

[3] Burdeau, *Método de la Ciencia Política* ("Method of Political Science"), pp. 32, 76.

ilar or dissimilar (*concurso de delitos*). Until Decree 2525 of 1963 was promulgated, some persons contended that the duration of penalties laid down in article 45 of the Criminal Code established a maximum limit of twenty-four years, even in the case of proceedings against persons guilty of more than one offence, whether committed separately or jointly. The Government held that article 31 of the Criminal Code—the commission of one act only constituting simultaneously an offence against several penal provisions as the means for the commission of another and distinct offence (*concurso ideal o formal*)—and article 33 of the same Code—the commission by a person of more than one act constituting separate offences (*concurso real*)—in establishing the penalty and increasing it on account of these concurrent circumstances "up to one-third" or "up to another such term" could not, without a flagrant contradiction between the rules of the special part of the Criminal Code, be made subject to the aforesaid maximum limits of article 45.

The Government did not increase the penalty for the offences described in the Decree. It did, however, clarify the application of penalties in respect of such a combination of circumstances, so that the murderer of ten persons was not given the same penalty as the murderer of one person—that is, imprisonment with hard labour for a term of twenty-four years. Under the provision in articles 31 and 33 of the Criminal Code, that limit can be raised to forty-eight years, specifically in the case of a more serious offence.

Articles 168 (abuse of power by a judge) and 208 (association to commit an offence) were also amended with a view to obtaining the twofold result of cleansing the administration of justice and combatting one of the truly abominable methods of violating the rights of the community: organization or association for crime.

(b) *Judicial competence and organization.* It was noted that one of the grounds for judicial reform was that the systems in force lent themselves to the obstruction of proceedings, despite the great diligence and efforts of the judges. To increase the number of judicial employees was not an adequate remedy. Raising salaries on the presumption that thereby the investigations would be better conducted was nothing more than a lack of respect for the competent officials, since, as a distinguished Italian minister said, "while it is the State's duty to pay the judge adequately, we consider it insulting to the Bench to write—as someone wrote recently—that there are good judges only if there are good salaries, as though the legal profession was determined and supported in its daily work only by a material salary".

The solution—which would raise the level of the official's work, facilitate the access of citizens to judicial offices, and relieve the congestion of the docket in the large centres—proved to be the so-called "broad jurisdiction", that is, the broad authority of the judges in the various municipalities to hear all civil, criminal and labour cases, except those in which Act 27 of 1963 itself required the participation of a jury.

Under Decree 528, which was promulgated on 9 March 1964, the judges of each municipality hear cases previously entrusted to circuit judges or even to higher court judges. This leads to the elimination of the judicial circuits but strictly speaking not of the judges, because each municipal judge will have both his own jurisdiction and that formerly granted to the circuit judges. Naturally, in order to avoid wherever possible new congestion of business and purely for reasons of procedural efficiency, different minimum amounts were established. In this way, the municipal judge can in a final decision dispose of a greater number of cases —given his higher qualifications and conditions— and the citizens can expect a more expeditious disposal of their minor lawsuits.

This new conception of "broad jurisdiction" and of "decentralization" brought the need for changes in the jurisdiction of the higher tribunals of the judicial district directly to the Government's attention, because, with the elimination of the circuits, cases will have to go directly from the municipal courts to those tribunals.

In view of the administrative nature of some proceedings and the existence of a special court to deal with them (article 137, N.C.), a precise definition was laid down to make it possible for the Supreme Court of Justice to confine itself to its immeasurably important task as the guardian of the Constitution and a court of appeal and review, and to entrust exclusive jurisdiction of such proceedings to the administrative courts. Decree 528 of 1964 established the competence of each of the Chambers of the Supreme Court of Justice, eliminating the Chamber of General Business, reorganizing the division of the Council of State into Chambers, and changing the competence both of that Council and of the administrative courts.

Particular importance was attached to the creation of a Tribunal of Conflicts in application of article 217 of the National Constitution, with a view to clarifying any conflicts between the Supreme Court of Justice and the Council of State. To begin with, Decree 528 of 1964 indicates the manner of electing the judges of the Tribunal of Conflicts, their qualifications and requirements, term, restrictions on dual office holding, functions, salary, and the procedure that must be followed in respect of conflicts between the ordinary courts and the administrative courts.

Beginning with its third chapter, Decree 528 of 1964 establishes various rules of judicial organization intended to solve the problems arising in connexion with the disabilities of and challenges to civil, criminal and labour officials, changes of venue in criminal proceedings, and procedure on appeal. In respect of this latter subject, the grounds for appeal are reduced and brought into harmony technically and scientifically with the nature of the extraordinary remedy.

(c) *New judicial territorial division.* The judicial organization of the country came to have a paralysing effect on the administration of justice. Our justice had not kept pace with the fundamental changes that had taken place in the country. It was administered from twenty-two district capitals with courts in which the number

of judges fluctuated from four to twenty-four and was served also by seventy-five completely overburdened higher courts and by innumerable circuit courts, almost half of them with judges who heard both civil and criminal cases; there were more than nine hundred municipal judges, the vast majority of whom heard both civil and criminal cases and had limited jurisdiction; it lacked examining officials directly associated with the courts and also adequate supervision.

Simple factors such as distances, communications facilities, and economic, ethnic and geographic homogeneity were not taken into consideration in the formation of the judicial circuits. As the districts had been established with a court in each Department excepts Caldas, Boyacá, Valle and Santander, the false impression was given that the department capitals should be the only court seats and that no effort should be made to bring the two levels of court proceedings closer to small communities. In this respect, the new judicial territorial division shows an entirely different picture. The Colombian township, sunk in economic despair and lacking moral aid and intellectual influences, has declined considerably. As it is precisely in those regions that a large number of the cases that later come to the distant capitals originate, the territorial solution, in line with the jurisdictional changes, consisted in giving each municipality the number of judges needed to see to the entire handling of the proceedings in the very place where the offences occurred or where the civil, commercial and labour disputes originated. There is nothing more encouraging for a small community than to see justice done and to feel that it is provided with the judicial machinery indispensable for ensuring its tranquillity. As for the more serious cases, an undoubted *rapprochement*, through new higher courts, will also help, by means of the trial jury, to bring the citizens into closer contact with criminal matters which disturb the peace of their regions. Giving the different districts an opportunity to apply the justice they require and, perhaps, the justice they deserve, is considered a very valuable initiative.

Lastly, the "broad jurisdiction" of the municipal judges having been established and the judicial circuits having been eliminated, the beneficial work of decentralization was to conclude by increasing the number of higher courts and placing them according to the judicial needs, population and area of the new districts in the cities most in need of this service.

Those who think that the establishment of a greater number of judicial districts arose from local pressures or the inducements and interests of partisan politics are mistaken. Those who describe the Government's projects as hasty and too ambitious are also completely wrong. Several volumes were prepared in the Office of Criminological Studies of the Ministry of Justice for the new judicial territorial division, and the following factors were those mainly taken into account: (*a*) number and situation of the existing districts and circuits; (*b*) judicial case load in each of them, civil, criminal and labour; (*c*) population of the Colombian municipalities and positive and negative rates of annual geometric growth; (*d*) population density, altitude above sea-level, temperature and predominant activity in each municipality; (*e*) case load in the higher courts and municipal courts; (*f*) apparent volume of crime in each municipality in the last three years; (*g*) communications facilities between a municipality and neighbouring municipalities and between then and the seat of the new district court; (*h*) distances by air, river, sea and land from one place to another (railways, roads, tracks); (*i*) ties and relationships between some municipalities and the natural seat of the district court; (*j*) cultural and social climate in the new court seats; (*k*) area of each municipality and of each new district; (*l*) approximate calculation of the number of officials essential in each district and of the number of judges for each court; (*m*) actual petitions from the inhabitants of every municipality and region.

The substantial data obtained by direct investigations or through official, semi-official and private institutions and agencies were also to be subject to the basic rules of jurisdiction set out in Decree 528 of 1964. That being so, Decrees 1356 and 1701 of 1964 did not merely change the Colombian judicial territorial division but established a new, efficient and practical division for the lofty purposes of the reform.

A better understanding of the innovations may be obtained by giving specific examples of the changes brought about by the reform. Assume that a homicide has been committed in the community of Cajicá (Cundinamarca). Under the present system, the municipal judge keeps a prudent distance from the investigation while the mayor (*alcalde*) initiates the preliminary proceedings and requests the intervention of an examining judge. The judge will appear several days later when the traces, witnesses and particulars of the event may possibly have disappeared. He will perform his task in unfamiliar surroundings, with the limited assistance which can be given him by the mayor and a few police officers. Lastly, in a few days the file will be sent to Bogotá, to a higher court judge's chambers, possibly among more than 800 or 1,000 other files which preceded it. When its turn comes, the judge will examine the affair and decide the case or require further details. In any case, the idea that that homicide went unpunished will never be erased from the mind of that community. Four or five years later, the inhabitants may perhaps receive the news that the case was solved by a provisional stoppage of proceedings, since they will never be informed of the expiry of the time limit affecting the action.

The new system is far different. The mayor or the police inspector—acting as a criminal police officer—is obliged to open the preliminary proceedings for the investigation not within an arbitrary period, however, but within forty-eight hours. The file of the case will then pass finally to the municipal judge who must complete the full investigation, sending the case to the higher judge twelve kilometres away (at Zipaquirá), not with thousands of pending cases but with an average of seventy annually. The trial jury will be composed of regional inhabitants. Before six months have

passed, the decision may be heard on appeal before the judges of the Zipaquirá court. The news that the person who committed the homicide has been sentenced to ten, twenty or more years in prison will be disseminated throughout the region.

To the advantage of requiring evidence to be produced immediately must be added the preferential attention which the lawyers in towns smaller than the department capitals will give to the cases entrusted to them, and a much more thorough action by the *Ministerio Público*.

The number of courts is raised from twenty-two to sixty. The 363 circuit judges are eliminated. The number of municipal judges is raised from 980 to approximately 1,900. Three hundred and forty criminal investigation courts are abolished. The number of higher courts is increased from 75 to 132. The police courts, remand courts (*juzgados de prevención*) and customs and territorial criminal investigation courts are eliminated.

It is worth stressing, however, that all the regions of the country benefit equally from the new judicial territorial division. There are districts, such as Riosucio and Armenia, small in area but densely populated, and there are districts with a population ranging from 100,000 to 1.5 million. Departments such as Valle del Cauca, Caldas, Antioquia, Santander, Cundinamarca and Boyacá will have twice as many courts equitably distributed among their cities. The importance of these courts must be measured not by the number of posts attached to each court, but rather by the qualifications of those who fill them.

At any rate, in order to judge the new judicial territorial division, it is necessary to take a position from which one can observe the tenor of the reform as a whole and discuss the various factors which have been noted.

(d) *The Ministerio Público.* Various Decrees contain provisions respecting the *Ministerio Público* (Office of the State Counsel), an organization for the supervision and control of public officials to promote the enforcement of the laws, defend what is right and see that justice is done. The principal innovations, however, are to be found in Decree 1698 of 17 July 1964. There is fear that the judges, who alone exercise the vast powers granted by the reform, may abuse their powers. This feared outcome might come to pass if an active, vigorous and swift power of review were not instituted. In the first place, rules which up to now have been dispersed and more or less ineffective acquire legal force—judicial review, disciplinary penalties, correctional courts. The *Procuraduria General de la Nación* (Office of the State Counsel General of the Nation) has been strengthened by a Deputy State Counsel for Judicial Review and a District State Counsel, one for each district—posts which are a genuine innovation—and a promising one—in our judicial system. Each District State Counsel exercises within a limited area a function as important as that exercised by the State Counsel General for the whole nation, but much more effective because of its local character and because of the possibility of verifying the results of the system.

The Decree also establishes another type of official of the *Ministerio Público* new to our institutional organization—the examining prosecuting official (*Fiscales Instructores*). Since the municipal courts will have complete jurisdiction to examine all matters and to deal with those in which there is no jury, the Examining Prosecuting Official will act only in very exceptional matters. The aim is to maintain a highly mobile body of senior officials, adept in the work of investigation, who will act on the order of the State Counsel General or of the District State Counsel in cases of violations that are very complex or the consequences of which extend or spread to several towns or several districts.

(f) *The judicial career service.* When dealing with justice, the idea of a career—adequate compensation for the difficulties involved in the performance of judicial functions—awakens enormous interest. The long-held ambition of the servants of the State after many years of hope became a reality through Decree 1698 of 1964. The judicial career service in our opinion has four basic aspects: (*a*) it permits the selection of judges; (*b*) it ensures their tenure and opportunities for promotion; (*c*) it stimulates the officials to perfect their intellectual and moral proficiency; (*d*) it prevents those who have obtained their posts by competition from sinking into inferiority or performing their duties in a routine manner. The first two aspects are common to every similar organization. The last two are genuine achievements of Decree 1698, because, within the system of examinations it establishes, which must be held before the expiration date of the terms of office, those who are in service have a preferential mark, but are obliged in conscience—through additional efforts in practice and theory—to raise it, in order to avoid being displaced by candidates who are not judicial officials but who have superior educational attainments, knowledge and qualifications.

In countries where the judicial career service has been tried, there have been misgivings about a possible paralyzing effect on the judicial offices, inertia induced by immersion in study, and, to a certain extent, stagnation of court decisions—phenomena which may occur when judges become absolutely immoveable. The system devised for Colombia obviates such consequences. Respect for constitutional terms must be reconciled with the principles of the judicial service, and it was done so well that existing and future judges will keep their tenure, but not gratuitously—rather, on the basis of their own improvement and the broadening of their ability.

(g) *Auxiliary services.* It would be very difficult and time-consuming to comment individually on each of the eighteen Decrees issued by the Government in the exercise of the extraordinary powers granted to it by Parliament under Act 27 of 1963. Since the gaps and defects in the administration of justice exhibit many facets, the applicable remedy must be contained in decrees on different subjects. In the main the Decrees described above performed the task of establishing the backbone of the reform. Nevertheless, the

modernization of auxiliary services and organizations was the subject of special attention, thus: (1) In Decree 1483 of June 1964, an old problem of distribution of work among the Sections of the Council of State was settled, and the judges were granted jurisdiction to terminate attachments and measures adopted in respect of rural property by the former Tribunals of Conciliation and Equity; (2) In Decree 1700 of 16 July 1964, the Institute of Legal Medicine was reorganized, and the Higher School of Forensic Medicine was created; (3) In Decree 1726 of July 1964, the criminal police force was established and organized on the principle that it was an indispensable auxiliary function but not properly speaking an armed body, attached to the Ministry of Justice. In the same Decree, the classes of persons who can exercise criminal police functions at all times or for a limited period are defined; (4) In Decree 1727 of 1964, the number of judges in the administrative courts of Cundinamarca, Antioquia, Caldas and Valle del Cauca was increased and prosecuting officials (*fiscales*) were appointed to the latter three courts; (5) In Decree 1728 of 17 July 1964, a Judicial Career Service Division was established in the Ministry of Justice and the Office of Criminological Studies was reorganized. That Office was responsible not only for the preparation of the greater part of the material used in the judicial reform, but also with the secretariat of the Advisory Commission, the drafting of the texts of some decrees, and works intended to make the judicial reform known and defend it; (6) In Decree 1818 of 17 July 1964, the Colombian Family and Child Social Welfare Council was established, and the Children's Division of the Ministry of Justice was reorganized; (7) In Decree 1817 of 17 July 1964, some amendments were made to Decree 1405 of 1934, which were so broad as to replace it entirely as the National Prison Code. Items of undoubted interest within this lengthy statute (369 articles) are the classification of prisoners (article 25), the establishment of an education, instruction and religion section and an industrial and agricultural section in the Division of Prisons (articles 47 to 51), the establishment of "counsel for the poor", called Procurator Counsel, to provide better legal assistance to convicts (article 81), the organization of after-prison social service (article 356), and the creation of the National Penitentiary School for the training and instruction of members of the Prison Department (article 93).

(h) *Criminal procedure.* It is extremely important that the laws should reflect the highest values of the social conscience, that they should be related to the events of the immediate past, and that the legislative technique itself should ensure the effectiveness of the rules, avoiding the useless and the pedantic, and also purely subsidiary regulations. It is not a matter of embroidering the text of the provisions with the latest academic theses or, in these difficult times, of doing dialectical and grammatical fancywork. The new laws reforming justice, above all, are based on the Colombian reality, on the experiences of each person who took part in their drafting, on specific facts. Perhaps this is the only way to prevent them from soon turning into theoretical records fit only for the archives of useless regulations.

Decree 1358 of 1964 introduced into the Criminal Procedure Code useful amendments which went to the root of problems that are today virtually insoluble. It is difficult, without undertaking a commentary on each provision, to point out the principal changes. However, the amendments simplify proceedings which people are accustomed to regard as complicated. (1) In the conduct of the preliminary examination, due consideration having been given to the responsibility which falls primarily on the municipal judges, the time-limits are much more exact and the application of the rules is extremely simple. (2) The trial is transformed into a formality which must be strictly observed, regardless of the offence which gave rise to the proceedings. Some measures, such as the compulsory appraisal of the damage caused by the infraction, help to lay down clear bases for compensation, which is a far from negligible form of securing justice. (3) The judge's authority when he presides over public hearings is increased with a view to ending the sad spectacle of oral proceedings turned into discussions of striking mediocrity and pointless verbosity. (4) The participation of the *Ministerio Público* is strengthened when two or more defendants are being judged at the same court hearing. (5) Concerning the selection of jurors, the second chapter of the Decree establishes a brief procedure, with excellent guarantees of the fitness of the jurors and their freedom from corruption. (6) The handling of ordinary appeals is unified (article 35); in addition, it is provided that provisional suspension of proceedings will be reviewed (article 32), and that an appeal against an order to do what may be necessary will not bar the detention of the accused or the execution of preventive measures in respect of his property, if directed in the said order. (7) With the obvious intention of avoiding the unfortunate effect which the large number of applications that decisions be declared null and void had on criminal proceedings (a problem solved, in part, by the broad jurisdiction of the municipal judges), articles 37 and 38 of Decree 1358 of 1964 restrict the grounds for such applications. (8) The application of the provisions on seizure, detention and provisional release of accused persons gave rise to serious difficulties, caused by lack of precision in the wording of the Criminal Procedure Code. Articles 41 to 55 of the Decree under discussion regulate the subject very clearly, practically and unambiguously. A perfect balance is reached between the accused's right to have his procedural situation solved promptly and the time which the examining official must have if he is to act conscientiously. (9) There is established with great simplicity—for the first time in Colombia—a writ of habeas corpus, which grants those who feel that they have been unjustly deprived of their freedom an expeditious and rapid way to be and to secure legal protection. (10) Lastly, in article 65 of Decree 1358, the jurisdiction of the police authorities is increased to cover the punishment of minor offences against property (where the amount does not exceed 300 pesos) and offences involving personal injuries where the claim is subject to abandonment (fifteen

days of disability without lasting effects). As a factor contributing to procedural efficiency, this provision is commendable. Undoubtedly it will prevent the municipal courts of broad jurisdiction and other courts from experiencing a set-back in their efforts in deciding violations of law, which should be punished through swift police proceedings by authorities situated in even the most remote places.

(j) *Anti-social conduct.* Decree 0014 of 1955, which was devised to combat so-called "states of dangerousness", was a blunder of gigantic proportions, the wisdom of which was rightly criticized, for example, in these words by Dr. Jorge Enrique Gutiérrez Anzola: "Among the numerous legal errors adorned with incomprehensible juridical dress, Decree 0014 is a further step on the way to greater chaos. To show Colombians the hard facts arising from an inadvisable and foolish measure, which must produce more evils than those they wanted to prevent, is a sacred duty of conscience and an offering made once again to the cause of justice which is our greatest passion."

The conception of dangerousness was unfortunate not only from the legal-scientific standpoint but also in its practical application. The extension of the procedure provided for in the fifth chapter of the Decree to proceedings for offences against property (article 81) made the handling of these proceedings highly difficult and introduced a source of diversity into the acts of the judges, with grave consequences.

In reforming the judicial system, the Government wished, by virtue of Decree 1699 of 18 July 1964, to replace the mixed criterion of offence—infraction—dangerousness established in Decree 0014, by the criterion of anti-social conduct. The latter is much more understandable and logical, within the scope of the law, since it brings many acts which are obviously harmful but which today are neglected in view of the blank spaces in the Criminal Code and in fact go unpunished. Nobody doubts the need to combat directly with judicial weapons offences against livestock property, begging under fraudulent pretences, the possession of tools adapted to committing offences against property, the thousand subterfuges used to impede the recovery or identification of stolen automobiles, the uttering of fraudulent cheques, and all kinds of practices harmful to children under eighteen years of age, such as encouraging them to become drunk. Similarly, there was an urgent need to define and to establish provisions of this kind to deal with the narcotics traffic, the manufacture and carrying of arms, and activities designed to result in acts of barbarism and terrorism.

We should mention particularly article 27 of Decree 1699, which lays down: "If a person, without just cause, leaves without economic or moral support persons to whom he is obliged to furnish such support, he shall be liable to imprisonment for a term of not less than six months nor more than two years."

This provision is not—as some have interpreted it—limited to cases of family abandonment by parents who ruthlessly violate and disregard obligations and duties voluntarily entered into. That is clearly the principal aim, since the irresponsible behaviour of some men consigns many women and children to terrible poverty and turns their existence into a very hard and desperate struggle.

An effort was made also to combat the irresponsibility of working mothers who in any way deny moral assistance to their children and whose distorted view and conception of life will affect their children more seriously for that reason.

A society which creates problems cannot close its eyes to them. Those who deliberately place themselves in difficult situations cannot, without being an addition to the moral dissolution of the community, pitilessly throw into anguish and poverty the fruits of their transitory pleasure. This legal provision is a vigorous call to arms against those conscienceless beings, concerned with the wholely sordid and vulgar, who must begin to answer for their deeds here, before that other infinite justice, from which there is no appeal, demands from them the whole of their incredible debt.

(l) *Customs Legislation.* From the start, it was very clear that the National Government, exercising the powers granted to it by Act 27 of 1963, would introduce reforms into customs legislation—in its punitive or penal aspect only. Cheating on customs duties—the result of the restrictions imposed because of the necessities of economic policy—has come to be one of the most urgent and widespread problems of the day. Very few people, facing a general flood of moral laxity, may understand that the country is severely shaken when a very noticeable majority of its citizens make a habit of cheating on their taxes. On a growing scale, national fiscal pressures hinder the carrying out of vast improvement schemes in education, public works, housing and community development plans, and health campaigns. People attribute this situation to the Government's financial errors, very often forgetting that which genuinely contribute to the pride of our nation cannot be carried out except with the direct or indirect co-operation of all good citizens. If a group seeks to profit by cheating on customs duties, taking advantage of those who seek their advancement, maintaining respect for the established rules, not only will there be direct harm because of the economic stringency resulting from their cheating but the whole community will unjustly suffer losses. It follows that the smuggler must be considered one of the most harmful and dangerous elements, because of the social maladjustments produced by his dark machinations.

The Government brought together the scattered customs penal legislation in Decree 1821 of 17 July 1964. It defined again and clearly some terms customarily used in those matters, delimited the forms of smuggling, specified the acts that constitute a legal presumption of the offence, established a simple and drastic scale of penalties and organized the customs courts, simplifying procedures and entrusting the investigation of smuggling offences to the municipal judges. It also increased the number of higher customs court judges and did away with customs criminal examining courts.

(m) *Operation and amendments.* As Dr. Alfredo Araujo Grau, Minister for Justice, said when he defended the Extraordinary Authorization Act in the Senate of the Republic: "What is involved here is, in fact, a practical effort, because justice is made effective and quick not by revolution but rather by a series of measures which study and experience have shown to be appropriate and necessary. Nothing better than what is proposed here has been suggested."

Even when, with the distribution of more than 8,000 volumes of the preparatory works in 1962 and 1963, all citizens were offered the opportunity to state their criticism, neither better proposals nor fundamental plans to remedy the judicial problem were in fact received. The Government waited until the last instant for that voluntary collaboration.

Even after Decrees 528, 1356 and 1358 of 1964 were issued, it heard all petitions and with a patriotic desire to achieve success, even amended and added to its original determinations with Decrees 1701 and 1819 of 17 July 1964. Few reforms can offer a broader and firmer basis than 1964 judicial reform in respect of studies, knowledge of the national situation, interpretation of statistics, consideration of many factors, and lofty disinterestedness, bringing the judicial branch of the Government to an outstanding level of security, dignity and grandeur in the service of the people.

It is not an easy task to set the machinery of reform in operation. Decree 1822, issued on 17 July 1964, established an ingenious system of effective dates to avoid interruptions in court service and to make the changes regarding jurisdiction operative at the appropriate time.

III. GENERAL EVALUATION

(a) *Uninformed criticism.* Some persons have denied the intrinsic advantages of the judicial reform decrees. The disorganization and weakness of the criticisms do not lend themselves to a profound argument for the reform. They all have one common denominator: ignorance of the tactical and legal groundwork, ignorance of the past studies, ignorance of the very text of the decrees, and ignorance of their possible results. The trial of this crusade for justice must come sooner or later. We who attended the birth, growth and success of the reform are sure of having done an honest, serious and responsible piece of work. It is not perfect, but it is a substantial contribution to the solution of the disaster overwhelming us.

Certainly there are distressing assertions, which are ineffective in direct ratio to their generality. We had an opportunity to see in prominent form the following phrases, which do not affect informed people but do much harm when heard by uneducated persons. It is said, in opposition to the new district courts, that there are "too many" and that there will be a "confused mass of court decisions", that they "have been established in unimportant villages", that "national conditions" have not been considered, that the new courts are a scandalous "bureaucratic proliferation", "that they will cost an exaggerated amount" and that "the warnings of responsible jurists were not heeded"; in opposition to the decree concerning the judicial territorial division, arguments such as an "absolute ignorance of geography" and "disregard of the towns" are used. A certain higher court judge succeeded in saying something against the Judicial Career Decree which for us automatically became an undeserved compliment. He said that it seemed to have been made with "a schoolteacher's judgement".

The situation in respect of criticism is discouraging.

(b) *Advantages and negative factors.* The reform has undoubted advantages and will produce enormous benefits, which we deliberately refrain from repeating. The negative factors which come up in opposition to it may be listed as follows: (*a*) The transition from one legislative system to another may result in a momentary paralysis; (*b*) Conformist minds will predict an increase in posts and salaries as the routine solution; (*c*) the decrees will not be thoroughly known and applied as part of the reform proposals within a short time; (*d*) Some regions may possibly feel that "their rights" have been prejudiced by a reduction in the number of judicial officers of by the creation of a court in a municipality near the capital cities of those regions; (*e*) Those who are not capable or deserving or cannot satisfactorily demonstrate their honesty or uprightness will logically be opposed to the judicial career service; (*f*) The number of clients of many practising lawyers living in the large cities and possessing widespread and deserved prestige may be reduced by virtue of the court decentralization and the creation of judges of broad jurisdiction; (*g*) Those individuals or public officials accustomed to obtaining illegitimate advantages from the slowness of the proceedings or the present impossibility of exercising adequate supervision of their acts will naturally fear the end of that very immoral state of affairs; (*h*) It is not unlikely that certain political pressures will be exerted, precisely because this factor, was not taken into account in the judicial territorial division and in the other reform decrees. The amendments introduced may conflict with the intentions of the politicians of some regions; (*i*) The process of staffing the new offices, district prisons and children's institutions, and the shuffling of subordinate staff will require large budget allocations; (*j*) In some places the supply of qualified staff may become a serious difficulty; (*k*) The speeding up of proceedings may have a twofold effect: it settles the juridical situation of those detained pending trial by turning them into convicted prisoners or it increases the number of those under detention. In either case the numbers of the prison population may increase temporarily, with consequent additional cost; (*l*) The slow shifting movement of members of the legal profession to the areas of the new courts may give rise to a temporary dearth of legal assistance.

IV. CARRYING OUT OF THE JUDICIAL REFORM

(a) *Tribute to those who created the reform.* The judicial reform, which has today become a legislative reality, required time and great efforts.

Three movements may be distinguished in this process. In the first, some renowned jurists, apostles if you wish, established the foundations of the general reform plan. The names of Drs. Rodrigo Noguera Laborde, Jorge Enrique Gutiérrez Anzola, Gustavo Orjuela Hidalgo and Bernardo Gaitán Mahecha are unquestionably connected not only with the institution of the reform but also with its development, and their aid will be indispensable in order to obtain its complete execution. In the first stage it fell to Dr. Germán Zea Hernández, of the Ministry of Justice, to introduce and defend the great reform ideas in the Congress of the Republic, but he did not have the success desired by many.

The second great stage began with the arrival at the Ministry of Justice of Dr. Vincente Laverde Aponte, whose dynamism and energy made an obvious impression. He not only organized and vigorously spurred on the preparatory studies for the reform, through his constant interest in the Office of Criminological Studies, but also convened a commission of jurists (Felipe Salazar Santos, Domingo Sarasty, Jesús Ramírez Suárez, Agustín Gómez Prada, Luis Gutiérrez Jiménez and Jesús Bernal Pinzón, in addition to Drs. Orjuela Hidalgo, Noguera Laborde and Gutiérrez Anzola) who revised the first drafts and, with their great knowledge, helped to perfect them. Minister Laverde Aponte devoted many months of his term of office to defending the reform plans with exceptional zeal, but his tenacity and his hopes were suddenly checked by the Chamber of Representatives' rejection of his draft regulating article 12 of the Plebiscite. In that period, the lines of the reform remained firmly marked, and through the publications of the Office of Criminological Studies the geographical, statistical, juridical and practical considerations which demonstrated the viability and soundness of the judicial reform were submitted to the consideration of the country as whole. Minister Héctor Charry Samper, as Dr. Eliseo Arango had done before, urged the Congress to vote on the proposals before it.

The third and last stage is longer than the previous stages, and began with the arrival of Dr. Alfredo Araujo Grau at the Ministry of Justice on 2 May 1963. Within a few days he secured an agreement from the political parties in order to facilitate the passing by Parliament of a bill granting the Government extraordinary authority that would enable it to carry out the reform. The success of his draft in the Parliament is the result of the enthusiasm, intelligence and patriotic devotion with which Dr. Araujo presided over this vast undertaking. The Advisory Committee established by article 2 of Act 27 of the same year met in September 1963. It was composed in accordance with Decrees 2171 and 2257 of Dr. Gustavo Orjuela Hidalgo, State Counsel General of the Nation, Senators Emiliano Guzmán Larrea, Carlos Alberto Olano and Jesús Bernal Pinzón and Representatives Alvaro Leal Morales, César Ordóñez Quintero and Pedro Arturo Sanabria Niño. The Minister presided over the majority of the 142 meetings which that body held. They assigned to the writer the honoured post of Secretary of the Commission and the task of preparing, at the Commission's request, eight of the eighteen judicial reform decrees.

Many others showed generous goodwill in aiding the reform. They were sub-commissions of noted jurists at work in the Ministry of Justice, which were entrusted with the preparation of drafts on the judicial career service, judicial review, customs legislation, children's legislation, forensic medicine and the prison system.

Although some names—such as those of Ministers Laverde Aponte and Araujo Grau, State Counsel Noguera Laborde and Orjuela Higalo and Professors Gutiérrez Anzola and Gaitán Mahecha —are permanently associated with the 1964 judicial reform, this real advance is the creation of all Colombians. Two Governments, one led by Dr. Alberto Lleras Camargo and the other by Dr. Guillermo León Valencia, who represented different political parties, five Ministers of Justice, two conservative and three liberal, more than fifteen conservative jurists and as many liberal jurists, the 1963 Congress with representation of the parties, the plenary Ministerial Cabinet of both National Front Governments, distinguished judges, practising barristers and many citizens are truly the architects of this transformation.

(b) *Responsibility of those carrying out the reform.* The fourth stage of the judicial reform is beginning. It has three aspects:

(1) Establishment of rules and regulations for carrying out the Decrees enacted under the authority of the extraordinary powers;

(2) Studies, organization, staffing and equipment, installation and operation of the new judicial offices and the *Ministerio Público;*

(3) Defence of the reform, with a view to averting arbitrary amendments concerning the number or class of offices, officials or districts, or their jurisdiction. This latter type of measure may easily upset this undertaking which was conceived as a complete scheme, much more thorough and complex than the simplistic notions of the dissatisfied.

Let us assume that the first stage will be carried out by those who drew up the judicial reform Decrees. In the second phase, the Ministry of Justice will perform a task requiring the greatest care. The third is the task of scholars of good will.

The success of the judicial reform is dependent upon the trust which Colombians repose in its effectiveness. Both those who are going to execute it—the judges and judicial officers—and those who sought it are morally bound to support it.

CONGO (BRAZZAVILLE)

ACT No. 21-63 OF 15 JUNE 1963 [1]

This Act authorizes ratification of the Agreement concerning the Establishment of an African and Malagasy Industrial Property Office, signed on 15 September at Libreville by the Governments of the Central African Republic, the Republic of Chad, the Republic of the Congo (Brazzaville), the Republic of Dahomey, the Gabonese Republic, the Republic of the Ivory Coast, the Malagasy Republic, the Islamic Republic of Mauritania, the Republic of the Niger, the Republic of Senegal and the Republic of the Upper Volta.[2]

[1] Text published in the *Journal officiel de la République du Congo*, No. 14, of 15 June 1963.

[2] See pp. 427-428 below.

ORDINANCE No. 63-2 OF 11 SEPTEMBER 1963 CONCERNING THE PROVISIONAL ORGANIZATION OF THE STATE AUTHORITIES [3]

The Prime Minister,
Head of the Provisional Government

Considering the devotion of the Congolese people to fundamental rights as laid down in the Declaration of the Rights of Man and of the Citizen and the Universal Declaration of 10 December 1948,

Considering the determination of the Congolese people to co-operate with other peoples in peace, justice, liberty and equality,

With the agreement of the Council of Ministers,
Decrees that:

Art. 1. The Congolese people shall sovereignly decide on their future institutions within a period of three months.

The draft Constitution shall be drawn up by the Provisional Government and submitted to a popular referendum after the Supreme Court has given its opinion.

Art. 2. A National Assembly shall be democratically elected within a month of the adoption of the Constitution by the people.

Art. 3. During the transitional period until the National Assembly is convened, the authority of the State shall be exercised in the manner described below by the Provisional Government on the basis of the existing legislation.

Decisions taken by the Provisional Government prior to this Ordinance shall remain in force.

Art. 4. The form of government is and shall remain the republic.

Art. 5. The Provisional Government shall take decisions either in the form of an ordinance in all matters subject to legislation under the previous Constitution or in the form of a decree or order when the decision is a regulatory or executive one.

Art. 6. Ordinances shall be submitted to the National Assembly at its first session for ratification.

Art. 7. The Prime Minister, Head of the Provisional Government, shall appoint and dismiss ministers. He shall determine their functions.

Art. 8. The Prime Minister, Head of the Provisional Government, shall decide and direct the policy of the Republic. He shall have control of the civil service, the army, the *gendarmerie* and the police force.

Art. 9. The Prime Minister, Head of the Provisional Government, shall exercise the right of pardon.

Art. 10. Ordinances shall be discussed by the Council of Ministers after being submitted to the Supreme Court for its opinion.

They shall be signed by the Prime Minister and countersigned by the Ministers concerned.

Art. 11. Decrees involving general policy and those which are of concern to several Ministers shall be discussed by the Council of Ministers and countersigned by the Ministers concerned.

Decrees of an administrative nature shall be issued by the Prime Minister upon the proposal of the Minister concerned and shall be countersigned by the latter.

Art. 12. International treaties and conventions entered into previously by the Republic of the Congo and duly ratified shall remain in force.

Art. 13. Diplomatic representatives of foreign Powers shall be accredited to the Prime Minister, Head of the Provisional Government.

. . .

[3] *Journal officiel de la République du Congo*, No. 23, of 15 September 1963.

ORDINANCE No. 63-9 OF 16 OCTOBER 1963 CONCERNING THE ORGANIZATION OF ELECTIONS TO THE NATIONAL ASSEMBLY [4]

TITLE I

GENERAL

Art. 1. The members of the National Assembly shall be elected from a national list by a majority multiple vote on a single ballot without vote-splitting.

The number of seats in the National Assembly shall be fifty-five.

The electoral suffrage shall be direct and universal.

The ballot shall be secret.

. . .

TITLE II

VOTERS AND ELECTORAL ROLLS

Art. 7. All Congolese citizens of both sexes who have attained the age of eighteen years and are in full possession of their civil and political rights shall be entitled to vote.

Art. 8. A person must be on the electoral roll before he can vote.

. . .

Art. 9. The following persons may not be registered on an electoral roll:

1. Persons convicted of a serious offence (*crime*).

2. Persons sentenced for any less serious offence (*délit*) within the previous five years to imprisonment for one month or more under a sentence not subject to suspension or to a fine of 100,000 francs or more.

Persons sentenced for any less serious (*délit*) more than five years previously to imprisonment for three months or more under a sentence not subject to suspension or to a fine of 200,000 francs or more.

Persons who have been deprived of the right to vote and to stand for election by the courts under the laws authorizing such deprivation.

3. Undischarged bankrupts.

4. Persons under disability.

Art. 10. No obstacle to registration on an electoral roll shall be constituted by:

1. A conviction for a less serious offence (*délit*) committed through negligence, except where the offender has fled;

2. A conviction for an offence—other than an offence under the Companies Act of 24 July 1867—which is classified as a less serious offence (*délit*) but is punishable without proof of bad faith and is subject only to the penalty of a fine;

3. A conviction for an offence against the hunting and fishing regulations.

. . .

TITLE III

ELIGIBILITY

Art. 13. Any citizen over the age of twenty-three years who qualifies as a voter, who knows how to read and write and who has satisfied all the requirements of law concerning active military service shall be entitled to stand for election to the National Assembly.

. . .

TITLE V

ORGANIZATION OF ELECTIONS

. . .

Art. 30. The electoral campaign shall open fifteen days before the election day.

The publicity commission shall include:

A civil officer of the judiciary, police or administration appointed by the Minister of Justice, to act as Chairman;

A representative of the Minister of the Interior;

A representative of the Minister of Information.

It shall be convened by the Chairman five days before the closing date for the filing of lists of candidates.

The means of publicity and the mode of operation and functions of the publicity commission shall remain as fixed by Decree No. 59-98 of 12 May 1959. The commission shall also lay down the conditions governing use of the national radio and television services.

. . .

TITLE VII

ELECTORAL IRREGULARITIES

Art. 45. In the event of any dispute concerning the regularity of the elections, the matter shall be brought before the Supreme Court, which shall give a decision upon representation of the records and supporting evidence relating to the operations in question.

Art. 46. The Court's hearings shall not be public . . .

[4] *Ibid.*, No. 25, of 1 November 1963.

CODE OF PENAL PROCEDURE

Promulgated by Act No. 1-63 of 13 January 1963 [5]

PRELIMINARY TITLE

PUBLIC PROSECUTION AND CIVIL ACTION

Article 1

1. Public prosecution with a view to the application of penalties shall be instituted and conducted by the officers and officials responsible therefor under the law.

2. Such proceedings may also be instituted by the injured party, in accordance with the conditions set forth in this Code.

Article 2

Civil proceedings for compensation for injury caused by a serious offence (*crime*), correctional offence (*délit*) or petty offence (*contravention*) may be brought by any person who has personally suffered injury directly caused by the acts which are the subject of criminal proceedings.

. . .

Book I

Prosecution and Preliminary Investigation

TITLE I

AUTHORITIES RESPONSIBLE FOR PROSECUTION AND PRELIMINARY INVESTIGATION

Article 11

1. Except where the law provides otherwise, and without prejudice to the rights of the defence, proceedings during the inquiry and preliminary investigation shall be secret.

2. Any persons participating in these proceedings shall be required to observe professional secrecy in accordance with the conditions and subject to the penalties laid down in article 378 of the Penal Code.

. . .

TITLE II

INQUIRY

Chapter I

FLAGRANTE DELICTO OFFENCES

Article 37

1. A serious offence (*crime*) or correctional offence (*délit*) is termed *flagrante delicto* if it is in the process of being committed or has just been committed. A serious offence or a correctional offence is also *flagrante delicto* if, within a very short time of the offence, the suspect is pursued by hue and cry or is found in possession of objects or bears traces or marks which give reason to believe that he has participated in the serious offence or correctional offence.

2. Any serious or correctional offence which, even though not committed in the circumstances specified in the preceding paragraph, was committed in a house the head of which requests the Chief State Counsel or an officer of the criminal police to establish the fact shall be treated as a *flagrante delicto* offence.

. . .

Article 40

1. If the nature of the crime is such that proof thereof may be acquired by the seizure of papers, documents, or other objects in the possession of persons who appear to have participated in the crime or to hold objects or documents relating to the alleged acts, the officer of the criminal police shall proceed without delay to the dwelling of the said person in order to undertake a search of which he shall draw up a report in writing.

. . .

Article 41

1. The operations prescribed by the preceding article shall be carried out in the presence of the person at whose dwelling the search is made.

2. If this is impossible, it shall be the duty of the officer of the criminal police to invite him to appoint a representative of his choice; if he fails to do so, the officer of the criminal police shall select two witnesses—not being persons under his administrative authority—whom he shall ask to give assistance to this end.

. . .

Article 42

1. Subject to the requirements of the inquiries, if a person acting without the authorization of the defendant or his representatives or of the signatory or addressee of a document secured in a search communicates or discloses such document to a person not authorized by law to have knowledge thereof, he shall be liable to a fine of not less than 36,000 nor more than 360,000 francs and to imprisonment for a term of not less than two months nor more than two years or one of these penalties only.

Article 43

1. Unless requested by a person in the house or unless an exception is provided by law or a state of siege has been declared, searches and house visits shall not begin before 5 a.m. of after 7 p.m.

2. Nevertheless, officers of the *ministère public*, examining judges and officers of the criminal police may at any hour of the day or night enter any hotel, furnished apartment house, boarding house, bar, club, dance hall or place of entertainment or the annexes thereto or any other place open to or used by the public in order to establish that an offence of any kind has been committed.

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[5] Text published in the *Journal officiel de la République du Congo*, special issue No. 3, 31 January 1963.

3. The formalities referred to in article 40 and 41 and paragraph 1 of this article shall be complied with on pain of the operation being declared null and void.

. . .

Chapter II

PRELIMINARY INQUIRY

Article 61

1. The officers of the criminal police shall make preliminary inquiries on the instructions of the Chief State Counsel or *ex officio*.

2. Such operations shall be under the supervision of the State Counsel General.

Article 62

1. Searches, house visits and seizures of material evidence may be made only with the express consent of the person in whose dwelling the operation takes place.

2. Mention of this consent shall be made in the written record.

. . .

TITLE III

PRELIMINARY INVESTIGATION

Chapter I

EXAMINING JUDGE

. . .

Section 2. — *Civil Proceedings in Criminal Cases and their effects*

Article 70

If a person considers himself injured by a serious offence (*crime*), correctional offence (*délit*) or petty offence (*contravention*) he may, by filing a complaint, institute civil proceedings before the examining judge.

. . .

Article 76

1. When, after an investigation has been opened upon the institution of civil proceedings, the case is dismissed, the accused and any persons mentioned in the complaint, without prejudice to the possibility of prosecution for false accusation, may, if they do not bring a civil action, seek damages from the plaintiff in the manner indicated below.

. . .

Section 3. — *Visits, Searches and Seizures*

Article 77

1. The examining judge may visit the scene in order to establish any necessary facts or to make a search. He shall notify the Chief State Counsel, who shall be entitled to accompany him.

. . .

Article 79

Searches shall be made in all the places where objects may be found the discovery of which would be useful in establishing the truth.

Article 80

If the search is made at the defendant's dwelling, the examining judge must comply with the provisions of articles 41 and 43.

Article 81

1. If the search is made in the dwelling of a person other than the defendant, the person at whose dwelling it is to be made shall be invited to be present. If this person is absent or refuses to attend, the search shall be made in the presence of two of his relatives by blood or marriage who are present on the spot or, in the absence of such persons, in the presence of two witnesses.

2. The examining judge must comply with the provisions of articles 41 and 43.

. . .

Article 83

Subject to the requirements of the judicial preliminary investigation, if a person acting without the authorization of the defendant or his representatives or of the signatory or addressee of a document secured in a search, communicates or discloses such document to a person not authorized by law to have knowledge thereof he shall be liable to a fine of not less than 36,000 nor more than 360,000 francs and to imprisonment for a term of not less than two months nor more than two years or one of these penalties only.

. . .

Section 4. — *Hearing of Witnesses*

Article 86

1. The examining judge shall summon to appear before him all the persons whose evidence will in his view be useful, in accordance with the procedure indicated in the following articles.

2. The examining judge may call upon the services of an interpreter who is not less than twenty-one years of age.

3. If the said interpreter is not under oath, he shall take an oath to translate the evidence faithfully.

. . .

Article 88

If a person is named in a complaint accompanied by the institution of civil proceedings he may refuse to be heard as a witness. The examining judge shall so inform him after acquainting him with the complaint. The fact that he has done so shall be mentioned in the written record. If such a person refuses, the examining judge may only hear him as an accused.

. . .

Article 91

Children under the age of fifteen years shall be heard without taking an oath.

Article 92

1. If a person is summoned to be heard as a witness he shall be required to appear, to take an oath and to give evidence.

2. If a witness does not appear, the examining judge may issue a warrant to compel attendance and upon the application of the Chief State Counsel may sentence him to a fine of not less than 1,000 nor more than 10,000 francs.

. . .

Article 94

If a person states publicly that he knows who committed a serious offence (*crime*) or a correctional offence (*délit*) and refuses to answer questions put to him in that connexion by the examining judge he shall be liable to imprisonment for a term of not less than eleven days nor more than one year and a fine of not less than 36,000 nor more than 360,000 francs or one of these penalties only.

Article 95

If it is impossible for a witness to appear, the examining judge shall visit him to take his evidence or shall issue a commission rogatory for the purpose in accordance with the procedure provided in article 142 *et seq.*

Article 96

If a witness has been heard under the conditions as provided in the preceding article although it was possible for him to attend at court in accordance with the summons served upon him, the examining judge may sentence him to the fine laid down in article 92.

Section 5. — *Interrogations and Confrontations*

Article 98

A defendant under detention may communicate freely with his defence counsel immediately after his first appearance before the examining judge.

Article 99

1. If the examining judge considers it necessary to issue an order depriving an accused person of communication, the duration of such order shall not exceed ten days.

2. He may renew the said order for two further periods of ten days.

3. The said order prohibiting communication shall not in any event apply to the defendant's counsel.

. . .

Section 6. — *Warrants and their Execution*

Article 104

1. The examining judge may, according to the circumstances, issue a summons to appear, a warrant to compel attendance, an order for committal to prison or a warrant for arrest.

. . .

Article 107

1. The examining judge shall immediately interrogate a defendant who has been summoned to appear.

2. The interrogation of a defendant or hearing of a witness arrested in pursuance of a warrant to compel attendance shall be conducted under the same conditions. If, however, the interrogation cannot take place immediately, the defendant shall be taken to the place of custody for such persons, where he shall not be kept for more than seventy-two hours.

3. Upon the expiry of that period, he shall be conducted by the person in charge, *ex officio*, before the Chief State Counsel, who shall call upon the examining judge, or, in his absence, the president of the court, or a judge designated by the latter, to conduct the interrogation immediately. If this is not done, the defendant shall be released.

Article 108

1. If a person having been arrested under a warrant to compel attendance is held in the place of custody for more than seventy-two hours without being heard he shall be deemed to be arbitrarily detained.

. . .

Article 109

If a defendant or witness sought under a warrant to compel attendance is found within the jurisdiction of an authority other than that of the place where the judge who issued the warrant sits, he shall be brought before the Chief State Counsel or the officer competent to act on his behalf in the place where he is arrested.

. . .

Book II

Trial Courts

TITLE I

CRIMINAL COURT

Chapter I

COMPETENCE OF THE CRIMINAL COURT

Article 215

The criminal court shall be fully competent to try defendants brought before it.

. . .

Chapter II

CONDUCT OF THE CRIMINAL COURT

. . .

Section 2. — *Jury Panel*

Article 228

Jury panels shall be set up at the seat of each court of main instance (*tribunal de grande ins-*

tance) during the month of the reopening of the courts for the following year.

. . .

Article 233

1. The following shall not be eligible to serve as jurors:

(1) Those who have been sentenced to a criminal penalty;

(2) Those who have been sentenced to imprisonment for a term of not less than one month for a serious offence (*crime*) or a correctional offence (*délit*);

(3) For a period of five years only reckoned from the final decision of the court, those sentenced for any correctional offence to imprisonment for less than one month or to a fine of at least 100,000 francs;

(4) Persons certified as of unsound mind or detained in a mental institution under guardianship appointed by the court;

(5) Undischarged bankrupts;

(6) Persons who have been banned from serving as assessors or jurors by decision of a court;

(7) Officials and agents of the State who have been dismissed from their posts.

Article 234

The office of juror shall also be incompatible with that of member of the Government or National Assembly, General Secretary of the Government, director in a ministry, administrative or judicial officer responsible for the administration of justice, prefect, sub-prefect, law officials, district head of police or member of the armed forces on active service.

. . .

Chapter IV

PROCEEDINGS PREPARATORY TO THE SESSIONS OF THE CRIMINAL COURT

. . .

Article 239

If the defendant cannot be apprehended and does not appear, he shall be proceeded against by default.

. . .

Article 242

1. The defendant shall then be invited to select counsel to assist him in his defence.

2. If the defendant does not select counsel, the president or his deputy shall appoint one for him *ex officio*.

3. This appointment shall be cancelled if the defendant subsequently selects counsel.

. . .

Chapter VI

THE TRIAL

Section 1. — *General Provisions*

Article 258

1. The trial shall be public, unless a public hearing is prejudicial to order or public morality. In that event, the court shall so declare by a decision issued in open court.

2. Nevertheless, the president may forbid minors, or some of them, access to the court room.

3. When the hearing has been ordered closed, the order shall apply to the pronouncing of decisions which may be made on the procedural questions referred to in article 267.

4. The judgement on the substance shall always be pronounced in open court.

. . .

Article 261

1. The president shall be vested with a discretionary power by virtue of which he may, in honour and conscience, take any measures he considers will help to reveal the truth.

2. During the trial he may summon, if necessary by means of a warrant to compel attendance and hear any persons or order the production in court of any new evidence which the course taken by the procedings leads him to think will help to reveal the truth.

3. Witnesses summoned in this way shall not take an oath and their statements shall be regarded merely as information.

. . .

Section 2. — *Appearance in Court of the Defendant*

Article 268

1. During the trial it shall be compulsory for counsel to be with the defendant in court.

2. If the defence counsel chosen or appointed does not appear, the president shall appoint one *ex officio*.

Article 269

The defendant shall appear in court unrestricted, accompanied only by guards to prevent him from escaping.

. . .

Article 271

If a defendant refuses to appear, he shall be summoned in the name of the law by an official designated for the purpose by the president and assisted by the police. The official shall draw up a written record of the summons and of the defendant's reply.

Article 272

1. If the defendant does not comply with the summons, the president may order him to be brought before the court by force. He may also,

after the record establishing the defendant's refusal has been read out in court, order that the trial should proceed despite his absence.

. . .

Section 3. — *The Production and Discussion of the Evidence*

Article 295

1. If the defendant or one or more of the witnesses do not speak French adequately or if it is necessary to translate a document submitted at the trial, the president shall *ex officio* appoint an interpreter who shall not be under the age of twenty-one years and shall require him to take an oath to perform his duties faithfully.

2. The *ministère public,* the defendant and the civil claimant may challenge the interpreter, stating their reasons. The court shall give a decision on the challenge. There shall be no appeal from its decision.

3. The interpreter shall not, even with the consent of the defendant or the *ministère public,* be the clerk to the court, nor shall he be chosen from among the judges who are members of the court, the members of the jury, the parties or the witnesses.

Article 296

1. If the defendant is a deaf mute and does not know how to write, the president shall *ex officio* appoint as interpreter the person who is most used to conversing with him.

2. The same shall apply if a witness is a deaf mute.

3. The other provisions of the preceding article shall be applicable.

4. If the deaf mute knows how to write, the clerk to the court shall write down the questions or observations addressed to him. They shall be handed to the defendant or witness, who shall make his replies or statements in writing. The whole shall be read out by the clerk to the court.

. . .

Chapter VII

JUDGEMENT

. . .

Section 2. — *Decision*

. . .

Article 308

If the charges against the defendant are dismissed or if he is acquitted, he shall be released immediately, provided that he is not detained on other grounds.

Article 309

If a person has been legally acquitted he shall not be arrested or arraigned again on the same grounds, even under a different classification.

. . .

Article 316

1. If a defendant, having been regulary summoned, fails to appear, he shall be tried by default.

2. If he gives himself up or if he is arrested before the expiry of the statutory time-limit, the sentence shall be quashed automatically and a new trial shall be held.

. . .

TITLE II

TRIAL OF CORRECTIONAL OFFENCES (*DÉLITS*)

Chapter I

CORRECTIONAL COURT

Section I. — *Competence of and Initiative of Proceedings in the Correctional Court*

Paragraph 1. — *General Provisions*

Article 319

1. The correctional court shall have jurisdiction over correctional offences (*délits*).

. . .

Article 321

The jurisdiction of the court over a detained person shall extend to all accomplices and accessories.

Article 322

In cases in which proceedings are instituted by the public authorities, the court shall be competent to give a decision on all pleas in defence raised by the defendant, unless the law provides otherwise or the defendant's plea relates to a right respecting a chattel real.

. . .

Paragraph 2. — *Flagrante Delicto*

. . .

Article 330

Witnesses of an offence committed *flagrante delicto* may be summoned orally to give evidence by any officer of the criminal police or law enforcement services. They shall be required to appear under pain of the penalties provided in article 92.

. . .

Section III. — *Public Hearings and Maintenance of Order in Court*

Article 335

1. Hearings shall be public.

2. Nevertheless, the court may, by a decision rendered in open court in which it notes that a public hearing will be prejudicial to order or morals, order that the trial shall be held *in camera.*

3. An order that the trial shall be held *in camera* shall apply to the delivery of separate decisions that may be made relating to matters of

procedure or pleas by defendant as provided in article 394, paragraph 4.

4. The judgement on the substance of the case shall always be delivered in open court.

Article 336

The president shall be responsible for maintaining order in court and directing the proceedings. He shall have the discretionary power provided in article 261.

Article 337

The president may forbid access to the court room to minors, or to some of them.

. . .

Section IV. — *The Trial*

. . .

Paragraph 3. — *Submission of Evidence*

Article 362

1. Except where the law provides otherwise, the existence of an offence may be established by evidence of every kind and the judge shall decide according to the law and the facts moved.

2. The judge shall base his decision solely on the evidence submitted in the course of the trial and duly argued before him by both sides.

Article 363

The judge shall be free to determine the value of a confession, in the same way as any other piece of evidence.

. . .

Article 367

Correspondence between the defendant and his counsel shall not be allowed as evidence in writing.

. . .

TITLE III

TRIAL OF PETTY OFFENCES

Chapter I

COMPETENCE OF THE POLICE COURT

Article 458

1. The lower court sitting as police court shall have jurisdiction over petty offences.

. . .

Chapter III

INSTITUTIONS OF PROCEEDINGS BEFORE THE POLICE COURT

Article 472

Proceedings shall be instituted in the police court in connexion with offences within its jurisdiction either by transfer of the case to the court by the examining judge, or by the voluntary appearance of the parties, or by a summons served directly on the accused and the person civilly liable for the offence.

. . .

Book III

Extraordinary Legal Remedies

TITLE I

APPEAL TO THE COURT OF CASSATION

Chapter I

DECISIONS OPEN TO APPEAL AND CONDITIONS GOVERNING APPEALS

Article 512

1. Orders of the *chambre d'accusation* and orders and judgements not subject to appeal in cases relating to serious offences, correctional offences and petty offences may be quashed if the law has been violated upon submission of an appeal by the *ministère public* or the injured party, subject to the distinctions indicated below.

. . .

TITLE II

DETENTION

Chapter I

REMAND IN CUSTODY PENDING TRIAL

Article 625

1. Untried prisoners remanded in custody shall be held in a place of custody.

2. There shall be a place of custody near each court of main instance (*tribunal de grande instance*) and each section thereof.

. . .

Article 627

1. Each place of custody shall include two separate sections according to the way of life of the prisoners.

2. The manner in which the preceding paragraph is to be applied shall be the subject of an order by the Keeper of the Seals, Minister of Justice.

3. Each section shall itself be divided into subsections for men and women in such a way that there cannot be any communication between them.

Article 628

Untried prisoners shall be allowed all communications and facilities for the conduct of their defence compatible with the requirements of prison discipline and security.

Chapter II

EXECUTION OF SENTENCES ENTAILING DEPRIVATION OF LIBERTY

Article 629

Persons sentenced to deprivation of liberty for serious offences (*crimes*) or correctional offences

(*délits*) under the ordinary law shall be required to work.

Chapter III

PROVISIONS COVERING PENITENTIARY INSTITUTION IN GENERAL

. . .

Article 635

If any prisoner is guilty of threats, insults or violence or commits a breach of discipline, he may be subjected to solitary confinement in a cell equipped for the purpose or even subjected to coercive measures if he loses self-control or in the event of serious violence, without prejudice to any proceedings for which there may be grounds.

. . .

TITLE III

CONDITIONAL RELEASE

Article 638

1. Persons sentenced to one or more penalties involving deprivation of liberty may be conditionally released if they give sufficient proof of good conduct and show reliable signs of social rehabilitation.

2. Only prisoners who have completed three months of their sentence, if the sentence is less than six months, or half their sentence, if it is six months or more, shall be eligible for conditional release. In the case of prisoners guilty of recidivism under the law in accordance with articles 56-58 of the Penal Code, the probationary period shall be six months if the sentence is less than nine months and two-thirds of the sentence if it is nine months or more.

3. In the case of persons sentenced to forced labour for life, the probationary period shall be fifteen years.

4. In the case of persons sentenced to imprisonment for less than life together with relegation, the probationary period shall be four years longer than that corresponding to the principal sentence if it has been imposed for a correctional offence (*délit*) and six years longer if it has been imposed for a serious offence (*crime*).

. . .

TITLE IV

SUSPENSION OF SENTENCE

Chapter I

Article 643

If a person sentenced to imprisonment or a fine has not previously been sentenced to imprisonment for a serious offence (*crime*) or a correctional offence (*délit*) under the ordinary law, the court may order, as part of the same decision and with a statement of its reasons, that enforcement of the principal penalty shall be suspended.

. . .

TITLE IX

JUVENILE DELINQUENTS

Chapter I

GENERAL PROVISIONS

Article 685

Persons under the age of eighteen years who are accused of a serious offence (*crime*) or correctional offence (*délit*) shall not be brought before the ordinary criminal courts, but shall be tried only by the juvenile courts or the minor's criminal court.

Article 686

1. The juvenile court or minors' criminal court shall, depending on the circumstances, order such measures of protection, assistance and education as seem appropriate.

. . .

Article 687

1. The juvenile court and the minors' criminal court may decide in the case of minors over the age of sixteen years that their minority should not be considered an extenuating circumstance.

2. This decision may only be taken by means of an order for which special reasons are given.

Article 688

The juvenile court of the place where the offence was committed, or where the minor, his parents or his guardians have their residence, or where the minor was found or where he has been temporarily or permanently placed shall be deemed to be the competent court.

Article 689

1. For the purposes of the application of the provisions of this title, the age of the minor shall be established by the production of an extract from the civil register, court decisions in place thereof or other documents corroborated by medical evidence.

2. If the evidence in the matter is contradictory, the court dealing with the case shall be competent to estimate the age of the offender without appeal.

3. In every case where only the years of birth is known, the date of birth shall be deemed to be 31 December of that year.

. . .

Article 693

The judge of the juvenile court and the juvenile court may in all cases order provisional enforcement of their decisions, notwithstanding an application for a stay of execution or an appeal.

Chapter II

PROCEEDINGS

. . .

Article 695

1. Proceedings relating to a serious offence (*crime*) may not be brought against minors under

the age of eighteen years without a preliminary investigation.

2. In the case of a correctional offence (*délit*), the Chief State Counsel shall bring the matter before the judge of the juvenile court.

Article 696

1. Civil actions may be brought before the judge of the juvenile court, the juvenile court and the minors' criminal court.

2. When one or more minors under the age of eighteen years are involved in the same case as one or more persons over the age of eighteen years, civil proceedings against all the defendants may be brought before the correctional court or the criminal court that is competent with respect to the defendants over eighteen.

3. In such cases, the minors themselves shall not appear in court, but only their legal representatives. If defence counsel has not been chosen by the minor or by his representatives, counsel shall be appointed for him by the court.

4. In the case mentioned in the preceding paragraph, if no decision has yet been given as to the guilt or innocence of the minors, the correctional court or the criminal court may suspend its decision on the civil proceedings.

Chapter III

THE JUDGE OF THE JUVENILE COURT

. . .

Article 698

1. The judge of the juvenile court shall carry out any proceedings and investigations that may help to reveal the truth and give him a knowledge of the character of the minor and indicate the appropriate means for his rehabilitation.

2. He shall conduct an inquiry for that purpose, either informally, or in accordance with the procedure provided in book I, title III, chapter I of this Code.

3. If it is decided that an accused minor under the age of eighteen years who is found guilty should not be given a criminal sentence, the measures relating to his placement or custody on which the court has to give a decision shall be those prescribed in article 712-714.

. . .

Chapter V

JUVENILE COURT

Article 709

1. The juvenile court shall consist of the judge, who shall act as chairman, and two assessors.

. . .

Article 711

1. Each case shall be tried separately, no other accused being present.

2. The only persons permitted to attend the hearings shall be witnesses, the close relatives, guardian or legal representative of the minor, the defence counsel, representatives of charitable associations and of child-care services and institutions and probation officers.

3. The president may at any time order the minor to withdraw for all or part of the remainder of the hearing. He may likewise order witnesses to withdraw after they have been heard.

4. Publication of the records of proceedings of juvenile courts in books or in the Press, by broadcasting, by cinematography or in any other way shall be prohibited. Publication by the same means of any test or illustration relating to the identity or character of delinquent minors shall also be prohibited. If a person violates these provisions he shall be liable to a fine of not less than 36,000 nor more than 3 million francs.

5. If the offence is repeated, the person shall be liable to imprisonment for not less than two months nor more than two years.

6. The judgement shall be delivered at a public hearing, in the presence of the minor. It may be published, but the minor's name shall not be given, on pain of a fine of not less than 36,000 nor more than 300,000 francs.

Article 712

If a minor under the age of thirteen years is ordered to be held in custody, the juvenile court shall order one of the following measures, stating its reasons:

(*a*) The placing of the minor in the custody of his parents, his guardian, the person who had charge of him or a reliable person;

(*b*) The placing of the minor in an authorized public or private educational or vocational training institution or establishment or with any public or private child welfare society;

(*c*) The placing of the minor in an authorized establishment;

(*d*) The placing of the minor in a boarding school suitable for delinquent minors of school age.

Article 713

If a minor over the age of thirteen years is ordered to be held in custody, the juvenile court shall order, giving its reasons, one of the measures provided in the preceding article or the placing of the minor in a public institution of supervised or corrective education.

Article 714

1. In every case as provided in articles 712 and 713, the measures shall be ordered for the number of years specified in the decision, which shall not extend beyond the time when the minor will reach the age of twenty-one years.

2. The decision shall specify the date on which the placement order shall cease to have effect.

. . .

CONGO (DEMOCRATIC REPUBLIC OF THE)

CONSTITUTIONAL ACT OF 18 JULY 1963 AMENDING THE FUNDAMENTAL ACT OF 19 MAY 1960 CONCERNING THE STRUCTURE OF THE CONGO [1]

Article 1

Articles 40 and 41 of the Fundamental Act of 19 May 1960 concerning the structure of the Congo are repealed and replaced by the following provisions:

Art. 40. Ministers may not be prosecuted under penal law unless they have been formally impeached by one of the two Chambers.

Art. 41. A High Court of Justice shall be established to judge Ministers formally impeached in the circumstances laid down in article 40.

The organization of the High Court and the procedure applicable before it shall be defined in a law.

Art. 41 (a). The High Court, concurrently with the ordinary law courts, shall be competent to judge the accomplices and aiders and abettors of the Ministers brought before it.

Art. 41 (b). The High Court may deal only with facts to which the penal laws are applicable and may prescribe only the penalties provided in those laws.

Art. 41 (c). The Chief of State may not pardon a Minister convicted by the High Court except at the request of one of the two Chambers.

[1] Text of the Constitutional Act published in the *Moniteur congolais*, No. 18, of 15 September 1963. For extracts from the Fundamental Act of 19 May 1960, see *Yearbook on Human Rights for 1960*, pp. 66 and 67.

ORDINANCE No. 226 OF 29 SEPTEMBER 1963 CLOSING THE PARLIAMENTARY SESSION AND APPOINTING A COMMISSION FOR THE PREPARATION OF A DRAFT CONSTITUTION FOR SUBMISSION TO REFERENDUM [2]

The President of the Republic,

. . .

Orders:

Art. 1. The closure of the present parliamentary session and the convening of a Commission entrusted solely with the discussion and preparation of the draft Constitution.

. . .

Art. 3. The members of this Commission shall be appointed by an ordinance on the proposal of the Council of Ministers.

Art. 4. The Commission thus convened must present the draft Constitution within a period of not more than one hundred days from the date of its first meeting.

Art. 5. The draft shall be submitted to a referendum one month, at the latest, after it has been presented.

Art. 6. The organization of the referendum shall be the subject of a decree by the Head of the Government, promulgated after consideration by the Council of Ministers.

Art. 7. As soon as it has been approved by means of the referendum, the draft shall be proclaimed as the national Constitution and shall enter into force immediately.

. . .

[2] *Ibid.*, special edition of 30 September 1963. For the composition and organization of the Commission for the preparation of a draft constitution, see Ordinance No. 278 of 27 November 1963, published in the *Moniteur congolais*, No. 24, of 15 December 1963.

LEGISLATIVE ORDINANCE No. 250 RESPECTING COLLECTIVE LABOUR AGREEMENTS

SUMMARY

The text of the Legislative Ordinance was published in the *Moniteur congolais*, No. 23, of 1 December 1963.

Section 1 of the Legislative Ordinance defines a collective agreement as "a written agreement respecting conditions of work made between one or more employers or one or more employers' occu-

pational associations and one or more workers' occupational associations".

Under section 8, every collective agreement shall be made in the French language and shall contain the place and date of the agreement; the name, identity and powers of the contracting parties and signatories; the object of the agreement; its occupational and territorial scope; its date of coming into operation; and the conciliation and arbitration procedure to be followed in setting disputes between employers and workers bound by the agreement and concerning the interpretation of the agreement. The same section state that a collective agreement may contain, *inter alia,* provisions regarding workers' freedom of association; the wages corresponding to the occupational categories; rules for hiring and dismissal of workers; the duration of engagements for a trial period and of the period of notice; paid leave; the rules governing overtime and the rates payable; service and attendance bonuses; travelling expenses; general rules for payment by results, where this method of remuneration is deemed to be feasible; extra pay for arduous, dangerous or unhealthy work; the organization and functioning of apprenticeship and vocational training in the branch of activity concerned; the organization, management and financing of social and social-medicine services; and all or any other provisions for the purpose of governing the relations between employers and workers in a given branch of activity.

The Legislative Ordinance also deals with joint committees which the Minister of Labour (or the provincial government, according to whether the proposed negotiation concerns two or more provinces or one province only), at the request of an occupational association representing the workers or employers concerned, or on his (or its) own initiative, may establish to prescribe by collective agreement the relations between one or more employers and the workers in one or more specified branches of activity.

The text of the Legislative Ordinance in French and a translation into English have been published by the International Labour Office as *Legislative Series* 1963—Congo (Leo.) 1.

COSTA RICA

NOTE[1]

I. Political Constitution

Act No. 3124 of June 1963, whereby the text of article 49 of the Political Constitution was amended.

The previous text read as follows:

Art. 49. Administrative courts shall be established as part of the Judicial Power and with the object of protecting any person in the exercise of his administrative rights, if he has suffered prejudice in these rights by final decisions of any kind issued by the Executive Power or its officials, by the municipalities or any independent or semi-independent State institution, acting as persons of public law and in the exercise of powers regulated by law."

The present revised text of article 49 reads:

"Administrative courts shall be established as part of the Judicial Power, with the object of guaranteeing the legality of the administrative activities of the State, of its institutions and of any other entity of public law. Abuse of power shall be a ground for the challenging of administrative acts.

"The law shall protect, at least, the subjective rights and legitimate interests of those subject to the Administration."

With reference to the foregoing constitutional reform, the Explanatory Note accompanying the draft amendment stated the following:

"Article 49 of the Political Constitution precludes the enactment of an effective law on administrative justice. First, it refers only to the activities of the Executive Power and decentralized institutions, neglecting the fact that the other Powers sometimes exercise administrative functions which must also be subject to the judicial control mentioned. Secondly, it extends judicial protection only to the subjective rights of those subject to the Administration, whereas it is necessary to apply that protection also to their interests, or at least to their legitimate interests. Finally, the article limits control to the 'exercise of powers regulated by law', to the exclusion of the 'exercise of discretionary powers'—a distinction which today is unacceptable so far as the scope of the jurisdiction referred to is concerned, since the exercise of administrative discretionary powers also constitutes an activity which is subject to law. Admittedly, if the law provides that the Administration may act in one way or another, the solution which the latter adopts as to the substance cannot be modified by the court with a view to its having legal force in one case or another; but the point here is the substance of each particular case, and not merely the admissibility of appeal, as provided for at the present time. Furthermore, in making use of such discretionary power, the Administration might commit errors due to faults of form or procedure or to abuse of power, which must unfailingly be subject to judicial control, in order that administrative justice may be of a standard appropriate to a State which, like ours, is based on justice.

"It is therefore necessary to amend the above-mentioned part of the Political Constitution. And the drafting should be fairly general and comprehensive, so that the legislator may be spared any difficulties in interpreting it."

II. Ordinary laws

PROTECTION OF JUVENILES

(Legislative Decree No. 3260 of 21 December 1963)

Title I

GENERAL PROVISIONS

Chapter I

PROBATIONARY JURISDICTION

Art. 1. It shall be the duty of the Probationary Court for Juveniles to deal with cases of juveniles under the age of seventeen years who are exposed to social danger, to decide exclusively on the measures to be applied to such juveniles and to implement the decisions which it delivers, with the general aim of rehabilitating such juveniles morally and socially. For the purpose of the present law, a juvenile shall be deemed to be a person as defined in this article.

Art. 2. For the purpose of the preceding article, any juvenile as defined in article 1 shall be deemed to be in social danger if he has committed an offence defined under ordinary law as a crime, an offence or a contravention.

. . .

[1] Note furnished by the Government of Costa Rica.

Title II

PROBATIONARY HEARINGS

Chapter I

PROBATIONARY MEASURES

Art. 29. Probationary measures which may be imposed shall be the following:

(*a*) Admonition;

(*b*) Release under supervision;

(*c*) Committal to a special home;

(*d*) Assignment to suitable work or occupation;

(*e*) Internment in re-education centres; and

(*f*) Any other measure considered by the judge to be suitable for juvenile.

Chapter II

NATURE OF PROBATIONARY MEASURES

Art. 30. Admonition shall be given in a clear and fatherly manner, direct to the juvenile, and, if necessary, in the presence of any persons whose attendance the judge may consider desirable.

Art. 31. Release under supervision shall consist in entrusting the juvenile to his family or to a guardian, under the supervision of the Department of Social Service, the Court or other body, in conformity with the recommendations which the judge may see fit to make.

Art. 32. Release under supervision may be made to the National Infancy Protection Service, the Higher Council for Social Defence, or another social institution of a similar nature in the area in which the juvenile resides.

Art. 33. Committal to a special home shall consist in the placing of the juvenile with another family, not his own, under the conditions of supervision stated in articles 31 and 32.

Art. 34. The juvenile may be interned, on a full or partial basis, in the establishment or institution approved by the judge, either for the juvenile's social rehabilitation or for his physical or mental recovery, up to a term which shall not exceed that remaining prior to his attainment of the age of twenty-one years. Full internment shall be that under which the juvenile spends the day and the night in the institution or under its supervision; partial internment shall be that under which he remains in the institution for only part of the day or night.

Art. 35. The juvenile protection establishments which are the responsibility of the State, the municipalities and independent or semi-independent institutions, and the private establishments subsidized by any or above-mentioned bodies, shall be obliged to admit free of charge the juveniles whom the courts may assign to them, for the period indicated by those courts, without prejudice to the maintenance obligations which may be incumbent on the parents and other persons responsible for the juveniles.

Art. 36. Total internment shall be ordered only in serious cases, when the juvenile's family is manifestly unfit to accord him the treatment required and when release under supervision or committal to a special home cannot be ordered.

Art. 37. When the internment of a juvenile is ordered, the judge shall send, to the establishment which is to receive the juvenile, a copy of the order together with any remarks and recommendations that he may think desirable.

Art. 38. The director of the establishment to which the juvenile is committed shall send to the judge a quarterly report on the situation of the internee and shall incorporate in it any necessary recommendations.

III. International Conventions

(*a*) By Act No. 3172 of 12 August 1963, Costa Rica ratified Convention 11 concerning the Rights of Association and Combination of Agricultural Workers, adopted by the International Labour Organisation.

(*b*) By Act No. 3170 of 12 August 1963, the Legislative Assembly authorized the Executive Power to accede to the Convention against Discrimination in Education, signed *ad referendum* by Costa Rica on 14 December 1960 at the eleventh session of the General Conference of UNESCO in Paris, France.

CUBA

ACT No. 1022 of 27 APRIL 1962 RESPECTING BODIES FOR THE ADMINISTRATION OF JUSTICE IN LABOUR MATTERS

SUMMARY

The text of this Act was published in the *Gaceta Oficial*, No. 84, of 4 May 1962.

Under Section I of the Act, the bodies for the administration of justice in labour matters and procedure applicable in the case of labour disputes, and the bodies responsible for social security benefits under the jurisdiction of the Ministry of Labour shall be subject to the rules prescribed by this Act.

Section 2 provides that any worker of either sex who has attained the age of 18 years, irrespective of civil or marital status, shall be entitled, without any special formality, to appear as complainant or to bring any claim before any of the bodies competent to take a decision.

Other provisions of the Act deal with the composition and competence of complaints committees; the procedure for the settlement of labour disputes laid before the complaints committees; the procedure for the settlement by the complaints committees of disputes concerning social security benefits; the composition and competence of appeal boards; the composition and competence of the review board of the Ministry of Labour; and appeal for review by the Minister of Labour.

Translations of the Act into English and French have been published by the International Labour Office as *Legislative Series* 1962—Cuba 2.

ACT OF 3 OCTOBER 1963 PROVIDING FOR THE NATIONALIZATION OF RURAL LANDHOLDINGS [1]

1. All rural landholdings of an area of more than sixty-seven hectares and ten ares (five *caballerías*) are hereby nationalized and transferred to the Cuban State.

2. The provisions of the foregoing Article shall not apply to rural landholdings which prior to the promulgation of the Agrarian Reform Act [2] were being jointly worked by a number of brothers and sisters, always provided that no single brother's or sister's share in the farm exceeds sixty-seven hectares and ten ares (five *caballerías*.)

3. Notwithstanding the provisions of Article 1, the President of the National Agrarian Reform Institute shall be empowered, on the proposal of the appropriate Provincial Delegate, to waive the provisions of this Act in respect of rural landholdings that have been maintained in an exceptional condition of productivity since the promulgation of the Agrarian Reform Act, provided, however, that the owners or holders thereof have shown themselves completely willing to co-operate in carrying out the agricultural production and storage plans of the State.

4. For the purpose of the application of this Act and in accordance with the prohibitions laid down in the Agrarian Reform Act, transfers and grants of land by sharecropping contract, lease, verbal agreement or in any other manner, as also sales and alienations not approved by the National Agrarian Reform Institute under Resolution 113 of 31 December 1959, shall be considered absolutely null and void if made subsequent to 3 June 1959, the date on which the Agrarian Reform Act was promulgated.

Any portions of any landholding expropriated under this Act which have been the subject of such legal transfers or grants shall not be taken into account in computing the compensation provided for under Article 6.

5. If any landowner or holder affected by this Act lives permanently in a dwelling situated on the landholding subject to expropriation and has no urban accommodation, he may continue to reside on such holding if he so desires, as he is unable to obtain other accommodation in the town or village closest to the landholding.

6. Owners of landholdings expropriated under this Act shall, if they are working such holdings directly or through a manager at the time of pro-

[1] Text published in the *Gaceta Oficial, Edición Extraordinaria*, No. 1, of 3 October 1963. What appears under this heading is an English translation of the Act as published by the United Nations Food and Agriculture Organization in *Food and Agriculture Legislation*, Vol. XIII, No. 2, V/1b.

[2] For extracts from the Agrarian Reform Act, see *Yearbook on Human Rights for 1959*, pp. 73-74, and also *Food and Agriculture Legislation*, 1959, Vol. VIII, No. 2.

mulgation of this Act, be entitled to payment of compensation for a period of ten years, at the rate of fifteen pesos per month per *caballerías* expropriated or a proportionate corresponding sum in the case of smaller units.

The owners of rural landholdings expropriated under this Act who at the time of its promulgation are not working such holdings themselves nor have appointed a manager to work them on their behalf, shall not be entitled to any compensation whatever. In such cases, it shall be the persons occupying the said landholdings or those working them on their own behalf or through a manager who shall be entitled to compensation; this shall amount to ten pesos per month per *caballería* expropriated or a proportionate corresponding sum in the case of smaller units and shall be paid for a period of ten years.

In no circumstances may the compensation payments provided for in this article amount to less than one hundred pesos or more than two hundred and fifty pesos a month.

Such compensation payments shall constitute full payment for the property expropriated including livestock, equipment and installations, and shall not be inconsistent with the expropriated person's entitlement to any other income, whether this be salary, pension or other superannuation payments.

7. All mortgages and other charges on immovable property, in favour of natural or juridical persons, that burden any landholdings to which this Act applies and also the obligation from which they arose, are hereby cancelled.

8. The cash on hand belonging to the persons to whom this Act applies and also their current bank accounts shall be used as security for:

(*a*) paying the accrued wages of their workers when these have not been collected by the workers before the landholding was taken over;

(*b*) paying any debts which the persons subject to this Act may have contracted with State supply agencies;

(*c*) liquidating expired bank credits or any bank credits falling due during the thirty days following the promulgation of this Act.

9. Any persons who hold or own any landholdings of more than sixty-seven hectares and ten ares (five *caballerías*) which they were working themselves or through a manager shall, if such landholdings are not occupied within the twenty four (24) hours following the promulgation of this Act, be required to report to the Provincial Delegate of the National Agrarian Reform Institute within the subsequent seventy-two (72) hours, stating that they are subject to the provisions of this Act.

Failure to comply with this article and any attempt to prevent or void the application of this Act to any landholding, shall involve loss of all entitlement to the compensation laid down herein.

CYPRUS

NOTE[1]

1. The Hours of Employment Orders

One of the basic aims and policies of the Ministry of Labour and Social Insurance of the Republic of Cyprus is to improve and expand the existing social legislation and to introduce modern social legislation which indirectly affects the protection of human rights. Such items of legislation are the Hours of Employment Orders, which stipulate that commercial and bank employees should not work more than forty-four hours weekly and that miners employed underground should not work more than forty hours weekly. The exact titles of these two Orders are: (*a*) The Mines and Quarries (Hours of Employment) Order 1961 and (*b*) The Employees (Hours of Employment) Order 1961.

2. The Pneumoconiosis (Compensation) Law

This law was enacted towards the end of 1960. The object is to create the necessary legal machinery for the setting up and administration of a scheme to provide for the payment of compensation in cases of disablement or death caused or accelerated by pneumoconiosis or by pneumoconiosis accompanied by tuberculosis. Pneumoconiosis under this law includes silicosis, siderosilicosis and asbestosis.

The scheme is financed by monthly contributions from employers alone, which vary according to the industry and number of workers employed, and is administered by the Ministry of Labour and Social Insurance. The contributions are fixed by Order of the Council of Ministers and may vary from time to time where an actuary's report shows that the Fund is or is likely to become insufficient to discharge its liabilities, or is and is likely to continue to be more than reasonably sufficient to discharge its liabilities.

The compensation in cases of disablement consists of weekly payments, payable as from the date of disablement and during its duration, calculated at the rates set out in the following table.

RATES OF DISABLEMENT PENSION

Degree of disablement per centum	*Rate of pension*			
	Weekly rate (mils)	*Increase for one dependant* (mils)	*Increase for two dependants* (mils)	*Increased for more than two dependants* (mils)
91-100	2,850	1,000	1,500	1,800
81- 90	2,580	900	1,350	1,620
71- 80	2,310	800	1,200	1,440
61- 70	1,990	700	1,050	1,260
51- 60	1,720	600	900	1,080
41- 50	1,400	500	750	900
31- 40	1,130	400	600	720
1- 30	860	300	450	540

All claims for compensation under this law are submitted to a Compensation Officer, nominated by the Minister of Labour and Social Insurance, under the law. A Pneumoconiosis Medical Board consisting of three medical officers has also been appointed to examine and assess the disability in cases of disablement or report on the cause of death in the case of death claims.

This scheme covers retrospectively all cases of death or disablement due to pneumoconiosis from January 1958.

This law came into full operation during 1961 with the enactment of the Pneumoconiosis (Medical Arrangements) Regulations, which regulate the procedure to be followed during medical examinations, the validity of certificates issued by the Board, etc.

[1] Note furnished by the Government of the Republic of Cyprus.

3. Social Security

Article 9 of the Constitution provides

"Every person has the right to a decent existence and to social security. A law shall provide for the protection of the workers, assistance to the poor and for a system of social insurance."

The President of the Republic, in his address to the House of Representatives on 21 August 1961 on the Government activities and Five Year Programme, stated *inter alia*:

"Apart from its efforts to create conditions for full employment, the Government will also pursue a policy aiming at the improvement of labour conditions. To this end, the Government intends to take the following measures:

"(*a*) The amendment of the social insurance legislation to provide for an increase of 40-50 % in all benefits paid under the Social Insurance Scheme. There will also be a corresponding increase in the contributions to the Scheme. The relative amending Bill will be introduced to the House of Representatives within the next month.

"(*b*) The revision of the Workmen's Compensation Law, so as to provide for a considerable increase in the amounts of compensation payable in respect of industrial injuries. The present legislation provides for a maximum compensation of £600 in cases of death and £800 in cases of fatal incapacity. The amendment of the law will provide for increased compensation of a maximum of £2,000, payable either in the form of a lump sum or by way of pension.

"(*c*) The compulsory inclusion in the Social Insurance Scheme of certain self-employed classes, such as lawyers, doctors, merchants and agricultural workers."

Following this declared policy, a new Social Insurance Bill was prepared and approved by the Council of Ministers towards the end of 1963. The new law covers practically every person who is gainfully occupied in Cyprus. The following benefits are provided:

(*a*) *Persons employed under a contract of service or apprenticeship:* Cash benefits are provided for marriage, maternity, sickness, unemployment, widowhood, orphanhood, old age and death, and cash benefits with free medical treatment for employment accidents.

(*b*) *Self-employed persons, including farmers:* Cash benefits for marriage, widowhood, orphanhood, old age and death.

By this new law, cash benefits for sickness, unemployment, old age and widowhood will be increased by about 50% and will be within the rates provided by ILO Convention No. 102 concerning Minimum Standards of Social Security. Industrial injuries are for the first time included in the Social Insurance Law and the benefits provided over a prescribed degree are in the form of weekly payments and the rates are above these provided by the above Convention.

A maternity allowance is included in this law by which a working female contributor will be entitled to an allowance for a period of twelve weeks beginning with the sixth week before the expected week of confinement.

All above benefits are provided without discrimination as to race, colour or nationality. Pensions for old age, disablement and survivors are payable outside Cyprus without any restriction.

4. The Mines and Quarries (Safety Organization) Regulations

These regulations were published in the *Official Gazette* in July 1963 and came into force on 1 October 1963. They provide for the establishment of Safety Committees in all mines and quarries employing more than 20 persons. Workers' representatives will participate in the committees. The committees will consider matters of safety and hygiene in mines and quarries and will make recommendations to management and Government as appropriate.

It is expected that the Regulations will help to create a sense of responsibility amongst workers for their own safety and hygiene; will make safety and hygiene the joint effort of management and workers; will give the opportunity to workers to air their views responsibly and officially; and will give management, with whom primarily legal and moral responsibility for safety and hygiene lies, the benefit of experience and first-hand knowledge of workers who face constantly the dangers of this type of employment.

CZECHOSLOVAKIA

NOTE[1]

1. Act No. 94/1963 of the Collection of Acts on the Family Code

This Code reflects the changes that have occurred in the social system. The provisions governing marriage and family law are based on the new conception and function of marriage and the familly in a socialist society. The Family Code implements important principles relating to the protection of citizens' rights which are enshrined in the Constitution. It expressly states that marriage, maternity and family relations are placed under the protection of the State. Society gives to mothers and children—regardless of whether the latter were or were not born in wedlock—all the necessary care and material aid, as well as assistance for the children's upbringing. The family, based on marriage, is regarded as the most appropriate institution for regulating people's family and personal relations—on the basis not of property but of feelings of kinship, so as to create a healthy basis for giving children a good upbringing which will make them into loyal citizens. The State endeavours to make marriage a permanent, lifelong union. The organs of the State and the social organizations, together with all citizens, have an obligation to help to strengthen marriage and to prevent the arising of possible causes of divorce.

The protection of the interests of minor children is the fundamental principle of the Code. The decisive role of parents in the upbringing of children is stressed and the Code lays down the principles governing that upbringing. The parents on the one hand, and the State and the social organizations on the other, are both concerned with the upbringing of children. The children must acquire a broad and thorough education and a responsible attitude towards work. Their consciences and their acts must be imbued with such principles as love of country, friendship among nations, protection of social property, observance of the rules of socialist coexistence, respect for fellow-citizens, modesty, honesty and self-sacrifice.

Parents are responsible for the development of their children in all respects, physical and moral alike. They act on their behalf and have charge of their affairs.

A spouse who is not himself the parent of a particular child but lives with it in a common household must also share in its upbringing.

The need to ensure that children are well brought up entitles citizens and social organizations to draw the attention of parents—and, if necessary, of State organs and organizations—to any misbehaviour on the part of their children, so that the situation may be remedied.

Parents can seek the assistance of the child's school or of State organs, if such action is necessary for the exercise of their parental rights.

The courts are under an obligation to ensure that children are properly brought up and that their property is administered in the right way.

If the parents of a minor are dead or are for any reason unable to exercise their rights and fulfil their duties in respect of the child, it is the duty of the court to appoint a guardian for the child, who will exercise those rights under the regular supervision of the court. Any decision by the guardian with respect to the child on a fundamental matter requires prior approval.

The court also appoints, if need be, a guardian to protect the interests of the child, even if it lives with its parents.

Parents have an obligation to support their children as long as the latter are not capable of earning their own living. This duty is not limited in time. It is incumbent upon both husband and wife, even if the child was born out of wedlock.

The obligation of parents to support their children is paralleled by the obligation of children to support their parents, and there is a reciprocal obligation of that kind between ascendants and descendants and between husband and wife.

An unmarried mother is entitled to ask the child's father to contribute to its maintenance for a period of twenty-six weeks. She is also entitled to require him to contribute to the expenses of her pregnancy and confinement.

The State pays regular monthly maintenance to minors who lack means of support. If the child is preparing himself for a future occupation or there are other serious grounds, he may continue to receive maintenance up to the age of twenty-five.

[1] Note received from the Government of the Czechoslovak Socialist Republic.

2. Act No. 97/1963 on Private International Law

This Act applies to legal matters under civil and family law which involve what might be called a foreign element, i.e., a legal relationship in which one or more of the parties are aliens or the subject of the relationship is situated in a foreign country, or a specific act likely to have legal implications in a foreign country.

With regard to the status of aliens in the Czechoslovak Socialist Republic, the Act provides that, in respect of their personal and property rights, aliens shall have the same rights and obligations as Czechoslovak nationals.

Notwithstanding the principle of equality under the law, the protection of the rights and interests of foreign nationals sometimes requires that they be given a special status owing to the fact that the rules governing the conflict of laws call for the application of foreign substantive law or for the exclusive or optional jurisdiction of the foreign court. The settlement of matters involving conflict of laws should not give rise to harsh treatment in the personal, family or property relationships of aliens or of Czechoslovak nationals dealing with aliens.

Thus, as far as the ability to exercise civil rights and to perform legal acts is concerned, the law of the State of which the alien is a national applies. If, however, the legal act takes place in the territory of the Czechoslovak Socialist Republic, it is enough that the alien should possess legal capacity and be qualified to perform legal acts in accordance with Czechoslovak law. Moreover, so far as the form of a legal act is concerned, it is enough that it should be in conformity with the law of the place where the expression of will was manifested.

As for entitlement to damages arising from reasons other than the violation of an obligation deriving from a contract or other legal instrument, the law of the place where the damage occurred is invariably applied so that the person substaining the damage can be compensated without difficulty and as expeditiously as possible.

With regard to rights deriving from an employer-employee relationship, the rule is that in the absence of other arrangements between the employee and the employer, the law of the place where the employee works applies. If, however, the employee works in a country other than the country in which the employer is domiciled, the law of the employer's place of domicile applies. Special regulations govern such relations in international transport undertakings. The purpose of all these regulations is to ensure the speediest possible solution, without regard to nationality, of disputes involving workers, since for the majority of persons, labour relations are basic to their own lives and the lives of their families.

With regard to the right of succession, the law of the State of which the deceased was a national at the time of his death applies. This ensures that the estate of an alien leaving property in the territory of the Czechoslovak Socialist Republic will devolve on his heirs or legatees in accordance with the law of the country of which he was a national even if some aspects of the succession are regulated by Czechoslovak law. The right to bequeath property by will is also governed by the law of the State of which the testator was a national at the time the will was drawn up. As to the form of the will, it is sufficient for it to comply with the law of the State where the will was drawn up.

As regards the relationship between spouses, a special effort is made to facilitate to the utmost the regulation of matters affecting this relationship when one or both spouses are aliens. Whereas a person's capacity to contract marriage and the conditions necessary for the validity of the marriage are determined by the law of the country of which he is a national, he has the legal capacity to contract marriage in accordance with the law of the place in which the marriage ceremony is performed.

The personal and property relationship of spouses during their conjugal life is governed by the law of their country of nationality; only where the spouses are of different nationality does the Act specify that this relationship shall be governed by Czechoslovak law. Where the property rights of the spouses have been made the subject of a contractual settlement, the law under which such settlement was made continues to apply without regard to any future changes in the nationality of the spouses.

As regards divorce, the Act provides that the law of the State of which the spouses were nationals at the time proceedings were instituted shall apply. If the spouses are nationals of different States, the divorce is governed by Czechoslovak law. The possibility of applying Czechoslovak law in divorce cases is afforded even if the foreign law does not permit this or permits it only in extremely difficult circumstances, i.e., where the two spouses, or at least one of them, have lived in Czechoslovakia for a fairly long period of time. In such cases, a divorce and subsequent remarriage may not be recognized as valid in the country of which the alien spouses are nationals. However, the concern to ensure that persons living in Czechoslovak territory should be able to arrange their lives harmoniously prevails over these difficulties, which take on practical importance only if such persons return to the country of which they are nationals. The possibility of obtaining a divorce under Czechoslovak law is facilitated by the fact that the jurisdiction of Czechoslovak courts also extends to cases in which both spouses are aliens, provided that one of them has lived for a fairly long period of time in Czechoslovakia. If one of the spouses has been in Czechoslovakia for only a short time, the Czechoslovak court may not grant a divorce except in the case that its decision is recognized in the States of which the spouses are nationals.

The relations between minor children and their parents are governed exclusively by the law of the State of which the child became a national by birth. However, in the case of alien minors living in Czechoslovakia, such relations may be regulated by Czechoslovak law if this is in the interest of the child. In order to give effect to these excep-

tional provisions, the jurisdiction of the Czechoslovak courts also extends to the care of alien minors, provided that the Czechoslovak court takes only those measures necessary to protect the person and property of such minors and informs the appropriate body in the State of which they are nationals of the measures taken. Only when that body fails to correct the situation within a reasonable time may the Czechoslovak court assume this responsability.

The Act also makes similar provision with regard to adoption. Although adoption is in principle governed by the law of the State of which the adopter is a national, Czechoslovak law may be applied if the adopter is an alien and his national legislation either does not permit adoption or permits it only in extremely difficult circumstances; however, the adopter must in such case have lived in Czechoslovakia for a fairly long period of time.

The Act also regulates the status of aliens when claiming or defending their rights in court. It guarantees to them, subject to reciprocity, the same status as Czechoslovak nationals and the possibility of exemption from court costs and financial advances and of being granted free legal assistance.

This Act entered into force on 1 April 1964.

3. Act No. 99/1963 of the Collection of Acts on the Code of Civil Procedure

The Code lays down the procedure to be followed by courts and by the parties in civil actions in order that the rights and rightful interests of citizens and organizations may be properly protected. This Act is designed to ensure that citizens are brought up to observe the law of the land and the rules of socialist coexistence, to fulfil their duties honestly and to respect the rights of their fellow-citizens.

Every person is entitled to call upon the courts to protect any of his rights which have been threatened or impaired. No distinction is made between Czechoslovak nationals and foreigners, nor is there any discrimination on grounds of race, sex, language, ethnic origin, political or other opinions, social origin or status in society.

The courts give assistance to the parties in legal actions and see that they obtain their rights. It is the responsibility of the courts to inform them as to their rights and duties and to ensure by every possible means that no person suffers prejudice through lack of adequate legal knowledge.

In civil proceedings, both parties are on an equal footing. They have the right to use their mother tongue in court, and the court must make sure that they both have the same chance to assert their rights. If a person is not in a position to appear alone before the court, because he is a minor or for other reasons, the court nominates a guardian for him.

The State Counsel also has responsibility for safeguarding the rights of the citizen. He can himself propose the institution of proceedings, and can take part in the proceedings if the interests of society or the protection of the rights of the citizen so require.

The defence, by the parties to legal actions, of rights which have been thereatened or impaired is facilitated by the fact that the case can be argued in a court other than the public court of the defendant (i.e., the court of the district in which the defendant resides). Depending on the nature of the right which he is asserting, a party can, for example, take his case to a court in the district where the defendant works, where the event giving grounds for the payment of damages took place, or where the place of payment is located.

It is the duty of the courts to use their influence in order to prevent disputes from arising.

The court exerts a primarily educative influence on the parties. It invites them to a discussion in which it explains their duty to them, points out the consequences which would ensue for society and their fellow-citizens if they did not fulfil their duty, and calls on those who have not fulfilled their duty to do so and make good what has been neglected. In all cases the courts strives to restore, in a conciliatory manner, the legal relations which have been impaired. If the parties so propose, it does so even before the opening of the legal proceedings.

If the case has to be dealt with in court, the summons to appear must be delivered to the parties long enough in advance for them to have adequate time in which to prepare for the proceedings. Except in unusual cases specified in the Act, the hearings are public, and care must be taken to ensure that citizens have every opportunity of attending them.

The parties are entitled to be present when evidence is produced. They may express their opinion regarding all proposals for the presentation of evidence and regarding all evidence already submitted.

Claiming of their rights by the parties is also facilitated because they can obtain tax exemptions if their property status or their financial situation justify such exemptions. In such cases, they do not even have to make an advance deposit to cover the expenses in connexion with the submission of evidence.

Either party can appeal against the court's decision to a court of higher instance. Only in the case of certain types of decision specified in the Act, which are of no importance so far as decisions in normal proceedings are concerned, is there no provision for appeal.

Even after expiry of the time-limit for the lodging of an appeal, the parties can call upon the court to reopen the proceedings, annul its decision and take a new decision, if certain facts which are specified in the Act and in the light of which the decision would appear to be unjust subsequently become known.

If the court's decision has infringed the law, the President of the Supreme Court or the State Counsel General can enter a complaint against the decision on that ground. In certain cases, such a complaint can be made even by the Chairman of the district or regional court or by the district or regional State Counsel, as appropriate. The initial request for the submission of such a

complaint can be made by any citizen or any organization.

The Code of Civil Procedure likewise lays down rules for the procedure to be followed in the consideration of decisions taken by other bodies. This is of particular importance in the case of decisions concerning the social insurance allowances prescribed by law, where the court may, at the plaintiff's proposal, consider a decision by the State Social Security Board or the National Committee regarding an allowance, annul the decision if unjust, and resubmit the case to the competent body so that a new decision can be taken.

The procedure for putting a decision into effect ensures that the decisions of the court or of other bodies are actually implemented. The law protects the citizen because implementation of the decision can be ordered only in the manner specified by the Act, and only to the extent required for the giving of satisfaction to the person who is in the right. Before the decision is put into effect, however, the court can try to persuade a party to carry out his obligations voluntarily. For this purpose, it uses suitable educative methods such as exhortation and explanation of the consequences which would ensue non-fulfilment of the duties prescribed in the decision.

The procedure for putting decisions into effect also gives citizens the right to appeal against the decision of the court and even, under certain conditions specified by the Act, to propose that implementation of the decision be stopped.

DAHOMEY

NOTE

Act No. 63-3 of 26 June 1963 [1] establishes jurisdiction in actions brought against State offices and associations and all public and semi-public bodies which are legal entities. Article 1 of the Act states that in the absence of express agreement to the contrary and subject to provisions to the contrary in international conventions, in all disputes relating to obligations arising, even in foreign countries, out of a contract or quasi-contract or a delict or quasi-delict, regardless of where the obligations are supposed to be fulfilled, State offices and associations and all public and semi-public bodies which are legal entities shall be brought before Dahomean courts.

[1] Text published in the *Journal officiel de la République du Dahomey*, No. 17, of 15 July 1963.

DOMINICAN REPUBLIC

THE CONSTITUTION OF THE DOMINICAN REPUBLIC OF 29 APRIL 1963 [1]

FUNDAMENTAL PRINCIPLES

Art. 1. The following are the basic objectives of the State:

(*a*) To protect human dignity and promote and guarantee respect for it;

(b) To strive for the elimination of all economic and social obstacles which limit the equality and freedom of Dominican nationals and hinder the development of the human personality and the effective participation of all in the political, economic and social life of the country; and

(*c*) To affect the harmonious development of society according to the guiding principles of social ethics.

Art. 2. The existence of the Dominican nation is founded principally on work, which is declared to be the fundamental basis of its social, political and economic organization and an inescapable obligation for all able-bodied Dominican nationals. Accordingly:

(*a*) The right of everyone to work is recognized, together with the obligation of the State to provide and guarantee the necessary conditions for the effective exercise of that right;

(*b*) It is the duty of every citizen, according to his abilities, to select and engage in an activity or occupation which will contribute to the material or spiritual progress of society;

(*c*) Vagrancy, mendicancy and any other social vice prejudicial to the conception of work as the main foundation of the nation's existence, are public evils.

Art. 3. The freedom of private economic enterprise is assured. Nevertheless, private enterprise may not be exercised to the detriment of human safety, freedom or dignity.

Art. 4. It shall be a general rule that property shall serve to promote the progress and well-being of the community.

Art. 5. The acts of those who, for personal gain, embezzle public funds or take advantage of their position in State organs, branches thereof or the autonomous bodies of the State in order to obtain illicit economic advantages are crimes against the nation.

Persons in any of the above-mentioned positions who deliberately accord advantages to members of their families, associates, followers, friend or relations shall be likewise guilty of a crime against the nation.

Persons convicted of such crimes shall suffer, without prejudice to other sanctions provided by law, the penalty of civic degradation, the implications of which shall be specified by legislation; they shall also be required to make restitution of that which they have unlawfully appropriated.

Art. 6. No person may be compelled to do what the law does not require, or be prevented from doing what the law does not prohibit.

Art. 7. Any Act, decree, regulation or other instrument contrary to this Constitution shall be automatically null and void.

Art. 8. All usurped authority shall be invalid and all acts by such authority shall be null and void. Any decision taken through the intervention of the Armed Forces shall be null and void.

Art. 9. Laws shall not have retroactive effect, except where they are favourable to a person *sub judice* or serving a term of imprisonment.

. . .

Art. 12. No revision of the Constitution may be made concerning the form of government, which shall always be civil, republican, democratic and representative.

Part I

TITLE I

ECONOMIC AND SOCIAL-ETHICAL RELATIONS

Section 1

LABOUR

Art. 13. Labour, in all its forms and applications, shall be under the supervision and protection of the State. It shall be a major duty of the State to concern itself with the vocational training

[1] Text published in *Gaceta Oficial*, No. 8758, of 30 April 1963. Extracts from the Constitution in English and in French have been published by the International Labour Office as *Legislative Series* 1963 - Dom. 1. For extracts from the Constitution of 1 December 1955 and those from the Revised Constitution of 2 December 1960, of 29 December 1961 and of 16 September 1962, see *Yearbook on Human Rights for 1955*, pp. 99-103; *for 1960*, p. 94; *for 1961*, p. 98; and *for 1962*, p. 71, respectively.

and improvement of workers, and to promote and support agreements of international organizations designed to affirm and regulate labour rights.

Art. 14. Persons who are disabled or are unqualified for work shall be entitled to vocational and technical education, training and rehabilitation.

The State shall help to provide maintenance and social welfare assistance for all persons unqualified for work who lack the means or assistance required for their maintenance.

Art. 15. Freedom of trade union organization is assured, subject to the condition that the statutes of trade unions shall provide for democratic internal organization and that such statutes shall be entered in the registers of the local and central offices of the Department of Labour, in accordance with the law.

With respect to contractual relations between employers and workers in a given enterprise, if the trade unions concerned are similar in type or belong to the same branch of trade, the State shall recognize only the trade union to which the majority of the workers are affiliated.

Art. 16. Freedom of labour is assured. The law may, if it is in the public interest, make provision for a maximum working day, days of rest and vacation, minimum wages and salaries, mode of payment of wages and salaries, social insurance, predominant participation by nationals of the Dominican Republic in all types of work, and, in general, all measures of State protection and assistance considered necessary or desirable for the benefit of the workers.

Art. 17. The principle of equal pay for equal work shall apply, without discrimination as to sex, age or state in life.

Art. 18. The State recognizes the workers' right and obligation of co-determination in the undertaking, in the manner and subject to the limits prescribed by law, with a view to elevating labour socially and economically and meeting the requirements of production.

Art. 19. In every agricultural, industrial, commercial and mining undertaking the workers shall be entitled to a share in profits, the legitimate interest of the owner of the undertaking and the other factors of production being recognized.

The scope and manner of such profit-sharing shall be prescribed by law.

Art. 20. The workers' right to strike and the employers' right to declare a lock-out are recognized, except in the public services.

The rules governing strikes and lock-outs shall be prescribed by law, in conformity with the employers' and workers' interests, with social requirements and with national security.

Art. 21. The rights and benefits established under this section in favour of the workers, and those prescribed by law, shall not be renounceable.

Section II

OWNERSHIP

Art. 22. The State recognizes and guarantees the right of ownership; since property must serve to promote the progress and well-being of the community, expropriation may be effected on grounds of social interest, in accordance with the procedure provided for by law.

In fixing suitable compensation, the interest of society as a whole shall be taken into account as the principal factor, together with that of the owners concerned.

If legal proceedings are instituted with respect to the amount of compensation, each case shall be settled by the courts in accordance with the law, which shall observe the precept laid down in the preceding paragraph. In such cases, the State may take over the property without waiting for the decision of the courts.

In the case of adjudgement and forced sale, the State may acquire real property or securities representing real property at the adjudicated price, within the time-limit and subject to the rules prescribed by law, and shall take the necessary steps to restore such real property to the persons expropriated under attachment proceedings.

Art. 23. The ownership or possession of land in excessive quantities by private persons or bodies is contrary to the interest of the community. Accordingly, large private-owned estates (*latifundia*) are prohibited, irrespective of the way in which they originated.

The law shall prescribe the maximum extent of land which an individual or body may own, account being taken of agricultural, social and economic factors.

Private corporations may not acquire ownership in land except with a view to developing and expanding centres of population and installing industrial plant and commercial establishments, in accordance with the relevant legislation. Such bodies may also acquire, in urban areas, the necessary land for the installation of their factories and the outbuildings thereof.

The above provision shall not apply to banks or loan societies established in the Dominican Republic, which may acquire ownership in land and the appendages thereof when such land appendages have been given as guarantee for their loans, or to co-operative societies, because of their high social and economic aims, subject to the regulations prescribed by law. The law may, where good grounds exist, provide for other exceptions.

Art. 24. Small-holdings of inadequate size (*minifundia*) are uneconomic and anti-social. The law shall define what is meant by "small-holdings of inadequate size" and shall prescribe the necessary measures for their integration into economically and socially viable units.

Art. 25. Only Dominican nationals shall be entitled to acquire ownership in land. Nevertheless, the Congress may by law authorize, when such action is in the national interest, the acquisition of land in urban areas by persons other than Dominican nationals.

The law may regulate the leasing of land by its Dominican owners to non-Dominican persons or corporations.

The resources of the sub-soil and of the continental shelf belong to the State, which may issue

concessions for their exploitation by Dominican nationals or aliens. State ownership of mineral deposits is inalienable and imprescriptible.

Art. 26. The establishment of every Dominican family on its own land in its own property (including any improvements) is a prime public interest.

Every Dominican family should own a comfortable and healthy dwelling. Where the members of a family lack sufficient means, the State shall provide such a dwelling with the co-operation of the family, in accordance with the latter's income and financial resources and subject to the plans drawn up by the competent bodies.

Art. 27. The land and dwelling of the family shall be inalienable and exempt from liability to seizure. The law shall determine the extent, composition and value of the family patrimony which is inalienable and exempt from liability to seizure.

Art. 28. Every rural family which is landless or lacks sufficient land is guaranteed the right to be provided with land in the form of plots varying, in size, according to the type of land involved and the requirements and capacity for work of the persons concerned, each such family being provided with adequate means to ensure the economic and social progress of the community.

The State shall co-operate with farming institutions, associations and unions in ensuring for those who till the land the highest possible standard of living.

As a consequence of the above principle and for the purposes of this provision, it is of prime social interest that State lands shall be subject to the land reform plans, that areas in excess of the maximum amount which may be owned by one individual or body shall be broken up within a time-limit to be fixed by law, and that the resulting fractions shall be sold to farmers in the manner and under the conditions likewise prescribed by law. If there are no purchasers, the State shall acquire the unsold fractions and transfer them to farmers as and when the occasion arises.

Art. 29. The State shall encourage the creation of rural and urban co-operatives, designed to raise the social and economic levels of the community through combined effort; it may also convert State undertakings, with a view to their better working, either to full co-operative ownership or to operation in accordance with co-operative principles.

Section III

Social Economy

Art. 30. Monopolies for the benefit of private individuals are prohibited.

. . .

Section IV

Education and Culture

Art. 35. The right of all Dominican nationals to education is recognized, and the obligation of the State to take the necessary steps to guarantee the full exercise of this right is affirmed.

Art. 36. The complete and final eradication of illiteracy is of social interest.

Laws shall provide for the establishment of the institutions and bodies responsible for instituting, within the country, an effective public and private campaign to spread culture throughout the national territory and to teach reading and writing to all its illiterate inhabitants.

For the purposes of this literacy plan, the Government shall allocate the necessary funds and enlist the intellectual and financial collaboration of private individuals.

Art. 37. Freedom of teaching is guaranteed, and learning is declared to be the fundamental basis of education. The State shall be responsible for the organization, inspection and supervision of the school system, with a view to achieving the social aims of culture and ensuring the best intellectual, moral and physical training for the pupils.

Art. 38. In view of its social importance, the teaching profession shall have the status of a public service.

Accordingly, the public authorities shall assume responsibility for raising the standard of living of all teachers, for providing them with the necessary means of improving their knowledge and for protecting and safeguarding their dignity, so as to enable them to devote themselves to their important task free of any financial, moral, religious or political pressure.

Art. 39. The State shall provide, free of charge, primary and secondary education to all persons living on the national territory. Primary education is compulsory for all persons of school age residing in the country.

Art. 40. The State shall promote the spreading and perfecting of university education and of vocational and technical training among workers and peasants.

Section V

The Family

Art. 41. The public authorities shall promote, by means of economic measures and other suitable provisions, the formation and stabilization of the family and the full attainment of its purposes.

Art. 42. The State shall give special protection to marriage and the family, to women in pregnancy, to maternity, and to children from the date of their birth to that of their maturity.

Art. 43. All children, without distinction, shall enjoy the same opportunities for social, spiritual and physical development.

Art. 44. The father and mother shall be responsible for feeding, assisting, bringing up and providing education for their children, and the children shall be responsible for providing for their parent's sustenance and for respecting and assisting them. The law shall prescribe guarantees and sanctions to ensure the fulfilment of these obligations.

Art. 45. The State shall prescribe special measures to protect children and young persons from exploitation and from moral or material neglect.

Art. 46. Marriage is recognized as the legal basis of the family. Marriage presupposes abso-

lute equality of rights for husband and wife, including equality in financial matters.

Art. 47. A married woman shall enjoy full civil capacity.

For the disposal of real estate jointly owned by a married couple, the consent of both spouses shall be required.

Art. 48. By the agreement of both spouses or at the request of either of them, a marriage of any kind, whatever the laws or conditions under which it was contracted, may be dissolved, in the manner and for the reasons prescribed by law.

The law shall determine in what circumstances consensual unions between persons who are in every respect marriageable may, for reasons of equity and social interest, have economic effects similar to those of marriage.

Art. 49. Officials and civil servants may not issue civil registry certificates showing whether a person was born in or out of wedlock and, in general, what is the nature and character of his or her filiation, except as otherwise provided by law.

Section VI

HEALTH

Art. 50. The State shall see to the preservation and protection of the health of the individual and of society, as one of their fundamental rights.

Persons who are indigent or without sufficient means shall receive free medical treatment at the State health centres.

Art. 51. The State shall be responsible for all matters pertaining to public health and hygiene and shall ensure that legislation in this field is aimed at improving the physical and mental health of the inhabitants of the Republic.

Rural health is a prime social interest.

Art. 52. It is a basic duty of the State to see that the population receives nutritious and abundant food at low prices. For this purpose, the State shall take effective steps to ensure that essential articles can at all times be acquired at fair prices.

Art. 53. In certain cases where a reduction in the prices of articles that are necessary for the proper nutrition and well-being of the population is contrary to the fiscal interest of the State, the latter shall forgo its benefits and taxes in the interests of the health of the community.

The prices of the said articles shall be reduced in the proportion to which the State forgoes its benefits and taxes.

The above rule shall be specially borne in mind when legislation in regard to taxation and customs tariffs is drafted and implemented.

Art. 54. The State shall combat social vices by appropriate means and with the help of international conventions and organizations.

Specialized centres and bodies shall be established to rehabilitate individuals and eradicate such vices.

TITLE II

HUMAN RIGHTS

Art. 55. The inviolability of life is affirmed.

Neither the penalty of death nor any other penalty involving physical injury to the individual may be established. Nevertheless, the law may establish the death penalty for persons who, in the events of legitimate defensive action against a foreign State, are guilty of offences endangering the Armed Forces of the nation, or of treason or espionage in favour of the enemy.

Art. 56. The inviolability of personal liberty is affirmed. Any form of detention, inspection or search of a person, otherwise than by order the competent authority acting solely in the cases and in the manner prescribed by law, shall be deemed arbitrary and unlawful.

Art. 57. The inviolability of freedom of belief, conscience, and religious and ideological persuasion is affirmed. The professing of any faith and the practising of all forms of religious worship shall be subject only to the requirements of morality, law and order, and propriety.

Art. 58. Every inhabitant of Dominican territory may have recourse to the courts for the safeguarding and defence of this own rights and legitimate interests.

The administration of justice shall be free of charge.

Art. 59. No person shall be subjected to bodily restraint for a debt which does not arise from a violation of the penal laws.

Art. 60. Except in cases of *flagrante delicto,* no person shall be imprisoned or be restricted in his freedom unless a written order, setting forth the reasons, is issued by a competent judicial authority.

Art. 61. If a person is deprived of his liberty without cause or without due process of law, or in circumstances other than those for which the law provides, he shall be released immediately at the request of himself or of any other person. The method for preliminary investigation in such cases shall be in accordance with the Habeas Corpus Act.

Art. 62. If a person is deprived of his liberty, he shall be brought before the competent judicial authority within forty-eight hours of his arrest, or be released.

Art. 63. A person who has been arrested shall be either released or committed to prison within forty-eight hours after he has been brought before the competent judicial authority, and shall be notified, within that time-limit, of the decision taken in his case.

Art. 64. No person shall be convicted without having been heard or summoned before the court in due form, and unless the procedures established by law to ensure an impartial trial and the exercise of the right of defence have been observed. Hearings shall be public, except in the cases prescribed by the law where publicity might be contrary to public policy or propriety.

Art. 65. No person shall be tried twice for the same offence, or compelled to testify against himself.

Art. 66. No Dominican national shall be expelled from the country.

The deportation or expulsion of any alien from the territory of the Dominican Republic shall be carried out only by order of a competent tribunal after legal formalities and procedures have been observed.

Art. 67. All citizens shall have the right to be members of political parties, which may be organized freely, subject to no other requirement than that they shall serve peaceful and democratic ends.

Art. 68. All inhabitants of the national territory shall have the right to form associations and societies.

Associations or societies which pursue aims or engage in activities contrary to law or prejudicial to public order, propriety or the systems established under this Constitution, or which are organized on the basis of privilege or discrimination by reason of class, race or social position, shall be prohibited.

Art. 69. Inviolability of the home is affirmed. No house may be searched or forcibly entered, except by order of the competent judicial authority.

Nevertheless, when delay involves certain or imminent danger, forcible entry and search may be effected also by bodies or officials designated by law, provided that they act in strict conformity with the law.

Any procedure affecting or restricting the inviolability of the home may be justified only on the ground of manifest danger to the community or of risk to human life. As a general rule, no person may enter the home of another by night without the consent of the owner, except for the purpose of rendering assistance to the victims of a crime or disaster. Entry into the home of another person by day is permissible only in the cases and in the manner prescribed by law.

The law may also provide that such procedures shall be carried out for the purpose of preventing an imminent danger to public order and security, and more especially in order to prevent the outbreak of an epidemic or to protect minors in danger.

Art. 70. Every person may freely and without prior censorship express his thoughts by means of the spoken or written word or by any other form of graphic or oral expression, provided that such thoughts are not prejudicial to morality, public policy or propriety, in which case the penalties provided by law shall apply.

Anonymous letters or publications and propaganda in favour of war or designed to provoke disobedience to law are prohibited, but this prohibition shall not restrict the right to analyse or criticize legal principles or provisions.

Art. 71. The Press shall not be subjected to any form of coercion or censorship.

Freedom of publication shall be subject only to the requirements of respect for privacy, morality, public order and propriety.

Art. 72. Correspondence and other private documents are inviolable and may not be seized or examined except under legal procedures in connexion with matters which are being investigated by the courts. The secrecy of telegraphic, telephonic and cable communication is likewise inviolable.

Art. 73. Freedom of movement is assured. Accordingly, every inhabitant of the Republic has the right to leave and to enter the territory, and to travel and change his residence without an authorization, safe conduct, passeport or other requirement, provided that he carries his identity papers with him.

The exercise of this right may be restricted by the competent judicial authorities in respect of persons who are subject to the jurisdiction of the criminal, civil or commercial courts, or who have cases pending before the administrative authorities. It may also be restricted by the provisions of immigration laws relating to public health or to undesirable aliens.

Art. 74. Every inhabitant of the Republic has the right of peaceful assembly for all lawful purposes, subject to no other limitation than that required for the ensuring and maintaining of public order.

Art. 75. Every person has the right of access to the registers of prisoners held for trial.

Art. 76. The responsibility for any act affecting the personal integrity, security or honour of a person in custody or convicted shall attach to the persons arresting or guarding him, unless they can furnish evidence in rebuttal.

Subordinates shall have the right to refuse to comply with orders or decisions of their superiors which run counter to the safeguards specified in this article.

Art. 77. Prisoners held for trial on political grounds shall be kept in quarters separate from those or ordinary offenders and shall not be compelled to perform any work, or be subjected to the regulations, prescribed for such offenders.

Art. 78. Prisoners held for trial shall not be kept incommunicado or subjected to vexatious publicity.

Art. 79. The use of violence, torture or coercion of any kind in order to obtain statements from persons is absolutely prohibited. Violation of this provision shall render null and void any statement so obtained and shall expose those responsible to the relevant penalties.

Art. 80. The State shall ensure that prisons are modern penal institutions designed to provide corrective treatment for the offender and to lessen propensity towards crime.

The main purpose of any penal institution shall be to develop in convicted prisoners an aptitude for work, good habits and proper social behaviour. Prisons shall in no circumstances be used for the mortification or brutal treatment of offenders.

Art. 81. Resistance with a view to protecting the human rights specified above shall be lawful; nevertheless, those rights do not exclude the rights laid down in this Constitution, or rights which are

similar in nature or emanate from the sovereignty of the people and the democratic system.

Art. 82. The ordinary courts shall have exclusive jurisdiction to try cases involving breaches of the preceding articles, regardless of the place and circumstances of, or the persons involved in, the detention or imprisonment. The law shall determine the penalties applicable.

Art. 83. Individual citizens and bodies corporate shall have the right to petition the public authorities to take action on matters of public or private interest.

The public authorities shall reply to such petitions, through their heads or representatives, within a reasonable period which shall not exceed thirty days.

Art. 84. It shall be public policy to prosecute anyone who violates the provisions of this Title. Such prosecution may be initiated by the State or through the laying of information by a private person or body corporate.

Part II

TITLE I

ORGANIZATION OF THE REPUBLIC

Section I

THE NATION AND ITS GOVERNMENT

Art. 85. The Dominican people forms a nation organized as a free and independent State under the name of The Dominican Republic.

Art. 86. The form of government of the Dominican Republic is essentially civil, republican, democratic and representative.

The government is divided into a Legislature, an Executive and a Judiciary. These three powers are independent of one another for the purpose of the exercise of their several functions. The persons entrusted with the several functions are answerable for their actions and may not delegate their authority, which is exclusively as specified in this Constitution and in legislative provisions.

. . .

TITLE II

POLITICAL RIGHTS

Section I

NATIONALITY

Art. 89. The following persons are Dominican nationals:

1. Persons who enjoy that status at present by virtue of previous constitutions and laws;

2. Persons born in the territory of the Republic, with the exception of legitimate children of aliens residing in the Republic as diplomatic representatives or passing through the country;

3. Persons born abroad of a Dominican father or mother, provided they have not acquired a foreign nationality in accordance with the laws of the country of birth or, if they have done so, declare their intention of retaining Dominican nationality by transmitting to the Executive a sworn statement made in the presence of a competent official after coming of age under civil law, as specified in Dominican legislation;

4. Naturalized persons. The law shall specify the requirements and procedure for naturalization.

Section II

CITIZENSHIP

Art. 90. Dominican nationals of both sexes over eighteen years of age, as well as those who have not yet reached that age but are or have been married, are citizens.

Art. 91. Citizens have the following rights:

(1) The right to vote; and

(2) Eligibility for elective office subject to the limitations set forth in this Constitution.

Art. 92. The following circumstances entail loss of rights of citizenship:

(1) Taking up arms against the Republic or lending assistance in any attack upon it;

(2) Sentence for a criminal offence, until rehabilitation;

(3) Judicial interdiction, until such time as it is revoked;

(4) Acceptance, without prior authorization by the Executive, of office or employment in Dominican territory with a foreign Government; or

(5) Adoption of a foreign nationality.

In the last two cases, rights of citizenship may be regained if the law so provides, and in such manner as the lay may indicate.

Section III

SOVEREIGNTY

Art. 93. Sovereignty resides inherently in the people and is exercised through the powers recognized by this Constitution.

Interference by aliens in the political affairs of the country constitutes violation of the sovereignty of the State. Likewise, Dominican nationals who invoke the aid of foreign Governments of military forces for the settlement of international disputes shall be deemed to have violated the sovereignty of the nation and shall be liable to the penalties laid down by the law.

TITLE III

Section I

THE LEGISLATURE

Art. 94. All legislative powers conferred by the present Constitution are vested in the Congress of the Republic, comprising a Senate and a Chamber of Deputies.

Art. 95. Senators and deputies shall be elected by direct, secret and popular vote.

Art. 96. The duties of a senator and a deputy are incompatible with any other paid public employment in the service of the State or of a munic-

ipality, except in the case of a Minister, a Deputy Minister, the head of a department within a Ministry, or a diplomatic or consular agent; in these cases the emoluments of the legislator shall be paid to his alternate until the legislator returns to his legislative duties.

As soon as a legislator accepts any of the posts specified in this article, he shall inform the legislative Chamber to which he belongs, in order that it may take note of the fact and call upon his alternate to take his place.

Section II

THE SENATE

Art. 99. The Senate shall consist of elected members, one for each province and one for the National District. To each senator shall be added an alternate elected in the same way and at the same time as the senator.

Art. 100. In order to be eligible for election as senator or senator's alternate, a person must be a Dominican national in full possession of civil and political rights, must have attained the age of twenty-five years, and must be a native either of the province which elects him or of the National District, as the case may be, or have resided permanently in the said province or District during the five years prior to the election.

A naturalized citizen may not be elected as senator or senator's alternate until ten years after acquiring Dominican nationality and unless he has resided, during the five years prior to his election, in his electing area.

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Section III

THE CHAMBER OF DEPUTIES

Art. 102. The Chamber of Deputies shall consist of members elected every four years by the inhabitants of the provinces and the National District, with each deputy representing 50,000 inhabitants or a fraction exceeding 25,000 inhabitants.

To each deputy shall be added an alternate elected in the same way and at the same time as the deputy.

No province shall have less than two deputies.

Art. 103. In order to be eligible for election as deputy or deputy's alternate, a person must be a Dominican national in full possession of civil and political rights, must have attained the age of twenty-five years, and must be a native either of the province which elects him or of the National District, as the case may be, or have resided permanently in the said province or District during the five years prior to the election.

A naturalized citizen may not be elected as deputy or deputy's alternate until ten years after acquiring Dominican nationality and unless he has resided, during the five years to his election, in his electing area.

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Section IV

PROVISIONS COMMON TO BOTH CHAMBERS

Art. 105. Both Chambers shall meet in National Assembly on the occasions specified in this Constitution, and for that purpose more than half of the members of each Chamber shall be present.

Decisions shall be taken by an absolute majority of votes.

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Section II

THE MINISTRIES

Art. 134. Public administration shall be conducted through ministries instituted by law.

In order to be a Minister or Deputy Minister, a person must be a Dominican national in full possession of civil and political rights and must have attained the age of twenty-five years.

A naturalized person may not be appointed Minister or Deputy Minister until five years after his naturalization.

The ministries shall operate in accordance with regulations established by the Executive.

TITLE VII

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Section II

THE SUPREME COURT OF JUSTICE

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Art. 137. A judge of the Supreme Court of Justice must fulfil the following conditions:

(1) He must be Dominican by birth or origin and must have attained the age of thirty-five years;

(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 held 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* in such courts. Periods of law practice and judicial office may be combined for the purposes of this provision.

Art. 138.

. . .

In order to be *Procurador General de la República,* a person must be a Dominican national and must fulfil the other conditions required of a judge of the Supreme Court of Justice.

. . .

Section III

APPEAL COURTS

. . .

Art. 141. 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 three years or have held for a like period the office of judge of first instance or judge of original jurisdiction of the land court, or representative of the *Ministerio Público* in courts of first instance. Periods of law practice and judicial office may be combined for the purposes of this provision.

Art. 142. The *Ministerio Público* shall be represented in each appeal court by a *Procurador General* or such substitutes as the law may determine, provided that they fulfil the same conditions as those required of judges of appeal courts.

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TITLE XIV

Revision of the Constitution

Art. 173. This Constitution may be amended if a proposal to amend it is submitted to the National Congress with the support of one third of the members of either Chamber, or if it is submitted by the Executive.

Art. 174. The necessity for a revision of the Constitution shall be proclaimed in an Act which must have received a majority vote of two thirds of the members of both Chambers. This Act, which may not bind the Executive, shall order a meeting of the National Assembly, shall state the purpose of the revision and shall specify the articles of the Constitution which are to be amended.

Art. 175. In order to take a decision with regard to the revision proposed, the National Assembly shall meet within fifteen days following the publication of the Act proclaiming the necessity for a revision, and more than half of the members of each Chamber shall be present for that purpose. In this case, notwithstanding the provisions of article 105, decisions shall be taken by a two-thirds majority of votes. After the amendments have been adopted and proclaimed by the National Assembly, the full text of the revised Constitution shall be published.

Art. 176. An amendment to the Constitution may be made be suspended or annulled by any power or authority, or by popular acclamation.

. . .

ECUADOR

NOTE[1]

All the fundamental human rights proclaimed in the Political Constitution of the Republic and related laws upon which the democratic organization of our State is based, were fully and strictly observed during 1963. The reason for this is that in the course of their social and political development the Ecuadorian people have achieved constitutional victories which firmly safeguard freedom, equality and justice as basic principles of our democratic system which by their nature imply respect for human dignity and protection of the person and his individual rights.

Ecuador has accordingly been diligent and scrupulous in the observance of international instruments, particularly as regards the obligations deriving from the United Nations Charter and the Declaration of Human Rights, which are the juridical embodiment of the highest aspirations of the civilized world and in their fulfilment embrace aspect of human dignity.

The political transformation undergone by our country in July 1963 in no way affected the traditional respect of the National Government for human rights in a context of law and order support for republican and democratic institutions.

The social order has not been disturbed, and the judicial organs apply legal norms in the protection of justice in the same way as before the political transformation took place. The Military Council of Government took over power precisely in order to protect and strengthen the basic democratic principles essential for the advancement of society in an atmosphere of peace and security and for the establishment of freedom, equality and justice in every sphere.

[1] Note furnished by the Government of Ecuador.

EL SALVADOR

DECREE No. 241 OF 23 JANUARY 1963 TO PROMULGATE A LABOUR CODE

SUMMARY

The text of the Decree was published in the *Diario Oficial*, No. 232, of 1 February 1963.

The purpose of the Code, as set out in its section 1, is "to harmonise relations between capital and labour".

Other provisions of the Code deal with obligations and prohibitions to be observed by employers; obligations and prohibitions to be observed by workers; employment of women and young persons; wages, hour of work, weekly rest, annual leave, public holidays and annual bonuses; occupational associations; social welfare and security; and procedure in labour suits.

The text of the Code in Spanish and translations into English and French have been published by the International Labour Office as *Legislative Series* 1963 - Sal. 1.

DECREE No. 455 OF 27 NOVEMBER 1963 TO ORGANIZE THE MINISTRY OF LABOUR AND SOCIAL WELFARE

SUMMARY

The text of the Decree was published in the *Diario Oficial*, No. 232, of 10 December 1963.

Section 1 of the Decree reads as follows:

"The following shall be the functions of the Ministry of Labour and Social Welfare: to harmonise relations between employers and workers; ensure that labour and social welfare standards are observed; promote workers' upgrading in the technical, economic, social and cultural fields; and discharge any other duties assigned to it by the Labour Code [1] and other laws and regulations".

Other provisions of the Decree deal with the powers and duties of the various departments of the Ministry of Labour and Social Welfare and also with employment abroad for which prior permission from the Ministry is required.

The text of the Decree in Spanish and translations into English and French have been published by the International Labour Office as *Legislative Series* 1963 - Sal. 2.

[1] For a summary of the Code, see Decree No. 241, of 23 January 1963.

ETHIOPIA

LABOUR RELATIONS PROCLAMATION
(Proclamation No. 210 of 1963)[1]

1. This proclamation may be cited as the "Labour Relations Proclamation, 1963".

2. The Labour Relations Decree (Decree No. 49 of 1962)[2] is hereby renumbered as Proclamation No. 210 of 1963, and incorporated herein, subject to the changes set forth below:

[The changes are minor and do not affect the provisions of Decree No. 49 of 1962.]

. . .

The English text of the Proclamation and a French translation thereof have been published by the International Labour Office as *Legislative Series*, 1962—Eth. 1A.

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[1] Text communicated by the Government of Ethiopia.

[2] For extracts from the decree, see *Yearbook on Human Rights for 1962*, p. 81.

FEDERAL REPUBLIC OF GERMANY

THE PROTECTION OF HUMAN RIGHTS IN 1963

A SURVEY OF LEGISLATION, JUDICIAL DECISIONS AND INTERNATIONAL AGREEMENTS [1]

CONTENTS

ABBREVIATIONS

Bayr. Verw. Bl.	*Bayerische Verwaltungsblätter* (Bavarian Journal of Administration)
BGBl	*Bundesgesetzblatt* (Official Gazette of the Federal Republic); parts I and II
BVerfGE	*Entscheidungen des Bundesverfassungsgerichts* (Decisions of the Federal Constitutional Court)
BVerwGE	*Entscheidungen des Bundesverwaltungsgerichts* (Decisions of the Federal Administrative Court)
DÖV	*Die Öffentliche Verwaltung* (Public Administration)
DVBl	*Deutsches Verwaltungsblatt* (German Journal of Administration)
GBl	*Gesetzblatt (der Länder)* (Official Gazette (of *Länder*))
GVBl	*Gesetz-und Verordnungsblatt (der Länder)* (Journal of Legislative Provisions, Regulations, etc. (of *Länder*))
MDR	*Monatsschrift für Deutsches Recht* (Monthly Journal of German Law)
NJW	*Neue Juristische Wochenschrift* (New Weekly Journal of Law)

[1] Report prepared by Dr. Alfred Maier, Consultant at the Max Planck Institute for Foreign Public Law and International Law, Heidelberg.

INTRODUCTION

The presentation of this report is similar to that employed in past years, with primary emphasis placed on decisions of the higher courts. In selecting these decisions, particular attention was given to the desirability of reporting only on cases involving facts and circumstances of a type not dealt with in previous reports. As a result, this report is somewhat shorter than its predecessors.

1. PROTECTION OF HUMAN DIGNITY

(Universal Declaration of Human Rights, preamble and article 1)

In 1963, as in past years, the principle of respect for human dignity, which is the corner-stone of the German legal system, received a great deal of attention from the courts. Although a firmly established body of relevant legal precedent has grown up during the fifteen years since the entry into force of the Basic Law, situations continue to arise in which the actions of the public authorities must be judged in the light of this principle. Thus, the Federal Constitutional Court was called upon to decide whether a manager of an enterprise accused of embezzling 1,000 marks, who showed signs of suffering from a disease of the central nervous system, could be forced to submit to a procedure for the withdrawal of body fluid for the purpose of determining the state of his health and, hence, his mental state. The Constitutional Court, to which the accused had appealed against the compulsory test (originally ordered by the District Court and subsequently ruled permissible by the *Land* Court), upheld the constitutional

appeal in a decision of 10 June 1963 (*NJW* 1963, p. 1597). It rested its decision on the basic right to physical inviolability, which is embodied in article 2, paragraph 2, of the Basic Law and is an outgrowth of the principle of the protection of human dignity. The Constitutional Court found that the provision in the Code of Criminal Procedure on which the District and the *Land* Court had based the orded for the text was constitutional; it stated, however, that that did not mean that certain types of infringement of the right of physical inviolability under that provision might not be of such a nature as to be held unconstitutional. The withdrawal of body fluid, which was possible only by means of a lumbar or occipital puncture, fell in that category. The Constitutional Court emphasized that, in ordering a compulsory test, a court must always take account of the principle that the means employed must be commensurate with the end in view. The seriousness of the suspected offence is, the Court stated further, the main criterion for determining whether the necessary relationship between means and end does in fact exist. Furthermore, the consequences to the accused resulting from the investigation of the offence may not be of a nature more severe than the penalty prescribed for the offence. The Federal Constitutional Court enunciated the same principle in its ruling of 25 July 1963 (*NJW* 1963, p. 2368). In this case, the District Court had ordered that the accused individual's contention that he was not fully responsible for his actions should be tested by means not only of electro-encephalography but also of pneumo-encephalography. Unlike electro-encephalography, which involves neither breaking of the scalp nor the introduction of electric current into the skull, the court-ordered pneumo-encephalography was held by the Federal Constitutional Court to be unconstitutional because it called for a puncture of the vertebral canal. On the other hand, the Federal Administrative Court ruled on 20 December 1963 (*DVBl* 1964, p. 438) that a psychological opinion may be obtained by court order and used in court in the Federal Republic. However, the Administrative Court barred the use of psychotechnical means of determining the truth, especially the lie detector, as distinct from the mere exploration of character by means of observation and questioning. Thus, German courts regard the use of these technical methods of determining the truth as an inadmissible invasion of a person's innermost being and a violation of human dignity.

During the year under review, the Federal Constitutional Court was also called upon to rule, in the light of the principle of respect for human dignity, on the validity of the provision making it a punishable offence for a person involved in a traffic accident to leave the scene before the circumstances of the accident have been determined. There was some question about the validity of this provision because of the fact that a person who has caused an accident and is required by this provision to remain at the scene is thus placed in a position in which he exposes himself to criminal prosecution for having caused the accident. In its decision of 29 May 1963 (*MDR* 1963, p. 736), the Federal Constitutional Court held in this connexion that acting as a "self-accessory", even though in principle not punishable under German law, is not covered by the principle of personal freedom embodied in the Basic Law and that a "self-accessory" is not necessarily exempt from punishment in all cases. Thus, the prohibition against flight from the scene of an accident, which facilitates the task of determining the circumstances of the accident and the guilty party, is not at variance with the principle of the inviolability of human dignity. In the court's view, a citizen is not robbed of his dignity if the law requires him to accept responsibility for the consequences of a human failure and at least not to complicate or thwart the determination of the causes of the accident by taking flight.

2. PRINCIPLE OF EQUAL TREATMENT

(Universal Declaration, articles 2 and 7)

The principle of equal treatment, like that of respect for human dignity, constantly confronts the courts with new problems. In a much-discussed, to some extent highly controversial, decision of 20 March 1963 (*NJW* 1963, p. 947), the Federal Constitutional Court ruled on the question whether the principle of male succession to farms, as embodied in the farm regulations issued in the former British Occupation Zone, was in keeping with the principle of equality. The farm regulations provide that, by way of exception to the general provisions governing succession, a farm always descends to a single heir, who must, moreover, be male. Underlying this provision is not only the desire to preserve the farm as an efficient economic unit but also the assumption that only a man can ensure its efficient operation. The legal preference thus given to men gave rise to the question whether this provision was at variance with the principle of the equal treatment of men and women. Referring to its previous decisions, the Federal Constitutional Court recognized that, in view of the biological and functional differences between the sexes, enactments providing for different treatment could not be ruled out; it held, however, that such provisions were permissible only where the situation being regulated was of such a distinctive nature that, over and above the matter of sex, it had nothing—or nothing of any significance—in common with other situations. Since the management of a farm, which today is increasingly assuming the character of an industrial operation, calls for co-ordination of the activities of all farm personnel, particularly the husband and wife, the distribution of labour between the two which is customary in farming can no longer serve to justify distinctions based on sex in the statutory succession to a farm.

The Federal Administrative Court was once again called upon to deal with the principle of equal treatment during the year under review. In its ruling of 22 March 1963 (*DVBl* 1964, p. 318), in which it had to decide on the legality of an order by the Berlin Administrative Court overruling an examining board's decision that a school-leaving examination was to be deemed not to have been taken by one of the examinees, the Court considered the question of the extent to which impairment of the examinee's health could be

taken into consideration without violating the principle of equality. The Court laid down the principle that such impairment should be taken into consideration in the examinee's favour only in exceptional cases and, furthermore, only where circumstances beyond his control compelled the examinee to take the examination under those conditions. Impairment of health caused by the taking of drugs or otherwise caused by the examinee himself could be given no more consideration than the "examination fright" which was so often encountered. Even an acutely ill person, if he took the examination after having had an opportunity to withdraw, was prevented by the principle of equality from requesting treatment different from that accorded the other examinees.

In another case relating to examinations, the Federal Administrative Court held that to introduce a significant change in the examination procedure while the examination was under way was contrary to the principles of equality and of the rule of law. In a ruling of 14 June 1963 (*DVBl* 1964, p. 321), the Court declared that faith in the orderly conduct of the examination in a predetermined manner would be seriously shaken if, during the examination, an examinee was suddenly confronted with the fact that the conditions under which he had expected to take the examination had been fundamentally altered. Finally, the principle of equality also entered into a decision on whether a preacher of the Jehovah's Witnesses was, like a Catholic or Protestant clergyman, statutorily exempt from military service. In a ruling of 8 February 1963 (*Verw. R. Spr. Bd.* 15 (1963) No. 281), the Federal Administrative Court acknowledged that the Jehovah's Witnesses constituted a religious denomination whose members, like all other persons subject to military service, could refuse on conscientious grounds to perform that service. The Court held, however, that a preacher of the Jehovah's Witnesses did not hold a position corresponding to that of a Roman Catholic clergyman ordained as a sub-deacon or to that of an ordained Protestant minister. Catholic and Protestant clergymen, the Court pointed out, underwent a regular course of extended training which set them apart from the rest of the faithful, while a preacher of the Jehovah's Witnesses merely performed a certain type of service and could give up his position at any time. That difference was held to justify different treatment in regard to military service.

3. ARBITRARY DEPRIVATION OF LIBERTY

(Universal Declaration, articles 3, 4 and 9)

The law of the Federal Republic, which is pervaded by the spirit of individual liberty, permits the deprivation of liberty only in execution of a sentence and, to a limited extent, in the case of persons suspected of having committed certain offences or where there is danger of flight or the destruction of evidence; during the period under review, no cases of arbitrary deprivation of liberty were brought before the courts. Since the existing legislation can be described as comprehensive in this regard, there was no need to enact further protective provisions.

4. GUARANTEES OF DUE PROCESS

(Universal Declaration, articles 8 and 10)

During the year under review, as in past years, the courts were called upon to deal with numerous cases in which the central problem was that of ensuring the protection of the law against acts of the public authorities. Although the body of precedent with regard to these matters is no less firmly established than that relating to the protection of human dignity, new problems and questionable points constantly arise in this area as well. The question of the right to a lawful hearing continues to assume central importance in this connexion. In a ruling of 26 November 1963 (*DVBl* 1964, p. 231), the Federal Constitutional Court held this principle to have been violated where, in criminal proceedings, the respondent was informed only of the fact that an appeal had been filed but not of the grounds on which it had been made. The Court held that the statement of grounds must be communicated to the respondent even if it presented no new facts or evidence. In a similar case, the Federal Constitutional Court ruled on 10 December 1963 (*DVBl* 1964, p. 114) that a court could not base its decisions on facts or evidence on which the parties had not previously had an opportunity to express their views. In this case, the Court also had to settle the question whether a party can be required to ascertain by examining the records whether all of his opponent's pleadings have in fact been made available to him. The Constitutional Court ruled that a party is not required to take the initiative in determining what written statements have been submitted and what petitions filed by his opponent. Failure on the part of the court to give proper notice was held to constitute at all times a denial of a lawful hearing. The Federal Constitutional Court ruled on 24 July 1963 (*DVBl* 1963, p. 671) that the principle thus laid down in the matter of pleadings also applied to expert opinions. The case in question involved a complaint on the part of the plaintiff that he had not been informed of a medical opinion obtained in administrative proceedings on which the lower courts had based their decision. The Federal Constitutional Court rejected the complaint on the ground that the provisions concerning the right to a lawful hearing applied only to judicial proceedings. It held that there was no infringement of that right if a court based its decisions wholly or in part on an expert opinion originally submitted in the administrative proceedings even if the opinion had not been brought to the attention of one of the parties. In its ruling on the appeal filed against this decision on constitutional grounds, the Federal Constitutional Court noted that it had always taken the position that courts could not base their decisions on facts or evidence concerning which the parties had previously been given no opportunity to express their views. It held that it was in the nature of things that that prohibition should apply to all facts and evidence, without regard to their source.

Finally, the Federal Constitutional Court ruled on 26 November 1963 (*DVBl* 1964, p. 230) that there was also infringement of the right to a lawful hearing if a court ruled on an appeal

without allowing the appellant sufficient time to submit a statement of the grounds for his appeal, even though he had explicitly reserved the right to do so. In the case in question, an appeal filed by a member of the *Bundeswehr* in a disciplinary proceeding was promptly transmitted from the military court to the competent disciplinary court, which received it on the following weekday. By the next day, a ruling had already been made on the appeal. Since the disciplinary court, which had set no time-limit for a statement of the grounds for the appeal, had not waited for the possible submission of a statement, the Constitutional Court held that the right to a lawful hearing had been violated, particularly since it was conceivable that a decision more favourable to the appellant would have been rendered following examination of the statement of grounds.

During the year under review, the Federal Administrative Court also had further occasion to deal with cases involving the right to a lawful hearing and thus to add to the body of precedent relating to the matter. On 22 November 1963 (*DVBl* 1964, p. 194), it decided a case in which the Administrative Court had, shortly before announcing its decision, revoked an order calling for an expert opinion as to whether the plaintiff could be held legally accountable for his actions; the Court had done so because it could obtain information on the question raised in the order from a medical opinion which had previously been submitted to the District Court. The Federal Administrative Court quashed the contested decision and sent the case back for retrial on the ground that the plaintiff had been given no opportunity, following revocation of the order, to adjust to the changed situation. It held further that an offer of evidence could be rejected only in such a manner that it remained possible to make further offers. This had a significant bearing on the case in question, since in proceedings relating to the Equalization of Burdens Tax—with which case was concerned—only one court is competent to rule on the facts.

On the other hand, the Federal Administrative Court ruled on 8 April 1963 (*DVBl* 1963, p. 673) that there had been no denial of a lawful hearing where the court, after ordering the parties to appear in person, refused to grant a request for postponement by a party claiming inability to appear at the appointed time and proceeded to hear and decide the case in that party's absence. The Bavarian Constitutional Court also ruled on 28 January 1963 (*NJW* 1963, p. 707) that the right to a lawful hearing had not been infringed where a court delayed the proceedings. Although the result of such delay might be that memories would grow dim with the passage of time and the exercise of a right would thereby be made more difficult, it did not constitute an infringement of the right to a lawful hearing. The Court held that that constitutional principle afforded protection only against denial of a lawful hearing and not against a mere failure to take certain steps in connexion with the proceedings where that failure interfered with but did not actually prevent pleadings by the parties.

Occasion also arose, during the year under review, to limit the concept of a lawful hearing. The *Land* High Court at Neustadt dealth with this question in connexion with an appeal filed against an acquittal in a slander case tried in a District Court. In the appeal, the plaintiff alleged that, several weeks before the trial, the defendant had been in the company of the judge who later presided at the trial and that the case had almost certainly been discussed on that occasion. Since the plaintiff had not been present during the conversation, he had had no opportunity to state his views on what had been said and his right to a lawful hearing had thus been infringed. The *Land* High Court, which found that it was obliged to deny the appeal by reason of formal defects in any case, ruled on 11 September 1963 (*NJW* 1963, p. 2087) that the right to a lawful hearing applied only to acts connected with the rendering of a decision. However, the provisions governing the conduct of judicial proceedings made it clear that the only acts connected with the rendering of a decision were those connected with the trial itself. Since the decision rested entirely on the results of the trial, at which the plaintiff had been present, the Court held that the appeal would have had to be denied even if it had been formally admissible. In a ruling of 27 June 1963 (*Bayer Verw. Bl.* 1964, p. 24), the Bavarian Administrative Court dealt with another case in which the denial of a lawful hearing was alleged. This case is of interest primarily because it was an administrative authority rather than a court that was alleged to have violated the principle in question. The basis for the plaintiff's allegation was the fact that the official dealing with his case had caused his superior to forbid him to make constant personal visits to the official in question for the purpose of discussing the case. In its ruling, the Administrative Court addressed itself at length to the question whether a citizen has a right to discuss matters in person with administrative officials. It concluded that the currently widespread administrative practice of dealing with certain matters in direct conversation had not yet given rise to a prescriptive right on the part of citizens to approach administrative officials personally. Accordingly, in the Court's view, an order forbidding a person to make constant visits of that nature was unlawful only if it constituted an abuse of authority. The Court did not find that to be so in the case before it since the plaintiff was obviously a chronic complainer. A similar case was decided on 20 January 1963 by the penal chamber of the *Land* High Court at Cologne (*NJW* 1963, p. 875). The Court held that the principle of a lawful hearing merely required that the person concerned should be given an opportunity to state his views. It was left to him to decide whether to avail himself of that opportunity. If he did not present his views within an appropriate time-limit fixed for that purpose, a decision could nevertheless be rendered. The Court held further that, even if the person concerned was not explicitly summoned to appear, he could forfeit his right to a lawful hearing if he failed to avail himself of an opportunity to receive one.

In addition to the decisions relating to the right to a lawful hearing, which is of central importance in the system of legal protection of the

individual, a decision was rendered by the country's highest court with regard to the right to have a case tried by the judge provided for under the plan for distribution of court business. A case brought before the Federal Court of Justice and decided on 7 October 1963 (*NJW* 1963, p. 2071) involved the question whether the principle of a lawful hearing is violated by a procedure under which cases are assigned purely on the basis of serial numbers corresponding to the dates on which they were entered in the docket, so that the assignment is a matter of chance. The Court of Justice held that assignment on the basis of docket numbers was not inappropriate or unconstitutional *per se* but became so if the registry clerk deliberately made an assignment to a particular judge. Hence, care must be taken, in assigning cases on the basis of docket numbers, not to employ a system of numbering which lends itself to arbitrary assignment.

Finally, the legal protection guaranteed in article 19, paragraph 4, of the Basic Law was again the subject of proceedings before the Federal Constitutional Court. In a ruling of 5 February 1963 (*DVBl* 1963, p. 362) on a petition for revocation of an order for payment of an administrative fine issued against a bank by the Department of Finance, the Constitutional Court held that the recourse provided for by article 19, paragraph 4, of the Basic Law must permit a complete review, as regards both the law and the facts, of the administrative act in question, the court not being bound by the administrative authority's determination of the facts.

5. DUE PROCESS IN CRIMINAL PROCEEDINGS

(Universal Declaration, article 10 and 11)

Article 104, paragraph 4, of the Basic Law provides that one of the legal guarantees accorded to persons who are deprived of liberty is the requirement that a relative of the person concerned or someone enjoying his confidence must be notified of the order depriving him of liberty. The Federal Constitutional Court has now ruled, in a decision of 14 May 1963 (*NJW* 1963, p. 1820), that the detained person himself has a legally enforceable right to require such notification to be made. Thus, the article in question not only requires the judge to effect notification but also gives the person concerned the right to compel compliance with this provision.

In its decision of 10 June 1963 (*NJW* 1963, p. 1597), which has already been cited in section 1 above in another connexion, the Federal Constitutional Court also held, in the matter of due process in criminal proceedings, that a judge is at all times constitutionally bound to test a measure which is in itself legally admissible against the rule which bars the application of excessive measures. Thus, a defendant in a petty case may not be subjected to any medical tests whose effects are more severe than the penalty prescribed for the offence.

During the year under review, the Bavarian Constitutional Court also had occasion to deal once again with the problem of due process in criminal proceedings. On 30 May 1963, the Court ruled on a case (*Bayer. Verw. Bl.* 1963, p. 281) in which the appellant, who was being tried on a petty charge and against whom the judge had issued a warrant to compel attendance after his failure to appear at the specified time, contended that he had been treated like a felon in the proceedings to compel his attendance. Although the Bavarian Constitutional Court was not competent to pass on the provision on which the warrant was based, it nevertheless had to determine whether the Federal legislative provision was in keeping with the Basic Law, since otherwise it would be a simple act of power which would also be contrary to the *Land* Constitution and would thus give the *Land* Constitutional Court jurisdiction after all. The Court found that the provision in question was not contrary by the Basic Law, but it observed, in stating the grounds for its decision, that it would have been appropriate to make use of the less drastic procedure of a disciplinary fine instead of issuing a warrant. The Court then went on to point out, in a manner which left no doubt about its own view, that an appeal on constitutional grounds could be made to the Federal Constitutional Court in cases where the measures of compulsion employed by the State went beyond constitutional limits.

The Federal Constitutional Court regards freedom of information for persons held in custody pending investigation as one of the legal safeguards provided in connexion with deprivation of liberty. On 19 February 1963, it ruled on a case (*DVBl* 1963, p. 363) in which a person held in solitary confinement pending investigation on a murder charge requested permission to make use of a radio set belonging to him which could be heard only with headphones. The Federal Constitutional Court, overruling all the lower courts, upheld the prisoner's right to use the set. It cited as the basis for its decision that radio was one of the generally accessible sources from which, according to article 5, paragraph 1, of the Basic Law, everyone had the right to instruct himself without hindrance. It held that this basic right was not suspended even in the case of persons held in custody pending investigation and was at most subject to limitations. Thus, since freedom of information enjoyed protection as a basic right, permission to use a radio set constituted neither preferential treatment nor relaxation of the conditions of confinement. Considerations arising out of the manner in which confinement pending investigation was effected, which were essentially of a technical administrative character, could therefore serve as a basis for limiting that basic right only if that was essential to the purpose of the confinement.

6. PROTECTION AGAINST INTERFERENCE WITH PRIVACY

(Universal Declaration, article 6 and 12)

During the year under review, the fundamental aspects of the question of protecting the privacy of the individual were dealt with on several occasions by the courts. Since interference with privacy generally occurs through the publication of material in the Press, occasion also arose to define

the limits which this protection imposes, in particular, on the sensational Press. On 15 January 1963, the Federal Court of Justice ruled on a case (*NJW* 1963, p. 665) involving the publication, in connexion with a call-girl scandal, of a newspaper article in which a minister in one of the *Land* Governments, although not actually named, was linked with the affair on the basis of a personal description which made his identity apparent to everyone. In actual fact, however, it was a case of mistaken identity. In the criminal proceeding brought against him, the responsible editor invoked in his defence the right of the Press to report on matters in the sphere of public life and to make critical comments on them. The Federal Court of Justice, to which the case had come in the normal sequence of appeal, made the fundamental point in this connexion that occurences in a person's private life did not fall in the sphere of public life simply because they related to a person active in public life. Such occurences were not inherently of public interest; special circumstances must be present before they could be recognized as matters of public interest. That might have been the case, the Court went on, if the person responsible for publication had been actuated by concern that important official posts should be occupied by persons whose private lives were beyond reproach. It was clear from the nature and content of the report, however, that that was not so. The Court went on to say that reports and comments which aimed at sensationalism and scandal were automatically excluded from the sphere of those public tasks for the performance of which the Press as an institution enjoyed special constitutional protection.

In two other decisions of 5 March 1963 (*NJW* 1963, pp. 902 and 904) which related to the protection of privacy, the Federal Court of Justice reaffirmed its previous position that non-material damage was compensable in cases involving a grave violation of the personality. In awarding compensation for interference with privacy, the Court actually went beyond the letter of the law, which it regarded as no longer an adequate reflection of current thinking, and sought to give effect to the value judgement which the Basis Law makes in favour of the protection of the personality. If the protection of human dignity as an urgent task of the public authorities and judge's obligation to give effect to the value judgement contained in the Basic Law are taken seriously, then, the Federal Court of Justice held in this decision, the judge can no longer be bound by the decision taken by the legislator in 1900, which restricted the right to compensation for non-material damage to such an extent that it was inapplicable even in the case of serious violations of the personality. Under present-day conditions, such restrictions would mean that the courts would have to abandon, in frustration and resignation, any attempt to give appropriate effect to the legal protection of the personality. As a result, not only would those concerned be made to feel that they had no legal protection against unlawful injury, but observance of the bounds which are fixed in society by the individual's right to develop his personality would be seriously threatened.

Finally, the Higher Administrative Court at Münster, in a ruling of 17 December 1963 (*DVBl* 1964, p. 363), also dealt with a case relating to the individuals's right to develop his personality. In the case in question, the plaintiff was seeking the destruction of records drawn up more than twenty years previously concerning his confinement at that time in a sanatorium. He regarded the preservation of the records as a violation of his human dignity in view of the danger that their contents might become publicly known or become known to authorities not concerned with the matter and to unauthorized persons. The court held that, since the persons responsible for preserving the records were required to treat them as confidential, the danger apprehended by the plaintiff did not exist; however, it emphasized the necessity of treating the records as confidential and the fact that their only purpose was to enable administrative authorities and courts to make an accurate appraisal of the paintiff's health and to take it into consideration for his benefit.

7. THE RIGHT TO FREEDOM OF MOVEMENT; FREEDOM TO LEAVE THE COUNTRY

(Universal Declaration, article 13)

The right of every German to work and to live anywhere in the Federal territory, which is guaranteed by article 11 of the Basic Law, did not give rise to either legislation or litigation during the year under review. Similarly, no occasion arose for new enactments or rulings with regard to the freedom to leave the country.

8. THE RIGHT OF ASYLUM; DEPORTATION; EXTRADITION

(Universal Declaration, article 14)

During the year under review, a number of opportunities arose for further clarification of the frequently misunderstood concept of the right of asylum. In a ruling of 16 January 1963 (*NJW* 1963, p. 823), for example, the Federal Court of Justice dealt with the question whether individuals, too, can derive rights from an extradition treaty. In the case in question, the existence of such a right had been claimed by an individual who had been sentenced to fifteen years in the penitentiary for the murder of a member of the Algerian National Liberation Front and the attempted murder of another and who, after committing the crime in Germany, had fled to Belgium an then been extradited to Germany. In court, the defendant cited the political character of the offence and argued that he had been entitled to asylum in Belgium both under the general rules of international law and under the terms of the German-Belgian extradition treaty. He contended that, since Belgium had not been fully informed about the political nature of the offence, it must be assumed that that country had extradited him in the belief that it was doing so in respect of a non-political offence. The Federal Court of Justice held, in this connexion, that there was no right of asylum under general international law for persons prosecuted in respect of political offences. Further-

more, the right of asylum was not a right of the individual to receive asylum under international law but a right of the State to grant asylum. Hence, it was the exclusive right of the State applied to, in the present instance Belgium, to decide whether extradition should be authorized. As far as the German courts were concerned, the authorization and execution of extradition merely created the *de facto* conditions necessary for their assumption of jurisdiction. Thus, the German courts had no basis for making their right and obligation to prosecute dependent on whether the authorization of extradition and the extradition proceedings were in conformity with the treaty. Extradition treaties were not intended to accord the offender a legal status prejudicial to prosecution because he had been able to flee to a foreign country. The Federal Court of Justice further held it to be a general principle that, under an extradition treaty, rights and obligations arose only for the contracting States. Hence, the extradited person himself could not invoke the provisions of the treaty.

In another decision rendered on 29 October 1963 (*NJW* 1964, p. 212), the Federal Court of Justice dealt with the principle of "speciality", which is embodied in most extradition treaties. Under this principle, an extradited person may not be prosecuted or punished for an offence committed prior to extradition which is not the offence in respect of which extradition was granted or on any other legal grounds which arose prior to extradition. The Court therefore quashed, in respect of the assault charge, the verdict rendered against a defendant who, after being extradited from Austria, had been convicted in Germany of robbery and assault resulting in severe bodily injury; it did so on the ground that the defendant had not been extradited in respect of the assault and could in any case not have been extradited, on that basis alone under the German-Austrian extradition treaty.

During the year under review, the question of the deportation of nationals of the States members of the European Economic Community gave rise to proceedings in the Higher Administrative Court at Münster. On 10 September 1963, the Court ruled on a case (*DVBl* 1963, p. 593) involving the deportation of an Italian exercising a profession in Germany who, in addition to another offence, had evaded payment of taxes. Since the European Economic Community treaty places no restriction on the right to deport nationals of member States who have committed punishable acts, the Court had to determine whether the deportation was contrary to the German-Italian Treaty of Friendship, Commerce and Navigation of 21 November 1957, which permits deportation after more than five years' residence only in cases where public order or security is impaired to such an extent as to create the presumption of a specific or general danger within the meaning of the regulations governing the police power and public order. The Court held, in this connexion, that in view of the large number of aliens residing in the Federal Republic there was a substantial public interest in being able to prohibit residence with a view to warning them against committing crimes and making them aware that the provisions of German law applied to them. In the light of the public interest attaching to a deportation, the Court held further, no recognition could be given to the private interest of the deportee in remaining in the Federal Republic. The disadvantages which he suffered from having his residence prohibited did not create undue hardship and did not represent inhuman treatment within the meaning of article 3 of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms.

The Münster Court took the same position in a decision on 29 October 1963 (*DVBl* 1964, p. 595) relating to the deportation of a Netherlands national. The Court again held that an order prohibiting residence by an alien did not constitute inhuman or degrading treatment or punishment within the meaning of article 3 of the European Convention on Human Rights.

9. THE RIGHT TO A NATIONALITY

(Universal Declaration, article 15)

On 19 December 1963, with a view to giving further effect to the principle of avoiding statelessness, the Federal Legislature enacted a law (*BGBl* I, p. 982) which supplemented and filled a gap in the Nationality Act of 22 July 1913. Whereas under the old law a child born in wedlock always acquired the nationality of the father, it is now provided that, where the mother is German and the father is stateless or is a national of a country whose law does not automatically confer his nationality on the child, the child—who formerly was born stateless—becomes a German national. The law even applies retroactively to children born in wedlock after 1 April 1953 to a German mother and a father who is stateless or of foreign nationality. However, such children can refuse German nationality within a period of one year after the entry into force of the Amending Act.

10. PROTECTION OF THE FAMILY

(Universal Declaration, article 16)

The protection of marriage and the family guaranteed by article 6 of the Basic Law and given effect in past years through the enactment of numerous laws was not the subject of any special legislation during the year under review, nor did the courts, which had built up a solid body of precedent over the years, deal with basic issues to any extent in 1963.

A ruling by the Federal Administrative Court on the legality of the transfer of a woman teacher is, however, worthy of mention. The woman in question, who had taught at a Catholic denominational school in Lower Bavaria, had been designated unfit to teach at a denominational school after her marriage to a divorced man and had therefore been transferred to a non-denominational school in another locality. Her superiors had felt bound to take this action because the diocesan authorities had objected to her employment at a denominational school. The Federal Administrative Court cited article 6 of the Basic Law in overruling the decisions of the lower courts and held, in explaining its ruling, that the State was particularly bound to protect the right to marry when it was a question of enabling an expected child to be born

in wedlock. The effect would be to withhold that protection if behaviour which was improper only under Church law was deemed to make the person in question unfit to teach at a denominational school. Since the teacher still adhered to her religion, her superiors were not bound to transfer her from the denominational school.

11. PROTECTION OF PROPERTY

(Universal Declaration, article 17)

The Hanseatic city of Hamburg, whose constitutional status is that of a *Land* of the Federal Republic, adopted an Expropriation Act on 14 June 1963 (*Hamb. GVBl* No. 26, 25 June 1963, p. 577) which can be described as a model of modern codification in this sphere. The Act, which contains twenty-four paragraphs, establishes as a fundamental principle that expropriation is permissible only if it serves the general welfare and if its purpose cannot be accomplished in some other reasonable manner. The procedures relating to compensation, which are largely based on the principles laid down in the Federal Building Act of 1960, are defined in particular detail. Another section of the Act defines the appeal procedures to which resort can be had against proposed expropriations.

Even though a well-established body of precedent has developed with regard to compensation for expropriation, questionable points calling for judicial rulings continue to arise. Thus, the Federal Constitutional Court was called upon to pass on the constitutionality of a provision in the Act concerning Pensions for Former Wehrmacht Officials and Personnel. The Act provided that no pensions were to be paid to former Wehrmacht officials who had been retired before the end of the war as unfit for service but had not become regular military personnel until after 8 May 1935. The Federal Constitutional Court annulled this provisions in a ruling of 7 May 1963 (*DVBl* 1963, p. 590) on the ground that pensions awarded to a Wehrmacht official also represent a right acquired through the performance of service which cannot be withdrawn without compensation. A case decided by the Federal Court of Justice on 14 October 1963 (*DVBl* 1964, p. 481) raised the question whether certain damage resulting from military manœuvres not mentioned in the Federal Special Powers Act, which regulates the question of compensation for damage of that type, gives rise to a claim for compensation. The Court held that it does, since the fact that certain types of damage are not mentioned in the Act does not mean that they are not compensable on some other legal basis. Complete exclusion of compensation, the Court continued, would be contrary to the guarantee of property embodied in article 14 of the Basic Law. In accordance with this thinking, the Federal Court of Justice also ruled on 27 June 1963 (*NJW* 1963, p. 1925) that, where the owner of an expropriated house resides in the house, he can claim compensation for the expenses involved in moving and in obtaining a new dwelling. On the other hand, the Court did not regard the confiscation of property belonging to a dissolved political party as constituting expropriation. It accordingly dismissed, in a decision of 11 July 1963 (*MDR* 1963, p. 917), the action brought by an employee of the outlawed Communist Party for compensation for loss of pay.

12. FREEDOM OF BELIEF, FREEDOM OF OPINION AND FREEDOM OF RELIGIOUS PRACTICE

(Universal Declaration, articles 18 and 19)

In a ruling of 8 February 1963 (*NJW* 1963, p. 1169), the Federal Administrative Court dealt with the question whether preachers of the Jehovah's Witnesses whose service to the adherents of that faith is their main occupation are, like clergymen of the two Christian faiths, exempted from military and alternative civilian service. Even though the Jehovah's Witnesses are free to form a religious community and that community has the right to regulate and manage its own affairs, the Court refused to place the Witnesses' preachers on the same footing as an ordained clergyman. It held that a clergyman, in contrast to a preacher of the Jehovah's Witnesses, holds a position for which he has received extended special training and which therefore sets him apart from the rest of the faithful. It had been the intention of the legislator, the Court contended, to exempt from military service only those who held a position of that type. Hence, the requirement that preachers of the Jehovah's Witnesses must perform alternative civilian service instead of military service, which they were usually permitted to refuse, was not a violation of the principle of equality nor did it constitute discrimination against that particular religious denomination. On 8 February 1963 (*NJW* 1963, p. 776), the *Land* High Court at Stuttgart ruled in a similar case that a preacher of the Jehovah's Witnesses cannot refuse to perform alternative civilian service. The Court held that, although the guarantee of freedom of conscience embodied in the Basic Law permitted a decision on grounds of conscience to refuse to perform military service, it did not afford exemption from general civic duties, such as that of performing alternative civilian service. According to this ruling, it is precisely because of the principle of equality that exemption from the performance of alternative civilian service, which is accorded only to clergymen, cannot be extended to other persons.

The question of the limits of freedom of opinion was also the subject of a decision during the year under review. A case decided by the Federal Court of Justice on 10 July 1963 (*NJW* 1964, p. 29) had to do with a circular which a newspaper publisher had sent to newspaper dealers and kiosks, threatening to halt deliveries to those dealers who sold at their stands a certain weekly newspaper which printed the texts of East Zone broadcasts; the question was whether the circular was covered by the basic right of freedom of opinion and thus permissible or was contrary to the Act Against Unfair Competition and was therefore not protected by the basic right. The Court held that, where an expression and its effects are prejudicial to the gainful activity of another person, the particular case must be judged in the light of the basic right with a view to determining whether the legitimate interests of the business

concern are such as to outweigh the right to free expression of opinion. Contrary to the view of the lower courts, the Federal Court of Justice held that the extent of the provocation which had given rise to the circular must be regarded as one of the factors which had caused the publisher to choose the particular means which he had employed. In view of the occurrences along the zonal boundary, particularly in Berlin, the publisher, who regarded the reprinting and circulation of Soviet Zone broadcasts as support of the Zone régime, must be permitted to press his point of view by means which would not have been granted him in a matter which affected the national interest to a lesser degree. Since the publisher thus had a legitimate interest in effectively accomplishing the non-material end which he sought, the injury caused to the business concern in question as a result of the protection accorded to that interest could not be regarded as unlawful interference with free competition.

No new legislation relating to freedom of belief and of opinion was enacted during the year under review. Only in the revised Civil Service Act promulgated in Lower Saxony on 1 March 1963 (*Nds. GVBl* No. 9, 15 March 1963, p. 95) did this right, already guaranteed by the Constitution, receive explicit new affirmation in a provision relating to freedom of association.

13. PROHIBITION OF POLITICAL PARTIES AND ASSOCIATIONS

(Universal Declaration, articles 20 and 30)

The *Land* Electoral Acts adopted in Bremen and Baden-Württemberg during the year under review contain provisions relating to the legal effects of the prohibition of a political party. The object of the legislators was to regulate by statutory means, in so far as possible, such doubtful points as have arisen and might arise again in the future in connexion with the prohibition of the Communist Party. Hence, the Electoral Act of 8 June 1963 for the Legislature of *Land* Bremen (*Brem. GVBl* No. 1, 22 January 1963, p. 1) provides in paragraph 35 that, when a party is dissolved, its deputies lose their seats in the Legislature. The seats then remain vacant until the end of the legislative term, the legal membership of the Legislature being reduced accordingly. A similar provision appears in paragraph 48 of the Baden-Württemberg Legislative Elections Act of 20 September 1963 (*GVBl* No. 17, 30 October 1963, p. 153).

The prohibition of political parties was also once again the subject of a decision of the Federal Constitutional Court rendered on 2 April 1963 (*DÖV* 1963, p. 618). In the case, the Court had to determine whether the prohibition of the German Communist Party applied to a "Communist Voters' League" recently founded in a German city. The Court decided that it did, holding that the prohibition of a party also applied to organizations which, in terms of their political aims and of the political forces active in them, supplanted the banned party.

14. THE SUFFRAGE AND THE RIGHT OF SELF-DETERMINATION

(Universal Declaration, article 21)

During the year under review, the principle of equality in the electoral procedure gave rise to a significant ruling by the Federal Constitutional Court. The occasion for the ruling was a complaint lodged with regard to the validity of the elections to the fourth German Bundestag. It was alleged that, under the system of apportionment used for the elections in Schleswig-Holstein, the latter had been divided into too many election districts in relation to its population, with the result that the Christian Democratic Union had received three additional direct seats. In its decision of 22 May 1963 (*NJW* 1963, p. 1600), the Court dealt first with the principle of electoral equality. This principle holds that the form in which the suffrage is exercised must be as nearly the same as possible for everyone. It further requires that every person who, under the general provisions in force, is eligible to vote shall be permitted to cast his vote in the same manner as everyone else and that all valid votes shall be given the same weight. In other words, every vote cast must affect the result of the election in equal measure. The Court then proceeded to a detailed examination of the particular electoral system currently in force and concluded that the size of election districts must be a function of the number of persons living in them. It accordingly held that a change in population density, without an accompanying change in the system of apportionment, could result in a disproportion which was no longer in conformity with the Constitution. The Court did not specify how great the change in population density had to be, since it felt that, in the case before it, it was not yet clear that a disproportion did in fact exist. This ruling means, of course, that in drawing election districts the legislator will have to give particular attention to population density in view of the danger that an election will be annulled because of differences in population density between the various districts.

15. THE RIGHT TO THE FREE CHOICE AND EXERCISE OF A PROFESSION OR OCCUPATION

(Universal Declaration, article 23)

In 1963, as in all years previously reported on, numerous cases relating to the right to the free choice of a profession or occupation were adjudicated. On 23 July 1963, for example, the Federal Administrative Court ruled (*NJW* 1963, p. 1994) on the question whether the restrictions imposed in Bavaria on admission to the Preparatory Service for the Higher State Forestry Service constituted a violation of the right to the free choice of a place of training which is embodied in the first sentence of article 12, paragraph 1, of the Basic Law. The restrictions were applied in such a manner that the number of applicants admitted each year to the Preparatory Service did not exceed the number of posts to be filled, the selection being made on the basis of examination

grades. The Court held that, since the Institute of the Preparatory Service provides training, Bavaria was debarred from restricting admission to it even if it was apparent in advance that not everyone trained in the Preparatory Service could be taken into the State Service.

The Bavarian Constitutional Court dealt with a similar case in its ruling of 16 April 1964 (*DVBl* 1964, p. 485). The Court had to pass on the constitutionality of the provision in the statute for students at Bavarian higher educational establishment issued by the Bavarian State Ministry for Education and Public Worship to the effect that persons who have completed their studies and are already exercising an occupation may no longer, as a general rule, be admitted to such schools. The Court upheld the validity of this provision on the ground that a person who is already exercising an occupation can no longer devote all his energies to study and therefore cannot expect the State to make, for his benefit, the financial sacrifices involved in establishing and maintaining a university. At the same time, the Court emphasized that care must be taken to avoid causing undue hardship in individual cases.

The Federal Administrative Court, in a ruling of 8 February 1963 (*Bayer. Verw. Bl.* 1963, p. 251), also dealt with the question of persons who wish to return to school for further education. In this case, the plaintiff, who had already completed his medical studies and also had a degree in psychology, had applied for re-enrolment as a regular student in order to obtain a degree of Doctor of Philosophy as well. His application had been turned down, and his appeal against the decision had been rejected in all the lower courts. The Federal Administrative Court, like the Bavarian Constitutional Court in the ruling just referred to, emphasized that the number of places was limited and that those students who were still endeavouring to prepare themselves for an occupation had first claim to them.

Although not specifically cited, the basic right to the free choice or a profession or occupation guaranteed by article 12 of the Basic Law was the basis of a decision rendered by the Lawyers' Court of Honour of the Federal Court of Justice. The question to be decided was whether a judge or public prosecutor who has retired because of his part in imposing a death sentence during the national-socialist period can be admitted to the bar. In its ruling of 21 October 1963 (*NJW* 1964, p. 250), the Court of Honour held that the mere fact of such a person's retirement was not in itself sufficient to preclude his admission and that it must be determined from the specific case which had occasioned his retirement whether the applicant's behaviour had been so unworthy of his profession that he could not even be admitted to the bar.

Another case involving a lawyer's exercise of his profession came before the Federal Constitutional Court. In its ruling of 11 June 1963 (*MDR* 1963, p. 738), the Court passed on the question whether a lawyer's right to exercise his profession was infringed by an order removing him as defence counsel because of the fact that he had been named by the Public Prosecutor's Office as a witness for the prosecution. The Court held that the right in question had in fact been infringed, since the mere possibility that the lawyer would be a prosecution witness did not justify his removal. It went on to state that, even if the lawyer appeared as a witness in the course of the proceedings, it was possible, by obtaining a second defence counsel, to arrange matters in such a way that the lawyer called as a witness could take part in all the essential phases of the trial. A lawyer could be removed as defence counsel only if, in the light of all the relevant circumstances in the particular case, he was clearly involved in a situation of conflict.

On 30 November 1963, the Federal Constitutional Court rendered another decision (*DVBl* 1964, p. 226) relating to the exercise of a profession or occupation. The question before the Court was whether the provision in the Federal Pharmacy Act under which a pharmacist is permitted to operate only one pharmacy has the effect of restricting the right to the exercise of a profession or occupation and therefore unconstitutional. The Court found that that was not the case, since a pharmacist could best perform his functions, which were so important from the standpoint of public health, if responsibility for operating the pharmacy rested with a single individual, i.e., if the trained pharmacist responsible for performing his functions in that capacity was also the owner of the pharmacy. The Court held further that the provision limiting an individual to the operation of a single pharmacy was not an infringement of the right to the free choice of a profession or occupation, since a pharmacist who wished to operate a second pharmacy had, by establishing and operating the first pharmacy, already chosen the profession of an independent pharmacist.

16. THE PROTECTION OF RIGHTS IN LABOUR LEGISLATION

(Universal Declaration, articles 23, 24 and 25)

By Act of 15 June 1963 (*BGBl* II, p. 678), the Bundestag approved the Social Security Agreement concluded between the Federal Republic and Greece, which provides that nationals of either Contracting State residing in the other country are entitled to the same social benefits as the nationals of the latter country. The Agreement was primarily designed to protect the interests of the many Greek nationals working in the Federal Republic. Since these individuals generally return home after a certain period of time, the Agreement contains detailed provisions on accounting procedures in respect of contributions paid in one country by nationals of the other. Two countries also concluded an Additional Agreement on the procedure for the grant of benefits, which was approved by Act of 5 September 1963 (*BGBl* II, p. 1190).

The Bundestag also approved the German-Belgian Social Security Agreement (*BGBl* II, p. 404), concluded in 1957, the German-Luxembourg Agreement of 14 July 1960 concerning Social Security for Frontier Workers, and the German-Danish Agreement of 12 September 1961 concerning Student Employees (*BGBl* II, p. 453).

17. STATE CARE FOR PERSONS IN NEED OF ASSISTANCE

(Universal Declaration, articles 22 and 23)

The year under review brought no new legislation or basic rulings by the higher courts in this field.

18. THE RIGHT TO EDUCATION

(Universal Declaration, article 26)

Apart from a few rulings concerning the legal character of examination grades and the extent to which they can be contested, the right to education did not give rise to any questions requiring adjudication during the year under review, nor was there any occasion for noteworthy new legislation in this area of law, which is already regulated in great detail.

19. INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF HUMAN RIGHTS

(Universal Declaration, article 28)

In its issue No. 14 of 11 May 1963, the *Bundesgesetzblatt* published the amended text of the Rules of Procedure of the European Commission of Human Rights, as adopted at the Commission's plenary meetings of 1-5 August 1960, and the new rules of the Court of Human Rights adopted on 24 October 1961.

By Act of 28 June 1963 (*BGBl* II, p. 791), the Bundestag approved the German-Italian Treaty of 2 June 1960, under which the Federal Republic entered into an undertaking to Italy to pay the sum of 40 million marks to Italian victims of national socialism.

FEDERATION OF MALAYA[1]

CONSTITUTION (AMENDMENT) ACT, 1963

Act of Parliament No. 25 of 1963, assented to on 26 August 1963 [2]

. . .

2. (1) In Article 12 of the Constitution, in Clause (2) (which among other things authorises federal law to provide for special financial aid for Muslim educational institutions and for the instruction in the Muslim religion of persons professing that religion), after the words "federal law" there shall be inserted the words "or State law".

. . .

(3) This section shall be deemed to have effect from Merdeka Day.

. . .

[1] Since the entry into force of the Malaysia Act on 31 August 1963, the Federation of Malaya became Malaysia.

[2] *Her Majesty's Government Gazette*, Vol. VII, No. 18, of 29 August 1963, Act Supplement No. 4. For extracts from the Constitution of the Federation of Malaya, see *Yearbook on Human Rights for 1957*, pp. 67-76.

MALAYSIA ACT

Act of Parliament No. 26 of 1963,

assented to on 26 August 1963 and entered into force on 31 August 1963 [3]

Whereas on behalf of the Federation it has been agreed, among other things, that the British colonies of North Borneo and Sarawak and the State of Singapore shall be federated with the existing States of the Federation as the States of Sabah, Sarawak and Singapore, and that the name of the Federation should thereafter be Malaysia;

And whereas, to give effect to the agreement, it is necessary to amend the Constitution of the Federation so as to provide for the admission of those States and for matters connected therewith;

And whereas the Conference of Rulers has consented to the passing of this Act in so far as it amends Articles 38 and 153 of the Constitution or otherwise affects the privileges, position, honours or dignities of their Highnesses:

Now, therefore, be it enacted by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Ra'ayat in Parliament assembled, and by the authority of the same, as follows:

Part I
PRELIMINARY

. . .

2. Except in so far as the contrary intention appears, this Act shall come into force on the thirty-first day of August, nineteen hundred and sixty-three or such later day as may, before the said thirty-first day of August, have been specified for the purpose by proclamation of the Yang di-Pertuan Agong; and in this Act and in any other written law "Malaysia Day" shall mean the day on which this Act comes into force.

. . .

Part II
THE STATES OF THE FEDERATION

4. (1) The Federation shall be known, in Malay and in English, by the name Malaysia.

(2) The States of the Federation shall be—

(*a*) the States of Malaya, namely, Johore, Kedah, Kelantan, Malacca, Negri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Trengganu; and

(*b*) the Borneo States, namely, Sabah and Sarawak; and

(*c*) the State of Singapore.

(3) The territories of each of the States mentioned in Clause (2) are the territories comprised therein immediately before Malaysia Day.

Part III
GENERAL CONSTITUTIONAL ARRANGEMENTS
TITLE I
GENERAL PROVISIONS AS TO THE FEDERAL AND STATE INSTITUTIONS

. . .

Chapter 3—Parliament, Legislative Assemblies and State Constitutions

8. In Article 45 of the Constitution, in paragraph (*b*) of Clause (1) (which provides for sixteen

[3] *Ibid.*

members of the Senate to be appointed by the Yang di-Pertuan Agong), for the word "sixteen" there shall be substituted the words "twenty-two".

9. (1) The House of Representatives shall consist of one hundred and fifty-nine elected members.

(2) There shall be—

(*a*) one hundred and four members from the States of Malaya;

(*b*) sixteen members from Sabah;

(*c*) twenty-four members from Sarawak;

(*d*) fifteen members from Singapore.

. . .

11. (1) At the end of Article 53 of the Constitution (which requires that on any question whether a member of either House of Parliament has become disqualified the decision of the House shall be taken) there shall be added—

"Provided that this Article shall not be taken to prevent the practice of the House postponing a decision in order to allow for the taking or determination of any proceedings that may affect the decision (including proceedings for the removal of the disqualification)";

. . .

Chapter 4—The Judiciary

. . .

19. A person is qualified for appointment under Article 122*b* as a judge of the Federal Court or as a judge of any of the High Courts if—

(*a*) he is a citizen; and

(*b*) for the ten years preceding his appointment he has been an advocate of those courts or any of them or a member of the judicial and legal service of the Federation or of the legal service of a State, or sometimes one and sometimes another.

TITLE II

CITIZENSHIP

Chapter 1—Citizenship by operation of law

23. (1) Subject to the provisions of this Part, the following persons are citizens by operation of law, that is to say:

(*a*) every person born before Malaysia Day who is a citizen of the Federation by virtue of the provisions contained in Part I of the Second Schedule; and

(*b*) every person born on or after Malaysia Day, and having any of the qualifications specified in Part II of the Second Schedule; and

(*c*) every citizen of Singapore.

(2) Subject to the provisions of this Part, provision with respect to citizenship of Singapore may be made by the constitution of that State, and may be amended by laws passed by the Legislature of that State and approved by Act of Parliament.

(3) Citizenship of Singapore shall not be severable from citizenship of the Federation, but a Singapore citizen by the loss of either shall lose the other also (subject to the provision made by this Part for the enrolment of a Singapore citizen as a citizen who is not a Singapore citizen).

26. Subject to Article 18, any person of or over the age of eighteen years who is on Malaysia Day ordinarily resident in a Borneo State is entitled, upon making application to the Federal Government before September, 1971, to be registered as a citizen if he satisfies the Federal Government—

(*a*) that he has resided before Malaysia Day in the territories comprised in those States and after Malaysia Day in the Federation outside Singapore for periods which amount in the aggregate to not less than seven years in the ten years immediately preceding the date of the application, and which include the twelve months immediately preceding that date;

(*b*) that he intends to reside permanently in the Federation outside Singapore;

(*c*) that he is of good character; and

(*d*) except where the application is made before September, 1965, and the applicant has attained the age of forty-five years at the date of the application, that he has a sufficient knowledge of the Malay language or the English language or, in the case of an applicant ordinarily resident in Sarawak, the Malay language, the English language or any native language in current use in Sarawak.

27. (1) Subject to Clauses (7) and (9), the Federal Government may, upon application made by any person of or over the age of twenty-one years who is not a citizen, grant a certificate of naturalisation to that person if satisfied—

(*a*) that—

(i) he has resided in the Federation outside Singapore for the required periods and intends, if the certificate is granted, to do so permanently; or

(ii) he has resided in Singapore for the required periods and intends, if the certificate is granted, to do so permanently;

(*b*) that he is of good character; and

(*c*) that he has an adequate knowledge of the Malay language.

(2) Subject to Clause (9), the Federal Government may, in such special circumstances as it thinks fit, upon application made by any person of or over the age of twenty-one years who is not a citizen, grant a certificate of naturalisation to that person if satisfied—

(*a*) that he has resided in the Federation for the required periods and intends, if the certificate is granted, to do so permanently;

(*b*) that he is of good character; and

(*c*) that he has an adequate knowledge of the Malay language.

(3) The periods of residence in the Federation or the relevant part of it which are required for the grant of a certificate of naturalisation are periods which amount in the aggregate to not less than ten years in the twelve years immediately preceding the

date of the application for the certificate, and which include the twelve months immediately preceding that date.

(4) For the purposes of Clauses (1) and (2) residence before Malaysia Day in the territories comprised in the Borneo States shall be treated as residence in the Federation outside Singapore; and for purposes of Clause (2) residence before Malaysia Day in Singapore shall be treated as residence in the Federation.

(5) A person to whom a certificate of naturalisation is granted shall be a citizen by naturalisation from the date on which the certificate is granted.

(6) A person to whom a certificate of naturalisation is granted shall be a Singapore citizen if but only if the certificate is granted by virtue of paragraph (*a*) (ii) of Clause (1).

(7) A certificate of naturalisation as a Singapore citizen shall not be granted without the concurrence of the government of Singapore.

(8) Any application for naturalisation as a citizen of Singapore which has been made but not disposed of before Malaysia Day shall as from that day be treated as if it had been an application duly made for naturalisation under this Article, and as if anything done in connection therewith before that day under or for the purposes of the law of Singapore had been duly done under of for the purposes of this Article.

(9) No certificate of naturalisation shall be granted to any person until he has taken the oath set out in the First Schedule.

28. (1) The Federal Government may, upon application made by any Singapore citizen of or over the age of twenty-one years, enrol him as a citizen who is not a Singapore citizen, if the Federal Government is satisfied that, had his application been for the grant under Article 19 of a certificate of naturalisation as a citizen who is not a Singapore citizen, the conditions of paragraphs (*a*) (i), (*b*) and (*c*) of Clause (1) of that Article for the grant of the certificate would be fulfilled.

(2) In relation to Singapore citizens Articles 15 and 15*a* shall apply to entitle or allow them to be enrolled as citizens who are not Singapore citizens, in the same way as those Articles apply, in relation to persons who are not citizens, to entitle or allow them to be registered as citizens, except that references to Article 18 shall not apply, nor shall Clause (6) of Article 15.

(3) A citizen enrolled as being or not being a Singapore citizen by virtue of this Article or by virtue of any corresponding provision in the Constitution of the State of Singapore shall be or not be a Singapore citizen accordingly from the day on which he is so enrolled.

(4) Where a person has been enrolled under this Article as a citizen who is not a Singapore citizen, and the Federal Government is satisfied that the enrolment—

(*a*) was obtained by means of fraud, false representation or the concealment of any material fact; or

(*b*) was effected by mistake;

the Federal Government may cancel the enrolment:

Provided that Article 27 shall apply in relation to the cancellation as it applies in relation to an order under Article 24, 25 or 26 depriving a person of citizenship.

(5) Where a person's enrolment as a citizen who is not a Singapore citizen is cancelled under paragraph (*a*) of Clause (4), and in consequence of that enrolment a child of that person had also been enrolled as such a citizen pursuant to Clause (2) of Article 15 as applied by this Article, the Federal Government may also cancel the child's enrolment unless the child has attained the age of twenty-one.

(6) Where under this Article or under any provision of the Constitution of the State of Singapore a person's enrolment as a citizen of either description is cancelled, that shall not discharge him from liability in respect of anything done or omitted before the cancellation, but except as regards anything so done or omitted he shall revert to his former status as a citizen.

29. (1) In Article 16 of the Constitution (which provides for the registration as citizens of certain persons born in the Federation before Merdeka Day) in paragraph (*a*) after the words "resided in the Federation" there shall be inserted the words "outside Singapore", and in paragraph (*b*) for the words "to reside permanently therein" there shall be substituted the words "to do so permanently".

(2) Article 18 of the Constitution (which makes general provision as to registering persons as citizens under Article 15 or 16) shall be amended as follows:

(*a*) in Clause (1) for the words "Article 15 or 16" and in Clauses (2) and (3) for the words "either of the said Articles" there shall in each case be substituted the words "this Constitution"; and

(*b*) in Clause (2) after the words "deprived of citizenship under this Constitution" there shall be inserted the words "or the Constitution of the State of Singapore".

(3) In Article 20 of the Constitution (which, until the end of January, 1964, makes special provision for the naturalisation of members of the Federation forces), in the words "to reside permanently in the Federation" in paragraph (*b*) of Clause (1), the words "States of Malaya" shall be substituted for the word "Federation".

(4) In Article 26*a* of the Constitution (under which a child may be deprived of citizenship on his parent losing citizenship if the child was registered as a citizen pursuant to Clause (2) of Article 15) for the words "Clause (2) of Article 15" there shall be substituted the words "this Constitution or the Constitution of the State of Singapore, and was so registered as being the child of that person or of that person's wife or husband".

Chapter 3—Miscellaneous

30. (1) For the purposes of Articles 24, 25, 26 and 26*a* a person who is a citizen by operation of law as having the status of a Singapore citizen shall be treated—

(*a*) as a citizen by registration, if he acquired that status by registration, or if he acquired it by enrolment when he was (or for those purposes was to be treated as being) a citizen of the Federation by registration; and

(*b*) as a citizen by naturalisation, if he acquired that status by naturalisation, or if he acquired it by enrolment when he was (or for those purposes was to be treated as being) a citizen of the Federation by naturalisation;

and references in those Articles to the registration or naturalisation of a citizen shall be construed accordingly.

(2) For the purposes of Articles 24, 25, 26 and 26*a* a person who on Malaysia Day becomes a citizen by operation of law because immediately before that day he has the status of a citizen of the United Kingdom and colonies shall be treated—

(*a*) as a citizen by registration if he acquired that status by registration; and

(*b*) as a citizen by naturalisation if he acquired that status by or in consequence of naturalisation; and references in those Articles to the registration or naturalisation of a citizen shall be construed accordingly.

(3) Where a woman is under this Article to be treated as a citizen by registration, and the status in consequence of which she is to be so treated was acquired by her by virtue of marriage, then for purposes of Clause (4) of Article 24 and Clause (2) of Article 26 she shall be treated as a citizen by registration under Clause (1) of Article 15.

(4) Where a person born before Malaysia Day is under this Article to be treated as a citizen by registration by virtue of a connection with a Borneo State or with Singapore and he was not born in the territories comprised in the Borneo States or, as the case may be, in the State of Singapore, Article 25 shall apply to him as if he were a citizen by registration under Article 16*a* or 17.

(5) Notwithstanding that a person is under this Article to be treated as a citizen by naturalisation, he shall not be deprived of his citizenship under Article 25 if he was born before Malaysia Day in the territories comprised in the Borneo States and is to be so treated by virtue of a status acquired by or in consequence of naturalisation in those territories.

(6) Without prejudice to the foregoing Clauses, where on Malaysia Day a person becomes a citizen by operation of law in virtue of any status possessed by him immediately before that day, but he was liable in respect of things done before that day to be deprived of that status under the law relating thereto, then the Federal Government may by order deprive him of his citizenship, if proceedings for that purpose are begun before September, 1965; but Clause (2) of Article 26*b* and, subject to Clause (7), Article 27 shall apply to an order under this Clause as they apply to an order under Article 25.

(7) Where a person is liable to be deprived of citizenship under Clause (6) and proceedings had before Malaysia Day been begun to deprive him of the status in virtue of which he acquired his citizenship, those proceedings shall be treated as proceedings to deprive him of citizenship under that Clause, and shall be continued as such; but they shall be continued in accordance with the law relating to that status immediately before Malaysia Day, and the functions of the Federal Government in relation thereto shall be delegated to such authority of the State in question as the Federal Government may determine.

31. (1) Notwithstanding anything in Article 47, a Singapore citizen is not qualified to be an elected member of either House of Parliament except as a member for or from Singapore; and a citizen who is not a Singapore citizen is not qualified to be a member of either House for or from Singapore.

(2) A Singapore citizen shall not be qualified to be an elected member of the Legislative Assembly of any State other than Singapore, and a citizen who is not a Singapore citizen shall not be qualified to be a member of the Legislative Assembly of Singapore.

(3) Notwithstanding anything in Article 119, a citizen is not entitled to vote in a constituency in any election to the House of Representatives or a Legislative Assembly if—

(*a*) the constituency is not in the State of Singapore and he is on the qualifying date (as defined in that Article) a Singapore citizen; or

(*b*) if the constituency is in the State of Singapore and he is not on that date a Singapore citizen.

(4) Any election of a person to either House of Parliament or to a Legislative Assembly contrary to Clause (1) or (2) shall be void; and if a member of either House or of a Legislative Assembly (not being an appointed member) changes his status as being or not being a Singapore citizen, his seat shall become vacant.

32. (1) Where under this Constitution a person becomes a Singapore citizen by naturalisation, or is enrolled as a citizen who is not a Singapore citizen, or being a Singapore citizen renounces or is deprived of his citizenship, or where a certificate of citizenship or other certificate is issued under Article 30 in relation to citizenship of Singapore, the Federal Government shall notify the government of Singapore of that fact.

(2) Where under the Constitution of the State of Singapore a person becomes a Singapore citizen by registration, or is enrolled as a Singapore citizen, or is deprived of his citizenship, or where a certificate of citizenship is issued under that Constitution, the government of Singapore shall notify the Federal Government of that fact.

33. (1) In Article 24 of the Constitution the words "at any time after Merdeka Day" in both places, and in Article 25 the words "whether beginning before, on or after Merdeka Day" in Clause (2), shall be omitted; and in Article 28 (which makes special provision as to the termination of citizenship of persons becoming citizens on Merdeka Day) there shall be added at the end as a new Clause (3)—

"(3) A person who on Merdeka Day became a citizen by operation of law as having been a citizen of the Federation immediately before that day shall not be deprived of citizenship under Clause (1) or (2) of Article 24 by reason of anything done on or before that day; but in the case of any such person Clause (2) of Article 25 shall apply equally in relation to a period of residence in foreign countries beginning before Merdeka Day and in relation to such a period beginning on or after that day."

(2) Article 25 of the Constitution (which provides for deprivation of citizenship for disloyalty, etc.) shall be amended as follows:

(*a*) for the words "Article 17" there shall in all places be substituted the words "Article 16*a* or 17";

(*b*) in Clause (1*a*) the words from "after" to "later, and" shall be omitted, and there shall be added at the end of the Clause the proviso—

"Provided that a person shall not be deprived of citizenship under this Clause by reason of anything done before the beginning of October, 1962, notwithstanding that he was at the time a citizen";

(*c*) in Clause (2) for the words "Malayan consulate" in paragraph (*b*) there shall be substituted the words "consulate of the Federation".

. . .

34. In Article 22 of the Constitution (which enables Parliament by law to determine what persons are to be citizens by reason of a connection with a territory admitted to the Federation in pursuance of Article 2) after the words "admitted to the Federation" there shall be inserted the words "after Malaysia Day".

TITLE III

LEGISLATIVE POWERS AND ADMINISTRATIVE ARRANGEMENTS

. . .

39. (1) In Article 150 of the Constitution (which makes special provision for legislation in the event of the Yang di-Pertuan Agong being satisfied of the existence of a grave emergency whereby the security or economic life of the Federation or of any part thereof is threatened, whether by war or external aggression or internal disturbance) there shall be omitted in Clause (1) the words "whether by war or external aggression or by internal disturbance".

(2) In that Article for Clauses (5) and (6) there shall be substituted the following Clauses (5), (6) and (6*a*):

"(5) Subject to Clause (6*a*), while a Proclamation of Emergency is in force, Parliament may, notwithstanding anything in this Constitution, make laws with respect to any matter, if it appears to Parliament that the law is required by reason of the emergency; and Article 79 shall not apply to a Bill for such a law or an amendment to such a Bill, nor shall any provision of this Constitution or of any written law which requires any consent or concurrence to the passing of a law or any consultation with respect thereto, or which restricts the coming into force of a law after it is passed or the presentation of a Bill to the Yang di-Pertuan Agong for his assent.

"(6) Subject to Clause (6*a*), no provision of any ordinance promulgated under this Article, and no provision of any Act of Parliament which is passed while a Proclamation of Emergency is in force and which declares that the law appears to Parliament to be required by reason of the emergency, shall be invalid on the ground of inconsistency with any provision of this Constitution.

"(6*a*) Clause (5) shall not extend the powers of Parliament with respect to any matter of Muslim law or the custom of the Malays, or with respect to any matter of native law or custom in a Borneo State; nor shall Clause (6) validate any provision inconsistent with the provisions of this Constitution relating to any such matter or relating to religion, citizenship, or language."

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TITLE VI

PROTECTION OF SPECIAL INTERESTS

Chapter 1—General

60. (1) In Article 9 of the Constitution, in Clause (2) (which guarantees to citizens the right of free movement throughout the Federation), for the words "Subject to any restriction imposed by any law relating to the security of the Federation" there shall be substituted the words "Subject to Clause (3) and to any law relating to the security of the Federation or any part thereof"; and at the end of the Article there shall be added as Clause (3)—

"(3) So long as under this Constitution any other State is in a special position as compared with the States of Malaya, Parliament may by law impose restrictions, as between that State and other States, on the rights conferred by Clause (2) in respect of movement and residence:

"Provided that no restriction on the right of movement between the State of Singapore and the States of Malaya shall be imposed by virtue of this Clause except by a law relating to labour or education or to any matter in respect of which, because of the special position of the State of Singapore, it appears to Parliament to be desirable to prevent the enjoyment of rights both in the State of Singapore and in the States of Malaya."

(2) The said Clause (3) of Article 9 of the Constitution shall apply to laws passed before Malaysia Day so as to impose restrictions with effect from Malaysia Day.

(3) In Article 10 of the Constitution (which guarantees to citizens the rights of free speech, assembly and association, subject to any restrictions imposed in the interest of the security of the Federation, etc.), in Clause (2) after the words "the security of the Federation" there shall, in all places, be inserted the words "or any part thereof".

(4) In the said Article 10, in Clause (1) for the words "Clause (2)" there shall be substituted the

words "Clauses (2) and (3)", and at the end of the Article there shall be added as Clause (3)—

"(3) Restrictions on the right to form associations conferred by paragraph (*c*) of Clause (1) may also be imposed by any law relating to labour or education."

Chapter 2—Borneo States

61. (1) No Act of Parliament terminating or restricting the use of the English language for any of the purposes mentioned in Clauses (2) to (5) of Article 152 shall come into operation as regards the use of the English language in any case mentioned in Clause (2) of this Article until ten years after Malaysia Day.

(2) Clause (1) applies—

(*a*) to the use of the English language in either House of Parliament by a member for or from a Borneo State; and

(*b*) to the use of the English language for proceedings in the High Court in Borneo or in a subordinate court in a Borneo State, or for such proceedings in the Federal Court as are mentioned in Clause (4); and

(*c*) to the use of the English language in a Borneo State in the Legislative Assembly or for other official purposes (including the official purposes of the Federal Government).

(3) Without prejudice to Clause (1), no such Act of Parliament as is there mentioned shall come into operation as regards the use of the English language for proceedings in the High Court in Borneo or for such proceedings in the Federal Court as are mentioned in Clause (4), until the Act or the relevant provision of it has been approved by enactments of the Legislatures of the Borneo States; and no such Act shall come into operation as regards the use of the English language in a Borneo State in any other case mentioned in paragraph (*b*) or (*c*) of Clause (2), until the Act or the relevant provision of it has been approved by an enactment of the Legislature of that State.

(4) The proceedings in the Federal Court referred to in Clauses (2) and (3) are any proceedings on appeal from the High Court in Borneo or a judge thereof, and any proceedings under Clause (2) of Article 128 for the determination of a question which has arisen in proceedings before the High Court in Borneo or a subordinate court in a Borneo State.

(5) Notwithstanding anything in Article 152, in a Borneo State a native language in current use in the State may be used in native courts or for any code of native law and custom, and in the case of Sarawak, until otherwise provided by enactment of the Legislature, may be used by a member addressing the Legislative Assembly or any committee thereof.

62. (1) Subject to Clause (2), the provisions of Clauses (2) to (5) of Article 153, so far as they relate to the reservation of positions in the public service, shall apply in relation to natives of any of the Borneo States as they apply in relation to Malays.

(2) In a Borneo State Article 153 shall have effect with the substitution of references to natives of the State for the references to Malays, but as regards scholarships, exhibitions and other educational or training privileges and facilities Clause (2) of that Article shall not require the reservation of a fixed proportion for natives.

(3) Before advice is tendered to the Yang di-Pertuan Agong as to the exercise of his powers under Article 153 in relation to a Borneo State, the Chief Minister of the State in question shall be consulted.

(4) The Constitutions of the Borneo States may make provision corresponding (with the necessary modifications) to Article 153 with the changes made by Clause (2).

(5) Article 89 shall not apply to a Borneo State, and Article 8 shall not invalidate or prohibit any provision of State law in a Borneo State for the reservation of land for natives of the State or for alienation to them, or for giving them preferential treatment as regards the alienation of land by the State.

(6) In this Article "native" means—

(*a*) in relation to Sarawak, a person who is a citizen and either belongs to one of the races specified in Clause (7) as indigenous to the State or is of mixed blood deriving exclusively from those races; and

(*b*) in relation to Sabah, a person who is a citizen, is the child or grandchild of a person of a race indigenous to Sabah, and was born (whether on or after Malaysia Day or not) either in Sabah or to a father domiciled in Sabah at the time of the birth.

(7) The races to be treated for the purposes of the definition of "native" in Clause (6) as indigenous to Sarawak are the Bukitans, Bisayahs, Dusuns, Sea Dayaks, Land Dayaks, Kadayans, Kalabits, Kayans, Kenyahs (including Sabups and Sipengs), Kajangs (including Sekapans, Kejamans, Lahanans, Punans, Tanjongs and Kanowits), Lugats, Lisums, Malays, Melanos, Muruts, Penans, Sians, Tagals, Tabuns and Ukits.

63. (1) In so far as any provision made by or under an Act of Parliament, by removing or altering a residence qualification, confers a right to practise before a court in the Borneo States or either of them on persons not previously having the right, that provision shall not come into operation until adopted in the States or State in question by an enactment of the Legislature.

(2) This Article shall apply to the right to practise before the Federal Court when sitting in the Borneo States and entertaining proceedings on appeal from the High Court in Borneo or a judge thereof or proceedings under Clause (2) of Article 128 for the determination of a question which has arisen in proceedings before the High Court in Borneo or a subordinate court in a Borneo State.

64. (1) No Act of Parliament which provides as respects a Borneo State for special financial aid for the establishment or maintenance of Muslim institutions or the instruction in the Muslim religion of persons professing that religion shall be passed without the consent of the Governor.

(2) Where under any provision of federal law not having effect as respects Sabah, or not having effect as respects Sarawak, any such aid as aforesaid is given by way of grant out of public funds in any year, there shall be paid by the Federation to the Government of Sabah or Sarawak, as the case may be, and applied for social welfare purposes in that State, amounts which bear to the revenue derived by the Federation from that State in the year the same proportion as the grant bears to the revenue derived by the Federation from other States in that year.

(3) For the purposes of Clause (2) the revenue derived by the Federation from any State or States shall be the amount after deduction of any sums assigned to States under Article 110 or the Tenth Schedule; and there shall be disregarded any contributions received by the Federation out of the proceeds of lotteries conducted by the Social and Welfare Services Lotteries Board together with any amounts applied to such aid as aforesaid out of or by reference to those contributions.

65. Notwithstanding Clause (4) of Article 11, there may be included in the Constitution of a Borneo State provision that an enactment of the State Legislature controlling or restricting the propagation of any religious doctrine or belief among persons professing the Muslim religion shall not be passed unless it is agreed to in the Legislative Assembly on second or third reading or on both by a specified majority, not being a majority greater than two-thirds of the total number of members of the Assembly.

66. (1) As from the passing of the Malaysia Act no amendment to the Constitution made in connection with the admission to the Federation of a Borneo State shall be excepted from Clause (3) of Article 159 by Clause (4) (*bb*) of that Article; nor shall any modification made as to the application of the Constitution to a Borneo State be so excepted unless the modification is such as to equate or assimilate the position of that State under the Constitution to the position of the States of Malaya.

(2) No amendment shall be made to the Constitution without the concurrence of the Governor of the Borneo State or each of the Borneo States concerned, if the amendment is such as to affect the operation of the Constitution as regards any of the following matters:

(*a*) the right of persons born before Malaysia Day to citizenship by reason of a connection with the State, and (except to the extent that different provision is made by the Constitution as in force on Malaysia Day) the equal treatment, as regards their own citizenship and that of others, of persons born or resident in the State and of persons born or resident in the States of Malaya;

(*b*) the constitution and jurisdiction of the High Court in Borneo and the appointment, removal and suspension of judges of that court;

(*c*) the matters with respect to which the Legislature of the State may (or Parliament may not) make laws, and the executive authority of the State in those matters, and (so far as related thereto) the financial arrangements between the Federation and the State;

(*d*) religion in the State, the use in the State or in Parliament of any language and the special treatment of natives of the State;

(*e*) the allocation to the State, in any Parliament summoned to meet before the end of August, 1970, of a quota of members of the House of Representatives not less, in proportion to the total allocated to the other States which are members of the Federation on Malaysia Day, than the quota allocated to the State on that day.

(3) No amendment to the Constitution which affects its operation as regards the quota of members of the House of Representatives allocated to a Borneo State shall be treated for purposes of Clause (1) as equating or assimilating the position of that State to the position of the States of Malaya.

(4) In relation to any rights and powers conferred by federal law on the government of a Borneo State as regards entry into the State and residence in the State and matters connected therewith (whether or not the law is passed before Malaysia Day) Clause (2) shall apply, except in so far as the law provides to the contrary, as if the law had been embodied in the Constitution and those rights and powers had been included among the matters mentioned in paragraphs (*a*) to (*e*) of that Clause.

(5) In this Article "amendment" includes addition and repeal.

Chapter 3—Singapore

67. Notwithstanding anything in Article 152, until otherwise provided by enactment of the Legislature of Singapore, the English, Mandarin and Tamil languages may be used in the Legislative Assembly of Singapore, and the English language may be used for the authoritative texts of all Bills to be introduced or amendments thereto to be moved in that Assembly, and of all enactments of that Legislature, and of all subsidiary legislation issued by the government of Singapore.

68. Nothing in Clause (2) of Article 8 or Clause (1) of Article 12 shall prohibit or invalidate any provision of State law in Singapore for the advancement of Malays; but there shall be no reservation for Malays in accordance with Article 153 of positions in the public service to be filled by recruitment in Singapore, or of permits or licences for the operation of any trade or business in Singapore.

69. (1) No amendment shall be made to the Constitution without the concurrence of the Governor if the amendment is such as to affect the operation of the Constitution in relation to Singapore as regards any of the following matters—

(*a*) citizenship of Singapore, and the restriction to citizens of Singapore of the right to be a member of either House of Parliament for or from Singapore, or to be a member of the Legislative Assembly of Singapore, or to vote at elections in Singapore;

(*b*) the constitution and jurisdiction of the High Court in Singapore and the appointment, removal and suspension of judges of that court;

(*c*) the matters with respect to which the Legislature of the State may (or Parliament may not) make laws, the executive authority of the State in those matters, the borrowing powers of the State and the financial arrangements between the Federation and the State;

(*d*) the discharge of functions of the Public Services Commission or of the Judicial and Legal Service Commission by a branch established for the State, and the constitution of any such branch;

(*e*) religion in the State, the use in the State or in Parliament of any language and the special position of the Malays in Singapore;

(*f*) the allocation to the State, in any Parliament summoned to meet before the end of August, 1970, of a quota of members of the House of Representatives not less, in proportion to the total allocated to the other States which are members of the Federation on Malaysia Day, than the quota allocated to the State on that day.

(2) In this Article "amendment" includes addition and repeal.

TITLE VII

SUPPLEMENTARY

. . .

IMMIGRATION ACT

Act No. 27 of 1963, assented to on 26 August 1963 [4]

. . .

PART I

GENERAL

1. This Act may be cited as the Immigration Act, 1963, and shall be construed as one with the Immigration Ordinance, 1959.[5]

2. Save as otherwise provided by this Act, this Act shall come into operation on Malaysia Day.

3. (1) Subject to the provisions of this Act, the Immigration Ordinance, 1959, shall extend throughout Malaysia (and references therein to the Federation shall be construed accordingly).

. . .

PART II

SPECIAL PROVISIONS FOR THE BORNEO STATES

4. (1) Without prejudice to the general operation of the Immigration Ordinance, 1959 (in the Borneo States as in other parts of the Federation), as a general law for the Federation as a whole, that Ordinance shall also have effect, subject to and in accordance with this Part of this Act, as a special law for each of those States as if for any reference to the Federation (except in a reference to a Government in the Federation or to a citizen of the Federation) there were substituted a reference to the Borneo State.

. . .

(3) If in a Borneo State there is no Controller, there shall be a Deputy Controller having all such authority to exercise the powers and discretions vested in the Controller by the Immigration Ordinance, 1959, and discharge the duties required to be discharged by him, as may be necessary for the purpose of giving effect to that Ordinance as a special law for the State.

. . .

(5) Notwithstanding anything in the foregoing provisions of this section, the powers and discretions vested in the Controller by the Immigration Ordinance, 1959, as a special law for a Borneo State shall not be exercised by him so as to exclude or remove from the Borneo State a person entitled to be in the Federation outside the Borneo State, except with a view to making effective the powers conferred by this Part on the authorities of the State; and no such person shall in the exercise of those powers be required to leave and depart from the Federation nor, without his consent, be removed from the Federation.

. . .

6. (1) Subject to sub-section (2) and to sections 7 and 8 a citizen of the Federation shall not be entitled to enter a Borneo State without having obtained a Permit or Pass in that behalf unless—

(*a*) he belongs to the Borneo State; or

(*b*) he is a member of the Federal Government, or of the Executive or Legislative Assembly of the Borneo State (or of any Council having similar functions in the State); or

(*c*) he is a judge of the Federal Court or of the High Court in Borneo, or is a person designated or nominated to act as such, or he is a member of any Commission or Council established by the Federal Constitution or by the constitution of the Borneo State; or

(*d*) he is a member of any of the public services of the Federation, or of the public service of the Borneo State, or of a joint public service serving the Borneo State, or is seconded to any such service.

(2) Where a citizen of the Federation is entitled to enter the Borneo State under sub-section (1), the citizen's children under the age of eighteen years and (if he is a man) his wife, if entering the Borneo State with, or to be with, the citizen, shall not be required by sub-section (1) to obtain a Permit or Pass in that behalf.

(3) Where a citizen of the Federation is not entitled to enter a Borneo State under this section,

[4] *Ibid.*

[5] For the text of the Ordinance, see *Federal Ordinances and Acts, 1959*, published by authority, pp. 51-87.

the Immigration Ordinance, 1959, in its operation as a special law for the Borneo State shall apply to him as if he were not a citizen:

Provided that a citizen arriving in the Federation in the Borneo State or in the other of the Borneo States, and proceeding to a part of the Federation which he is entitled to enter, shall be entitled to such Pass as is reasonably required to enable him to do so.

(4) The burden of proof that a person is entitled to enter the Borneo State under this section shall lie on him.

7. Sub-section (1) of section 6 shall not have effect in relation to a citizen of the Federation entering the Borneo State for the sole purpose of engaging in legitimate political activity; but the burden of proof that a person is entitled to enter the Borneo State under this section shall lie on him.

8. (1) Sub-section (1) of section 6 shall not have effect in relation to any citizen of the Federation whose entry into the Borneo State is temporarily required by the Federal Government in order to enable that Government to carry out its constitutional and administrative responsibilities.

(2) The Minister shall from time to time notify the Controller of the persons or classes of persons whose entry into a Borneo State is required as aforesaid, and shall give him such particulars as are necessary to enable him to discharge his functions in relation to those persons; and in relation to a Borneo State sub-section (1) shall not be taken to apply to any person unless he is a person, or belongs to a class of persons, so notified to the Controller in relation to that State.

(3) The Minister shall not give any notification to the Controller under sub-section (2) except after consultation with the State authority.

9. (1) The powers of the Controller under the Immigration Ordinance, 1959, shall be so exercised as to allow the entry into a Borneo State of any person if his entry is required by the government of the State for State purposes.

(2) The State authority shall from time to time notify the Controller of any person whose entry is required as aforesaid, giving such particulars as are necessary to enable the Controller to discharge his functions in relation to that person; and sub-section (1) shall not be taken to apply to any person unless he is a person so notified to the Controller.

(3) The State authority shall not give any notification to the Controller under sub-section (2) except after consultation with the Minister; and if the Minister considers it desirable in the national interest for entry to be refused to the person in question, and so informs the State authority, the notification shall not be given.

10. (1) As regards entry into and residence in a Borneo State and all matters connected therewith a person entitled in the State to the benefit of this section shall be treated for the purposes of the Immigration Ordinance, 1959, as if he were a citizen of the Federation.

(2) Subject to the provisions of this section, a person shall be entitled in Sabah or Sarawak to the benefit of the section if—

(*a*) on Malaysia Day he is ordinarily resident in the State, and in the ten years immediately preceding that day he has resided in the territories comprised in the Borneo States and Brunei for periods which amount in the aggregate to not less than seven years; and

(*b*) immediately before Malaysia Day under the immigration law of the territories comprised in the State, he would as being a Commonwealth citizen (or if not a Commonwealth citizen, then in the case of Sabah as having been before November 1931 born in North Borneo) have been entitled to enter those territories without having obtained a permit or pass.

(3) A person shall not be entitled to the benefit of this section after the beginning of September, 1965:

Provided that where before September, 1965, a person entitled in a Borneo State to the benefit of this section makes an application to be registered as a citizen of the Federation and the application is not disposed of before the beginning of that month, he shall continue to be so entitled until the application is disposed of.

(4) So long as a person is entitled in a Borneo State to the benefit of this section that person's children under the age of twenty-one years and (if he is a man) his wife shall as regards entry into and residence in the State and all matters connected therewith be treated for the purposes of the Immigration Ordinance, 1959, as if they were citizens of the Federation.

(5) For the purpose of determining whether paragraph (*b*) of sub-section (2) is satisfied in the case of any person, any question which under the immigration law of the territories comprised in a Borneo State would have fallen to be determined by an authority or officer of the government of those territories shall be determined by the Minister.

(6) A person who has left a Borneo State on or after Malaysia Day shall not be entitled in the State to the benefit of this section if the Minister is satisfied that his residence in the State would be prejudicial to public security.

(7) This section shall not entitle any person for the purpose of reaching a Borneo State to enter or remain in any part of the Federation outside the State otherwise than in accordance with the Immigration Ordinance, 1959, as it applies to persons who are not citizens of the Federation; but a person entitled by virtue of this section to enter a Borneo State shall be entitled to receive such Pass to enter a part of the Federation outside the State as is reasonably required to enable him to do so.

(8) For persons entitled to enter a Borneo State by virtue of this section regulations under the Immigration Ordinance, 1959, may, as respects Certificates of Status and other matters, make special provision different from that made for citizens of the Federation.

(9) For purposes of this section residence shall be calculated in like manner as for the purpose of registration as a citizen of the Federation, and "child" includes in relation to a woman, an illegitimate child.

11. (1) For purposes of section 6, a citizen of the Federation shall be treated as belonging to a Borneo State if—

(*a*) he is or has within the preceding two years been a permanent resident in the Borneo State; or

(*b*) he became a citizen of the Federation in any of the following ways, that is to say,

(i) by operation of law on Malaysia Day in respect of his being a citizen of the United Kingdom and Colonies ordinarily resident in the State; or

(ii) by operation of law on or after Malaysia Day in respect of his birth in the Federation and of one of his parents being at the time of the birth a permanent resident in the Borneo State; or

(iii) by registration in respect of his being on Malaysia Day ordinarily resident in the Borneo State.

(2) Subject to sub-section (3) a person shall not be treated for purpose of this section—

(*a*) as becoming a permanent resident in a Borneo State after not being one, until he has in a period not exceeding five years been resident in the State for periods amounting to three years; or

(*b*) as being a permanent resident in a Borneo State at any time when under federal law he requires permission to reside there and has not got permission to do so granted without limit of time.

(3) Paragraph (*a*) of sub-section (2) shall not prevent a woman being treated as a permanent resident in a Borneo State at any time when she is married to a permanent resident in the State and is ordinarily resident there with him.

(4) In determining for the purposes of this section whether a person is or was at any time a permanent resident in a Borneo State no account shall be taken of any period of residence in the State while he is there by virtue of section 7 or 8; but a period of residence or of permanent residence shall not for purposes of this section be treated as interrupted or terminated—

(*a*) by a period of absence from the State of less than six months; or

(*b*) by a period of absence from the State for purposes of education of such kind, in such country and for such time as may from time to time be either generally or specially approved by the State authority; or

(*c*) by a period of absence from the State on duty in the service of the Federation or of any State, where the absence is not inconsistent with the essential continuity of the residence in the State; or

(*d*) by a period of absence from the State for any other cause allowed generally or specially by the State authority.

(5) A person who for purposes of the Immigration Ordinance, 1959, is for the time being treated under section 10 of this Act as a citizen of the Federation in respect of his being on Malaysia Day ordinarily resident in a Borneo State shall for purposes of section 6 be treated as belonging to that State.

(6 Any authority empowered under the Immigration Ordinance, 1959, in its operation as a special law for a Borneo State to issue Certificates of Status showing that a person belongs to that State shall (unless the authority is an authority of the State) notify the State authority of any application for the issue of such a Certificate, and if so required by the State authority consult with that authority before issuing the Certificate.

12. In this Part of this Act "State authority" means, for any purpose relating to a Borneo State, the Chief Minister of the State or such person holding office in the State as the Chief Minister may designate for that purpose by notification in the State *Gazette*.

PART III

SUPPLEMENTARY

13. (1) Subject to any exemption granted under section 55 of the Immigration Ordinance, 1959, every person entering Malaya or a Borneo State from a place in the Federation outside Malaya or outside that State, as the case may be, shall produce to the immigration officer either an internal travel document issued under section 14 or the like passport, or other travel document, having the like visa (if any), as would be required by the law for the time being in force with respect to passports if he were entering from a place outside the Federation.

(2) A person shall be guilty of an offence against the Immigration Ordinance, 1959, if he enters Malaya or a Borneo State contrary to the provisions of sub-section (1), or attempts to do so, or abets any person to do so.

. . .

FINLAND

NOTE[1]

I. LEGISLATION

1. *General Principles Governing the Administration of Justice in Criminal Matters*

(*a*) Act No. 320, of 20 June 1963, amending Chapter 1 of the Penal Code (*Suomen Asetuskokoelma,* hereinafter referred to as *AsK*—Official Statute Gazette of Finland—No. 320/63) defines anew the scope of the application of Finnish criminal law. According to this amendment, anyone who commits a crime in Finland shall be sentenced in accordance with Finnish law. This is the case also when a Finnish citizen or an alien permanently residing in Finland commits a crime outside Finland. Furthermore, an alien who does not live in Finland permanently shall be sentenced in accordance with Finnish law for a crime committed outside Finland aboard a Finnish ship or aircraft; for a crime directed against Finland, a Finnish citizen, society, institution, foundation or against a foreigner who is permanently residing in Finland; and for any other crime committed in a country where the crime according to the law of that country is punishable or committed in an area where the laws of any country are not in force.

In this connexion, it should be mentioned that the term "crime" is used here in the broad sense of the word comprising all criminal acts. As regards the place of crime, a definition is given in the amendment to the effect that a crime shall be considered to have been committed both where the criminal act has occurred and where its consequence has appeared or, if the crime has remained an attempt, where the consequence of an accomplished crime would have appeared.

An alien shall not be prosecuted in Finland for a crime committed aboard a foreign ship while in Finnish territorial waters or in a foreign aircraft while above Finnish territory and not directed against Finland, a Finnish citizen, society, institution or foundation if the Chancellor of Justice has not given an order to this effect.

Similarly, action against a crime committed outside Finland shall not be brought if the Chancellor of Justice has not given an order thereto. However, such an order is not needed:

(1) if the crime has been committed aboard a Finnish ship or aircraft by someone belonging to the crew of the ship or the aircraft or by a passenger or by someone who otherwise would be aboard the ship or the aircraft;

(2) if the crime has been committed by a Finnish citizen and is directed against Finland, a Finnish citizen, society, institution or foundation;

(3) if the crime has been committed in Denmark, Iceland, Norway or Sweden and is punishable according to the law of the country where it has been committed, provided that the appropriate public prosecutor has been notified of the crime for indictment.

Without the order of the Chancellor of Justice, no one shall be prosecuted in Finland for a crime for which he has already undergone a punishment sentenced by a foreign court. If action is brought and a punishment is sentenced in Finland, the punishment already undergone by the convict shall, at the consideration of the court, be deducted from that sentenced in Finland or be deemed a full punishment for the crime in question.

Against a crime, adjudicated already by a Danish, Icelandic, Norwegian or Swedish court, action shall not be brought in Finland if the Chancellor of Justice has not given an order to this effect.

Without prejudice to the above, the limitations to the scope of the application of Finnish law based on the generally accepted practice of international law shall be observed.

If it has been agreed with a foreign State in certain cases otherwise than what is said above, such exceptions shall be observed as provided by law separately.

A person who, at the invitation of a Finnish authority, has voluntarily arrived in Finland in order to testify in a criminal case shall not, while in Finland for that purpose and as long as, for a valid reason, he is prevented from leaving the country, be prosecuted or arrested for a previous crime or for a previous sentence or on the ground that he is alleged to be a participant in the acts under investigation concerning which he is heard as a witness.

(*b*) Act No. 326, of 20 June 1963, on the cooperation between Finland and other Nordic

[1] Note prepared by Mr. Voitto Saario, Judge of the Court of Appeal, Helsinki, government-appointed correspondent of the *Yearbook on Human Rights.*

countries concerning the execution of court decisions in criminal cases (*AsK* No. 326/63).

The close co-operation among the Nordic countries has given rise to this arrangement in the administration of justice in order to help the free movement of people in the area comprising the Nordic countries.

According to this Act, a court decision rendered by a Danish, Icelandish, Norwegian or Swedish court of law, by which someone has been sentenced to pay a fine or a penalty or to forfeit a certain article or other property or an amount of money or to pay compensation for the expenses caused by criminal proceedings, can be, at request, executed in Finland.

The amount of money to be collected shall be converted into Finnish currency according to the buying rate on the day before the decision was given. The execution will be carried out in accordance with Finnish law.

Similarly, a court decision of the kind mentioned above rendered in Finland can be left for execution in Denmark, Iceland, Norway or Sweden.

A corresponding arrangement is possible concerning court decisions imposing imprisonment or hard labour. Thus, such punishments sentenced in Denmark, Iceland, Norway or Sweden can be, at request, executed in Finland, provided that the convict, at the time of execution, is a Finnish citizen or is permanently residing in Finland or that the convict, if he is a foreigner and does not permanently reside in Finland, sojourns in the country at that time and the execution in the circumstances then prevailing is to be considered expedient. This applies also to cases where a decision imposing fine is converted into imprisonment. In such cases the execution is carried out in accordance with Finnish law.

If the convict has already undergone part of his punishment in another Nordic country, this part shall be deducted from the punishment to be executed in Finland. If the convict has been transferred to Finland for the execution of his punishment, the time needed for the transfer shall be included in the term of his punishment.

If a fine is totally paid, the execution of the imprisonment to which the fine has been converted shall be dropped. If only part of a fine is paid, the converted punishment shall be reduced respectively.

Similarly, imprisonment or hard labour sentenced in Finland or converted punishment instead of a fine imposed in Finland can be left for execution in Denmark, Iceland, Norway or Sweden, provided that the convict, at the time of execution, is a citizen of the respective country or is residing there permanently or that the convict, if he is not a citizen of the respective country and does not live there permanently, sojourns in that country at the time of execution and the execution in the circumstances then prevailing can be considered expedient.

If the convict is transferred from Finland to another Nordic country for the execution of his punishment, the term of punishment shall be counted from the day when he was taken into custody by a Finnish authority, provided that the execution has not started earlier.

The supervision of a person who has been placed on probation in Denmark, Iceland, Norway or Sweden can, at request, be arranged in Finland. If the appropriate authority in Denmark, Iceland, Norway or Sweden changes the conditions set for observance by the person placed on probation or declares the postponement of execution lost, such a decision shall be valid also in Finland. After it has been decided that the supervision be arranged in Finland, Finnish law is applicable to the loss of postponement of execution.

If the convict fails to observe the special conditions or orders set for him, the court of his place of residence may, at the request of his supervisor, declare the postponement of execution lost.

Such a person who has been placed on probation in another Nordic country but whose supervision has not been decided on for arrangement in Finland even can, when sentenced in Finland for a crime committed during the probation or before it, be declared to lose the postponement of execution of his punishment. In such a case, Finnish law shall be applied.

Instead of declaring the postponement of execution lost, the court may transfer this question to be decided on in the Nordic country where the convict has been placed on probation or where he is under supervision.

Similary, the supervision of a person placed on probation in Finland can be left to be arranged in Denmark, Iceland, Norway or Sweden. In spite of such an arrangement, the postponement of execution can be declared lost in Finland if the convict has committed a crime in the country during the probation or before it or if the appropriate authority of another Nordic country has transferred this question to be decided by the Finnish court which has placed the convict on probation.

Furthermore, the supervision of a person who has been conditionally released after having undergone part of the imprisonment or hard labour imposed on him in Denmark, Iceland, Norway or Sweden can, at request, be arranged in Finland. If the appropriate authority in the respective country changes the conditions or orders set for the person conditionally released or cancels his conditional freedom, such a decision is valid also in Finland. After it has been decided that the supervision be arranged in Finland, Finnish law shall be applied to it.

Even such a person who has been conditionally released in another Nordic country but whose supervision has not been decided on to be arranged in Finland can, when sentenced in Finland for a new crime committed during the conditional freedom, be declared by the Finnish court to lose that freedom. In such a case, the Ministry of Justice shall convert part of the punishment which has not been served yet into a corresponding sort of punishment prescribed by Finnish law, and the execution of the converted punishment shall take place in accordance with Finnish law.

Instead of declaring the conditional freedom lost, the court may transfer this question for decision in the Nordic country where the person has been conditionally released or where he is under supervision.

Similarly, the supervision of a person conditionally released in Finland can be arranged in Denmark, Iceland, Norway or Sweden. In spite of such an arrangement, the conditional freedom can be declared lost by the Finnish court if the convict is sentenced in Finland for a new crime committed during the conditional freedom or if the appropriate authority of another Nordic country has transferred this question to be decided on by a Finnish authority.

If a Danish, Icelandic, Norwegian or Swedish authority declares the conditional freedom of a person conditionally released in Finland lost, such a decision is valid also in Finland.

The request concerning the execution in Finland of a punishment sentenced in Denmark, Iceland, Norway or Sweden and the arrangement of the supervision in Finland of a person placed on probation or conditionally released in another Nordic country is decided on by the Ministry of Justice. Before the request is consented to, the convict shall be given an opportunity to be heard, except in cases where only the collection of a fine is involved, provided that it can be done without difficulties. If the consequent is granted, the convict is entitled to appeal against such a decision in the order provided by law.

The request concerning the execution in Denmark, Iceland, Norway or Sweden of a punishment sentenced in Finland and the arrangement of the supervision in another Nordic country of a person placed on probation or conditionally released in Finland shall be made by the Ministry of Justice.

The provisions of Finnish law concerning pardon shall be applied also to sentences pronounced in Denmark, Iceland, Norway or Sweden if it has been decided that they be executed in Finland. A decision made by the appropriate authority in another Nordic country concerning the pardon of a person sentenced in the respective country shall, although it has been decided that the execution of the sentence take place in Finland, be observed in Finland.

The question concerning prescription of the execution of a sentence shall be decided on in accordance with the law of the Nordic country where the sentence has been pronounced.

2. *Right to Health and Medical Care*

Act No. 364, of 4 July 1963, on health insurance (*AsK* No. 364/63).

Every person residing in Finland is insured against sickness in accordance with the provisions of this Act. In the framework of this insurance system, a compensation is paid also for pregnancy and childbirth. This Act covers Finnish citizens in diplomatic service abroad, their spouses and children who are under twenty-one years of age as well as Finnish citizens who are self-employed and employed aboard Finnish ships. It does not cover foreigners who are in Finland in the diplomatic service of a foreign State and their foreign servants.

Every insured person is entitled to partial compensation of expenses for necessary medical care including travel expenses and daily allowance during disability to do work caused by sickness. The compensation is paid only for expenses for medical care ordered by a physician. Everyone is free to choose his own physician.

This insurance system is administered by the National Pension Institute through local bureaux, commissions and offices or through certain employment funds. For this purpose, there is a Consultative Board of Health Insurance attached to the National Pension Institute.

In order to finance this insurance system, insured persons, employers and the State contribute to a special insurance fund administered by the National Pension Institute. To this end, every insured person pays an amount equalling a penny (1/100 Finnmark) for each income tax unit levied on him by the communal taxation for the foregoing year. Every employer pays one per cent of the wages paid by him to his employees. The State pays every year an amount equalling at least one-third of the total expenses of the fund during respective year. If, at the end of a calendar year, the capital of the fund exceeds one eighth of the total expenses during that year, the share of the State is reduced to such an amount that the capital of the fund will be one eighth of the total expenses.

The provisions concerning the enforcement of this law are contained in Decree No. 473, of 1 November 1963, on health insurance (*AsK* No. 473/63).

3. *Special Care and Assistance for Motherhood and Childhood*

Act No. 281, of 7 June 1963, on advance payment for maintenance (*AsK* No. 281/63).

According to this Act, advances can be paid from public funds when payments for maintenance of children are neglected by those who are obliged to pay them either by a court decision or by an agreement.

The conditions for the advances are:

(1) that the child or at least one of his parents is a Finnish citizen;

(2) that the child lives or permanently resides in Finland;

(3) that the child is not in the custody of the person who is obliged to pay for his maintenance and does not live with him;

(4) that the parents of the child or one of the parents and the person who is obliged to pay for the maintenance of the child do not live together;

(5) that the child is not otherwise supported by the State or the commune.

To a child born in wedlock advances are granted and paid by the Social Board of the commune where the guardian of the child resides or, if the guardian does not live in Finland or if the child is not in the custody of his guardian, by the Social Board of the commune where the child resides. To a child born out of wedlock, advances are granted and paid by the Social Board of the commune where the interests of the child are supervised by the official Children's Inspector.

The application for an advance can be made by the guardian of the child or by the person in whose custody the child actually is. For a child born out of wedlock the advance can be applied also by the official Children's Inspector.

Advances are granted for the present from the beginning of the month of their application until not later than the end of the month when the child attains the age of eighteen. If special reasons so require, advances can be granted retroactively for three previous months.

The amount of an advance is at most 40 Finnmarks monthly and may not exceed the actual amount of maintenance in every particular case. When the advance is granted, the Social Board is entitled to collect the payments of maintenance which are due from the person who is obliged to pay for the maintenance in question.

The observance of the provisions of this Act is supervised by the Ministry for Social Affairs.

4. *Rights relating to Work*

(*a*) Act No. 331, of 28 June 1963, on full employment (*AsK* No. 331/63)

The State shall endeavour to secure full employment by general economic political measures and to promote the formation of new permanent opportunities of getting work.

In order to adjust the fluctuations in the demand and supply of labour, the State, the communes and the unions of communes shall endeavour to concentrate their works of investing nature to be carried out at times when there is unemployment. Similarly, the State, the communes and the unions of communes shall endeavour to concentrate their procurings providing for work for times when there is or there may be unemployment in the economic fields in question.

In order to secure full employment, loans and subsidies can be granted from the State funds reserved for this purpose in the budget. To combat unemployment, vocational courses can be arranged by the State or with the State support. If it is expedient from the point of view of securing full employment, workers can be transferred to another locality wholly or partly at the State's expense. The State and the communes shall also, in advance, make plans for arranging work when needed.

To determine the share of the communes in arranging opportunities of getting work as compared to that of the State, the communes are classified in ten categories according to their economic strength and in five groups according to their needs and possibilities in arranging work, taking into consideration their population and the structure of their economic life. This classification is confirmed by the Ministry of Communications and Public Works for a calendar year at a time after the central organizations of communes have been given a chance to state their opinions.

If workers, who actually belong to their commune's share in arranging work, are placed in work arranged by the State, the respective communes shall pay the State compensation for the expenses according to the grounds confirmed by the Ministry of Communications and Public Works. Similarly, if more workers have been placed in work by a commune than its share would imply, the commune shall get compensation from the State funds according to the same grounds.

The general administration and supervision of these measures are vested in the Ministry of Communications and Public Works. In each commune there shall be a Commission of Labour for directing unemployed persons to the works arranged by the State or the commune and for taking care of other local tasks in this respect.

More detailed provisions are given in Decree No. 333, of 28 June 1963, on full employment (*AsK* No. 333/63).

(*b*) Act No. 332, of 28 June 1963, on compensation for unemployment (*AsK* No. 332/63).

According to this Act, everyone whose name has been entered in the files kept by the Commission of Labour in each commune and whom it has not been possible to place in work shall be paid compensation for unemployment from the State funds.

More detailed provisions are given in Decree No. 334, of 28 June 1963, on compensation for unemployment (*AsK* No. 334/63).

II. INTERNATIONAL AGREEMENTS

1. Decree No. 117, of 1 March 1963, brings into force the Convention among Finland, Denmark, Iceland, Norway and Sweden on collecting alimony through execution, adopted in Oslo on 23 March 1962.

2. Decree No. 128, of 22 February 1963, brings into force the Equal Remuneration Convention adopted by the International Labour Conference in 1951. The ratification of the Convention by Finland was registered on 14 January 1963.

3. Decree No. 254, of 11 April 1963, brings into force the Universal Copyright Convention adopted in Geneva on 6 September 1952. The instrument of ratification was deposited by Finland on 16 January 1963.

FRANCE

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS IN 1962 AND 1963 [1]

The year 1962 marked the end of the long and painful conflict which, after involving Algeria in bloodshed, resulted in the independence proclamation of 1 July 1962.

The upheavals in French political life during the last months of the conflict and the succeeding months again necessitated the introduction of exceptional measures, to which reference is made under a special heading.

Mention should also be made of the amnesty provisions and the provisions concerning the reception of persons repatriated from Algeria.

The text of an ordinance of 21 July 1962, containing provisions concerning the granting of French nationality to persons of Algerian origin, is repoduced below.

There was considerably less legislative activity during 1963 in the human rights fields.

I. CIVIL AND INDIVIDUAL RIGHTS

1. *Amnesty*

A decree of 22 March 1962 [2] declared a general amnesty for acts committed "with a view to participating in, or giving direct or indirect assistance to, the Algerian insurrection". This amnesty concerned in particular persons of local status who took part in the Algerian rebellion. By extension, it covered the same category of persons for acts committed anywhere in the territory of the Republic.[3]

A second decree of 22 March 1962 [4] provided amnesty for "offences committed in Algerian within the ambit of operations for the maintenance of law and order directed against the Algerian insurrection prior to 20 March 1962". This decree has likewise been made applicable to the whole territory of the Republic.[5]

2. *Vital Records*

The provisions of the decree of 3 August 1962 [6] strengthen the earlier provisions (articles 47 and 57 of the Civil Code) concerning the publication of vital records, in order more effectively to ensure the secrecy of births, especially in the case of illegitimate births, adoptive legitimation and adoption. Information concerning the natural father or mother of the child concerned may not be communicated directly to third parties.

3. *Adoption. Adoptive Legitimation*

While the tendency of the French legislator is to encourage and promote adoption and adoptive legitimation, distressing cases had recently called attention to the possible conflicts between an adoptive family and a natural family, the latter contesting, belatedly but at times with serious and well-founded motives, the regularity or legitimacy of the adoption.

It was in the emotional atmosphere caused by such cases that the Act of 1 March 1963 [7] was passed; the latter does not prejudice later, more radical modifications of the adoption system, the reform of which remains under study.

The measures enacted tend, in the first place, to reinforce legal precautions against adopting being approved lightly or where inadvisable. They provide a minimum period of six months—some would have preferred a longer period—between the date when the child is received in the adopter's home and the date of declaration of adoption. This is a probationary period. The text of the act provides that "A minor aged sixteen years may not be declared legally adopted unless the child has been given a home by the adopter(s) for at least six months."

The investigative powers of the court are also strengthened to enable it to obtain the fullest possible information concerning the child and concerning his future adoptive parents and his natural parents. Thorough investigation may obviate the court's remaining in ignorance of facts or situations liable to give rise later to an appeal by the natural parents. To facilitate such investigation, the legislator has conditionally authorized a depar-

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[1] Note prepared by Mr. E. Dufour, Maître des requêtes of the Conseil d'Etat, Paris, appointed by the French Government as correspondent to the *Yearbook on Human Rights.*

[2] Decree 62-327, *Journal officiel,* March 1962, p. 3143.

[3] Ordinance 62-427, *Journal officiel,* April 1962, p. 3892.

[4] Decree 62-328, *Journal officiel,* March 1962, p. 3144.

[5] Ordinance 62-428, *Journal officiel,* April 1962, p. 3892.

[6] Decree 62-921, *Journal officiel,* August 1962, p. 7918.

[7] Act 63-215, *Journal officiel,* March 1963, p. 2091.

ture from the very strict rule of secrecy imposed on the child welfare services (article 81 of the Civil Code).

The new act also widens the court's discretion in the case of opposition by the legitimate parents to a request for adoption. "The court may declare the child adopted if it deems unreasonable the refusal of one or both of the legitimate or natural parents to give consent, when they have so neglected the child as to endanger his morals, health or education."

The new legislation introduces an interesting innovation in respect of adoptive legitimation, by defining the concept of abandonment and of the abandoned child, which had previously been left to the discretion of the judge. As a consequence of the new text, adoptive legitimation is possible (but remains optional to the judge) if the child is a ward of State, if its natural parents have forfeited parental authority, or if the parental authority over the child has been "delegated" to a third party, a welfare agency or the child welfare service, under the Act of 24 July 1889, which was, moreover, amended by the 1963 Act. In addition, however, the judge may declare the adoptive legitimation of children abandoned *de facto*, provided that the conditions imposed by the Act of 24 July 1889, as amended, for the delegation of parental authority are fulfilled. This reference to a judge, which does not imply accomplishment of the formalities for delegation of parental authority, guarantees that the notion of *de facto* abandonment will not be misinterpreted to the disadvantage of families.

Lastly, the Act establishes regulations governing opposition by third parties to judgements or orders confirming adoption or adoptive legitimation. While admitting the principle of such opposition, it limits its exercise to a period of one year from the date of entry of the judgement or order in the civil register; usually this will tend to have a prohibitive effect, and it reflects a desire to promote the stability of the adoptive family.

4. *Texts relating to the End of the Algerian Conflict*

On 19 March 1962, as the outcome of the discussions known as the Evian talks, the text of a "Cease-fire Agreement in Algeria" [8] and that of eight "Governmental Declarations concerning Algeria" were published simultaneously.

The provisions of those instruments, approved by the referendum of 8 April 1962,[9] were designed to authorize a consultation of the Algerian people on 1 July 1962, which resulted, as is known, in the immediate proclamation of Algerian independence, formally recognized by France in a "Declaration of 3 July 1962".[10]

The end of the war was not, however, without its dramatic upheavals in French political life and its impact on the conscience of the French people in Algeria. To contend with subversive activities, the authorities had to intensify certain preventive and repressive measures. The following were thus promulgated: the Ordinance of 14 April 1962 [11] relating to procedure in respect of serious and correctional offences connected with the events in Algeria; the Ordinance of the same date [12] modifying the competence of the Military Tribunal and its procedure; the Ordinance of 1 June 1962 [13] setting up a Military Court of Justice (see below, under "Jurisprudence"); the Ordinance of 30 June 1962 [14] concerning the establishment of tribunals for the armed forces in Algeria; and the Act of 15 January 1963 [15] which assigned to a State security court the competence originally vested in the Military Tribunal to deal with serious and correctional offences against the security of the State and other serious and correctional offences committed in various circumstances.

5. *Jurisprudence*

Among the enactments connected with the political events that attended the end of the Algerian conflict was the aforementioned Ordinance of 1 June 1962 establishing a Military Court of Justice.

This Ordinance was referred to the Conseil d'Etat on the ground that it violated the traditional rights of the defence and the normal guarantees of procedure. By a decision of 19 October 1962,[16] the Conseil d'Etat annulled the ordinance, which had been made under the special powers conferred on the President of the Republic by the Act of 13 April 1962 (see above, under "Texts relating to the End of the Algerian Conflict"), stating that its exorbitant procedural provisions—particularly the exclusion of any means of appeal—constituted a serious derogation from the general principles of criminal law, which the application of the Governmental declarations of 19 March 1962 did not require.

II. SOCIAL RIGHTS

1. *Industrial accidents. Travel accidents*

Reference was made previously to the Acts of 30 October 1946 and 26 July 1957 (*Yearbook on Human Rights for 1957*, p. 80) which extended the system of contractual compensation for industrial accidents to the victims of accidents occurring during travel to or from the place of work. Under this principle, however, the victim may not claim from the employer or his agents any other compensation based on civil liability in ordinary law. If that consequence is applied to accidents occur-

[8] Agreement of 19 March 1962 and governmental declarations, *Journal officiel*, March 1962, p. 3019.

[9] Act 62-421, *Journal officiel*, April 1962, p. 3843.

[10] Declaration, *Journal officiel*, July 1962, p. 6483.

[11] Ordinance 62-429, *Journal officiel*, April 1962, p. 3893.

[12] Ordinance 62-430, *Journal officiel*, April 1962, p. 3893.

[13] Ordinance 62-618, *Journal officiel*, June 1962, p. 5316.

[14] Ordinance 62-718, *Journal officiel*, July 1962, p. 6392.

[15] Act 63-22, *Journal officiel*, January 1963, p. 507.

[16] Decision 58502, *Recueil des décisions du Conseil d'Etat*, 1962, p. 552.

ring during travel between the home and the place of work, or vice-versa, the result is a diminution of the victim's right to compensation in cases where the person responsible for the accident happens to be either the employer himself or one of his agents, for example, one of the victim's fellow-workers. Some courts of appeal, having realized the injustice of a situation in which the person responsible for the accident was in fact in the position of a third party, had allowed the victim to have recourse even against the employer or the latter's agent responsible for an accident during travel. However, the Court of Cassation, in joint session, by an order of 27 June 1962 [17] upheld the strict and literal application of the text of article 415-1 of the Social Security Code, which unconditionally assimilates an accident during travel to an accident at the place of work.

The act of 6 August 1963 [18] was therefore passed, which enables the victim of a travel accident occurring in the above circumstances to sue a third party who is responsible and obtain additional compensation, even if that party is his employer or one of the latter's agents; save that if the agent was carrying out duties on the instructions of the employer, the contractual system again applies.

2. *Trade union rights. Workers' representatives*

The relevant jurisprudence has at times to arbitrate conflicts between the legal protection of the functions exercised and the discipline necessary within the place of business.

The functions entrusted to workers' representatives under the Act of 16 April 1946 may require them to absent themselves at times from their work, within the limit of fifteen hours per month laid down in article 13 of the Act.

Any clause of a collective agreement which makes the exercise of this right conditional on the prior approval by agreement of the head of the undertaking of a request submitted one or two days in advance is illegal; failure to observe such a clause cannot debar those concerned from exercising the capacity of representative.[19]

3. *Works Committees. Scope of their Functions*

Since the ordinance of 2 November 1945, amended by the act of 16 April 1946, does not contain a precise definition of the "welfare schemes" whose operation it entrusts to the head of the undertaking, jurisprudence has had to define the extent of the committees' powers in this field.

Thus the Court of Cassation dismissed the claim of a company which was contesting the right of its works committee to grant contractual daily allowances to staff members availing themselves of the education leave provided for in the Act of 23 July 1957 (*Yearbook on Human Rights for 1957*, p. 80), which is unpaid leave.

The Court based its judgement on recognition of the fact that "the establisment of an allowance system to facilitate workers' education comes within the social welfare schemes designed to improve the collective working and living conditions of the staff".[20]

4. *Manpower. The National Employment Fund*

Changes and adjustments in the nation's economic life and industrial structure, and technological developments impose heavy demands on the adaptability of workers. In order to facilitate their search for new employment and their reclassification and readaptation, a National Employment Fund was established by an act of 18 December 1963.[21] Its purpose is to provide conversion allowances for unemployed wage-earning workers who are following a vocational training course designed to fit them for other work, and to make various grants and allowances (removal, resettlement, etc.) for workers who have to move to another geographical area.

Special vocational guidance and training courses are provided for young men who no longer have active military service obligations.

5. *Penal Labour*

The Decree issued on 13 April 1962,[22] which amends the Decree of 10 December 1949,[23] serves as a reminder that prisoners also benefit from the various provisions of the Social Security Code.

6. *Overseas Departments*

Two decrees of 31 July 1963 [24] provide for increasing the minimum inter-professional wages guaranteed in the *départements* of Guadeloupe, Guiana, Martinique and Réunion.

7. *Contractual Development of the Right to Work. The Renault Agreements*

In recent years there has been an increasing tendency to complete, or supplement, labour legislation by means of contract clauses applying either to a particular undertaking or to an entire trade, in which case they take the form of collective agreements. This phenomenon arose out of a change in the attitude of the employers' and workers' organizations which have discovered the advantages of jointly considering the future prospects for their trades and the possibilities of development which they show. Many of the contributions to social law made by these talks between employers' and workers' organizations are still unknown, because they are not usually made public.

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[17] Cass., Ch. réunies, *Bulletin des arrêts de la Cour de cassation*, 1962, pp. 3-4.

[18] Act 63-820, *Journal officiel*, August 1963, p. 7357.

[19] Cass. Crim., 22 February 1962, *Droit social*, 1962, p. 622.

[20] Cass, Soc., 4 January 1962, *Droit social*, 1962, p. 164.

[21] Act 63-1240, *Journal officiel*, December 1963, p. 11331.

[22] Decree 62-4777, *Journal officiel*, April 1962, p. 4027.

[23] Act 49-1585, *Journal officiel*, December 1949, p. 12021.

[24] Decrees 63-772 and 63-773, *Journal officiel*, August 1963, pp. 7133 and 7134.

For that reason the publication, early in 1963, of the "Renault Agreements" of 29 December 1962 [25] came as a striking manifestation of the trend. Agreement was reached for a two-year period between the management of the Régie nationale des Usines Renault and the staff trade union organs.

One of the "benefits" provided for in this agreement was the granting of a fourth week of paid leave. The example spread rapidly and was soon followed during 1963 by many of the major metallurgical firms.

Another clause of the agreement contains the promise of wage increases if not less than 4 per cent in each of the two years, "linked to the technical progress reasonably foreseeable in two coming years".

Thus, concurrent with and sometimes running counter to governmental and legislative action, a contractual social law is developing, which is itself evidence of an improved social atmosphere and cannot fail sooner or later to have an important effect on legislation.

8. *Repatriated Persons*

The prospect of Algerian independence prompted the return to France of a large number of persons either of French or other European origin or of indigenous status. As mentioned earlier (*Yearbook on Human Rights for 1961*, p. 133), the Government had been authorized by an act to take all possible steps to facilitate the re-establishment, resettlement and readaptation of those persons in metropolitan France. A series of legal texts has given effect to these intentions:

(*a*) by the establishment of a special provisional social security and family allowance scheme (Ordinance of 14 February 1962 [26]);

(*b*) by measures to promote resettlement in the civil service (Ordinance of 11 April 1962 [27] concerning conditions of integration in the metropolitan public services of officials and agents of the Algerian and Saharan public services); and

(*c*) by measures to facilitate resettlement in the private sector (Ordinance of 11 April 1962 [28] instituting temporary priority of employment in enterprises employing more than fifty wage-earning workers and in sectors of trade to be determined by decree).

Furthermore, an Ordinance of 4 August 1962 [29] made provision for setting up agricultural enterprises, particularly in uncultivated or inadequately cultivated areas, for assignment to farmers repatriated from Algeria.

III. INTERNATIONAL CONVENTIONS

The Journal officiel *has published:*

(*a*) The Convention of Paris of 20 March 1883 for the Protection of Industrial Property, last revised at Lisbon on 31 October 1958 (Decree 62-53, *Journal officiel*, January 1962, p. 637);

(*b*) The Convention of 14 September 1961 extending the competence of the authorities qualified to register the recognition of illegitimate children (Decree (62-833, *Journal officiel*, July 1962, p. 7286).

Ratification of the following has been authorized:

(*a*) The International Telecommunication Convention, signed at Geneva on 21 December 1959 (Act 62-633 of 5 June 1962, *Journal officiel*, June 1962, p. 5411);

(*b*) The Convention on recognition of the legal status of foreign societies, associations and foundations, signed at The Hague on 12 June 1956 (Act 62-704 of 29 June, *Journal officiel*, June 1962, p. 6339);

(*c*) The Convention on the law applicable to maintenance obligations in respect of children, signed at The Hague on 24 October 1956 (Act 62-704, above-mentioned, and Publication Decree 63-646 of 3 July 1963, *Journal officiel*, July 1963, p. 6134).

The Act of 22 June 1962 (Act 62-684, *Journal officiel*, June 1962, p. 6066) authorized approval of the Statute of the Hague Conference on Private International Law of 31 October 1951, and published the text of the Statute.

The Act of 6 August 1963 (Act 63-811, *Journal officiel*, August 1963, p. 7334) authorized ratification of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery, signed on 7 December 1956.

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[25] Published in *Droit social*, 1963.

[26] Ordinances 62-168 and 62-169, *Journal officiel*, February 1962, pp. 1605 and 1606.

[27] Ordinance 62-401, *Journal officiel*, April 1962, p. 3787.

[28] Ordinance 62-400, *Ibid.*, p. 3786.

[29] Ordinance 62-914, *Journal officiel*, August 1962, p. 7874.

ORDINANCE No. 62-825 OF 21 JULY 1962 [30] CONCERNING CERTAIN PROVISIONS RELATING TO FRENCH NATIONALITY PROMULGATED IN APPLICATION OF ACT No. 62-421 OF 13 APRIL 1962 [31]

Art. 1. French nationals of civil status in ordinary law domiciled in Algeria at the date of the official announcement of the results of the self-determination ballot shall retain French nationality whatever their situation in respect of Algerian nationality.

Art. 2. Persons of civil status in local law and of Algerian origin may in France, together with their children, assert their right to be recognized as French nationals under the provisions of title VII of the French Nationality Code.

From 1 January 1963 such persons shall be able to establish their French nationality only under the conditions prescribed in article 156 of the Code.

Art. 3. The provisions of articles 104 to 108 of the Nationality Code shall be applicable to persons referred to in article 2 of this Ordinance.

For a period of three years from the date of publication of this Ordinance, registration as provided for in article 104 may be postponed. Such postponement shall suspend the six months' time-limit laid down in article 107 of the Code.

Art. 4. The French nationality of persons referred to in article 1 who were born in Algeria before the publication of this Ordinance shall be held to be established, in accordance with the provisions of article 143 of the French Nationality Code, if they have been in uninterrupted possession of French status.

Art. 5. The procedural formalities for recognition as provided in article 2 above shall be prescribed, so far as is necessary by a decree of the *Conseil d'Etat.* No fee or tax shall be levied for this procedure.

Art. 6. The Prime Minister, the Keeper of the Seals, the Minister for Justice, the Minister of State for Algerian Affairs, the Minister for the Interior, the Minister for Health and Population and the Minister for Finance and Economic Affairs are hereby entrusted, each within his sphere of jurisdiction, with the execution of this Ordinance. This Ordinance shall be published in the Official Journal of the French Republic.

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[30] *Journal officiel,* July 1962, p. 7230.

[31] Act No. 62-421 of 13 April 1962, published in the *Journal officiel,* April 1962, p. 3843, relates to the agreements to be drawn up and measures to be taken regarding Algeria in pursuance of the governmental declarations of 19 March 1962.

GABON

DECREE No. 6/PR OF 7 JANUARY 1963 TO INSTITUTE A WORKER'S FAMILY BENEFIT SCHEME TO PROVIDE FOR THE ORGANIZATION AND OPERATION OF A FAMILY BENEFIT AND EMPLOYMENT ACCIDENT EQUALISATION FUND IN GABON [1]

SUMMARY

Under section 1 of the Decree, a family scheme is instituted for all workers covered by section *o* of Act No. 88 of 4 January 1962 to establish a Labour Code in the Gabon Republic [2] and engaged in the territory of Gabon in employment for the account of a private individual or public or private body corporate and having one or more dependent children resident in that territory.

Other provisions of the Decree deal with pre-natal allowances; birth grants; family allowances; health and welfare.

The text of the Decree in French and a translation thereof into English have been published by the International Labour Office as *Legislative Series* 1963—Gab. 1.

[1] Text published in the *Journal officiel de la République gabonaise*, No. 12, of 1 June 1963.

[2] For a summary of the Labour Code, see *Yearbook on Human Rights for 1962*, p. 97.

ACT No. 9/63 OF 12 JANUARY 1963, ON THE MAINTENANCE OBLIGATIONS OF THE FATHER OF A CHILD BORN OUT OF WEDLOCK [3]

Art. 1. The maintenance obligations of the father of a child born out of wedlock are governed by the provisions of this Act.

Art. 2. The mother of a child born out of wedlock or, in her absence, the person having effective charge of the child may bring against the alleged father who fails to fulfil his maintenance obligations an action to oblige him to contribute to the maintenance and education of the child until the latter reaches his fifteenth birthday.

Art. 3. The action shall be admissible only in the following cases:

(1) In the case of notorious concubinage of the alleged father and the mother during the legal period of conception;

(2) In the case of kidnapping or rape, when the time of the kidnapping or rape coincides with that of conception;

(3) In the case of seduction carried out with the aid of abuse of authority or promise of marriage;

(4) In the case of acknowledgement by the alleged father, either explicit or tacit, when his behaviour towards the child has been that of a father.

Art. 4. The action shall be brough before the court of main instance of the place of residence of the mother or of the person having effective charge of the child. Under penalty of inadmissibility, the action must be brought during the year following the birth of the child, or, if the mother and the alleged father have lived in concubinage or if the alleged father has contributed for a time to the maintenance of the child, in the year following the termination of either the concubinage or such contribution.

Art. 5. Legal proceedings are free. Legal aid for the enforcement of the judgement is provided as of right.

. . .

[3] *Journal officiel de la République gabonaise*, No. 3, of 1 February 1963.

ACT No. 20/63 OF 31 MAY 1963 ON PROHIBITION OF THE BRIDE-PRICE [4]

Art. 1. The practice known in customary law as the "bride-price", consisting of the transfer of a sum of money or articles of value by the prospective husband to the family of the prospective wife on the occasion of the marriage, is forbidden.

Art. 2. Any mention of the bride-price in a public or private instrument is henceforth prohibited.

Any action to secure payment or reimbursement of the bride-price shall be declared inadmissible.

[4] *Ibid.*, No. 14, of 1 July 1963.

Nevertheless, with regard to marriages contracted prior to the date of entry into force of this Act, an action for repayment of the bride-price may, in the case of divorce, be brought against the parents who received it.

Art. 3. Any person who contravenes the provisions of this Act, either by demanding or accepting or by giving or promising gifts in cash or in kind as bride-price, as defined in article 1, shall be punished with a term of imprisonment of from three months to one year and a fine of from 36,000 to 360,000 francs, or with one of these penalties only.

Performance of services is assimilated with gifts in kind.

The Court shall rule on the confiscation of sums of money or articles paid as bride-price.

Art. 4. No person may claim the title of spouse and the civil effects of marriage unless the latter has been celebrated before the Civil Register and attested to by an instrument entered in the Civil Register. However, marriages contracted prior to the date of entry into force of this Act in forms sanctioned by custom shall continue to have effect.

Art. 5. The modalities of the present Act shall be determined, where necessary, by implementing decree.[5]

[5] Decree No. 227/PR of 24 July 1963, published in the *Journal officiel de la République gabonaise*, No. 18, of 15 August 1963, sets forth the modalities for repayment of bride-prices paid prior to the date of entry into force of this Act.

PENAL CODE OF THE GABONESE REPUBLIC
Promulgated by Act No. 21-63 of 31 May 1963[6]

BOOK I
PENALTIES AND PERSONS LIABLE TO THEM

Chapter 1
PRELIMINARY PROVISIONS

Art. 5. No crime, offence (*délit*) or petty offence (*contravention*) shall be punished with penalties which were not prescribed by law before the commission thereof.

Art. 6. Any attempted crime manifested by an overt act shall be deemed to be the completed crime, unless it is interrupted or is frustrated in its purpose solely by the operation of circumstances independent of the will of the offender.

The same shall apply to attempted offences punishable by law with imprisonment for more than five years. Attempts to commit other offences shall be deemed to be offences only in cases specified by a special provision of the law.

Art. 7. Where a person is convicted of several crimes or offences, the most severe penalty alone shall be imposed. Where the principal penalty is commuted, the penalty after commutation and not the penalty initially pronounced shall be taken into consideration in the application of this rule.

Art. 8. Sentences to penalties prescribed by law shall in all cases be pronounced without prejudice to such rights of restitution and damages as may be due to the parties.

Where the sentenced offender's property is insufficient to cover a fine as well as measures of restitution and damages awarded at the same time, the latter penalties shall be accorded preference.

Chapter 2
THE DEATH PENALTY

. . .

Art. 10. If a woman under sentence of death states that she is pregnant and is found to be so, she shall not be executed until after child-birth.

[6] *Ibid.*, Special number, of 25 July 1963.

Chapter 3
PENALTIES INVOLVING DEPRIVATION OF LIBERTY

. . .

Art. 13. Every penalty involving deprivation of liberty shall run from the day on which the convicted person is taken into custody by virtue of the final sentence.

Any period of detention pending trial shall be deducted in its entirety from the term of the penalty imposed by sentence of the court.

Art. 14. Men sentenced to hard labour shall be employed at the most arduous work.

Art. 15. Sentences to a term of hard labour shall be for not less than five years and not more than twenty years.

Art. 16. Sentences to imprisonment shall be for not less than one day and not more than ten years. A penalty of imprisonment for one day shall run for twenty-four hours; a penalty of imprisonment for one month shall run for thirty days.

Art. 17. Any person sentenced to imprisonment shall be confined in a prison.

Chapter 4
PENALTIES INVOLVING DEPRIVATION OF RIGHTS

Art. 18. A person sentenced to a criminal penalty shall be prohibited from exercising the following political civil and family rights:

1. The right to vote and to elect;
2. The right to be elected;
3. The right to be summoned or appointed to office as an assistant judge or to any other public office or service, or to perform such office or service;
4. The right to bear arms;
5. The right to vote in family deliberations;

6. The right to be a guardian or curator, except of his own children and then only with the consent of the family;

7. The right to act as an expert or to witness legal instruments;

8. The right to testify in court otherwise than for the purpose of making direct statements.

Art. 19. In correctional matters, the courts may, in the cases expressly provided by law, prohibit in whole or in part, for a period of five to ten years, the exercise of the civil, personal and family rights mentioned in the preceding article.

Chapter 5

RESTRICTION OF MOVEMENT

Art. 20. The penalty of restriction of movement shall consist in prohibiting a sentenced offender from frequenting certain places.

It may be imposed on any offender sentenced to hard labour or to imprisonment for a term of one year or more.

The maximum penalty of restriction of movement shall be twenty years.

Art. 21. The list of prohibited places shall be established by the Minister for the Interior by means of collective or individual orders. Notice thereof shall be given to the sentenced offender before his release at the request of the administrative authorities.

Art. 22. Restriction of movement shall run from the date of the sentenced offender's release.

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Chapter 8

RELEGATION

Art. 36. The penalty of relegation shall consist in perpetual internment in conditions to be fixed by decree.

Art. 37. The penalty of relegation may be imposed only by ordinary courts and tribunals, and only sentences previously pronounced by such courts and tribunals shall be taken into consideration in its application.

. . .

Art. 39. Sentences which have subject to pardon, commutation or reduction of penalty may nevertheless be taken into consideration for the purpose of relegation. Sentences which have been extinguished by rehabilitation shall not be taken into consideration.

Art. 40. Relegation shall not be applicable to infants or to persons who would be more than sixty years of age at the expiration of their penalty.

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Chapter 12

GROUNDS OF LACK OF CRIMINAL RESPONSIBILITY; EXCUSES

Art. 50. No crime or offence shall be deemed to have been committed where the accused was in a state of mental derangement at the time of the act or where he was compelled to commit the act by a force which he was unable to resist.

. . .

Chapter 13

INFANCY

Art. 56. Where an infant under thirteen years of age is guilty of acts defined as crimes or offences, he shall be brought before the president of the Tribunal, who may order either the committal of the infant to the charge of his parents, his guardian, the person who had custody of him or a trustworthy person, or his placement in an institution, a public or private educational or vocational training establishment or a medical establishment. These measures may be revoked or modified by the same procedure.

Art. 57. Where an infant between the ages of thirteen and eighteen years commits a crime or offence, he shall in all cases be brought before the examining judge, who shall also inquire into his living conditions and education. If the examining officer does not order the infant committed to prison, he may, by special order, commit him to the charge of any person or institution of his choosing, which shall retain custody of the infant until the Tribunal renders its decision.

Art. 58. Infants over the age of thirteen years and under the age of eighteen years shall be judged by the Correctional Tribunal or by the Criminal Court in a closed hearing, unless the infant is a defendant in the same case as one more co-defendants of full age. In all cases, judgement shall be pronounced in open court.

Art. 59. The court dealing with a crime or an offence committed by an infant over the age of thirteen years and under the age of eighteen years shall state whether or not he acted with discernment. In the former case, the Tribunal may either sentence the infant to the penalties prescribed by law or sentence him to a lesser penalty, the minimum penalties being those prescribed for petty offences.

In the latter case, no sentence shall be pronounced, but the Tribunal shall take all necessary measures to ensure the infant's reform and re-education.

Art. 60. In penitentiary establishments, untried prisoners or sentenced offenders who are infants under eighteen years of age shall always be placed in a special section.

The death penalty shall never be imposed on an infant under eighteen years of age.

BOOK II

CRIMES AND OFFENCES AGAINST THE STATE

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Chapter 4

ACTS PREJUDICIAL TO PUBLIC POLICY AND SAFETY, THE AUTHORITY OF THE STATE AND THE CREDIT OF THE NATION

. . .

Art. 84. Persons who:

1. Desiring to hold a public meeting, make an incomplete or inaccurate statement such as to mis-

represent the nature of the projected meeting, or who, either before filing the statement prescribed by law or after the meeting has been prohibited, invite other persons, by any means whatsoever, to take part therein; or who

2. Participate in the organization of a public meeting for which a statement has not been filed or which has been prohibited, shall be punishable by imprisonment for not less than one month or more than six months or a fine of not less than 24,000 or more than 100,000 francs, or by both of these penalties.

Art. 85. Persons who utter seditious cries or sing seditious songs in public places or at public meetings shall be punishable by imprisonment for not less than three months or more than one year or a fine of not less than 24,000 or more than 120,000 francs, or by both of these penalties.

Art. 86. Any person who, by words, writings, gestures or in any other manner, insults the flag of the Gabonese Republic shall be punishable by imprisonment for not less than one month or more than one year or a fine of not less than 24,000 or more than 240,000 francs, or by both or these penalties.

Art. 87. Any incitement addressed through written or oral propaganda, whatever the means of dissemination, to the international security forces or to members of the army, the navy or the air force with a view to seducing them from their duties and from the obedience they owe their superior officers in everything they are commanded by the latter to do for the execution of laws, regulations, requisitions, or orders of the public authorities, or for the execution of military regulations shall be punishable with imprisonment for not less than one year or more than ten years and a fine of not less than 24,000 or more than 500,000 francs.

Art. 88. A person who participates in whatsoever manner in any written or oral propaganda tending to disturb public order, to incite rebellion against the authorities of the State, to injure the Republic by lowering the prestige of its institutions, to provoke disunion among citizens, to inspire racial, religious or tribal hatred and, in general, to injure the vital interests of the State and the Nation shall be punishable by imprisonment for not less than six months or more than five years and a fine of not less than 24,000 or more than 250,000 francs.

Art. 89. Any person who receives, directly or indirectly, in whatsoever form and on whatsoever consideration, funds of foreign origin intended for propaganda and who engages in political propaganda shall be punishable by imprisonment for not less than one year or more than five years and a fine of not less than 24,000 or more than 500,000 francs. The funds so received may be seized at any place where the recipient deposits them, and any payment to come shall be blocked or confiscated in the possession of the payer.

Art. 90. Persons who disseminate or keep with a view to dissemination for propaganda purposes pamphlets, handbills or leaflets of foreign origin or inspiration which are of such a nature as to injure the national interest or to disturb public order shall be punishable by the same penalties.

Art. 91. Any person who knowingly disseminates or reproduces newspapers or periodicals which have been prohibited in the manners prescribed by the laws in force shall be punishable by imprisonment for not less than three months or more than one year and a fine of not less than 24,000 or more than 100,000 francs.

Art. 92. Without prejudice to the application of article 49 (4) in the event that the incitement has effect, any person who, through written or oral propaganda, whatever the means of dissemination, directly incites another to commit a crime or offence against the State or individuals, against persons or property, or who seeks to justify such crimes or offences, shall be punishable by imprisonment for not less than one year or more than five years.

Art. 93. The malicious dissemination or reproduction, by any means whatsoever, of false reports or documents which are fabricated, forged or falsely attributed to third persons shall, if a disturbance of public order results, or might have resulted, be punishable with imprisonment for not less than six months or more than threee years and a fine of not less than 24,000 or more than 240,000 francs.

Where such malicious dissemination or reproduction is calculated to impair the discipline or morale of the armed forces, the penalty shall be imprisonment for not less than one year or more than five years and a fine of not less than 50,000 or more than 500,000 francs.

. . .

Chapter 11

Insults and Violence to Public Officers and the Police and Security Forces

Art. 157. Any injury to the honour or reputation of a person or body exercising public authority or of the police and security forces, committed by insulting, defamatory or threatening words, or by writings pictures or gestures, shall be deemed an insult.

Art. 158. Any insult to the President of the Republic, wheresoever, whensoever and howsoever committed, shall be punishable with imprisonment for not less than one year or more than three years and may be punishable, in addition, with a fine of not more than 500,000 francs.

Art. 159. Any public insult to a foreign Head of State or Government, ambassador or other diplomatic agent accredited to the Government of the Gabonese Republic, shall be punishable with imprisonment for not less than one month or more than two years and may be punishable, in addition, with a fine of not more than 300,000 francs.

The proceedings shall be instituted at the request of the insulted person addressed to the Minister for Foreign Affairs.

Art. 160. Any public insult to the courts, tribunals, armies, legislative bodies and public authorities shall be punishable with imprisonment for not less than one month or more than two

years and may be punishable, in addition, with a fine of not more than 300,000 francs.

Art. 161. Any public insult to, or any insult not publicly uttered but addressed to, a member of the Government, a member of the National Assembly, a judge of the administrative or judicial courts or an assistant judge, an officer or member of the police or security forces, an officer of justice (*officier ministériel*) or a public official or citizen charged with a public service function in the exercise of their duties or in connexion with such exercise, shall be punishable with the same penalties.

Art. 162. Where, in the cases referred to in articles 160 and 161, the insult consists in an allegation or imputation prejudicial to the honour or reputation of the person or body concerned, the truth of the defamatory statement may be proved, save when the imputation concerns the private life of the individual or refers to facts more than ten years old, or when it constitutes an offence which is covered by amnesty or limitation. If proof of the defamatory matter is established, the accused shall be acquitted.

In such cases, proceedings shall be instituted only on the complaint of the person concerned or, where appropriate, of the minister to whom he is subordinate, or, in the case of a public authority, on a decision to prosecute adopted in general assembly, or, if the public authority has no general assembly, on the complaint of the head thereof or of the minister to whom it is subordinate.

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Chapter 19

SORCERY, QUACKERY AND ACTS OF CANNIBALISM

Art. 210. Any person who participates in a transaction having reference to human remains or bones, or who engages in practices of sorcery, magic or quackery which are liable to disturb public order or to cause injury to persons or property shall be punishable by imprisonment for not less than two or more than five years or a fine of not less than 50,000 or more than 200,000 francs, or by both of these penalties.

Art. 211. Without prejudice to the application of article 229 in cases of murder committed for the purpose of cannibalism, any act of cannibalism and any transfer of human flesh for a consideration or free of charge for the same purpose shall be punishable with hard labour for a specified term.

Chapter 20

OFFENCES AGAINST PUBLIC DECENCY

Art. 212. Any person who:

1. Manufactures, possesses, distributes, imports, exports, displays, sells, hires out, publishes or offers in any manner whatsoever any printed matter, writings, drawings, posters, engravings paintings, photographs, films or negatives, phonographic matrices or records, emblems, objects or images contrary to public decency;

2. Utters publicly speeches contrary to public decency;

3. Draws attention publicly to an opportunity for immorality or publishes a notice or an exchange of correspondence of this kind, whatever its terms,

shall be punishable by imprisonment for not less than one month or more than two years or a fine of not less than 24,000 or more than 500,000 francs, or by both or these two penalties.

Art. 213. The criminal police officers may, before any proceedings are initiated, seize any writings or other objects mentioned in the preceding article, one or more copies of which have been exposed to public view and which, as being contrary to decency, represent a present danger to public morality. They may likewise seize, tear down, deface or cover posters of the same character.

. . .

Chapter 7

SEX OFFENCES

Art. 255. Any person who commits an act of public indecency shall be punishable by imprisonment for not less than three months or more than two years and a fine of not less than 24,000 or more than 120,000 francs.

. . .

Chapter 8

OFFENCES RELATING TO MARRIAGE AND THE FAMILY

Art. 264. Any person who gives in marriage or marries according to custom a girl who does not give her consent or who is under the age of fifteen years shall be punishable by imprisonment for not less than one year or more than five years.

Art. 265. Any person who, with a view to the consummation of a marriage celebrated according to custom, has or attempts to have carnal knowledge of a child under the age of fifteen years shall be punishable by imprisonment for not less than one year or more than ten years.

Art. 266. Where as a result thereof the child suffers serious injury or a disability, even if temporary, or where the connexion results in the child's death, the guilty person shall be punishable by hard labour for a specified term.

Art. 267. A wife convicted of adultery shall be punishable by imprisonment for not less than one month or more than two years.

The proceedings may be instituted only on the complaint of the husband who shall retain the right to stop them by consenting to take back his wife.

The accomplice of the adulterous wife shall be punishable by the same penalties. The only evidence admissible against him, save where he is found *in flagrante delicto*, shall be letters or other documents written by him.

Art. 268. A husband who, save in the cases permitted by custom, keeps a concubine at the matrimonial domicile shall be punishable by the same penalties. Proceedings may be instituted only on the complaint of the spouse.

Art. 269. A married woman who without substantial cause abandons the matrimonial domicile

shall be punishable by the penalties for adultery.

The husband shall retain the right to stop the proceedings by consenting to take back his wife.

Art. 270. Save in cases of polygamy authorized by custom, any person who, being married, marries any other person before the dissolution of the preceding marriage, shall be punishable by imprisonment for not less than six months or more than three years. A public official who, having knowledge of the preceding facts, lends his services for such a marriage, shall be sentenced to the same penalty.

Art. 271. The following shall be punishable by imprisonment for not less than one month or more than two years or a fine of not less than 24,000 or more than 500,000 francs, or by both of these penalties:

1. A father or mother who without substantial cause abandons the family residence for more than two months and evades all or part of the moral or material obligations flowing from paternal authority or legal guardianship; the running of the two-month period be interrupted only by a return to the home implying the will to resume family life on a permanent basis;

2. A husband who without substantial cause, knowing his wife to be pregnant, wilfully deserts her.

Art. 272. The father and mother or other persons having parental responsibility under law or custom who, by ill-treatment, pernicious examples of habitual drunkenness or notorious misconduct, or failure to provide care or to exercise necessary supervision, seriously endanger the health, safety or morals of one or more of their children, shall be punishable by the same penalties.

Art. 273. Any person who, in defiance of an enforceable judicial decision, or in disregard of an order or a judgement sentencing him to pay maintenance, wilfully fails for more than two months to pay in full the allowances fixed by the judge or to pay the full amount of maintenance, shall be punishable by the same penalties.

In the absence of proof to the contrary, such default shall be presumed to be wilful. Insolvency resulting from the debtor's habitual misconduct, idleness or drunkenness shall in no circumstance be deemed a valid excuse.

The maintenance or allowances fixed by the judge shall be paid or furnished at the domicile or residence of the person entitled to receive them, save as otherwise decided by the judge. Jurisdiction to hear the offence shall be vested in the tribunal of the domicile of the person entitled to receive the maintenance or allowances.

The maintenance order and all documents relating to past prosecution or enforcement proceedings shall be filed with the *Procureur de la République* at the same time as the complaint.

Art. 274. In the cases dealt with in this chapter and in the preceding chapter, the sentenced offender may be deprived of the exercise of the political, civil and family rights specified in article 18.

Chapter 9

CRIMES AND OFFENCES AGAINST CHILDREN

Art. 275. Any person who, by kidnapping, concealment of birth, substituting one child for another or representing a child to be the child of a woman who did not give birth to him, conceals or attempts to conceal the identity of the child and destroys or attempts to destroy evidence of his existence or of his parentage, shall be punishable by imprisonment for not less than five or more than ten years.

Art. 276. Any person who, being entrusted with a child, does not return him to the persons entitled to reclaim him, shall be punishable by imprisonment for not less than five or more than ten years.

Art. 277. Any person who exposes or causes to be exposed, neglects or causes to be neglected a child or incompetent unable to protect himself because of his physical or mental condition, shall be sentenced for that act alone to imprisonment for not less than one year or more than five years and a fine of not less than 24,000 or more than 240,000 francs. If the exposure or neglect results in an illness or incapacity of more than twenty days' duration, the penalty shall be imprisonment for not less than five or more than ten years.

If the child or incompetent suffers a permanent mutilation or disablement, or if he is left with a permanent infirmity, the guilty persons shall be punishable by hard labour for a specified term. Where the exposure or neglect results in death, the guilty persons shall be punishable by hard labour for life.

Art. 278. Any person who, by fraud or violence, kidnaps an infant, causes him to be kidnapped, or takes or entices him away or removes him from a place where he has been put by those to whose authority or control he is subject or has been entrusted, shall suffer a penalty of not less than five or more than ten years of imprisonment. If the guilty person exacted a ransom or had as his purpose the exaction of a ransom from the persons under whose authority or supervision the infant was placed, the penalty shall be death. The same shall apply where the kidnapping is followed by the infant's death.

Art. 279. Any person who, without the use of fraud or violence, kidnaps or entices away an infant under sixteen years of age shall be punishable by imprisonment for not less than one year or more than five years or a fine of not less than 24,000 or more than 120,000 francs, or by both of these penalties.

Where an infant girl so kidnapped or enticed away marries her abductor, the latter may be prosecuted only on the complaint of the persons entitled to apply for the annulment of the marriage, and may be convicted only after the annulment has been pronounced.

Art. 280. After the court has made a provisional or final ruling on the custody of an infant, the father, the mother or any other person who fails to produce the infant to those entitled to claim him or who, even if without the use of fraud

or violence, kidnaps him or entices him away from those entrusted with his custody or from a place where the latter have put him, shall be punishable by imprisonment for not less than one month or more than one year or a fine of not less than 24,000 or more than 240,000 francs, or by both of these penalties.

Art. 281. Any person who causes an infant under the age of eighteen years to drink to the point of drunkenness shall be punishable by imprisonment for not less than one month or more more than three months and a fine of not less than 24,000 or more than 240,000 francs.

. . .

Chapter 11

INJURIES TO PRIVATE HONOUR AND REPUTATION

Art. 283. Any allegation or imputation of an act prejudicial to the honour or reputation of the person to whom it is imputed shall be deemed to be defamatory. The publication of such an allegation or imputation, directly or by reproduction, shall be punishable, even if it is made in oblique form or refers to a person who is not explicitly named but may be identified by the terms of the offending means of dissemination.

Art. 284. Any person who, save in the cases provided for in articles 157 to 162, is guilty of the defamation of a private person, either by speeches, cries or threats uttered in public places or at public meetings, or through printed matter sold or distributed, placed on sale or displayed in public places or at public meetings, or by posters or notices put on public view, shall be punishable by imprisonment for not less than three months or more than one year or a fine of not less than 24,000 or more than 300,000 francs or by both of these penalties. The defamation by the same means of a group of persons who belong by origin to a particular race or religion shall be punishable by imprisonment for not less than six months or more than two years and a fine of not less than 50,000 or more than 500,000 francs, where its purpose is to incite hatred among citizens or inhabitants.

Art. 285. The truth of the defamatory statements may always be proved save:

1. When the imputation concerns the private life of the individual;

2. When the imputation refers to facts more than ten years old;

3. When the imputation refers to an act constituting an offence which is covered by amnesty or limitation, or which led to a conviction cancelled by rehabilitation or review;

4. Where proof of the defamatory matter is established, the accused shall be acquitted.

. . .

Chapter 12

VIOLATION OF PROFESSIONAL SECRECY

Art. 289. Physicians, surgeons and other health officers, and pharmacists, midwives and all other persons to whom secrets have been entrusted by reason of their position or profession or of the temporary or permanent functions that they exercise, and who disclose such secrets in cases other than those in which they are compelled or authorized by law to do so, shall be punishable by imprisonment for not less than one month or than six months or a fine of not less than 24,000 or more than 240,000 francs, or by both of these penalties.

Where such persons are summoned to testify in court, they may be absolved by the tribunal from the obligation of professional secrecy; they may not in this event refuse to testify.

Art. 290. Any manager, clerk or workman who communicates or attempts to communicate secrets of the factor in which he is employed shall be punishable by imprisonment for not less than three months or more than three years or a fine of not less than 24,000 or more than 1 million francs, or by both of these penalties.

. . .

Chapter 14

INFRINGEMENTS OF COPYRIGHT

Art. 325. Any person who is guilty of counterfeiting a literary or artistic work, either by publishing, importing or exporting writings, musical compositions, drawings, paintings or any other printed or engraved production in whole or in part, in disregard of the laws and regulations relating to literary and artistic property, or by reproducing, performing or disseminating by any means whatsoever or work of the human mind in violation of the rights of the author as defined and regulated by law, shall be punishable by a fine of not less than 24,000 or more than 600,000 francs.

Where it is established that the guilty person habitually engages in the acts specified in this article, the penalty shall be imprisonment for not less than three months or more than two years and a fine of not less than 50,000 or more than 1,200,000 francs, and the temporary or permanent closing of the establishments operated by the offender may be ordered.

Art. 326. In all the cases referred to in the preceding article, the guilty person shall in addition be sentenced to the forfeiture of a sum equal to the amount of his share of the receipts accruing from the illicit reproduction, performance or dissemination and to the confiscation of all equipment specially installed with a view to the illicit reproduction and all counterfeited copies and objects. The confiscated equipment or counterfeited copies and receipts or shares of receipts shall be remitted to the author or his heirs or assigns as partial compensation for the injury suffered; the balance of the compensation, or the entire compensation where no confiscation was ordered, shall be settled through the ordinary procedures.

. . .

GHANA

THE CRIMINAL CODE (AMENDMENT) (No. 3) ACT, 1963

Act No. 157 of 1963, assented to on 3 January 1963 [1]

. . .

2. (1) Section 124 of the principal Act is hereby amended as follows:

(*a*) by the renumbering of that section as section 124 (1); and

(*b*) by the addition immediately after the renumbered sub-section (1), of the following new subsection:

"(2) Where the Court which finds a person guilty of the offence of stealing is satisfied that on not less than two previous occasions such person was found guilty of the offence of stealing, the Court, shall order that the whole or any part of any term of imprisonment imposed by it shall be spent in productive hard labour."

(2) Where a Court makes an order under subsection (1) in respect of a person, such person shall be disqualified from voting in an election for, and for election to, the National Assembly or any Council within the meaning of the Local Government Act, 1961 (Act 54), for a period not exceeding five years.

(3) For the purposes of this section, "productive hard labour" means labour in any State Farm or State Factory or any other public co-operative or collective enterprise specified by the Minister.

(4) The "previous occasions" referred to in subsection (2) of section 124 of this Code may include occasions which occurred prior to the commencement of this Act.

. . .

[1] Text printed by the Government Printing Department, Accra, Ghana. For extracts from the Criminal Code, see *Yearbook on Human Rights for 1961*, pp. 140-142.

THE CRIMINAL PROCEDURE CODE (AMENDMENT) ACT, 1963

Act No. 177 of 1963, assented to on 7 May 1963 [2]

4. (1) Section 349 of the principal Act is hereby amended as follows:

. . .

(*c*) by the addition immediately after subsection (1), of the following subsections:

"(2) Any police officer, or probation officer having reasonable grounds for believing a juvenile to be in need of care or protection within the meaning of subsection (1), and being of the opinion that it is in interests of the juvenile that he should be taken to a place of safety, may take him to such place and cause him to be kept there for a period not exceeding eight days or until he can be brought before a court, whichever is the sooner.

"(3) Any police officer may bring a juvenile before a Juvenile Court or the nearest District Court, if such officer has reasonable grounds for believing that such juvenile is in need of care and protection within the meaning of subsection (1). The provisions of section 341 shall, as far as may be practicable, apply to cases brought before the District Court under this section.";

. . .

7. Section 375 of the principal Act is hereby amended as follows:

(1) by the substitution, for subsection (1), the following new subsection:

"(1) Where a juvenile is in need of care or protection or is convicted of any offence or where a young person is convicted of any offence for which the court has power to impose a sentence of imprisonment for one month or upwards without the option of a fine and it appears to the Court, after enquiry into the circumstances of the case that, by reason of the criminal habits or tendencies or of his association with persons of bad character, it is expedient that he should be subject to such detention, instruction

[2] Text printed by the Government Printing Department, Accra, Ghana. For extracts from Criminal Procedure Code, see *Yearbook on Human Rights for 1961*, pp. 143-149.

and discipline as appear most conducive to his reformation and the prevention of crime, the Court may order, in lieu of passing a sentence of imprisonment or making any other order, the detention of the person—

(*a*) if he is a juvenile in need of care or protection, in a school;

(*b*) if he is a juvenile convicted of an offence in such school or institution as the Court thinks desirable in the interests of the juvenile;

(*c*) if he is a young person, in an institution." and

. . .

9. Section 378 of the principal Act is hereby repealed and the following new section is substituted therefor:

"Where a juvenile is ordered to be sent to a school or institution and where a young offender is ordered to be sent to an institution, the detention order shall be the authority for his detention therein until the expiration of three years from the date of the order."

. . .

THE NEWSPAPER LICENSING ACT, 1963

Act No. 189 of 1962, assented to on 23 July 1963 [3]

1. (1) Without prejudice to the provisions of any other enactment, no person shall, after three months of the coming into force of this Act, print, publish or circulate any newspaper except under and in accordance with a licence granted in respect of such paper to the publisher thereof under this section (in this Act referred to as a newspaper licence).

(2) Regulations shall provide for the issue, conditions and the duration of a newspaper licence, and may prescribe the fees payable for the application for or grant of such licence.

2. Without prejudice to the provisions of section 3 of this Act, the Minister may, if the holder of a newspaper licence fails to comply with any condition included in such licence or for any other reason, by executive instrument published in the *Gazette* revoke or suspend such licence for such period as he thinks fit.

3. (1) If any person fails to comply with any requirement, conditions or prohibition imposed by or under this Act, that person and, in the case of a firm or a company, every partner or director thereof shall be guilty of an offence under this Act.

(2) A partner of a firm or a director of a company shall not be guilty of an offence under this section if he can prove that the offence was committed without his knowledge or that he has taken reasonable steps to prevent the commission of the offence.

(3) A person guilty of an offence under this Act shall be liable on conviction to a fine not exceeding one hundred pounds, or imprisonment for a term not exceeding twelve months, or to both.

4. No prosecution shall be instituted under this Act without the consent of the Attorney-General in writing.

5. The Minister shall or may, as the case may require, by legislative instrument make regulations providing for any matter which under this Act is to be provided for by regulation or is to be prescribed and generally for giving effect to the provisions of this Act.

. . .

[3] Text printed by the Government Printing Department, Accra, Ghana.

THE CRIMINAL PROCEDURE (AMENDMENT) ACT, 1963

Act No. 191 of 1963, assented to on 9 October 1963 [4]

. . .

3. The principal Act is hereby amended in Part VIII (which relates to appeals)—

. . .

(*d*) by the substitution for section 335 of the following new section—

"335. (1) The prosecution may appeal on a question of law to the Supreme Court from any decision of the High Court in its appellate jurisdiction under this Part.

(2) The defence may appeal to the Supreme Court from such a decision in the following cases, that is to say—

(i) where the appeal is against a conviction and is based on any ground which involves a question of law alone;

(ii) where the appeal is against a conviction and is based on any ground which involves a question of fact alone or mixed law and fact and the defence has obtained the leave of the Supreme Court to appeal or a certificate of the judge who tried the case that it is a fit case for appeal, or on any other ground which appears to the Supreme Court to be a sufficient ground of appeal;

(iii) where the appeal is against sentence, other than a sentence fixed by law, and the defence has obtained the leave of the Supreme Court to appeal."

(*e*) by the substitution for section 337 of the following section—

[4] Text printed by the Government Printing Department, Accra, Ghana. For extracts from Criminal Procedure Code, see *Yearbook on Human Rights for 1961*, pp. 143-149.

"337. (1) The prosecution may appeal on a question of law to the Supreme Court against any decision of the High Court in the exercise of its original jurisdiction, or against any decision of a Circuit Court in a trial upon indictment.

(2) The defence may appeal to the Supreme Court against any such decision of the High Court or of a Circuit Court in the same cases as are specified in subsection (2) of section 335 in relation to appeals from the High Court in its appellate capacity."

. . .

THE PUNISHMENT OF HABITUAL CRIMINALS ACT, 1963
Act No. 192 of 1962, assented to on 9 October 1963[5]

1. (1) Where a person who is not less than twenty years of age—

(*a*) is convicted of any offence other than an offence for which he is liable to suffer death; and

(*b*) has been convicted previously of at least two offences, each of which is either a felony or a misdemeanour; and

(*c*) it appears to the High Court, after enquiring into the circumstances of the case, that by reason of his criminal habits or tendencies or of his association with persons of bad character, it is expedient for the protection of the public that he should be detained in custody for a substantial period,

the Court shall, subject to the next following section, pass (in lieu of any other sentence) a sentence of preventive custody with productive hard labour for such term, not being less than ten years, as the Court may determine.

(2) In this Act the expression "productive hard labour" has the meaning assigned to it by the Public Property (Protection) and Corrupt Practices (Prevention) Act, 1962 (Act 121).

2. (1) Where in the case of any offender to whom subsection (1) of the foregoing section applies the High Court has reason to believe that his physical or mental condition is such as to render him unsuitable for a sentence of preventive custody with productive hard labour under that section, the Court shall, before passing such sentence—

(*a*) cause an enquiry to be held into, and a written report to be made on, the physical and mental health of that offender by a medical Board consisting of not fewer than two suitably qualified medical practitioners appointed by the Court after consultation with the Chief Administrator of the Ministry of Health;

(*b*) consider the report of the Board and take such further medical evidence concerning the offender as the Court thinks fit; and

(*c*) furnish the offender or his lawyer with a copy of the report.

(2) Where, having regard to such report or further medical evidence, or to any representations made by or on behalf of the offender, the Court is satisfied that his physical or mental health is such as to render him unsuitable for a sentence of preventive custody with productive hard labour, but for no other reason, the Court shall (in lieu of such sentence) pass such other sentence as is authorised by law in relation to the offence of which he is convicted.

3. (1) Where the Court by which an offender to whom paragraphs (*a*) and (*b*) of subsection (1) of section 1 of this Act apply is convicted is a Circuit Court, District Court or Local Court, the Court shall not pass sentence upon him but shall commit him for sentence to the High Court, and any enactment relating to the powers of any Court upon committal for trial shall apply, so far as is relevant, to the committal for sentence.

(2) Following such committal the High Court shall have power to deal with the offender as if he had been convicted by that Court of the offence (and, if the offence is an indictable one, as if he had been convicted on indictment) and the conviction and sentence shall be subject to appeal as if he had been so convicted.

. . .

[5] Text printed by the Government Printing Department, Accra, Ghana.

THE PREVENTIVE DETENTION (AMENDMENT) ACT, 1963
Act No. 199 of 1963, assented to on 6 November 1963[6]

The Preventive Detention Act, 1958 (No. 17)[7] as amended is hereby further amended by the insertion immediately after section 3 thereof of the following new section—

"3A. Notwithstanding the provisions of section 2 of this Act, the President may, at any time before the expiration of an order under that section, direct that the period of the detention authorized by that order be extended for a further period not exceeding five years if in his opinion the release of the person detained would be prejudicial to the matters specified in paragraph (*a*), (*b*) or (*c*) of subsection (1) of section 2 of this Act."

[6] Text printed by the Government Printing Department, Accra, Ghana.
[7] For extract from this Act, see *Yearbook on Human Rights for 1958*, pp. 82-83.

THE SECURITY SERVICE ACT, 1963

Act No. 202 of 1962, assented to on 27 November 1962 [8]

1. (1) There is hereby established a Security Service (in this Act referred to as the "Service") as one of the Public Services of the Republic which shall be directly responsible to the President.

(2) The Service shall consist of such persons as may be appointed by the President.

. . .

3. It shall be the duty of the Service to defend the Republic from external and internal dangers arising from activities directed from within or without Ghana which are subversive of the Republic, and to perform any other functions relating to the Security of the State assigned to the Service by the President.

4. (1) For the purpose of the efficient performance of the functions assigned to the Service by this Act, Rules may be made conferring on the members of such department, branch or division of the Service as may be specified in the Rules the powers of superior police officers in relation to investigation, search, arrest and detention.

(2) A security officer on whom such powers have been conferred shall be provided with such identification card as may be prescribed by Rules indicating that he has such powers.

(3) The powers conferred on a security officer under this section shall be exercisable only if the officer is carrying the prescribed identification card on him.

(4) Where a security officer referred to in subsection (2) of this section exercises any of the powers conferred on him under subsection (1) of this section, he shall, if requested by the person in respect of whom such power is being exercised, produce his identification card for examination by that person.

5. The President may remove or dismiss a security officer from office on any ground which the President considers sufficient in the public interest.

6. No proceedings shall be instituted against the Republic in any Court in respect of anything done in accordance with the provisions of this Act and the Rules made thereunder.

. . .

[8] Text printed by the Government Printing Department, Accra, Ghana.

THE FOREIGN TRAVEL (EXIT PERMITS) ACT, 1963

Act No. 212 of 1963, assented to on 10 December 1963 [9]

1. (1) Without prejudice to the requirements of any other enactment, no person who is a citizen of Ghana shall leave Ghana unless that person is in possession of a valid authorisation in writing granted by, or on behalf of, the Minister (hereafter in this Act referred to as an "exit permit") so to do:

Provided that nothing in this subsection shall be construed as requiring a Minister of Ghana to obtain an exit permit if, before leaving Ghana, he obtains a written approval granted by the President so to do.

(2) Any person to whom an exit permit is granted shall comply with such terms and conditions attached to the permit as may be prescribed.

(3) In this Act "the Minister" means the Minister responsible for immigration.

2. Any citizen of Ghana who wishes to obtain an exit permit shall—

(*a*) in the prescribed form and manner and within the prescribed period make an application in that behalf to the Minister;

(*b*) within the prescribed period surrender his passport or other travel document to the Minister or to such other person as may be prescribed; and

(*c*) furnish the Minister with such information concerning the application as may be prescribed.

3. Any person who contravenes—

(*a*) subsection (1) of section 1 of this Act; or

(*b*) any prescribed term or condition attached to an exit permit,

shall be guilty of a misdemeanour.

. . .

[9] Text printed by the Government Printing Department, Accra, Ghana.

PRISONS ACT, 1963

Act No. 221 of 1963, assented to on 12 December 1963 [10]

PART II—ESTABLISHMENT AND ADMINISTRATION OF PRISONS

Provision and Maintenance of Prisons

41. (1) There shall be established such prisons in such area, district or Region as the Minister may by executive instrument specify in the instrument.

(2) An instrument establishing a prison may declare any building in such area, district or Region referred to in subsection (1) of this section to be a prison.

. . .

Confinement and Treatment of Prisoners

43. (1) A prisoner, whether sentenced to imprisonment or committed to prison on remand or pending trial or otherwise detained in accord-

[10] Text printed by the Government Printing Department, Accra, Ghana.

ance with law, may be lawfully confined in any prison.

(2) The Minister may by an executive instrument appropriate particular prisons to particular classes of prisoners, and any prisoner of the appropriate class shall be confined in that prison.

(3) Prisoners shall be committed to such prison as the Minister may direct, and may by direction of the Minister be removed during the term of their imprisonment from the prison in which they are confined to any other prison.

(4) A warrant, summons or other legal instrument addressed to a keeper of a prison or any other person and identifying that prison by its situation or by any other sufficient description shall not be invalidated by reason only that the prison is usually known by a different description.

44. (1) Every prisoner shall be deemed to be in the legal custody of the keeper of the prison.

(2) A prisoner shall be deemed to be in legal custody while he is confined in, or is being taken to or from, any prison and while he is working, or is for any other reason, outside the prison in the custody of an officer of the prison.

45. (1) The Minister shall satisfy himself from time to time that in every prison sufficient accommodation is provided for all prisoners.

. . .

46. Regulations may be made authorising the infliction of corporal punishment for mutiny, incitement to mutiny, or gross personal violence to any prison officer or any other person employed in the Service, or personal violence to a fellow prisoner, when committed by a male person serving a sentence of imprisonment, preventive custody or preventive detention.

47. (1) A prisoner may be brought up for trial, and may be removed by or under the direction of the keeper of the prison in which he is confined from that prison to another, for the purpose of being tried.

(2) Where a person detained in any prison is charged with an offence before any court which, if that person were not so detained, might issue a warrant for his apprehension, the court may, instead of a warrant, issue an order in the prescribed form directed to the keeper of the prison requiring him to bring that person before the court in accordance with the order.

(3) Regulations may provide in what manner an appellant within the meaning of the Criminal Procedure Code, 1960 (Act 30), when in custody, is to be taken to, kept in custody at, and brought back from, any place at which he is entitled to be present for the purpose of that Act.

(4) The Minister may—

(*a*) if he is satisfied that the attendance at any place, other than a prison, of a person detained in prison is desirable in the interest of justice or for the purpose of any public inquiry, direct him to be taken to that place;

(*b*) if he is satisfied that a person so detained requires medical or surgical treatment of any description, direct him to be taken to an approved hospital or other suitable place for the purpose of the treatment,

and where any person is directed under this subsection to be taken to any place he shall, unless the Minister otherwise directs, be kept in custody while being so taken, while at that place, and while being taken back to the prison in which he is required in accordance with law to be detained.

. . .

50. Regulations may make provision whereby, in such circumstances as may be prescribed, a person serving a sentence of imprisonment for such term as may be prescribed may be granted remission of such part of that sentence as may be so prescribed on the ground of his industry and good conduct, and on the discharge of a person from prison in pursuance of any such remission his sentence shall expire.

51. Regulations may provide for—

(*a*) the appointment of medical officers and other persons to be visitors of a prison;

(*b*) the manner and duration of such appointment;

(*c*) the constitution of the visitors into visiting committees; and

(*d*) the functions of such committees.

Convict Labour

52. (1) Every prisoner under sentence of imprisonment with hard labour may, in accordance with any regulations made under this Act or a direction given by the Minister, be kept to labour in prison or outside, and in any part of Ghana.

(2) Every such prisoner shall be under the custody, management and orders of persons appointed by the Minister and every person so appointed shall have over him the powers incidental to the office of keeper of a prison.

. . .

GUATEMALA[1]

LEGISLATIVE DECREE No. 1 OF 2 APRIL 1963, PROMULGATING THE GUATEMALA LABOUR CHARTER[2]

SUMMARY

This Charter, which provides for the fundamental norms of labour legislation, was published in *El Guatemalteco*, No. 34, of 5 April 1963 and deals, *inter alia*, with labour principles and standards (arts. 1-4); workers' basic rights (art. 5); and workers' housing (art. 6).[3]

The text of the Charter is identical to that of Chapter V of the Constitution of Guatemala of 1956 entitled "Labour".[4]

[1] Texts of Legislative Decrees appearing under this heading published in *Decretos-Leyes Emitidos por el Jefe del Gobierno de la República*, I. Guatemala, C.A.—1963. and furnished by Mr. Gilberto Chacón Pazos, Ministry of Foreign Affairs, Guatemala City, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] *Op. cit.*, pp. 9-16.

[3] The Guatemala Labour Code promulgated by Decree No. 1441 of 29 April 1961 remains in force. For a summary of the Code, see *Yearbook on Human Rights for 1961*, p. 155.

[4] See *Yearbook on Human Rights for 1956*, pp. 98-99.

LEGISLATIVE DECREE No. 8 OF 10 APRIL 1963, PROMULGATING THE FUNDAMENTAL CHARTER OF GOVERNMENT[5]

Chapter I

PUBLIC AUTHORITY

Art. 1. Public authority shall be exercised by the Army of Guatemala, which shall retain its military status.

Art. 2. The Minister of National Defence shall be the Head of the Government of the Republic.

Art. 3. The Head of the Government of the Republic shall exercise executive and legislative functions; he shall therefore be responsible for drafting, promulgating and executing laws and approving or rejecting treaties and other international conventions. Legislative decrees shall be issued in Council of Ministers.

Art. 4. The Supreme Court of Justice and other courts are empowered to administer justice independently and exclusively in accordance with the law.

Art. 5. Guatemala will maintain and foster the closest possible relations with the sister republics which formed the Federation of Central America and will be ready to consider any position designed to bring about the restoration of that Federation.

Art. 6. The Republic of Guatemala will fulfil its international obligations; its actions will conform to the treaties, conventions and covenants which tend to consolidate the basic principles of democracy.

Chapter II

NATIONALITY

Art. 7. The following are native Guatemalans:

(1) Persons born in Guatemalan territory or on board Guatemalan vessels and aircraft, whether of a Guatemalan father or mother, of unidentified parents of a parents of nationality unknown.

(2) Persons born in Guatemala of foreign parents if either of them is domiciled in the Republic.

Person born in Guatemala of transient alien parents if, during their minority, either of the parents or the minors themselves acquire a domicile in the Republic.

Persons born in Guatemala of transient alien parents if, upon reaching their majority, they establish domicile in Guatemala and declare their desire to be Guatemalans. Children of diplomatic representatives or of persons holding legally comparable posts are excepted.

(3) Persons born outside the territory of the republic of a native Guatemalan father and mother in the following cases:

(*a*) If they establish domicile in Guatemala;

[5] Text published in *Decretos-Leyes Emitidos por el Jefe del Gobierno de la República*, I, Guatemala, C.A.-1963, pp. 30-45. The Constitution of Guatemala of 1956, extracts from which appear in the *Yearbook on Human Rights for 1956*, pp. 90-101, was suspended on 31 March 1963.

(*b*) If under the laws of the place of their birth, the foreign nationality of their birthplace is not attributed to them;

(*c*) If, having the right to choose, they opt for Guatemalan nationality.

(4) Persons born outside the territory of the Republic of a native Guatemalan father or mother in the following cases:

(*a*) If they establish their domicile in Guatemala and opt for Guatemalan nationality;

(*b*) If under the laws of the place of their births, the foreign nationality of their birthplace is not attributed to them;

(*c*) If, having the right to choose, they opt for Guatemalan nationality.

To opt for Guatemalan nationality implies a renunciation of any other nationality, which fact must be expressly recorded.

Art. 8. Native-born nationals of the other Republics which constituted the Federation of Central America are also considered to be native Guatemalans provided they acquire domicile in Guatemala and declare their desire to be Guatemalans before the appropriate authority. In this event, they may preserve their nationality of origin.

Art. 9. The following are naturalized Guatemalans:

(1) Aliens who have obtained a naturalization certificate in accordance with the law;

(2) Aliens who, having had their domicile and residence in Guatemala for the period of time established by law, obtain a naturalization certificate;

(3) A female alien married to a Guatemalan, who chooses Guatemalan nationality, or one who, in accordance with the laws of her country, acquires the nationality of her husband by reason of her marriage;

(4) A male alien married to a Guatemalan woman, with two or more years of residence when he chooses Guatemalan nationality, provided that the domicile of the spouses is in Guatemala;

(5) Spaniards and Latin Americans by birth who are domiciled in Guatemala and declare their desire to be Guatemalans before the appropriate authority.

Art. 10. The law may facilitate the naturalization of immigrants who come to Guatemala under State colonization projects or pursuant to treaties or conventions ratified by Guatemala.

Art. 11. Persons to whom Guatemalan nationality is granted must expressly renounce any other nationality and take an oath of allegiance to Guatemala and of respect for the national institutions.

Art. 12. Guatemalan nationality is lost:

(1) By naturalization in a foreign country, except in a Central American country.

(2) If naturalized Guatemalans reside for three or more consecutive years outside the territory of Central America, except in cases provided for by law.

(3) If naturalized persons repudiate their status as Guatemalans in any public instrument or voluntarily use a foreign passport.

(4) By revocation, in accordance with the law, of the naturalization granted.

Art. 13. Guatemalan nationality may be recovered:

(1) By native Guatemalans who lost it by naturalization in a foreign country, if they establish domicile in Guatemala.

(2) By persons who, having had the right to choose, opted for a nationality other than Guatemalan, if they establish domicile in Guatemala and declare their desire to be Guatemalans.

(3) By dissolution of marriage bonds when naturalization in a foreign country has resulted from marriage, provided that the person concerned declares his desire to recover Guatemalan nationality; and even without such declaration, if the foreign nationality has been lost through dissolution of the marriage.

Art. 14. All Guatemalans are under obligation:

(1) to serve and defend their country;

(2) to comply with and ensure compliance with the laws of the Republic;

(3) to work for the civic, cultural, economic and social development of the nation;

(4) to contribute to public fund in the manner prescribed by law;

(5) to respect the public authorities;

(6) to perform military service in accordance with the law.

Art. 15. On their entry into the territory of the Republic, aliens are under obligation to respect the public authorities, pay taxes and comply with the laws and regulations and acquire the right to be protected by the latter.

Art. 16. Neither Guatemalans nor aliens may claim compensation from the Government for damage to their person or their property, caused by armed movements or civil disturbances.

Chapter III

CITIZENSHIP

Art. 17. The following persons are citizens:

(1) Male Guatemalans over eighteen years of age;

(2) Female Guatemalans over eighteen years of age who know how to read and write.

Art. 18. Citizenship is suspended:

(1) By an order of imprisonment pronounced in the case of a crime for which correctional imprisonment is applicable and for which release on bail is not possible;

(2) By a final sentence of conviction, issued in criminal proceedings;

(3) By judicial interdiction.

Art. 19. Suspension of citizenship terminates:

(1) By means of a judicial decision rendering the sentence of imprisonment null and void;

(2) On completion of the sentence imposed, provided rehabilitation is not necessary;

(3) By means of an amnesty or pardon for political crimes and related common crimes;

(4) By means of rehabilitation.

Art. 20. Citizenship is lost:

(1) Through the loss of Guatemalan nationality.

(2) Through voluntary service to nations at war with Guatemala or to the allies of such nations if such service implies treason to the nation.

Art. 21. Citizenship is recovered:

(1) When three years have elapsed following recovery of Guatemalan nationality;

(2) By governmental order in the cases established by law.

Chapter IV

INDIVIDUAL GUARANTEES

Art. 22. The following guarantees are recognized:

(1) The life and physical integrity of the individual and his personality as a moral being endowed with intellect are the subject of special protection.

(2) Freedom of movement is assured. Every person shall be free to enter, remain in and leave the territory of the Republic, except as otherwise provided by law.

(3) Every person shall be free to dispose of his property in conformity with the law. The State reserves the right to impose limitations affecting the ownership of immovable property situated in a fifteen-kilometre belt along the land frontiers and in a three-kilometre belt immediately adjacent to the maritime-terrestrial zone of the sea coast of the Republic. An order of expropriation shall not be made except in case in which it is duly shown to be desirable or necessary in the public interest and in conformity with the law.

(4) The State shall be governed in all its actions by the principle that the property of the inhabitants should not suffer any prejudice; the State shall not be answerable for prejudice occasioned by riot or by a disturbance of the public peace or by the measures taken to deal with them.

(5) Any religion may be freely practised. Churches of all persuasions are recognized as legal entities and may acquire and possess property and dispose of it, provided that such property is to be used exclusively for religious, social welfare or educational purposes.

(6) The inhabitants of the Republic have the right to associate freely for the various objectives of human life, for the purpose of promoting, engaging in and protecting their trade union, economic, religious, social, cultural, professional and other interests.

The organization or operation of groups, associations or entities which function in accordance with or subordinate to organizations which advocate a communist ideology or any other totalitarian system is prohibited.

(7) Throughts may be freely expressed, without prior censorship, through any medium, subject to the limitations imposed by law.

(8) The correspondence and private papers and books of every person shall be inviolable.

(9) The inviolability of the home is guaranteed. Forcible entry may take place only by order of the competent authority.

(10) A person shall not be detained except by virtue of an order given in writing by the competent authority by reason of some crime or offence, or as a measure of security. This provision shall not apply to the case of *flagrante delicto.*

(11) No person shall be compelled to testify in a criminal case against himself, his spouse or his relatives within the fourth degree of consanguinity or within the second degree of affinity.

(12) No person shall be convicted unless he has first been summoned, received a hearing, and been found guilty by a court of justice.[6]

Art. 23. The remedy of an application for *habeas corpus* or production of the person shall be the proper recourse in cases relating to the treatment of persons under detention. If an application for the said remedy is made to a court, the latter shall confine itself to making an order for the production, at a public hearing, of the person under detention and, if it should appear that the detention is unlawful, to ordering his release. The court shall not have authority to order the release of a person who is subject to a security measure in conformity with the law concerning the defence of democratic institutions.

Art. 24. The exercise of all the rights and the enjoyment of the individual guarantees shall be limited by the security measures ordered by the Head of State. Any individual or group communist action is punishable by law.

. . .

[6] Amended by Legislative Decree No. 64.

LEGISLATIVE DECREE No. 9 OF 2 APRIL 1963, PROMULGATING THE ACT FOR THE DEFENCE OF DEMOCRATIC INSTITUTIONS [7]

Art. 1. Any activities aimed at attacking, damaging or destroying the democratic system on which the institutional life of the nation is based are illegal and shall be punishable in accordance with this Decree.

Art. 2. The organization and operation of political parties, groups, associations, committees, cells, combat groups, bureaux or in general any kind of entity with a communist ideology shall be prohibited in the national territory.

[7] Text published in *Decreto-Leyes Emitidos por el Jefe del Gobierno de la República,* I, Guatemala, C.A.-1963, pp. 47-52.

Art. 3. The establishment or operation of national or international entities which under any pretext maintain ties with the countries of the communist bloc shall also be prohibited. An exception shall be made for international organizations to which Guatemala belongs.

Art. 4. Two years of corrective imprisonment shall be prescribed for:

(1) Any persons who distribute brochures, pamphlets, placards, records, recordings or any type of printed or recorded matter from any source recommending the establishment in Guatemala of communist-type entities.

(2) Any persons who disseminate communist propaganda by any means.

(3) Any persons who manufacture or use communist emblems or trade in such emblems.

(4) Any Guatemalans who visit the countries of the communist bloc without specific Government authorization.

(5) Any persons who knowingly distribute propaganda of a communist or totalitarian type.

(6) Any persons who organize public meetings or engage in acts designed to encourage them, with the purpose of carrying on communist or totalitarian propaganda or agitation.

(7) Any persons who deal any of the objects enumerated in sub-paragraph 1 of this article; any persons using any method of inserting communist or totalitarian propaganda in commercial or cultural programmes.

Art. 5. Three years of corrective imprisonment shall be prescribed for:

(1) Any persons who carry on communist propaganda at public meetings or places of work.

(2) Any persons transmitting communications of a totalitarian nature or origin publicly or clandestinely.

(3) Any persons who have in their possession or project cinema films propagating communist views and any persons who traffic in such films.

(4) Any persons who contribute in any way to the support of communist or similar parties or entities.

. . .

Art. 7. Ten years of corrective imprisonment shall be prescribed for:

(1) Any persons who violate the prohibitions contained in articles 2 and 3 of this Act.

(2) Any persons who belong to or register in communist parties or any similar groups.

. . .

Art. 14. The Government of the Republic may revoke the nationality of naturalized Guatemalans who engage in the activities referred to in this Act.

Art. 15. The specified terms of imprisonment shall be doubled when the offences were committed on the occasion or for the purpose of teaching activities at educational institutions or in abuse of office, employment or mission.

Art. 16. All the offences referred to in the present Act shall be judged solely by military courts and in accordance with military law.

. . .

Art. 19. The Ministry of National Defence shall immediately establish a register of:

(1) Persons affiliated to communist parties or entities.

(2) Persons convicted under this Act.

(3) Countries considered as being in the communist bloc.

(4) Groups, organizations, entities or parties with communist leanings.

Art. 20 The fact that a person figures among those referred to in sub-paragraphs 1 and 2 of the preceding article shall constitute a presumption of guilt, unless proved otherwise.

. . .

LEGISLATIVE DECREE No. 23 OF 9 MAY 1963, GRANTING AUTONOMY TO THE UNIVERSITY OF SAN CARLOS OF GUATEMALA [8]

. . .

Art. 1. The University of San Carlos of Guatemala is an autonomous institution with legal status. It is solely responsible for organizing, directing and developing higher education and vocational training in the nation. It shall use all the means at its disposal to promote scientific and philosophical research and the wide dissemination of culture and shall assist in the study of national problems whenever necessary.

The autonomy of the University is guaranteed for the attainment of its high cultural aims, subject to the observance of the laws, the safety of the State and the maintenance of public order.

. . .

Art. 7. Other universities may be established and operate in the country but their organization and curricula shall be approved by the University of San Carlos of Guatemala. Any professional diplomas shall be countersigned by the Rector of the University of San Carlos.

[8] *Ibid.*, pp. 90-94.

HAITI

NOTE[1]

The following decrees, acts, orders and official decisions concerning human rights were made or enacted by the Government of Haiti during 1963:

1. The Presidential Decree of 9 March 1962, issued by virtue of the full powers granted to the President by the Decree of the Legislature of 13 September 1961, adopting and giving effect to the Convention concerning Freedom of Association and Protection of the Right to Organise, signed at San Francisco on 17 June 1948 (Convention reproduced in *Le Moniteur*, No. 20, 7 February 1963);

2. The Presidential Decree of 9 March 1962, issued by virtue of the full powers granted to him by the same Decree of the Legislature of 13 September 1961, adopting and giving effect to the Convention concerning the Rights of Association and Combination of Agricultural Workers, signed at Geneva, on 25 October 1921 (Convention reproduced in *Le Moniteur* of 4 March 1963);

3. The Act of 8 August 1963, extending the applicability of the principle of compulsory residence to dental surgeons, pharmacists, nurses, anaesthetists, midwives, laboratory technicians and all other medical technicians.

This obligation which applies only to doctors who have just graduated from the University of Haiti and compels them to spend a period of two years in a place designated by the appropriate Department, was established by a Legislative Decree of 17 June 1942 in order to extend and improve medical services in hospitals, dispensaries, sanatoria, maternity homes, health centres and clinics in both urban and rural areas for the benefit of the national community as a whole. This obligation is imposed by means of a monthly payment made by the State for the duration of the period of residence. It is now extended under the same conditions to dental surgeons, pharmacists and other professionally qualified persons whose services are related to medical activities (*Le Moniteur*, No. 72, 19 August 1963).

4. The Presidential Order of 19 August 1963, recognizing the Roger Riou Foundation, established in the island of Latortue, by the Catholic priest of that name as an institution of public interest in view of its unselfish pursuit of important social objectives in the fields of education and ethics, hygiene and sanitation and also in the economic, craft and vocational fields;

5. The Presidential Order of 2 October 1963 granting a full pardon to Robert Woodring, a United States citizen sentenced to death on 19 September 1963 by the Military Commission at Casernes Dessalines, in the Palais National for espionage and offences against the internal security of the State, crimes for which penalties are provided in article 63 *et seq.* of the Penal Code of Haiti (*Le Moniteur*, No. 92, 3 October 1963).

[1] Note furnished by Dr. Clovis Kernisan, Dean of the Faculty of Law of the University of Port-au-Prince, government-appointed correspondent of the *Yearbook on Human Rights*.

HONDURAS

LEGISLATIVE DECREE No. 127 OF 14 JUNE 1963, AMENDING THE AGRARIAN REFORM LAW [1]

SUMMARY

The text of this Legislative Decree was published in *La Gaceta*, No. 18,010, of 28 June 1963.

The Legislative Decree amends articles 7, 17, 29, 39, 49, 50, 51, 52, 53, 57, 166 and 204 of the Agrarian Reform Law.

Article 7 of the Agrarian Reform Law as amended reads as follows:

"7. The social function of the private ownership of land is hereby recognized. Every landowner shall be required:

"(*a*) To cultivate his property or to supervise and take financial responsibility for its cultivation, except in the special cases of indirect exploitation referred to in this Law;

"(*b*) To operate efficiently the land belonging to him. Regulations shall lay down rules for determining whether the operation is efficient, including minimum percentages of land which must be maintained under culture, according to the category of land and type of operation, as well as for the necessary conversation of renewable and non-renewable 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 National Agrarian Cadaster; and

"(*g*) To co-operate in the preservation of natural resources."

The other articles of the Law as amended deal with property owned by the National Agrarian Institute (article 17); lands to be exempted from expropriation (article 29); *ejido* land [2] which the National Agrarian Institute, for the purpose of Agrarian Reform, may require (article 39); the procedure governing the acquisition of holdings declared subject to expropriation (articles 49-53); lands not to be considered uncultivated or idle (article 57); regulations relating to land tenure (article 166); and the responsibility of authorities, officials and employees participating in the application of this Law (article 204).

Translation of the Legislative Decree into English and French have been published by the United Nations Food and Agriculture Organization in *Food and Agricultural Legislation*, 1963, Vol. XII, No. 3, V/1b.

[1] For a summary of the Agrarian Reform Law, See *Yearbook on Human Rights for 1962*, pp. 104-105. Translations into English and French of the Law have been published by the United Nations Food and Agriculture Organization in *Food and Agricultural Legislation*, 1962, Vol. XII, No. 1.

[2] Land held in common by the inhabitants of the community.

HUNGARY

NOTE[1]

I. Legislative Decree No. 34 of 1963, regulating Matters concerning the Protection of the Health and Physical Integrity of Workers

The significant changes that have taken place in the social and economic life of the Hungarian People's Republic since the comprehensible regulation of labour relations (Legislative Decree No. 7 of 1951 on the Labour Code) have called for further legislative measures. Enactment of the statutory measure referred to in the title suits this purpose.

Especially remarkable is Article 4 of the statute imposing on the employer more rigorous material liability for industrial accidents and other injuries to the health of workers. The employer's liability is objective in that evidence of his innocence is no excuse. He may be relieved of his responsibility only by producing evidence that the cause of damage accounted for is unavoidable and lies outside the scope of the plant's operation or that the damage is entirely the result of some unavoidable conduct of the injured worker. This liability is more rigorous than the objective responsibility provided by the Civil Code in the case of damage resulting from the operation of dangerous works. While the latter covered only damages sustained during an operation involving increased danger, the new measure extends the employer's material liability to the entire sphere of employment.

Art. 1. Sections 82 to 92 of Legislative Decree No. 7 of 1951 on the Labour Code shall be replaced by the following provisions:

Labour Safety

Establishment and operation of plants

Section 82. The establishment and operation of new plants (buildings, machinery, equipment, etc.); the transfer, modernization and, after long periods of standstill, resumed operation of existing plants; the application of new technologies and the utilization of new types of materials in the manufacturing process may be effected only if safe and healthy working conditions have been ensured. Preliminary labour safety inspection and approval may also be required to ensure safe and healthy working conditions.

Social and sanitary provisions

Section 83. (1) Plants shall establish and maintain dressing, washing, bathing and other social and sanitation facilities for workers in accordance with relevant regulations.

(2) The directors of plants shall take care that workplaces and the facilities referred to in paragraph (1) are kept clean and in order.

(3) The directors of plants shall provide such washing facilities and installations as are required by the particular conditions of work.

Section 84. Medical attention shall be ensured to workers at plants where required by the nature of work or other circumstances.

Safety measures

Section 85. (1) Should workshop organization, change in technology, or other measures (e. g., separation of the workplace) be insufficient to eliminate labour hazards to health or physical integrity, the director of the plant shall take appropriate safety measures by providing for protective installations, individual protective appliances and equipment, protective garments or protective nutriments and beverages.

(2) No monetary compensation shall be admissible in lieu of the carrying out of the safety measures under paragraph (1).

(3) Safety measures shall be lifted upon removal of hazards to the workers' health or physical integrity.

(4) Workers who in spite of warning fail to use the protective appliances, equipment, etc., provided for under paragraph (1) shall be prohibited from the performance of work.

Prerequisites of Employment

Prohibition from employment, pre-employment and periodic medical examination

Section 86. (1) If in certain spheres of work the worker's disease or bodily infirmity is liable to entail increased accident hazards or to have adverse effects on public health, the worker shall be prohibited from employment in or assignment to such spheres of work. Should the performance of work be likely to be detrimental to the worker's health or physical integrity, his employment or assignment shall be made dependent on the result of preliminary medical examination.

[1] Note furnished by the Government of Hungary.

(2) Workers shall be subjected to medical examination at definite intervals if in view of existing working conditions they are exposed to health hazards or if required by traffic safety or other public interests. The further employment of a worker undergoing medical examination shall be decided upon on the basis of medical diagnosis. A worker who, despite warning, fails to undergo medical examination shall be prohibited from the performance of work.

(3) The medical examination referred to in paragraphs (1) and (2) shall be free of charge. Workers shall not suffer financial loss by availing themselves of such examinations.

Training in health protection and accident prevention

Section 87. (1) In order to enable workers to become acquainted with the regulations regarding safe and healthy working conditions prior to actual employment, the relevant regulations shall form a subject of their training in conformity with the type of educational establishment they attend.

(2) Plants shall take care that workers become acquainted with the regulations regarding safe and healthy working conditions in their spheres of work. Prior to this, workers shall not be employed except under direct supervision.

(3) Provision shall be made for workers whose work is connected with the creation of safe and healthy working conditions to become acquainted with the relevant regulations and to pass an examination on the subject. Prior to examination, workers shall not be employed in such types of work without supervision.

Creation of Safe and Healthy Working Conditions

Section 88. (1) The directors of plants shall be responsible for the creation of safe and healthy working conditions, for the realization of related tasks, and for the establishment of a suitable institutional pattern. To this end, they shall provide for a planned improvement of working conditions and shall, if necessary, take any appropriate measures, even beyond the scope of legal provisions, to eliminate hazards to the workers' health and safety.

(2) The plant plans shall ensure the necessary means for creating safe and healthy working conditions.

(3) The directors of plants shall hold inspections at definite intervals to make certain that the required measures for safe and healthy working conditions are implemented.

(4) Workers are under an obligation to comply with the regulations regarding safe and healthy working conditions and to take an active part in the prevention of accidents and occupational diseases in general.

Direction and Co-ordination of the Implementation of Tasks relating to Safe and Healthy Working Conditions

Section 89. (1) The direction and co-ordination of the implementation of tasks relating to safe and healthy working conditions shall be the responsibility of the Hungarian Trades Union Council within the limits of this Code and the regulations issued by the Council of Ministers.

(2) The organization and direction of the creation of safe and healthy working conditions shall be the responsibility of the Minister exercising control over the plant concerned.

Supervision of Observance of the Regulations regarding Safe and Healthy Working Conditions

Section 90. (1) The observance of the regulations regarding safe and healthy working conditions shall be subjected to regular supervision.

(2) The organization and direction of supervision shall be the responsibility of the Hungarian Trades Union Council.

(3) The Ministry of Health and other State organs shall be responsible for the organization and direction of supervision within the limits of separate provisions of law.

(4) The organs of supervision shall have the discretionary right to take actions and impose fines as defined by separate provisions of law.

Section 91. The circumstances of the occurrence of industrial accidents and other instances of violation of the regulations regarding safe and healthy working conditions shall be subjected to investigation in each case, while action shall be taken to eliminate their causes and to establish responsibility.

Section 92. (1) The schemes of material incentives and the conditions of rewards shall be worked out in a way to stimulate the fulfilment of obligations arising from the regulations regarding safe and healthy working conditions.

(2) A worker who is guilty of intentional or unintentional negligence concerning the creation of safe and healthy working conditions may, in accordance with the directive issued by the Minister in concert with the trade union, be debarred, in whole or in part, from enjoying his premium or profit share otherwise due to him. This provision shall not preclude the worker's arraignment in other respects.

Art. 2. Chapter II of the Labour Code shall be completed with the following section:

Labour safety regulations

Section 6/A. (1) The detailed rules on safe and healthy working conditions shall be laid down primarily in accident prevention and sanitary regulations.

(2) The labour safety regulations to be issued shall cover all plants (General Accident Prevention and Sanitary Regulations) and each of the various trades (Trade Accident Prevention and Sanitary Regulations).

(3) The issuance of labour safety regulations and the scope of their application shall be determined by the Hungarian Trades Union Council in concert with the Minister of Health.

Art. 3. Chapter VII of the Labour Code shall be completed with the following section:

Working-clothes

Section 80/A. (1) Workers may be provided with free working-clothes in cases where the labour they perform is especially soiling or wearing their clothing; in cases warranted by protection against weather; or in any other circumstance peculiar to the operation of the plant.

(2) Workers may be provided with uniforms where required by the maintenance of order and discipline.

Art. 4. The title of Chapter XII of the Labour Code shall be changed to "Material Liability" and the chapter shall be completed with the following provisions:

Material liability of plants for industrial accidents and other injuries to health

Section 123/A. (1) The plant shall be obliged to compensate the worker—or, in case of his death, his relatives—for damage caused to his life, health, or physical integrity within the scope of employment relations. This provision shall not apply to compensation for damage suffered by the worker on the way to and from the workplace except when riding the plant's vehicle of transport.

(2) The plant shall be relieved of responsibility on evidence that the damage is accounted for by such unavoidable cause as lies outside the scope of its operation or exclusively by some unavoidable conduct of the injured worker. Failing this, the plant shall nevertheless be relieved of the responsibility to refund such part of the damage as has been caused by gross negligence of the injured worker.

(3) The establishment of the extent of damages and the manner of its calculation with regard to material liability under paragraphs (1) and (2) shall be regulated by the Council of Ministers.

Art. 5. (1) This Legislative decree shall enter into force on 1 April 1964.

(2) Nothing contained in this Law-decree shall affect the labour safety provisions laid down in Act III of 1960 on mining.

II. Order in Council No. 39/1963 (XII.26) and T.U.C. Regulation No. 2/1963 (XII.26), providing for Application of Legislative Decree No. 34 of 1933 Regulating Matters concerning the Protection of the Health and Physical Integrity of Workers

These statutes provide in detail for the ways and means of application of the Legislative decree reviewed under section I above and lay down among other things:

— the healthy and safe conditions of labour;

— the forms of social and sanitary provisions;

— protective measures;

— the preliminary conditions of employment, including the prohibition of employment, pre-employment and periodical medical examinations, training in health protection and accident prevention;

— the ensuring of safe and healthy working conditions;

— the supervision of observance of the relevant regulations, and

— the labour safety regulations.

III. Order in Council No. 33/1963 (XII.3), on the Protection of Workers Partially Incapacitated by Industrial Accident or Occupational Disease, or owing to Tuberculosis in Specified Spheres of Work

With a view to increased protection of the interests of workers, the Order provides in detail for employment conditions in respect of workers who have been subjected to industrial accidents and for ways of establishing wage supplements in their respect. It provides that these workers get particular jobs conforming to their partial incapacity for work, and appropriate wage supplements, taking into consideration their average earning prior to the accident.

Similar considerations justify the regulation of the protection of workers affected by tuberculosis.

Art. 1. The scope of this Order shall cover those workers who:

(*a*) as a result of their suffering from industrial accident or occupational disease receive accident allowance or disability pension and owing to partial incapacity cannot perform their work appropriately (hereinafter: industrial accident victims),

(*b*) because of their tuberculous disease are prohibited by law from their spheres of work.

Employment of industrial accident victims

Art. 2. (1) Employment of industrial accident victims shall be ensured in spheres of work and in working conditions conforming to their state of health. Besides, it must be kept in view that they should possibly be engaged in types of work suitable to their abilities and skills.

(2) In order to comply with the provisions in paragraph (1), the plant is required to ensure that the victim of an industrial accident:

(*a*) continues to work, subject to changes in his working conditions, primarily in his original place of work and trade, or

(*b*) is transferred to another job (workplace) or, if necessary, to another enterprise, or rather

(*c*) is trained for another job or receives vocational training and is accordingly transferred to an appropriate type of work.

(3) In addition to the measures referred to in paragraph (2), by agreement between the director and the worker, the worker may be employed in reduced working hours as against the full-time basis otherwise provided for his type of work.

(4) Several of the measures provided for in paragraphs (2) and (3) may be applied also at one time (e.g. transfer and reduced working hours).

Art. 3. (1) The measures referred to in paragraphs (2) and (3) of Article 2 shall be taken by the director of the plant at the request of the

worker. They may also be proposed by the factory doctor. Even without such a request or proposal the director of the plant is required to take measures in case he is employing the worker in a type of work which the worker, in view of his health condition, is prohibited to perform by law.

(2) The request or proposal may be submitted any time as long as the worker is being employed and receives accident allowance or disability pension.

(3) In accordance with the provisions in Article 2, the director of the plant is required to take measures within fifteen days from the date of receipt of the request or proposal or from the date of his being informed that the worker because of his disease, is prohibited by law from performing work. Before taking measures the director shall ask for the opinion of the Plant Commission for Partially Incapacitated Persons (see Art. 4).

(4) The worker shall be given a written notice of the measure proposed. If the notice is that of transfer, it shall be given fifteen days in advance.

Art. 4. (1) In order to promote the fulfilment of the provisions in Article 2, and with a view to looking after the activity of the partially incapacitated workers, every plant shall set up a Plant Commission for Partially Incapacitated Persons (hereinafter: Plant Commission).

(2) The Plant Commission shall be composed of three members. The trade union committee and the director of the plant shall appoint one member each. The third member shall be the head of the factory sanitary service or, failing this, a physician designated by the special sanitary agency of the Executive Committee of the local (district, municipal, town district) council. The chairman of the Plant Commission shall be selected from among the members by the trade union committee.

(3) The Plant Commission shall inform the director of the plant of its proposal for the conditions of employment of the victim af an industrial accident within three days.

(4) The ways and means of organization with regard to offices, institutions and plants with small staffs may be established by the Minister of Labour, in concert with the Minister of Health and the Trades Union Council, differently from the provisions in paragraphs (1) and (2).

Art. 5. The victim of an industrial accident has the right to resort to a legal remedy, in accordance with the provisions concerning labour-management disputes, against measures taken by the director in virtue of Article 3, or against the director's failure to take measures within fifteen days.

Art. 6. In order to help the director to take measures and the Plant Commission to discharge its functions, the Medical Expert Commission on Working Incapacity is required, besides establishing the extent of the reduction of working capacity, to give its opinion as to the working conditions in which the victim of an industrial accident may be employed.

Rules on the fixing and payment of wage supplements

Art. 7. (1) If the extent of the reduction of working capacity is 36 per cent or more, the wage of the victim of an industrial accident shall be rounded off to 80 per cent of the average wage he earned prior to the accident, but to at most Ft. 2,200 a month, provided that the aggregate sum of his average wage earned in his job (workplace), of the amount he receives as accident allowance of disability pension, or of the amount of damages paid by the party at fault in the industrial accident or occupational disease, as the case may be, does not reach 80 per cent of his earlier wage. The wage supplement shall not be higher than 25 per cent of the average wage earned prior to the accident.

(2) If the new type of work requires training or skilled labour, and during the relevant training the worker—whose working capacity has diminished by at least 36 per cent—does not perform work, for the duration of his training the accident allowance or disability pension of the victim of an industrial accident shall be completed to reach 80 per cent of his average wage, or Ft. 2,200 at most.

. . .

Protection of workers affected by tuberculosis

Art. 14. The provisions in Articles 2 to 13 shall apply, with due regard to the provisions in Article 15, to any worker affected by tuberculosis:

(*a*) whose tuberculous disease has been diagnosed by a tuberculosis hospital, and

(*b*) who at the time of the diagnosis is employed in a type of work which tuberculous persons are prohibited to perform by law, so that his transfer to another job (workplace) has become necessary.

IV. Directive No. 158/1963 (M. K.14) of the Minister of Culture, Concerning State Support to Day-time Students Attending Establishments of Higher Education

It is an endeavour of the Government of the Hungarian People's Republic to relieve parents as much as possible of the burden of their children's education. The Ministerial Directive regulates in detail the forms and conditions of material support to be given to students (scholarships, meals, accommodation in students' hostels, pecuniary aid). Most characteristic of the regulation is that it lays stress on support to students in need of it for material reasons and to those with good school achievements.

The scope of this Directive shall cover day-time students—except foreign scholarship holders—attending universities, colleges of university level, academies, teachers' training colleges, schools for kindergarten teachers, higher-grade technical schools and higher-grade trade schools (hereinafter: establishments of higher education).

State support may consist of (*a*) social grants and (*b*) scholarships. These forms of support shall be awarded, if the required conditions exist, independently of one another.

(a) *Social Grants*

1. Social grants are accommodation in students' hostels, regular money allowance, meals at reduced rates, and emergency allowance.

From the point of view of social grants students shall be classified, according to the income of the parents or other bread-winners (hereinafter: bread-winners) per member of the family, in the following three categories:

Category I. Students whose bread-winners' income per member of the family is under Ft. 800 a month;

Category II. Students whose bread-winners' income per member of the family is between Ft. 800 and Ft. 1,100 a month;

Category III. Students whose bread-winners' income per member of the family is more than Ft. 1,100 a month.

2. The extent and form of the social grants are:

(*a*) Accommodation in students' hostels, reducedrate meals, or pecuniary aid as follows:

(*c*) In cases warranted by social considerations (students of categories I and II), dinner shall be given at reduced rate in addition to lunch. This benefit shall be granted, first of all, to those students whose parents live outside the locality of the establishment of higher education. The sum to be paid for each reduced-rate dinner is Ft. 2.50.

(b) *Scholarships*

1. There are general scholarships, State scholarships, and social scholarships.

2. General scholarships may be granted to students whose average marks are at least "good". The scholarship awards are established by the dean's or the headmaster's office for a half-year period.

Depending on school achievement, the amount of a general scholarship may range from Ft. 100 to Ft. 300 a month. The monthly grant of general scholarship shall be Ft. 300 for students having "excellent" marks, Ft. 250 for those having "very good" marks, and Ft. 150 for those having "good" marks.

Grantees	*Grants*	*Categories*		
		I	*II*	*III*
A. Those accommodated in students' hostels	Meals	breakfast, lunch, dinner	breakfast, lunch, dinner	breakfast, lunch, dinner
	Regular pecuniary aid	Ft. 300	Ft. 200	—
B. Those not accommodated in students' hostels:				
(*a*) If the bread-winners do not live in the locality of the establishment of higher education	Reduced-rate meal	lunch	lunch	lunch
	Regular pecuniary aid	Ft. 350	Ft. 250	—
(*b*) If the bread-winners live in the locality of the establishment of higher education	Reduced-rate meal	lunch	lunch	lunch
	Regular pecuniary aid	Ft. 200	Ft. 100	—

(*b*) Emergency allowance that may be awarded, within a specified limit, to students in need of it.

3. Accommodation in students' hostels must be ensured, first of all, to children of bread-winners living outside the locality of the establishment of higher education. Priority shall be given to children of manual workers having smaller incomes.

Students failing through negligence shall not be granted accommodation in students' hostels.

4. (*a*) Students accommodated in hostels [see point A under 2 (*a*)] shall pay uniformly Ft. 200 for full board a month.

(*b*) Students receiving reduced-rate meals [see point B under 2 (*a*)] shall pay Ft. 4 for each lunch.

3. State scholarship awards may be granted, within the specified limits, for the period of one school year by the Minister exercising supervision over the establishment of higher education.

The State scholarship has two grades:

The State scholarship of Grade I (Ft. 1,000 a month) may be awarded to those students of the second to sixth years who in the preceding school year obtained "excellent" marks and who show exemplary study discipline, take an active part in voluntary work, and by their conduct give proof of their loyalty to the People's Republic and the working people.

The State scholarship of Grade II (Ft. 700 a month) may be awarded to those students of the second to sixth years who in the preceding school year obtained at least "very good" marks and displayed outstanding knowledge of at least one subject, and who show exemplary study discipline, take an active part in voluntary work, and by their conduct give proof of their loyalty to the People's Republic and the working people.

Heads of establishments of higher education shall every year, not later than 10 August, submit to the Minister exercising supervision a proposal for adjudicating State scholarships.

4. With regard to social scholarships a separate statute shall be issued.

V. Order in Council No. 22/1963/XI.21/ on Social Scholarships

Besides the funds appropriated in the State budget for the purposes of secondary and university education, the resources of society become of increasing importance. This Order is intended to promote, first of all, the satisfaction of the ever-increasing demand specialists in the country.

Art. 1. State enterprises and other economic organizations of the State, co-operatives, co-operative unions and centres, social organizations, as well as publicly financed institutions (hereinafter: grantors) may grant social scholarships (hereinafter: scholarships) mainly to children of their manual workers with the primary aim of satisfying the need for specialists of workplaces situated in the countryside.

Art. 2. (1) Scholarships may be granted to those who have applied for admission to the day-time courses of an establishment of higher education or a secondary school, or who are students of an establishment of higher education, provided their conduct is beyond reproach and their school achievement is at least satisfactory.

(2) The grantor and the grantee shall enter into written contract regarding the granting and acceptance of the scholarship, as well as any other relevant arrangements.

(3) The granting of the scholarship, that is the validity of the scholarship contract, is subject to the consent of the head of the educational establishment concerned or—in case of a university with several faculties—of the competent dean. No scholarship shall be granted to students of the last year, to students who have failed through negligence, or who have interrupted their studies without permission. No shall any scholarship be granted for the purpose of secondary school studies to children in whose family the monthly income per member of the family is above Ft. 800.

. . .

Art. 8. (1) The amount of the basic scholarship grant to students of establishments of higher education, if the monthly income per member of the family of the student:

— is less than Ft. 800, shall be Ft. 450 a month;

— is at least Ft. 800 but not more than Ft. 1,100, shall be Ft. 350 a month; and

— is more than Ft. 1,100, shall be Ft. 200 a month.

The establishment of higher education shall, every school year, issue to the student a certificate on the monthly income per member of his family.

(2) A scholarship supplement shall be given to any student of establishments of higher education who has undertaken in the scholarship contract to accept employment in the countryside. The monthly sum of the scholarship supplement shall be Ft. 200.

(3) Depending on the school achievement for the preceding semester, the scholarship supplement to be given to students of establishments of higher education shall be:

(*a*) Ft. 300 a month if the average mark is "excellent";

(*b*) Ft. 250 a month if the average mark is "very good";

(*c*) Ft. 150 a month if the average mark is "good"; and

(*d*) Ft. 100 a month if the average mark is "satisfactory" and if the grant is justified by other circumstances of the student concerned.

(4) In the first semester of the first school year, the scholarship supplement for students of establishments of higher education shall be Ft. 150 a month.

Art. 9. (1) The amount of the basic scholarship grant to secondary schoolchildren shall be Ft. 200 a month.

(2) Depending on the school achievement for the preceding half-year term, the scholarship supplement for secondary schoolchildren shall be:

(*a*) Ft. 150 a month if the average mark is between 4.5 and 5;

(*b*) Ft. 75 a month if the average mark is between 3.5 and 4.5.

(3) In the first school year, the scholarship supplement for secondary schoolchildren shall be Ft. 75 a month.

Art. 10. Subject to the existence of other conditions, scholarship students of establishments of higher education shall receive the family allowance due to any employee. The family allowance together with the scholarship grant shall be paid by the grantor.

. . .

Art. 12. (1) In the contract, the grantor shall undertake to pay the scholarship grant in accordance with the provisions of the law. The grantor is also under an obligation to look after, help and assist the scholarship holder's progress is his studies, as well as his moral and political development.

(2) In the contract, the scholarship holder shall undertake to use his abilities to comply with his obligations to study and enter for examinations, and also to behave in a morally and politically unobjectionable manner. After graduation, students of an establishment of higher education shall furthermore undertake to enter service as stipulated in the contract.

(3) In the case of higher education the grantor shall, and in the case of secondary-school studies the grantor may, stipulate that upon completing his studies the scholarship holder accept, at the

request of the grantor or of a body designated by the grantor, employment for a definite period, in some type of work conforming to his qualifications, in a certain district of the country or with a certain plant (institution, organization) specified in the contract. The scholarship holder may be obliged to enter service for at most as many years as he has been receiving scholarship grants. In such cases, the grantor is required to ensure him a suitable job. The period of military service done by the scholarship holder, who has completed his secondary school studies and is obliged to accept employment, shall be counted in the years of employment stipulated in the contract.

(4) The grantor may set also other conditions in connexion with progress in studies. The validity of the conditions concerning the scholarship holder's on-the-job or vocational training and diploma project is subject to the consent of the dean.

. . .

Art. 14. (1) The grantor may cancel the contract only if the scholarship holder:

(*a*) has, for some reason, not successfully completed the half-year term, imputable to him; or has not scored at least "satisfactory" marks at the end of the school year;

(*b*) has become unworthy of the scholarship because of his morally or politically objectionable conduct; and

(*c*) has, for some reason imputable to him, not fulfilled the contractual obligations concerning his studies, employment etc.

(2) Before cancelling the contract, the grantor shall ask for the opinion of the head of the establishment of higher education or—in the case of a university with several faculties—of the competent dean, or of the headmaster of the secondary school. Failing this, the statement on the cancellation of the contract shall be null and void. If the cancellation of a contract has been initiated by the dean or the headmaster, the grantor is bound to cancel it within 30 days.

(3) The scholarship holder may terminate the contract if:

(*a*) owing to illness or accident, or for some other serious reason, he is unable to pursue his studies;

(*b*) despite solicitation, the grantor has failed to pay the scholarship grants for two months; and

(*c*) after completion of his secondary school studies the scholarship holder, obliged by contract to accept employment, has been admitted to the day-time courses of an establishment of higher education.

(4) The cancellation or termination of the contract shall be made known to the other party in writing. The contract shall lose force on the day following the delivery of such a notification.

(5) When the contract has been cancelled, or when the scholarship holder does not fulfil his contractual obligations undertaken for the period following the completion of his studies, or when the contractually stipulated employment has been ended for some reason imputable to the scholarship holder before the time-limit set in the contract, the grantor may demand repayment in full or in part of the scholarship grants paid.

(6) When the contract has been terminated, the scholarship grants shall not be claimable, and in the case referred to in point (*b*) of paragraph (3) the grantor shall be bound to pay the scholarship grants until the end of the school year.

(7) Civil suit on account of the cancellation or termination of the contract may be instituted by the plaintiff under pain of forfeiture of his right in one year from the date of expiry of the contract.

(8) A written notice of the cancellation or termination of the contract shall be sent to the educational establishment without delay.

. . .

Art. 17. (1) Legal disputes arising from the contract shall be brought before the court.

(2) The extent of repayment of scholarship grants shall, if warranted, be diminished by the court.

VI. Decree No. 5/1963/VIII.25/ of the Minister of Culture on the Necessary Measures of Precaution Applicable to Children and Adolescents and on the Application of Protective Care

The Hungarian Government devotes great care to the education and protection of youth. In addition to considerable funds earmarked for the purpose, a number of statutes ensure the safeguarding of the interest of youth.

The Decree at issue is an elaboration of earlier provisions of a law designed to ensure the moral development and proper education of minors and the protection of their health. Besides stressing the responsibility of the parents, this Decree regulates in detail the tasks and the powers of various State bodies.

Measures of Precaution

Art. 1. (1) In the interest of a child or adolescent (hereinafter: minor) the guardianship authority shall order measures of precaution to be taken if the moral development, education and care of the minor is not ensured in the environment of the person who is given the custody of the minor (hereinafter: the parent).

(2) The guardianship authority shall take steps to provide measures of precaution whenever:

(*a*) it is summoned to do so by the police office, the public prosecutor, or the court;

(*b*) such steps are warranted by a well-grounded notice; and

(*c*) it obtains knowledge of a circumstance making such steps necessary.

(3) The guardianship authority shall open a file for the minor if it provides for measures of precaution to be taken on the basis of a preliminary report on the minor's conditions.

Art. 2. (1) Depending on circumstances, the guardianship authority may take the following measures of precaution:

(*a*) it shall summon the parent and the minor to appear; it shall make the facts known to them jointly or separately and hear them on the matter;

(*b*) it shall talk with the minor and give him information or advice; it shall warn the minor of the impropriety of his behaviour; the warning shall be placed on record;

(*c*) in the absence of the minor it shall warn the parent of the consequences of his parental conduct; it shall admonish the parent to change his improper conduct; it may oblige him to seek advice from a specialist in child neuropathology and education and to follow the advice thus received; the warning and admonishment, which may be repeated if necessary, shall be placed on record;

(*d*) it shall request the school headmaster, the permanent commission or the sub-commission for public education (hereinafter: the Permanent Commission), the employer and the competent trade union committee, to prevail on the parent to change his conduct prejudicial to the minor's education;

(*e*) if the measures taken according to the preceding paragraphs have proved to be of no avail, it shall, by warning the parent of the measures referred to in paragraph (4) or of a fine, oblige him to comply with the duties specified in the admonishment;

(*f*) in co-operation with the competent special administrative bodies, it shall help the minor over 14 to obtain proper employment, with due regard to the provisions relating to compulsory school attendance (Art. 7 of Legislative decree No. 13 of 1962).

(2) If, for lack of the necessary material means, a minor's moral development is impeded, the guardianship authority may use its influence with a view to improving the parent's conditions of work and may make a guardianship grant payable to him.

(3) To remove some environmental harm threatening the health of a minor, the guardianship authority shall take measures in concert with the competent sanitary bodies (head physician of the district, panel doctor, medical officer of the school etc.).

(4) Within the scope of measures of precaution the guardianship authority may initiate the termination of parental supervision, enforcement of the payment of alimony, transfer of the minor to another place, the calling to account of the parent before the factory court or by criminal procedure, and the application of a tapering-off cure to the parent.

Art. 3. (1) The tasks specified in paragraph (1) of Article 2 shall be discharged, in villages, by the secretary of the Executive Committee of the local council in concert with the Permanent Commission. Should his steps prove to be of no avail, he may refer the file to the guardianship authority.

(2) In discharging the above-mentioned tasks, the municipal and town district guardianship authorities shall seek co-operation with the Permanent Commission, the competent institute for child neuropathology and the officials in charge of the protection of youth.

Art. 4. (1) If necessary, the guardianship authority may, at any stage of the procedure, delegate a protector to the minor in danger, with a view to ensuring and controlling his development continuously.

(2) Upon recommendation of the Permanent Commission, there may be designated as protector any person whose abilities and conditions are suitable for promoting the education of the minor. The decision of delegation shall inform the protector of his tasks.

(3) The protector shall have the task to look after the conduct of the minor entrusted to him, to promote his moral development in the right direction and, if so needed, to assist the parent in the upbringing of the child.

(4) When required, but at least once every three months, the protector shall report to the guardianship authority on the results of his efforts and on his experiences. At the same time, he may make to the guardianship authority a proposal for the termination of the protective care if the changes occurred in the circumstances of the minor warrant such a measure.

Art. 5. (1) If the measures of precaution have proved to be of no avail, or if no success can be expected of them, the guardianship authority may order the minor to be taken into the care of the State.

(2) While ordering the child to be taken into the care of a State institute, the guardianship authority may suggest to the director of the children's welfare home as ex-officio guardian that the child be placed in a special reformatory.

After-care

Art. 6. (1) Upon notification from the court the guardianship authority shall open a file for the minor if the latter:

(*a*) has been placed on probation;

(*b*) has been sentenced to reformatory labour;

(*c*) has been sentenced to confinement and the sentence has been stayed; and

(*d*) has been let out on parole.

Art. 7. (1) Thereafter the guardianship authority shall prepare a report on the conditions at issue; then it shall summon the minor to appear, give him instructions concerning his manner of living, and inform him that he may change residence and employment only with the prior consent of the guardianship authority. All this shall be placed on record.

(2) Making use of the existing possibilities, the guardianship authority shall see to it that the minor gets into an environment which has a favourable influence upon his moral development.

Art. 8. (1) Upon the recommendation of the Permanent Commission, the guardianship authority shall delegate a protector to the minor taken into after-care. The decision by which the protector is delegated shall contain the rules of conduct prescribed by the court or by the council of the reformatory institute, as well as the date of expiry of the period of probation. The guardianship authority shall send a copy of this decision

to the court or the director of the reformatory institute.

(2) The tasks of the protector shall be governed by the provisions in paragraph (3) of Article 4.

(3) The protector may look into the files of the criminal proceedings; he shall report to the guardianship authority on the results of his efforts and on his experiences every three months. The guardianship authority shall send a copy of the protector's report to the court or the director of the reformatory institute.

Art. 9. (1) Upon expiry of the period of probation, the guardianship authority shall give information to the court or the director of the reformatory institute if the minor's behaviour during after-care has been beyond reproach or if he has completed his eighteenth year.

(2) If the minor's behaviour during after-care has been objectionable and the protector has proved to be of no avail, the protector shall report on this circumstance to the guardianship authority. The guardianship authority shall promptly make this known to the court or the director of the reformatory institute.

Art. 10. (1) After-care shall come to an end upon expiry of the period of probation, but not later than the minor's coming-of-age.

(2) If the minor under protective care comes of age during after-care, the guardianship authority cannot take direct measures for the minor's supervision after his coming of age, but it shall promote his development in the right direction by appealing to the welfare officer of the competent sanitary department by letting him know about the facts of the case. If necessary, the welfare officer shall request the permanent commission on health and social politics, the trade union committee, or the youth committee, to continue looking after the habits and living conditions of the person of age under protective care and to give him the assistance and help he may need.

(3) The provisions of the preceding paragraph shall apply to the action to be taken by the guardianship authority in connexion with a person released from the reformatory institute on account of his coming of age if the director of the reformatory institute appeals to the guardianship authority to this end.

VII. Order in Council No. 24/1963/xi.28/ on the Social Insurance Pension of Lawyers

This very important statute bearing on the social security of lawyers provides that, except for a few differences, the lawyers shall be covered by Legislative Decree No. 40 of 1958 on the social insurance pension of workers. This means that lawyers and their dependants are entitled to the same benefits as are workers in employment and their dependants. The differences referred to above arise mainly from the different way of calculating the period of service, the amount of pension, and of ensuring the provision of the pension fund.

VIII. Legislative Decree No. 33 of 1963 on the Functions of the Registry and on Marriage Ceremonies, as well as Order in Council No. 38/1963/xii.25/ on its Application

These statutes give a uniform regulation of the control of registers, the ways of registration, the issuance of certificates, and marriage ceremonies.

The principal provisions concerning Hungarian citizens are the following:

(*a*) it is a task of the Registrar to promote the celebration of births and marriages as social events in order to emphasize State solicitude;

(*b*) the rules of registration fully enhance the purpose of adoption,—i.e., integration of the adopted child with the family; accordingly, the adoptive parents (or adoptive parent, in the case of a single person) shall be registered as parents by blood;

(*c*) the rules of the marriage ceremony ensure that marriage is a free and voluntary act; they simplify the proceedings as well as the ways of obtaining the documents required for a marriage licence; and

(*d*) the rules facilitate the verification of the particulars of citizens by providing that certificates issued by the registry shall be sufficient to verify the data contained therein without presentation of any other document.

INDIA

DEVELOPMENT OF HUMAN RIGHTS IN 1963 [1]

I. CONSTITUTION

The Constitution (Fifteenth Amendment) Act, 1963, makes certain important amendments to the Constitution. The age of retirement for High Court Judges is now raised from sixty to sixty-two. It is also provided that if any dispute arises as to the age of a Judge (such a question actually arose in connexion with the date of retirement of a Judge of the Calcutta High Court), the matter should not be made the subject-matter of controversy in a court of law but should be decided, in the case of a Supreme Court Judge, by a special authority set up by a law of Parliament, and in the case of a High Court Judge, by the President, after consultation with the Chief Justice of India.

By an amendment to article 226, it is now provided that where any relief is sought against the Central or a State Government, the High Court within whose jurisdiction the cause of action arises may also have jurisdiction to issue appropriate directions, orders or writs. Before the amendment, the only High Court which had jurisdiction under article 226 with respect to the Central Government was the Punjab High Court, and this caused considerable hardship to litigants.

As a corollary to the assertion by a Presidential Proclamation of India's sovereign rights under international law over the sea-bed and the subsoil of the continental shelf adjoining its territory and beyond its territorial waters, article 297 has now been amended to make it clear that all land, minerals and other things of value underlying the ocean within the continental shelf shall also vest in the Union for the purposes of the Union.

By an amendment of article 311, it is now sought to make it clear that before any penalty is imposed on a government servant as a result of a departmental inquiry, the government servant should have an opportunity of making a representation against the proposed penalty also, but only on the basis of evidence adduced during the inquiry.

In order to prevent fissiparous tendencies and to preserve the sovereignty and integrity of the Union of India, it became necessary to authorize laws being made imposing restrictions on the fundamental rights of freedom of speech and assembly and to form association, guaranteed by article 19 of the Constitution. That article was therefore suitably amended by the Constitution (Sixteenth Amendment) Act, 1963, in order to enable laws being made imposing reasonable restrictions on the exercise of those rights. This Act also amended the form of oath prescribed for Members of Parliament, Ministers, Judges and others in order that the incumbents of all such offices pledged themselves solemnly to uphold the Constitution and to preserve the integrity and sovereignty of the Union before assuming office.

II. LEGISLATION

A. *Political and Personal Rights*

Central Legislation

The Official Languages Act, 1963 (Act 19 of 1963), provides for the continued use of the English language, in addition to Hindi, for all purposes of the Union and for the transaction of business in Parliament after 26 January 1965. This Act became necessary as under article 343 of the Constitution Hindi is the official language and the use of the English language is permitted only for a period of fifteen years from the commencement of the Constitution.

Enacted in pursuance of article 239A of the Constitution, the Government of the Union Territories Act, 1963 (Act 20 of 1963), provides for the establishment of an elected Legislature and a Council of Ministers in each of the centrally administered Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry. It also makes provision for the delimitation of Parliamentary and Assembly constituencies in the said territories.

State Legislation

The Orissa Official Language (Amendment) Act, 1963 (Orissa Act 18 of 1963), provides for the continued use of the English language, in addition to Oriya, for the transaction of business in the State Legislature even after 26 January 1965.

The Rajasthan Noises Control Act, 1963 (Rajasthan Act 12 of 1963), provides for the control of noises made by loudspeakers, amplifiers and the

[1] Information furnished by Shri G. R. Rajagopaul, Officer on Special Duty, Ministry of Law, formerly Special Secretary to the Government of India and Member, Law Commission of India, government-appointed correspondent of the *Yearbook on Human Rights*.

like in public places or near hospitals, educational institutions, etc. In particular, it authorizes district magistrates to prohibit noises of any kind whatsoever in any place and at any time if it is necessary in the public interest to do so.

B. *Emergency Legislation Affecting Personal Freedom*

The Proclamation of Emergency issued by the President on 26 October 1962, as a result of the Chinese aggression, continued to be in force throughout the year. The Order issued by the President under article 359 of the Constitution on the same day suspending the rights of citizens to move any court for the enforcement of the fundamental rights guaranteed by article 14 (equality before law), article 21 (due procedure) and article 22 (protection against arrest and detention) came up for consideration before the Supreme Court in *Makhan Singh Tarsikka* v. *State of Punjab* (A.I.R. 1964, S.C. 381) in connexion with applications under section 491 of the Code of Criminal Procedure, 1898, made by certain persons who had been detained under the Defence of India Rules. By its decision dated 23 September 1963, the Supreme Court ruled that the Presidential Order constituted a sort of moratorium or a blanket ban against the institution or continuance of any legal action where the action seeks to obtain relief on the ground that the claimant's fundamental rights specified in the Order have been contravened. The fact that the applications had been made under a law of the Legislature, like the Code of Criminal Procedure, 1898, did not make any difference because the effect of granting the applications would be to enforce the very fundamental rights the enforcement of which had been suspended. In reply to an argument that the Proclamation may last unduly long and the executive may abuse its powers, the Court observed that if extraordinary powers are given, they are given because the emergency is extraordinary and are limited to the period of the emergency. How long the emergency is to last will necessarily have to be left to the executive, as the executive alone knows the requirements of the situation and the effect of compulsive factors which operate during periods of grave crises. In a democratic State, the effective safeguard against abuse of executive powers, whether in peace or emergency, is ultimately to be found in the existence of enlightened, vigilant and vocal public opinion.

C. *Certain Aspects of Family Rights*

The only Act of any importance which may be referred to under this head is the Special Marriage (Amendment) Act, 1963 (Act 32 of 1963), which permits a marriage between persons within the degrees of prohibited relationship as laid down in the principal Act if there is a well-recognized custom applicable to one of the parties under which such a marriage is permissible.

D. *Social and Economic Rights*

Central Legislation

To augment the resources of the nation for national development, the Compulsory Deposit Scheme Act, 1963(Act 21 of 1963), requires certain categories of persons to deposit with government a portion of their income in accordance with a scheme to be framed for the purpose. The deposits are to bear interest and will be repayable at the end of five years.

The Employees Provident Funds Act, 1952, which provided for the institution of compulsory contributory provident funds for employees in factories and other establishments now covers seventy-nine industries and other establishments, and well over 35,000,000 workers. By an amendment of the Act (Act 28 of 1963), it is now provided that the benefit of this Act extends also to employees employed by or through a contractor. Detailed provisions have also been made for a Central Board of Trustees for administering the Fund.

The Personal Injuries (Compensation Insurance) Act, 1963 (Act 37 of 1963), seeks to impose on employers of workmen in factories, mines, major ports, plantations, etc., a liability to pay compensation in respect of personal injuries to the extent the amount of compensation payable under the Workmen's Compensation Act, 1923, exceeds the amount of compensation payable under the Personal Injuries (Emergency Provisions) Act, 1962. It should be noted in this connexion that under the Personal Injuries (Emergency Provisions) Act, 1962, the liability of an employer to pay compensation for personal injuries (that is, war injuries) under the Workmen's Compensation Act, 1923, has been removed. The 1963 Act also provides for a scheme of insurance of the employer's liability with Government.

State Legislation

The Mysore Industrial Establishments (National and Festival Holidays) Act, 1963 (Mysore Act 24 of 1963), provides for the grant of paid holidays to employees in industrial establishments on the Indian Republic and Independence Days and on five other days for national festivals to be chosen in consultation with the employers and their employees.

The West Bengal Shops and Establishments Act, 1963 (West Bengal Act XIII of 1963), regulates holidays, hours of work, payment of wages and leave of persons employed in shops and other commercial establishments. The hours of work are prescribed differently for adults, young persons and women.

The West Bengal Primary Education Act, 1963 (West Bengal Act XXVIII of 1963), provides for free and compulsory primary education by municipalities in urban areas.

The Punjab Corneal Grafting Act, 1963 (Punjab Act 13 of 1963), authorizes the removal of the eyes from the bodies of deceased persons who had expressed in writing before their death a desire that their eyes may be used for therapeutic purposes after their death. A similar Act has been passed by the Andhra Pradesh Legislature also (Andhra Pradesh Act 22 of 1963).

III. JUDICIAL DECISIONS

1. *Freedom from Discrimination: Equality before the Law*

Under the Constitution a citizen is entitled to the fundamental right of equality before the law and the doctrine of reasonable classification which has been evolved by the courts is only a subsidiary rule evolved for the purpose of giving a practical content to the said doctrine. The Supreme Court observed in *Lachman Dass* v. *State of Punjab* (A.I.R. 1963, S.C. 222) that to over-emphasize this doctrine or to make an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the article of its glorious content and uttered the warning that such process would inevitably end in substituting the doctrine of classification for the doctrine of equality.

2. *Freedom to form Associations*

A regulation made by Government had the effect of compelling a Government servant to withdraw his membership of a service association of government servants as soon as recognition accorded to the said association was withdrawn by Government or if, after the association was formed, no recognition was accorded to it within six months. The Supreme Court refused to uphold the validity of this regulation in the case of *O.K. Ghosh and another* v. *E.X. Joseph* (A.I.R. 1963 S.C. 812), observing that to do so would be to render the right to form associations or unions guaranteed by article 19 (1) (*c*) ineffective and even illusory. The fundamental right guaranteed by article 19 can be claimed equally by government servants as by others.

3. *Freedom of movement and residence*

Under article 19 (1) (*d*) of the Constitution a prostitute, like any other citizen, has a fundamental right to move freely throughout India, and under sub-clause (*e*) of that article to reside and settle in any part of India. Section 20 of the Suppression of Immoral Traffic in Women and Girls Act, 1956, which authorizes a magistrate to direct the removal of a prostitute from her place of residence to another place, whether within or without the local limits of his jurisdiction, no doubt, places a restriction on a citizen's fundamental rights, but the question is whether such a restriction is reasonable. In considering this question, the Supreme Court said in *the State of Uttar Pradesh* v. *Kaushailiya* (A.I.R. 1964 S.C. 416) that the reasonableness of the restriction would depend upon the values of life in a society, the situation obtaining at a particular point of time when the restriction is imposed, the degree and the urgency of the evil sought to be controlled and similar other matters. If, in a particular locality, the vice of prostitution is endemic, degrading those who live by prostitution and demoralizing others who come in contact with them, the Legislature may have to impose severe restrictions on the right of the prostitute to move about and to live in a house of her choice. If the evil is rampant, it may also be necessary to provide for deporting the worst of them from the area of their operations. In a given case, deportation outside the jurisdiction of the magistrate may also be necessary. Under the circumstances, the court held that section 20 does not impose any unreasonable restrictions.

4. *Security of Person*

An executive regulation authorized domiciliary visits to th houses of history sheet men in order to keep track of their movements. In *Kharak Singh* v. *State of Uttar Pradesh* (A.I.R. 1963 S.C. 1295), the Supreme Court observed that the intrusion into the residence of a citizen and the knocking at his door with disturbance to his sleep and ordinary comfort would tend to deprivation of the personal liberty guaranteed by article 21. It is an unauthorized intrusion into a person's home and the disturbance caused to him thereby is, as it were, the violation of a common law right of a man—an ultimate essential of ordered liberty, if not the very concept of civilization.

5. *Right of minorities to administer educational institutions*

In *Rev. Sidhrajbhai Sabbai and others* v. *State of Gujarat* (A.I.R. 1963 S.C. 540), the Supreme Court observed that the right established by article 30 (1) of the Constitution is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right cannot be whittled down by so-called regulatory measures conceived in the interests not of the minority educational institution but of the public or nation as a whole. Regulations which may lawfully be imposed by legislation or by executive action as a condition of receiving grant or recognition must be directed to making the institution, while retaining its character as a minority institution, effective as an educational institution. The regulation must be reasonable and must be regulative of the educational character of the institution and should be conducive to making the institution an effective vehicle of education for the minority community or for other persons who may resort to it. If a regulation made by Government provides for reservation of seats under the orders of the Government accompanied by a threat to withhold grants-in-aid and recognition, it would infringe this fundamental right.

IRAN

NOTE[1]

LEGISLATIVE DECREE OF 7 JANUARY 1963 RESPECTING THE PARTICIPATION OF WORKERS IN THE PROFITS OF INDUSTRIAL AND PRODUCTION UNDERTAKINGS

Summary

The text of this Legislative Decree was published in *Rouznameh Rasmi Chahanahi Iran*, No. 5296, of 23 April 1963.

Under section 1 of the Decree, the date of commencement of which is to be determined by a committee under the chairmanship of the Minister of Labour and Social Affairs or such person as he may designate for the purpose, every employer in an industrial or production undertaking covered by the Labour Act[2] shall be required in due course to apply the provisions of this Decree to the workers in his service.

Section 2 provides that the head of an undertaking that is brought under this Decree by decision of the above-mentioned committee shall be required by the end of the month Khordad 1342 (21 June 1963) to conclude a collective agreement with a representative of the workers in the undertaking or with the trade union to which the majority of such workers belong, providing for the grant of output bonuses or bonuses based on savings in overhead expenses or diminished losses, for the participation of the workers in the net profits of the undertaking or some other similar arrangement, or for a combination of some or all these measures, whereby the workers' earnings will be increased.

Other provisions of the Decree deal with the duty of the Minister of Labour and Social Affairs to make recommendations on measures to be taken to ensure that a collective agreement is concluded in case the employer and the workers' representative fail to conclude such an agreement; the reference to the committee mentioned in section 1 of cases of non-acceptance by the workers' representative of the recommendations made by the Ministry of Labour and Social Affairs; the requirement to afford workers a share in the net profits of the undertaking in case of non-acceptance by the employer of the recommendations of the Ministry of Labour and Social Affairs; and the settlement of disputes arising out of collective agreements covered by this Decre.

Translations of the Decree into English and French have been published by the International Labour Office as *Legislative Series* 1963 - Iran 1.

THE HOUSE OF REPRESENTATIVES ELECTORAL LAW OF 1329 HEJRI GHAMARI

PART I

Section 1

GENERAL

Art. 1. The House of Representatives (Majlis) shall consist of two hundred members representing the Capital City and the provinces. Every ten years, in the event of an increase in the population of the country, there shall be added, for every one hundred thousand additional inhabitants in each electoral district, one representative to the electoral district concerned. A separate law shall be promulgated governing electoral districts.

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Section 2

QUALIFICATIONS OF VOTERS

Art. 9. To be eligible to vote a person must:

(1) Be a citizen of Iran;

(2) Be not less than twenty years of age; and

(3) Have been a resident in an electoral district for not less than six weeks prior to the election.

Art. 10. The following persons shall not be eligible to vote:

(1) Repealed by Legislative Decree of 3 March 1963;

(2) Lunatics;

(3) Citizens of foreign countries;

(4) Persons no longer considered to be Moslems by decision of a religious leader;

(5) People under twenty years of age;

(6) Bankrupts;

[1] Note based upon texts furnished by Professor A. Matine-Daftary, member of the Senate of Iran, President of the Iranian Association for the United Nations, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] For a summary of the Labour Act, see *Yearbook on Human Rights for 1959*, p. 158.

(7) Persons who earn their livelihood by dishonest means;

(8) Murderers, thieves and other criminals; and

(9) Political criminals who endanger democracy and the independence of the nation.

Section 3

QUALIFICATIONS OF CANDIDATES

Art. 12. Candidates for election must possess the following qualifications:

(1) They must be religious followers of Muhammed bin Abdullah Sali Allah Alaihe Wasallam;

(2) They must be citizen of Iran;

(3) They must be able to read and write adequately;

(4) They must be known in the electoral district;

(5) They must not be under thirty or over seventy years of age; and

(6) They must have the reputation of being honest and reliable.

Art. 13. The following persons shall not be eligible for election:

(1) Princes (related to His Imperial Majesty the Shahanshah's family);

(2) Repealed by Legislative Decree of 3 March 1963;

(3) Citizens of foreign countries;

(4) Civil servants and officers of the armed forces, except those holding an honorary rank;

(5) Governors and their deputies while still in active service;

(6) Officials of the Department of Internal Revenue while still in active service;

(7) Officials of the court, judges and attorneys (both State and provincial);

(8) Administrative directors of the State Department as well as ministers and their deputies;

Note: Other Government officials shall be eligible for election provided that, after they have been elected, they shall resign from active service for the duration of their term of office in the House of Representatives.

(9) Persons convicted of bankruptcy;

(10) Persons convicted of murder, theft or other crimes punishable under Islamic law;

(11) Persons convicted of debauchery and of practising religious heresy and accordingly no longer considered to be Moslems by decision of the spiritual leader of a community mosque;

(12) Political criminals who endanger democracy and the independence of the nation.

(13) Members of the House of Representatives may only accept a public office after the conclusion of their term in the *Majlis* or by resigning therefrom three months prior to the acceptance of such office.

. . .

Section 7

ELECTORAL PROTESTS

Art. 40. If in the course of an election any elector or candidate submits a protest relating to the election, voting shall not be suspended but the substance of the protest shall be incorporated in the electoral report.

Art. 41. During the week following the election, the Supervisory Committees shall take note of any complaints which may be made in connexion with the election. At the end of the week, the Committees shall study these complaints and immediately announce their decision thereon.

Art. 42. Persons protesting an election and Supervisory Committees may submit their complaints to the House of Representatives during the first week after the House begins its session. The decision of the House of Representatives shall be final. Any complaint concerning an election made after the House has begun its session shall be submitted to it during the week following the dissolution of the Supervisory Committees.

Art. 43. Only persons eligible to vote shall be entitled to protest an election.

Art. 44. Elections based on threats or allurements shall be deemed null and void. Persons responsible for such threats and allurements shall be liable to imprisonment for a term of one year and shall be denied their right to vote for at least two years.

. . .

THE SENATE ELECTORAL LAW OF 14 ORDIBEHESHT 1339

Section 1

GENERAL

Art. 1. In accordance with article 42 of the Constitution, the Senate shall consist of sixty members. Pursuant to article 45 of the Constitution, thirty members shall be designated by His Imperial Majesty the Shahanshah and the remaining thirty shall be elected by the people.

. . .

Section 2

QUALIFICATIONS OF VOTERS

Art. 6. Citizens of Iran who meet the following qualifications shall be entitled to vote:

(1) They must be at least twenty years of age; and

(2) They must have been resident in an electoral district for not less than six months prior to the election.

Art. 7. The following persons shall not be eligible to vote even if qualified to do so under article 6:

(1) Persons committed to a trustee; and

(2) Persons who have committed a crime or an offence and have been sentenced to loss of civic rights, even if they have been rehabilitated.

Art. 8. Army, navy and air force officers as well as officers of the police and gendarmerie shall also be ineligible to vote, unless they have retired.

Section 3

QUALIFICATIONS OF CANDIDATES

Art. 9. Citizens of Iran who possess the following qualifications shall be eligible for election:

(1) They must be known in the electoral district or be resident therein;

(2) They must not be under forty years of age;

(3) They must have the reputation of being honest and well informed about the internal situation of the country; and

(4) They must be Moslems of followers of the Zoroastrian, Christian or Jewish religion.

Art. 10. In addition to possessing the abovementioned qualifications, any candidate for the Senate must also belong to one of the following categories of persons:

Those considered to be of the highest spiritual authority, this category consisting of members of the House of Representatives who have served for not less than three terms, governors-general and public prosecutors or heads of supreme courts with not less than twenty years' judicial experience;

Retired officers, such as brigadier-generals, major-generals and lieutenant-generals, and also professors with not less than ten years' experience;

Ambassadors or under-secretaries of a Ministry with not less than twenty years' experience;

Landowners and merchants paying not less than five hundred thousand rials in direct taxes and attorneys having not less than fifteen years' experience with the Ministry of Justice and possessing the degree of Doctor of Laws; failing such degree, attorneys must have not less than twenty years' forensic experience.

Art. 11. Though otherwise qualified under articles 9 and 10, the following persons shall not be eligible for election:

(1) Government officials in active service;

(2) Persons who have committed a crime or an offence and have been sentenced to loss of civic rights, even if they have been rehabilitated; and

(3) Persons committed to a trustee.

Save in so far as concerns persons who have been appointed by His Imperial Majesty the Shahanshah, the provisions of articles 9, 10 and 11 (1) shall be applied.

. . .

POLITICAL RIGHTS OF WOMEN [a]

On 3 March 1963, the Council of Ministers adopted a Legislative Decree repealing those provisions of the Electoral Law of the House of Representatives of 1329 Hejri Ghamari (articles 10 and 13) and of the Electoral Law of the Senate of 14 Ordibehesht 1339 (articles 6 and 9) which had deprived women of the right to vote and to be elected. Article 2 of the Legislative Decree states that "The Ministry of the Interior shall, after the opening of Parliament, obtain the approval of this Decree in the form of an Act". The Government of Iran informed the Secretariat of the United Nations on 10 March 1963 that the Legislative Decree is in force.

[a] Note based upon texts and information furnished by the Government of Iran.

IRAQ

NOTE[1]

THE PUBLICATIONS ACT (No. 24) OF 4 APRIL 1963[2]

Art. 1. For the purposes of this Act the expression "publication" shall comprise:

(1) Periodical publications appearing regularly in serial issues at a stated frequency, such as newspapers and reviews;

(2) Non-periodical publications, appearing once only or in a specific number of parts, such as books, pictures and the like, whether printed, handwritten, or produced by any other means in more than one copy for the purpose of circulation.

Proprietors and editors

Art. 2. Every periodical publication shall have a proprietor and an editor.

Art. 3. (1) The proprietor of a periodical publication shall:

(*a*) have attained the age of twenty-five;

(*b*) not have been convicted of any crime or offence involving loss of civil rights;

(*c*) be resident in the place of publication;

(*d*) not be employed in any official or semi-official agency;

(*e*) hold the diploma of the Journalists' Association of Iraq attesting him to be a duly-qualified journalist.

(2) A joint stock company which is the proprietor of a publication shall be established in Iraq. The applicant shall attach to his application a certified copy of the certificate of registration and of the articles of association, with the name, address, nationality and age of its chairman and each member of its board of directors.

(3) A society or party which is the proprietor of a publication shall be established in Iraq and shall submit a certified copy of its licence with the names of the Chairman and of each member of its governing board.

Art. 4. (1) The editor of a periodical publication:

(*a*) shall be a national of Iraq by birth or shall have been naturalized for not less than five years;

(*b*) shall have attained the age of twenty-five;

(*c*) may not have been convicted of a serious crime or of an offence involving loss of civil rights;

(*d*) shall hold the diploma of the Journalists' Association attesting him to be a duly-qualified journalist.

(2) Thre proprietor of a periodical publication may also be its editor.

(3) No person may be the editor of more than one periodical publication at any one time.

. . .

Art. 6. (1) The Minister of Instruction shall grant a licence or reject an application as he shall see fit having regard to the needs of the revolution and to the periodical publications licensed in all provinces.

(2) An applicant may appeal against the rejection by the Minister of an application to the Council of Ministers, whose decision shall be final, within fifteen days from the day on which he was notified of the rejection.

Art. 7. An alien may publish a periodical publication in Iraq by licence of the Ministry of Instruction approved subject to reciprocity by the Ministry for Foreign Affairs.

Art. 8. (1) An alien proprietor of a periodical shall:

(*a*) have attained the age of twenty-five;

(*b*) not have been convicted in Iraq or elsewhere of a serious crime or of an offence involving loss of civil rights;

(*c*) reside in the place of publication;

(*d*) not be employed in any official or semi-official agency.

(2) The editor of a periodical publication published by an alien shall satisfy the requirements of this Act.

(3) An alien shall submit to the Ministry of Instruction a request for leave to publish a periodical publication, together with a certificate from the diplomatic or consular representative of his State attesting that he satisfies the requirements of sub-paragraph (1) of this article.

Art. 9. (1) A foreign representative mission or an agency attached thereto may publish a

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[1] Information furnished by the Government of Iraq.

[2] Text published in *Waqayi'u al'Iraqiya*, No. 795, of 12 April 1963.

periodical publication in Iraq by licence of the Minister of Instruction approved subject to reciprocity by the Ministry of Foreign Affairs.

(2) A foreign representative mission or an agency attached thereto shall submit an application to publish a periodical publication with an editor satisfying the requirements of this Act.

Art. 10. An alien may not publish in a periodical publication:

1. Any matter that may be regarded as interference in the internal affairs of Iraq;

2. Any matter relating to or conflicting with the foreign policy of Iraq.

Art. 11. The Minister of Instruction may, in agreement with the Ministry of Foreign Affairs, revoke the licence of the periodical publication of an alien who has contravened the provisions of the previous article.

Art. 12. (1) No correspondent of a foreign newspaper or review or news agency may act in that capacity in Iraq without leave from the Ministry of Instruction.

(2) If it appears that news circulated about Iraq by a correspondent to whom the foregoing sub-paragraph applies is exaggerated, contradictory, misleading or distorted shall be warned, and if he continues to offend his leave shall be revoked.

. . .

Art. 16. (1) The proprietor of a periodical publication shall publish free of charge a reply reaching him from any person who has been defamed in the publication. The sons and grandsons of a deceased person so defamed shall possess a similar right.

(2) The proprietor of a periodical publication shall publish free of charge any reply sent to him by the Government to matter appearing in the publication.

(3) Replies to which the two preceding paragraphs refer shall appear in the same place of the first issue following their receipt, or, if that is impossible, in the issue next following. A reply may not fill more than double the space filled by the defamatory matter.

Matter which may not be published

Art. 17. It shall be unlawful to publish in a publication:

1. Any statement or speech relating to the President of the Republic or his Vice-President or deputy, except by leave of the competent authority.

2. Any insult to the President of the Republic or to his Vice-President.

. . .

Art. 19. It shall be unlawful to print in a publication:

1. Matter adverse to the postulates or principles of the revolution, or propaganda for colonialism, reaction or regionalism, or incitement to breach of the internal or external security of the State.

2. Incitement to crime, disobedience to law, or obstruction of any legal process.

3. Matter arousing hatred, enmity or discrimination between individuals, or religious sects.

4. An attack on any religion recognized in the Republic of Iraq.

5. Obscene matter.

Art. 20. It shall be unlawful to print in a publication:

1. Proceedings of a secret sitting of a court or of the National Council for the Guidance of the Revolution or of the Council of Ministers, or a secret official communication, without leave of the competent authority.

2. Any report of a debate in the Council of Ministers or of an order thereof, or any other official order, without leave of the competent authority.

3. Any agreement or convention concluded by the Government of Iraq, or any Act, regulation or instruction, before publication thereof in the Official Gazette.

4. Any account of a criminal examination, without leave of the examining magistrate.

5. Any order for the movement of armed forces or police or the national guard, or any matter relating to their organization, administration, armament or distribution, without leave of the competent authority.

Art. 21. It shall be unlawful to print in a publication:

1. Any matter likely to influence a judge in his consideration of a case before him.

2. Any matter likely to influence the State Counsel's department or counsel or an examining magistrate or a witness or public opinion in regard to a case *sub judice.*

3. An opinion of a dissenting member of a bench of judges, without leave of the court.

Art. 22. It shall be unlawful to print a publication:

1. Any order relating to price fixing, importation, customs tariffs or exchanges, before leave to publish has been given.

2. Any news likely to depreciate the national currency or Government bonds, or to weaken confidence therein in Iraq or abroad.

Prohibition of entry of injurious publications

Art. 23. Every importer of a publication published abroad shall submit a copy thereof to the Ministry of Instruction before sale or distribution in Iraq in order to obtain leave therefor.

Art. 24. It shall be unlawful to distribute in Iraq an imported periodical publication containing:

1. Matter conflicting with the political policy of the Republic of Iraq.

2. Propaganda for colonialist tendencies in either their new or their old form, or matter misrepresenting a world liberation movement.

3. Propaganda for racist movements such as Zionism and the like.

4. Calumny against the armed forces (the army, police or national guard), or matter disclosing their secrets or movements.

5. Matter arousing hatred, enmity or discrimination between individuals or communities or religious sects.

6. Matter conflicting with decency or morals.

7. A malicious attack on a friendly State.

. . .

ACT No. 55 OF 15 JUNE 1963 AMENDING THE SOCIAL SECURITY LAW (No. 27) OF 1956 [3]

Article 1 of the Act deletes and replaces article 26 of the Social Security Law of 1956. This new article 26 establishes a Social Security Council consisting of four members, one of them to be chosen as chairman. Members of the Council are the Director-General of the Council, the Governor of the Central Bank or the Director-General of the Rafidain Bank, a representative of employers and a representative of workers. Each of the four members shall have a deputy. The chairman, the members and the deputy members of the Committee are to be appointed by the Council of Ministers.

THE REHABILITATION ACT (No. 93) OF 5 AUGUST 1963 [4]

Art. 1. (*a*) Any person sentenced for a non-political crime or for a misdemeanour degrading honour shall be forfeited of the following rights:

(1) The right to vote and to nominate in public elections and in elections of councils, associations and bodies;

(2) The right to be appointed or to be employed in official or semi-official posts;

(3) The right to carry arms;

(4) The right to guardianship, tutorship and proxy;

(5) The right to carry medals; and

(6) Any other rights to be decided by law.

(*b*) The provisions of this article shall not apply to juveniles.

Art. 2. (*a*) The rehabilitation of a person sentenced for a non-political or for a misdemeanour degrading honour may be established by legal decision under the following conditions:

(1) That the sentence has been executed or legally omitted;

(2) That he has behaved well while in prison and after his release for a period of not less than five years if he has been sentenced for a crime and for a period of not less than three years if he has been sentenced for a misdemeanour, both these periods, in cases of recidivism, to be doubled;

(3) That he has executed his financial obligations in respect of the person in whose favour the decision concerning the obligation has been taken or that he has settled them; and

(4) That in case of bankruptcy financially he has been rehabilitated.

. . .

Art. 3. (*a*) A crime is considered political if it has been committed for political and not for merely selfish reason infringing upon the public or the political rights of the individual. The following crimes shall not be considered political:

(1) Murder;

(2) The causing of severe harm;

(3) The maltreatment of properties by setting on fire, destroying, drowning or spoiling; and

(4) The degrading of honour.

(*c*) The Court shall decide whether a crime is political or ordinary, its decision being subject to legal processes.

. . .

[3] The English translation of Act No. 55 of 1963 published in the *Weekly Gazette of the Republic of Iraq*, No. 48, of 27 November 1963. For extracts from the Social Security Law of 1956, see *Yearbook on Human Rights for 1956*, p. 128.

[4] The English translation of the act published in the *Weekly Gazette of the Republic of Iraq*, No. 6, of 5 February 1963.

IRELAND

NOTE[1]

I. LEGISLATION

The Social Welfare (Miscellaneous Provisions) Act, 1963, made provision for increases in the rates of the principal social insurance and assistance payments. Increases in the weekly rates of Unemployment Assistance, non-contributory Old Age, Blind and Widows, pensions and in the monthly rates of Children's Allowances became effective on 1 November 1963. Increases in the rates of contributory Old Age and Widows' Pensions became effective on 3 January 1964, and in the rates of Disability Benefit, Unemployment Benefit and Maternity Allowance from 6 January 1964.

The rates of benefit under the *Insurance (Intermittent Unemployment) Act, 1942,* were increased by statutory order from 26 August 1963.

The Local Government (Planning and Development) Act, 1963, replaces the Town and Regional Planning Acts, 1934 and 1933. In the main it provides for:

(*a*) the setting up of a new and more flexible planning system to be operated by local authorities;

(*b*) enabling local authorities to facilitate industrial and commercial development and securing the redevelopment of those parts of built-up areas which have become outmoded, uneconomic or congested;

(*c*) securing that the amenities of town and countryside are preserved and improved; and

(*d*) relating compensation to property owners to the restrictions imposed upon them by individual planning decisions rather than to provisions in planning schemes and for ending their liability for betterment charges.

County councils, county borough corporations, borough corporations and urban district councils are the planning authorities for the purposes of the Act. Wide powers are given them of positive planning including powers to acquire and develop land, especially for urban renewal, and to provide sites or buildings for the purpose of facilitating industrial, commercial and community development. They have power to make orders to ensure the preservation of areas of natural beauty or scenic or other amenity and views and prospects.

Effect was given to a number of the more important recommendations of the Company Law Reform Committee by the *Companies Act, 1963.* The Act completes the task of revision of company law and brings all the legislation on the subject together in a single consolidating measure. It makes a number of sustantial changes in regard to the information which must be set out in prospectuses inviting subscriptions for shares or debentures from the public by requiring much additional information to be given. Also, to ensure that no company, after the issue of a prospectus, commences business without sufficient resources to give it a reasonable chance of survival, the Act lays down that the minimum amount which must be subscribed before shares are allotted to the public must be sufficient to cover the purchase price of any property to be acquired by the company, together with any preliminary expenses and commission, and also be sufficient to provide the working capital of the company. Among a number of new provisions is one which empowers the High Court to make an order for compulsory winding-up of a company, if it is satisfied that the affairs of the company are being conducted in an oppressive manner.

The Finance Act, 1963, introduced for the first time a tax known as turnover tax. It is levied on monies received in respect of certain activities, mainly the sale of goods in the course of business, the hire of goods, the provision of services provided in the course of business and the acceptance of bets made with a licensed bookmaker or by means of a totalisator. The persons liable to pay the tax are, in the case of the sale of goods, the seller, in the case of the hire of goods, the person from whom the goods were hired, and so on. The tax is payable monthly and is at the rate of two and one-half per cent of the taxable turnover. Interest is chargeable on tax overdue at the rate of one per cent for each month or part of a month during which it remains unpaid.

The Electoral Act, 1963, effected a substantial degree of codification. It modernizes and liberalizes the law relating to elections to Dáil Eireann and incorporates corresponding changes, whenever appropriate, in the law governing presidential and local elections and referenda. The Act contains all the statutory provisions dealing with the franchise and registration of electors and with nominations at Dáil elections.

[1] Note furnished by the Government of Ireland.

The Hotel Proprietors Act, 1963, amended and codified the law relating to inns and innkeepers. It imposes upon the proprietors of hotels new statutory duties, liabilities and rights similar to, but in substitution for, those heretofore attaching to innkeepers under the common law.

Other measures of importance enacted in 1963 include the *Official Secret Act,* the *Copyright Act* and the *Trade Marks Act.* They consolidate with amendments the law on the subjects to which they relate.

II. JUDICIAL DECISIONS

An action challenging the constitutional validity of the Health (Fluoridation of Water Supplies) Act, 1960, under which the Minister for Health may require Health Authorities to fluoridate specified public piped-water supplies, was dismissed by the High Court Judge Mr. Justice Kenny in July, 1963. The plaintiff's case was that the Act is invalid because:

(1) it is a violation of the inalienable and imprescriptible rights guaranteed to the family by Article 41 of the Constitution;

(2) it is a violation of the inalienable right and duty of parents to provide according to their means for the religious, moral, intellectual, physical and social education of their children given by Article 42 of the Constitution; and

(3) it is a breach of the guarantee by the State in Article 40, Section 3, of the Constitution "in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen". The plantiff made two independent contentions namely, that Article 40, Section 3, gave her a right of bodily integrity and the Oireachtas in passing the Act had not respected the right, and secondly that the fluoridation of the public water supplies is or may be dangerous to the health of all or some of the citizens and the Oireachtas in passing the Act had failed to respect and as far as practicable by its laws to defend and vindicate the right of the citizen to life and bodily integrity.

The judge held that the fluoridation of water supplies in Ireland is not a violation of the plaintiff's constitutional rights and awarded the cost of the action against the plaintiff. In his judgement, he found that the ingestion of drinking-water containing one part per million of fluorine produces a marked reduction in dental caries among children and he was "satisfied beyond the slightest doubt that the fluoridation of the public water supplies in this country at a concentration of one part per million will not cause any damage or injury to the health of anybody..."

On 3 July 1964, the Supreme Court dismissed the appeal against the decision of the High Court and awarded the costs to the defendant. It held that the Act did not violate any of the three articles of the Constitution on which the plaintiff rested her submission and that she had failed to refute the evidence that fluoridation is not only the most effective but is indeed the only effective method to deal with the problem of dental caries. The Supreme Court accepted the findings of Justice Kenny that fluoridation at a level of one part per million will not be dangerous in this country.

ISRAEL

HUMAN RIGHTS IN 1963 [1]

I. LEGISLATION

1. The catalogue of personal belongings and technical utensils (such as clothing, tools, agricultural equipment, and the like) which may not be attached in execution of a judgement, has been enlarged to include machinery used by the judgement debtor for his trade, and not exceeding in value I£ 2,000.[2]

2. Disciplinary proceedings against civil servants are now regulated by law,[3] and not, as hitherto, by internal regulations only. Disciplinary tribunals are constituted by a lawyer qualified to be appointed magistrate, a person selected from a panel drawn up by the Civil Service Commissioner, and a person selected from a panel drawn up by the largest Civil Service Union; the appointments are made by the Minister of Justice for a period of five years.[4] It is expressly provided that in matters pertaining to their duties under the Act, members of the tribunal are subject to no authority other than that of the law;[5] and they are subject to the disciplinary jurisdiction provided for in the Judges Act, 5713-1953, as if they were judges.[6] The tribunal is vested with the ordinary powers of a court to take evidence, administer oaths, and compel the appearance of parties and witnesses.[7] Prosecutions are initiated and conducted either by the Civil Service Commissioner or by the State Attorney (or any person appointed by either).[8] Disciplinary offences, in respect of which the tribunal has jurisdiction, are acts or conduct prejudicial to the good discipline of the civil service, failure or neglect to carry out one's duty as a civil servant, improper conduct, and the conviction of a criminal offence involving moral turpitude.[9] The tribunal is competent to impose all or any of the following sanctions: warning, reprimand, downgrading in rank or salary, tranfer to another post, disqualification from all or certain offices, dismissal with or without compensation, and publication in the Press.[10] An appeal lies to a justice of the Supreme Court sitting alone, in cases of dismissal or disqualification.[11] The tribunal may appoint a lawyer to defend the accused at the expense of the State, and, on acquittal, may award costs against the State.[12] Proceedings are held *in camera*, and any unauthorized publication in respect thereof is a criminal offence.[13] The accused has the right to be present at all sessions of the tribunal and to examine all witnesses testifying before it;[14] where he is unfit, by reason of a disease, to stand his trial, proceedings must be adjourned until a physician certifies that the unfitness has ceased to exist.[15] Pending proceedings before the tribunal, the accused may be suspended from service; during suspension he is entitled to one half of his salary; in the event of his acquittal, the balance of his salary for the period of his suspension is paid out to him; in the event of his dismissal, the balance is not paid out to him, though he is not liable to return half the salary he has received during suspension; in the event of any other sanction being imposed on him, the Civil Service Commissioner may, in his discretion, pay him the balance of his salary in whole or in part; and in any event, the accused is not accountable for money he has earned by other work during his suspension.[16] There are provisions for retrials, on the lines of retrials in criminal matters.[17] Disciplinary responsibility under the Act does not derogate from criminal responsibility under any other law,[18] but

[1] Note furnished by Justice Haim Cohn, Supreme Court of Israel, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Civil Procedure Ordinance Amendment Act, 5723-1963, passed 5 February 1963 (*Sefer Ha-Hukim* 388, p. 46).

[3] Civil Service (Discipline) Act, 5723-1963, passed 26 February 1963 (*Sefer Ha-Hukim* 390, p. 50).

[4] Section 3, *ibid.*

[5] Section 8, *ibid.*, following an identical provision in the Judges Act, 5713-1953 (*Yearbook on Human Rights for 1953*, p. 147).

[6] Section 10, *ibid.*

[7] Section 11, *ibid.*

[8] Sections 14-16, *ibid.*; the Ministry of Justice and the Attorney-General may instruct the State Attorney to prosecute in any given case: Section 32, *ibid.*

[9] Section 17, *ibid.*

[10] Section 34, *ibid.*

[11] Section 43, *ibid.*

[12] Sections 36-37, *ibid.*

[13] Section 41, *ibid.*

[14] Section 38, *ibid.*

[15] Sections 44-45, *ibid.*

[16] Sections 47-55, *ibid.*

[17] Sections 56-60, *ibid.*, following Section 9 of the Courts Act, 5717-1957 (*Yearbook on Human Rights for 1957*, p. 155).

[18] Section 61, *ibid.*

nobody may be twice placed in jeopardy for a disciplinary offence, and disciplinary measures taken or applied for against him under any other law, preclude further proceedings under the Act.[19] No proceedings in respect of disciplinary offences may be instituted after the expiration of one year after their commission or detection.[20] The resignation of a civil servant does not preclude disciplinary proceedings against him in respect of acts committed during his term of service.[21] A civil servant may himself ask for a disciplinary investigation into his conduct, where adverse comment on his conduct in office has been published; and he may publish, as he sees fit, the result of such investigation, which is to be notified to him in writing.[22] After the commencement of the Act, no dismissal or suspension of a civil servant is lawful except by virtue of an order of the tribunal.[23]

3. The Civil Wrongs Ordinance, 1944 (Palestine), has been amended so as to exclude strikes and lockouts in the course of labour disputes, from the tort of inducing breaches of contract.[24]

4. A new experiment in the field of treatment of drug-addict offenders has received legislative sanction.[25] A person under sentence of imprisonment for six months or more, who is medically certified to suffer from drug addiction, may, if the court is satisfied that his offence was conditioned by such addition and that he is likely, by reason thereof, to commit further offences, be hospitalized in a closed institution for the purpose of being cured. Such hospitalization order may be only after the court has been notified by the Ministry of Health that the necessary accommodation is available in a suitable institution. The period of hospitalization may not exceed three years, unless the period of imprisonment to which the offender had been sentenced, exceeded three years; and the period of hospitalization will be deducted from the period of imprisonment. A committee composed of a judge as chairman, a psychiatrist and a third member (all appointed by the Minister of Justice), may release the prisoner, with or without conditions, from hospital if and when satisfied that he is no longer in need of medical treatment, or that he is incurable. A similar power is vested in the court which made the hospitalization order, and which may review, change or revoke the same once every six months. Discharge from hospital does not release the prisoner from serving the remaining portion of the period of his imprisonment.[26]

In order to dispel doubts which had arisen, it has now been expressly laid down that the court may place an offender under probation during the period of a suspended sentence of imprisonment. The court has also been given power to extend the period of a suspended sentence, even though the offender has committed a second offence.[27] It has likewise been empowered to postpone, even twice, the date for serving any sentence.[28]

A person on whose complaint criminal proceedings were instituted, which resulted in the acquittal of the accused, may be ordered to bear the costs of the defence; but no such order may be made, unless the complainant has been given reasonable opportunity to show cause why it should not be made, and the complainant has a right of appeal against any such order.[29]

5. The procedure to be followed in disciplinary proceedings against members of the Police Force, which was hitherto governed by the English Army Acts, has now been revised to correspond to the criminal procedure prevailing in the ordinary courts. A police officer accused of misconduct now enjoys in disciplinary proceedings all the rights of an accused in a criminal trial.[30]

6. Judgements by military tribunals, which in certain exceptional cases were unappealable,[31] are now made subject to appeal.[32]

7. The law in respect of criminal fraud and blackmail has been revised and restated.[33] It is now a criminal offence for a person to exploit the distress, the mental or physical weakness, the lack of experience, or the foolishness of another person, and thereby to receive anything from that other person, or to pay him unreasonably less than is reasonably due to him for services rendered or goods supplied by him, or to receive from him unreasonably more than is reasonably due for services rendered or goods supplied to him.[34] A person purporting to be a magician or to practise witchcraft or to predict the future, otherwise than by way of *bona fide* entertainment, is guilty of an offence.[35]

8. In the field of labour law, the old standing custom of paying compensation to an employee upon his dismissal, has now received legislative sanction.[36] Compensation is due to any employee who is dismissed from his work after a period of

[19] Sections 62-63, *ibid.*

[20] Section 64, *ibid.*

[21] Section 66, *ibid.*

[22] Section 67, *ibid.*

[23] Sections 68-69, *ibid.*

[24] Civil Wrongs Ordinance Amendment Act (No. 6), 5723-1963, passed 27 March 1963 (*Sefer Ha-Hukim* 393, p. 76).

[25] Penal Law Revision (Modes of Punishment) (Amendment) Act (No. 5), passed 4 June 1963 (*Sefer Ha-Hukim* 394, p. 80).

[26] Section 6, *ibid.*

[27] Section 7, *ibid.*

[28] Section 10, *ibid.*

[29] Section 13, *ibid.*

[30] Police Ordinance Amendment Act, 5723-1963, passed 11 June 1963 (*Sefer Ha-Hukim* 395, p. 86).

[31] Under the Defence (Emergency) Regulations, 1955 (Palestine).

[32] Military Jurisdiction Amendment (Appeals) Act, 5723-1963, passed 9 July 1963 (*Sefer Ha-Hukim* 400, p. 120).

[33] Penal Law Revision (Fraud and Extortion) Act, 5723-1963, passed 5 August 1963 (*Sefer Ha-Hukim* 403, p. 130).

[34] Section 13, *ibid.*

[35] Section 4, *ibid.*

[36] Severance Pay Act, 5723-1963, passed 6 August 1963 (*Sefer Ha-Hukim* 404, p. 136).

service of one year or more.[37] For the purposes of the Act, the termination of service in the following circumstances is tantamount to dismissal: the death of employer or employee; resignation for health reasons, or by reason of maternity, or by reason of change of residence; and the expiration of a contract of service.[38] Where the conditions of service have substantially deteriorated, the employee's resignation will also be regarded as dismissal.[39] The amount of compensation payable is the last month's salary multiplied by the years of the employee's service, in the case of employees with monthly salaries; in other cases, the amount is two weeks' wages multiplied by the years of service.[40] Such compensation is not affected by pensions and other emoluments to which the employer contributed and to which the employee is entitled out of special funds; but where pension is payable by virtue of any law, such pension takes the place of and excludes compensation.[41] Claims to such compensation have priority in bankruptcies and windings-up.[42] They cannot be waived or settled except by instrument in writting.[43] The provisions of the Act add to, but do not derogate from, any stipulation in a contract of service, and the employee may claim the greatest benefit either under the Act or under the contract.[44]

9. An Act was passed authorizing the Minister of Interior to proclaim national parks and natural reserves and to set aside state domain for the purpose.[45]

10. The Age Determination Act, 5724-1963,[46] provides machinery for obtaining declaratory relief in cases where the birth or age of a person is not or is wrongly registered or recorded. The declaratory judgement of the Magistrate's Court under the Act is binding as the determination of the applicant's age for all intents and purposes.[47] In determining such age, the court may, if satisfied that justice so requires, depart from the general rules of evidence.[48]

11. The Wages Protection Act, 5718-1958[49] was amended[50] to the effect that wages may no longer be paid only to the worker himself, but also, upon his instruction in writing, to his spouse, parent, child or fellow-worker, or to the agricultural settlement (Kibbutz) in which he is a member, or to a bank, or to any other institution authorized for the purpose by the Ministry of Labour.[51] Any claim for compensation for delayed wages is prescribed after the expiration of one year from the commencement of the delay;[52] and such compensation may be reduced by the court or the Controller of Wages where the delay was due to a *bona fide* mistake or dispute as to the amount of the wages due, or where the delay was due to causes over which the employer had no control.[53]

[37] Sections 1-2, *ibid.*

[38] Sections 4-9, *ibid.*

[39] Section 11, *ibid.*

[40] Section 12, *ibid.*

[41] Sections 14-15, *ibid.*

[42] Section 27, *ibid.*

[43] Section 29, *ibid.*

[44] Section 31, *ibid.*

[45] National Parks and Natural Reserves Act, 5723-1963, passed 7 August 1963 (*Sefer Ha-Hukim* 404, p. 149).

[46] Passed 12 November 1963 (*Sefer Ha-Hukim* 407, p. 7).

[47] Section 5.

[48] Section 4.

[49] See *Yearbook on Human Rights for 1958*, p. 112.

[50] Wages Protection Amendment Act, 5724-1963, passed 24 December 1963 (*Sefer Ha-Hukim* 412, p. 35.

II. JUDICIAL DECISIONS

1. Freedom of the Press—Contempt of Court Publications Prejudicial to Defendant on Trial

In the Supreme Court
sitting as Court of Criminal Appeals[54]

Dissentchik and another v. *Attorney-General.*
20 February 1963

A man by the name of Blitz was charged with murder. His trial started on 5 November 1958, in the District Court of Tel-Aviv, and on that day he pleaded not guilty to the charge. The trial then continued for several days. On 6 November 1958, the appellants, who are the editor and court reporter, respectively, of a daily newspaper, published a report of the court proceedings, in which—after mentioning that the accused had pleaded not guilty—the following passage occurred: "Prior to that, before the trial started, the accused had given quite a different answer to the question of a newspaperman. But what the accused says to a reporter is not binding on him, so long as he did not repeat it before the court. So the court will now have to try him on the strength of the evidence which will be adduced..."

The appellants were charged with an offence under Section 41 of the Courts Act, 5717-1957,[55] and were acquitted in the Magistrate's Court for the reason that the publication was not "calculated to influence the course or outcome of the trial". On appeal, the District Court reversed that decision and found the appellants guilty as charged. Leave to appeal to the Supreme Court was granted, and on the further appeal,

Held, conviction confirmed.

Per *Sussman, J.*: "...The argument of counsel is that in this country, where trials are held before professional judges only, any influence by newspaper publications is much less likely than in countries where the facts are determined by juries... I agree that our system of criminal process justifies a more liberal approach to publications in matters which are pending before the courts. The professional judge who sifts the evidence and

[51] Section 1, *ibid.*

[52] Section 5, *ibid.*

[53] Section 6, *ibid.*

[54] Reported in 17 *Piskei-Din* 169.

[55] Reproduced verbatim in *Yearbook on Human Rights for 1957*, p. 156.

gives the reasons for his findings in writing, is not as vulnerable to newspaper reports as is a juror who returns to courts saying just 'guilty' or 'not guilty', without ever disclosing his reasons. But while the general public may rightly presume that a professional judge is capable to free himself from the influence of what he had read in a newspaper, this does not mean that a duty is not owed by everybody to the judges not to try and create any prejudice or preconceived notion in any matter that is pending before him in court. It would be a false illusion to think that the judiciary is an exact machine which produces, on the strength of the evidence supplied to it, the right conclusions to be derived therefrom. As Justice Frankfurter has said:[56] 'Judges are also human, and we know better than did our forebears how powerful is the pull of the unconscious and how treacherous the rational process'...

"Generally speaking, there is no possibility to determine whether any publication had or had not, in fact, any influence. That is why the guilt of the publisher cannot depend on the actual mischief caused by the publication. The danger that any such mischief may be caused is enough to hamper the due administration of justice; in our courts, justice is administered by hearing evidence and arguments in open court, and any investigation tainted by outside influences, whether by public talk or by public print, is no longer a judicial process...

"The present charge is brought under an Act recently enacted by the Legislature. There is, therefore, no relevancy to the fact that the offence of contempt of court originated in a system of absolute monarchy, and that originally contempt of the king's judges was made tantamount to contempt of the king himself. We do not here deal. any longer with contempt of any individual judge who happens to try a case... We deal here with an interference with a judicial enquiry by reporting something which is contrary to what has transpired in open court—namely, the defendant's admission of guilt to the reporter as against his denial of guilt before the court. This amounts to an invitation to the public to judge the issue according to what the reporter was told—as if the judicial enquiry according to the rules of court was irrelevant. However free and democratic the régime, the integrity of the judicial process must be safeguarded if freedom and anarchy are not to become identical...

"Any matter regarding a judicial trial may be brought before the public, either before the trial starts of after it has ended. Only it is pending, a sort of moratorium bans public discussion. The public is entitled to know everything that went on in the courtroom during the trial, but what public interest can there possibly be in reporting that the defendant had said something privately to a reporter in contradiction of what he had pleaded in court? It is true that any such publication might be sensational and provide dramatic tension; but it is not for the purpose of satisfying desires like those that there exists freedom of the Press. As freedom of expression does not imply freedom to insult, so it does not imply any freedom to trespass upon the province of the courts and pronounce upon the guilt of a man standing his trial...

"In England, it was held that the publication of a confession of murder by a man who was arrested, but not yet charged, amounted to contempt of court.[57] *A fortiori* here, where the man has been charged and pleaded not guilty, and the purpose of the publication could only have been to create the impression that his plea was not sincere. It is the fundamental right of the accused to deny the charge, and then he is presumed innocent until proven guilty. The publication of the appellants amounts to a violation of this right; it tends to diminish the effect of the plea of not guilty, and hence to impair the presumption of innocence.

"I should like to add that I am surprised at the fact that the police allowed—in this and many another case—newspapermen to interview accused persons standing trial. So long as the trial is pending, newspapers may not publish anything calculated to influence the trial; so what is the sense in allowing newspapermen to collect material which they may not publish anyway? No public interest is served by having accused persons interviewed by the Press during trial, and I think this practice should be discontinued."

Per *Berinson J.*: "... The argument that the publication concerned was in the public interest appears to me irrelevant. What is and what is not in the public interest to publish is laid down by law; and the law says that anything calculated to influence the outcome of a trial may not be published, whether or not such publication is in the public interest.

"A person who tries to influence a judge, even in private, in regard to the guilt or innocence of a man standing trial before him, is treated as in 'high contempt of court',[58] and the Press is in no privileged position as compared with any private person.[59] On the contrary, the Press fulfils an important public mission, and press reports are normally and generally credited with reliability. The news that an accused person has admitted his guilt to a reporter leads every normal reader to believe that the man is guilty; and even a judge, willingly or unwillingly, can be influenced by any such report; he is only human, and he himself can never know whether and when he succeeded to divest himself from all traces of the intelligence which may have come to him unnoticed... The task confronting even the most conscientious and cautious of judges is difficult enough, and should not be allowed to be made more difficult still by allowing irresponsible publication of matters which should not come to his notice...

"... I would say in praise of the Israeli press that in general it acts with constraint and reticence, and with due respect to the courts, wherever a pending trial is concerned. The more reason for

[56] *Pennekamp* v. *Florida*, 66 S.C. at p. 1042.

[57] R. v. *Clarke* 103 L.T.R. 636.

[58] In re *Dyce Sombre* (1849) 41 Eng. Rep. at p. 1209.

[59] R. v. *Gray* (1900) 2 Q.B.D. at p. 40.

this court, on this—the first—occasion of an appeal coming before it under this Section, to say in unmistakable terms that the court in this country will not suffer any interference by the Press with any trial pending before a court. In order that the Press should not be uncertain as to what would happen here if any attempt were made to import into this country the system of trial by newspaper, the courts are in duty bound to frustrate any such attempt by drastic measures, and to prevent any system like that from acquiring a foothold in the legal and social climate of our community..."

2. PUNISHMENTS—FAVOURABLE INTERPRETATION PROBATION OF OFFENDER

In the Supreme Court sitting as Court of Criminal Appeals [60]

Attorney General v. *Weigel.* 23 April 1963

The respondent was convicted of offences under the Penal Law Revision (Prostitution Offences) Act, 5722-1962.[61] Under Section 10 of the Act, a person convicted of such an offence "shall be sentenced to imprisonment, whether with or without another punishment, and the sentence of imprisonment shall not be suspended". The District Court, in lieu of sentencing him, ordered him to be placed under the supervision of a probation officer for a period of three years.[62] On appeal by the Attorney-General, it was argued that under the law a sentence of imprisonment was obligatory, and the probation order was not competent.

HELD, probation order affirmed by majority decision.

Per *Berinson J.*: "... The law expressly provides that no suspended sentence may be imposed, but is silent regarding probation. If it was the the intention of the legislator to exclude also probation orders, nothing would have been easier for him than to say so. The general rule is that the abolition or exclusion of any law in force is not to be presumed or implied, but requires express legislation, *a fortiori* where the law in force benefits a person accused or convicted of crime...

"The Probation of Offenders Ordinance empowers the court to make a probation order, instead of sentencing him; there is, thus, no necessary contradiction between that Ordinance and the law before us. The law prescribes certain obligatory punishments in case that the court decides to sentence the offender; but it prescribes no punishments, obligatory or other, in case the court decides not to sentence the offender but to place him on probation... Probation is a method of treatment entirely different from ordinary punishment. It is a purely educational process, with no deprecatory string attached. It stems from the belief in man and the good qualities to be found in and to be brought out of him, if one takes only the trouble to support and assist him and lead him the right way. Punishment, on the other hand, is—more often than not—a rather desperate measure taken by society in order to protect itself, where no other measure would prove effective. It is inconceivable to me that the legislature would deprive the courts of that beneficial and important alternative to punishment, probation, without saying so *expressis verbis*..."

3. PUBLIC AUTHORITIES
INTERFERENCE WITH PRIVATE RIGHTS
NO FORCE ALLOWED WITHOUT DUE PROCESS

In the Supreme Court sitting as Court of Civil Appeals [63]

Buhakov v. *Municipality of Herzlia.* 11 July 1963

The respondent is invested with power to construct and widen roads, and for that purpose to take possession of, and to expropriate, land under certain conditions laid down by law.[64] The appellant was given notice of the respondent's intention to exercise that power with respect to a portion of his land; in that notice, he was requested to vacate that land within one month, or else the respondent would take possession thereof and evict him forcibly. The appellant refused to comply with the notice. Two months after the notice had been sent, the respondent took possession of the land, removed a fence which had been standing thereon, uprooted some trees, and widened the adjacent road.

The appellant sued the respondent in trespass, claiming an injunction not to interfere with his rights of property, the restoration of the *status quo ante*, and damages. Both courts below dismissed the action. On further appeal,

HELD, reversed.

Per *Manny J.*: "... The rule that no man may take the law into his own hands is fundamental to our system of law, and the legislature must, in the absence of a clear provision to the contrary, be presumed to intend that this rule should not be departed from... The powers given to the authorities to take possession of land for the purpose of widening roads are substantive and not procedural in character; they are public rights which can be enforced, if need be, by the due process of the courts. But no right, either public or private, may, without express legislative authorization, be enforced by the use of force..."

Per *Halevy J.*: "... The law relating to forcible entry on land, by the person entitled to the immediate possession thereof, differs in Israel from that in England. While under the Statutes of Forcible Entry (1381) such an act may entail criminal sanctions, under the common law of England it has always been the right of the owner or lawful occupier to enter on his land and take possession thereof even by force. This has never been the law in Israel, where even the owner or lawful occupier of land had to have recourse to the courts in order to regain possession from a trespasser.[65] The same rule has been applied

[60] Reported in 17 *Piskei-Din* 712.

[61] See *Yearbook on Human Rights for 1962*, p. 120.

[62] Under the Probation of Offenders Ordinance, 1944 (Palestine).

[63] Reported in 17 *Piskei-Din* 1583.

[64] Town Planning Ordinance, 1936 (Palestine).

[65] Article 24, Ottoman Magistrates' Law, 1913.

where the owner asked for, and was granted, police assistance to evict a trespasser; neither he himself nor the police may use force to enter on land without having first obtained an order of a competent court.[66] Forcible entry is an offence also in Israel,[67] and for the commission of that offence it does not matter whether the accused had a right to possession of the land or whether he was a trespasser.[68] There is nothing in the law under consideration that would justify a deviation from the general law in favour of the respondent having exercised his discretion in the matter of widening the particular road, for which purpose possession would have to be taken of some of the appellant's land, the respondent was now in the position of a person lawfully entitled to the immediate possession of the land—which provided him with an excellent cause of action in the courts, but did not entitle him to enter upon the land by the use of force..."

Judgement for the appellant, with costs.

4. Access to Courts
Discrimination—Foreign Jurisdiction

In the Supreme Court
sitting as Court of Civil Appeals[69]

Union Insurance Co. v. *Moshe.* 18 March 1963

The appellant company had issued to the respondent an insurance policy containing a stipulation to the effect that all disputes were to be litigated in the courts of the country where the respondent was then residing. The respondent had later to leave that country as a refugee, because of religious and racial persecution, and on his leaving the country, his whole property there was forfeited to the State without compensation and he was deprived of his nationality and all his civil rights.

He brought action on the insurance policy in the Courts of Israel. The District Court rejected a plea by the appellant that under the terms of the policy the action should have been brought in the country of the respondent's former residence, and that the Courts of Israel were not competent to entertain it. On appeal,

Held, confirmed. Where the Israeli Courts are clothed with jurisdiction under Israeli law, they will not refuse to exercise that jurisdiction on the ground alone that the parties have agreed to conduct their litigation in a foreign court, if the party relying on such agreement would thereby be enabled to evade or not fully to perform his obligations to the other party, or if either of the parties belongs to a group which is discriminated against, for reasons of race, religion, political or other opinion, property, or status, in the foreign country concerned.

[66] *Goldstein* v. *Custodian of Absentees' Property* (1949) to *Piskei-Din* at p. 726.

[67] Section 91, Criminal Code Ordinance, 1936 (Palestine).

[68] *Kahanovitz* v. *Attorney-General* (1949), 2 *Piskei-Din* 890.

[69] Reported in 17 *Piskei-Din* 646.

5. Freedom of Movement
Right to Leave Country
Priority of Children's Rights to Maintenance

In the Supreme Court
sitting as Court of Civil Appeals[70]

Howard v. *Howard.* 30 April 1963

The appellant was domiciled in Australia and an Australian citizen. He owed maintenance to his infant daughter, residing in Israel, under the judgement of an Israeli Court. An order was applied for, and granted, prohibiting him from leaving the country until and unless he had first secured the maintenance payments due until his daughter came of age (18 years). On appeal,

Held, confirmed.

Per *curiam*: In an earlier case,[71] the Court had asked itself whether it was competent to restrict the freedom of a person's movement where there was reason to apprehend that he would not meet his obligations in future. The Court had found an affirmative answer in the provisions of both Ottoman and Jewish law,[72] which both deal with obligations not yet merged in a judgement. We have no doubt that the rule applies, *a fortiori*, where there exists an unsatisfied judgement debt. The right of a visitor and of a citizen to leave the country is subject to restrictions imposed by law to safeguard other and paramount rights, and it can never be allowed to stand in the way of the right of an infant child to his or her maintenance.

Order discharged on condition that a bank guarantee is furnished to the satisfaction of the Registrar of the District Court.

6. Welfare of Children
Rights of Parents
Conflict of Religions

In the Supreme Court
sitting as Court of Civil Appeals[73]

El-Zaffadi v. *Attorney-General and another.*
11 July 1963

The appellant, a Muslim, claimed to be the father of a child who was born out of wedlock to a Jewish mother who had meanwhile died. It turned out that the child was the only heir to an estate which the mother had left. On application by the appellant, the Muslim *Sharia* Court issued an Order to the effect that the appellant was the father of the child and entitled to her custody and the guardianship over her property. In the exercise of the powers vested in him by law,[74] the Attorney-General applied to the District Court for an Order prohibiting the appellant from taking

[70] Reported in 17 *Piskei-Din* 747.

[71] *Kovatz* v. *Kovatz* (1952) 6 *Piskei-Din* at p. 116.

[72] Article 656 of the Mejelle, and Hoshen Mishpat 73, 10.

[73] Reported in 17 *Piskei-Din* 1419.

[74] Welfare (Procedure in Matters affecting Minors, Mental Patients and Absentees) Act, 5715-1955; see *Yearbook on Human Rights for 1955*, p. 138.

the child into his custody and from interfering with her property. The order was granted and, on appeal,

HELD, confirmed.

Per *Cohn J.*: "... The learned judge in the court below, and learned counsel before us, went very carefully and painstakingly into the intricacies of Muslim and of Jewish law as well as into inter-religious law; but I think this case turns upon a simple and very short point—namely, the welfare of the child concerned. The law [75] is that the parents, father and mother together, are the joint guardians of their children, and it does not matter whether or not they are married to each other; and in the event of the death of either of them, the surviving parent will be the guardian—always provided that the competent court did not otherwise order, in consideration only of the welfare of the child. The power thus vested in the courts is in effect a duty imposed on them; the welfare of the child excludes every other consideration [76] and outweighs any right of the parents; and while parents may be relied upon to claim their rights, it is where those rights are likely to conflict with the best interests of the child that the court is in duty bound to step in...

"The court below was satisfied, on the evidence before it, that it was in the best interests of the child concerned to remain in the institution where she was brought up ever since her mother died. As against this finding, the appellant says that he has now obtained a judgement from the Muslim *Sharia* Court in which it is stated, *inter alia*, that he is a fit and suitable person to have the child in his custody, and that the child is a Muslim; therefore, he argues, it is in the best interests of the child to grow up with her father and in the Muslim faith. I quite agree that it is, generally, in the best interests of a child to grow up in the faith of his parents, but I do not agree that this interest is paramount. Where the court has the choice between the physical and mental well-being of the child and his growing up in his father's faith, and cannot combine both together, the physical and mental well-being has priority over the faith. In the case before us, the court below was not satisfied, on the evidence before it, and taking due cognizance of the findings of the Muslim *Sharia* Court, that the appellant was able or willing to properly care for and look after the child... Moreover, the faith of the father conflicted here with that of the mother, and the priority was a moot question.

"The jurisdiction of the Muslim *Sharia* Court in a matter like this depends upon whether the child is a Muslim or not. It appears that Muslim law regards her, because of her Muslim father, as a Muslim, whereas Jewish law regards her, because of her Jewish mother, as a Jew. This conflict does not call for solution in the present case, because in any event, and whatever her personal religious law may be, the welfare of the child is the paramount and only relevant consideration. But it seems to me that, in analogy to a person with two domiciles or two nationalities, where a person has, in law, two religions, it is the 'effective' religion under which his rights are determined. In the case of an adult, the 'effectiveness' is a conclusion to be drawn from his way of life, his conduct and his expressions of opinion. In the case of a minor child, no such conclusions can validly be drawn; here, the 'effectiveness' is to be determined solely by his best interests—not only because the child's best interests are anyway the paramount consideration in all matters affecting him, but because the law must presume that if the child had been capable of giving expression to his preferences, he would have preferred that religion (or domicile or nationality) from which he would derive the greatest benefit and welfare... It follows that the Muslim *Sharia* Court could have assumed jurisdiction only *after* it had been established that Islam was the child's 'effective' religion, and as this has never been established, the Muslim Court was not lawfully seized with the matter..."

7. PUBLIC POLICY
PROTECTION OF FAMILY
CONTRACT IN CONTEMPLATION OF FUTURE MARRIAGE

In the Supreme Court
sitting as Court of Civil Appeals [77]

Risenfeld v. *Jacobson*. 15 May 1963

The appellant, a married man, agreed with the respondent that upon the dissolution of his marriage they would become husband and wife. Meanwhile, they lived together in a flat purchased by the appellant, but registered in the respondent's name. It had expressly been agreed between them that in the event of their separation (either before or after their marriage), the flat should belong and be restored to the appellant. In fact, appellant and respondent were never married to each other, and they separated, the flat remaining occupied by the respondent. An action brought by the appellant for a declaration that the flat was his property and for an order to have the registration in the name of the respondent cancelled, was dismissed by the District Court on the ground that the contract between the parties had been repugnant to public policy and morals and no action could be founded thereon. On appeal,

HELD, reversed by majority decision.

Per *Cohn J.*: "... Assuming the illegality or immorality of a contract by a married man to marry another woman after dissolution of his marriage—or of a contract by a married man to live with another woman as husband and wife—the question arises whether this action was founded upon any such contract... The only contract which has to be pleaded as the cause of the present action is the respondent's promise to return the flat to the appellant in the event (*inter alia*) of their not being married to each other. If there was anything illegal or immoral in their contract to become married to each other after the dissolution

[75] Equal Rights for Women Act, 5717-1951, Section 3.

[76] Per Silberg J. in *Steiner* v. *Attorney-General*, *Yearbook on Human Rights for 1955*, p. 139.

[77] Reported in 17 *Piskei-Din* 1009.

of the appellant's marriage, then legality and morals have prevailed when the respondent refused to perform that contract; and in so letting legality and morals prevail, she has herself fulfilled the condition stipulated by her to return the flat to the appellant: why should the courts not enforce that stipulation?...

"However, be that as it may, while the common law of England always regarded contracts by married men in contemplation of a dissolution of their marriage as repugnant to public policy and hence unenforceable, this was not the law of Israel... The English rule originated in the conception of marriage as a sacrament [78] and its purpose is the protection of this sacred institution from any harm or interference which may be caused to it by the performance of adverse contractual obligations. But as distinguished from the law of England, Jewish law—which applies in Israel to marriages of Jews—does not impose any 'status' of marriage of which, once they entered into it, the parties cannot rid themselves except by legislation or judicial act. The marriage in Jewish law is a contract, albeit a very solemn one, between husband and wife; as they entered into it from their own free will, so they may, at any time and for any reason, terminate and rescind it from their own free will. Where spouses agree to have their marriage dissolved, the function of the courts is a purely supervisory and executory one; they do not, as in other systems, 'decree' a divorce, but they only see to it that the divorce, agreed upon by the parties, is properly executed. It is in this divergence from other systems that the distinction —you may even say the modernity—of Jewish law lies; no imposition of a status, whether you like it or not, but your own and your spouse's right to determine yourselves when and whether to marry, and when and whether to dissolve your marriage. It follows that an agreement cannot be said to be repugnant to public policy or morals for the reason alone that it presupposes, or stipulates, the prior consent of a third party to have a marriage dissolved; parties are bound to their contracts only so long as they do not agree to terminate them, and there is nothing wrong in entering into agreement which is to come into force only when it can be performed so that a previously made contract should not be broken..."

[78] Quoting the opinion of Lord Russell of Killowen in *Fender* v. *Mildmay* (1938) A.C.1.

ITALY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS (1963)[1]

I. LEGISLATION

Act No. 66 of 9 February 1963 (Gazzetta Ufficiale No. 48 of 19 February 1963), *respecting the admission of women to public office and to the professions*

The Italian Constitution, in articles 3 and 51 (in accordance with the principles stated in Articles 7 and 21 of the Universal Declaration of Human Rights), recognizes, in the first of the two articles mentioned, the equal social dignity of citizens and their equality before the law, without distinction as to sex, and, in the second, the right of all citizens "of either sex" to hold public offices or elective positions on a footing of equality. Given these guiding principles of the Constitution, Act No. 1176 of 17 July 1919 and the corresponding regulations issued in Royal Decree No. 39 of 4 January 1920 had to be abrogated, since they placed considerable limitations on the participation of women in public employment and in public office. The Constitutional Court, by its decision No. 33 of 13 May 1960,[2] had already declared article 7 of the above-mentioned Act of 1919 to be unconstitutional.

Now, with the Act of 9 February 1963, any limitation on the access of women to public offices and posts has *de jure* disappeared.

Article 1 of the Act establishes that: "Women shall be allowed access to all public offices, professions and posts, including the magistrature, in the various grades and categories, without any restriction as to functions or professional advancement, subject to the requirements laid down by law. The recruitment of women into the armed forces and special corps shall be governed by separate enactments." Article 2 provides for the repeal of Act No. 1176 of 17 July 1919 and of the subsequent regulations approved by Royal Decree No. 39 of 4 January 1920, and of all other provisions conflicting with the present Act.

Another legislative measure enacted to safeguard the rights of women workers is Act No. 7 of 9 January 1963 (*Gazzetta Ufficiale* No. 27 of 30 January 1963) which abolishes the so-called marrying clause in labour contracts. This clause had already, in a decision given in 1961 by the Italian magistrature, been declared illegal because it conflicted both with the relevant constitutional provisions and with the ethical principles of public morality.[3]

The above-mentioned Act of 9 January 1963, to prohibit the dismissal of women workers on their marriage and to amend Act No. 860 of 26 August 1950 respecting the physical and economic protection of working mothers, is designed both to give effect to article 37 of the Constitution, which recognizes the equal rights of male and female workers and at the same time protects the discharge of the family functions of women (in accordance with the principles set forth in Articles 23 (2) and 25 (2) of the Universal Declaration), to ensure the full application, within the country, of the principles laid down in ILO Convention No. 103 concerning maternity protection.

The Act declares null and void and considers "incorrect" any clauses included in individual or collective contracts or in regulations which in any way provide for the rescission of the employment contract of a female worker as a result of her marriage. Dismissals on account of marriage are also declared null and void (article 1).

In consideration of the extreme difficulty which a woman employee might experience in *proving* that her employment contract had been cancelled for that reason, a *presumptio juris* was inserted in the same article 1 to the effect that dismissals intimated during the period from the day on which the publication of the banns was requested until one year after the marriage ceremony are dismissals on account of marriage, except when the employer can prove that the dismissal is for one of the reasons already laid down in Act No. 860 of 26 August 1950,[4] article 3, sub-paragraphs (*a*), (*b*) and (*c*) (i.e., misbehaviour on the part of the female worker which would be sufficient cause; stoppage of work in the undertaking; completion of the work for which the female worker was engaged or the rescission of the contract of em-

[1] Note prepared by Dr. Maria Vismara, Director of Studies and Publications of the Italian Association for the United Nations, Chief Editor of *La Communità internazionale,* a publication of that association, and government-appointed correspondent of the *Yearbook on Human Rights.*

[2] See *Yearbook on Human Rights for 1960,* p. 204.

[3] See the decision of the Milan court of 6 April 1961, quoted in the Report for 1961. See *Yearbook on Human Rights for 1961,* p. 197.

[4] See *Yearbook on Human Rights for 1951,* p. 202.

ployment on the expiry of the period for which it was made). In order to prevent dismissals made to appear as "voluntary resignations" (a device which is used fairly frequently), the Act has laid down (article 1) that a resignation submitted by a female worker during the aforesaid "period" is invalid unless confirmed by the worker herself at the Labour Office within one month.

Article 2 specifies, as a logical consequence of the invalidity of the dismissal, that the employer is still obliged to pay the employee who has been unlawfully dismissed "full remuneration until the day she is re-employed". The female worker who, having been offered re-employment, states her intention of withdrawing from the contract, is entitled to the emoluments provided for in the case of resignation for just cause. The above provisions are applicable to female employees of private undertakings of every kind—excluding only those employed in family and domestic service (because of the special nature of their work)—and to female employees of public institutions, except in cases where there are more favourable provisions.

The provision in article 3 designed to eliminate the main incentive for dismissals on account of marriage (the legislator considered that prohibitions and penalties, however serious, would not completely solve the problem), i.e., the desire on the part of the employer to evade the charges imposed by legislation concerning maternity protection. It was therefore considered that, by transferring such charges into an insurance benefit basis, the most serious motive for dismissal would be removed. Article 3 helps to achieve that purpose; it replaces article 17 of Act No. 860 of 26 August 1950 and makes general the principle that the financial benefits to which working mothers are entitled during the period of compulsory abstention from work are—in the case of *all* female workers employed by private employers—paid by the institution, society or fund which provides compulsory sickness insurance.

Article 4 introduces some improvements in the lump-sum benefits provided for in article 22 of the above-mentioned Act of 1950, payable to female agricultural workers in the event of childbirth; article 5 deals with the financing of the charges resulting from the two preceding articles. Article 6 provides that exceptions shall be made in cases where more favourable provisions for female workers are made in collective or individual work contracts and in legislative provisions and regulations.

Act No. 389 of 5 March 1963 (*Gazzetta Ufficiale* No. 90, 3 April 1963), respecting the introduction of pension insurance for housewives, further extends the system of disability and old-age insurance [Universal Declaration, Article 25 (1)]. Housewives, as a category, are of considerable importance in the country on account of their numbers; moreover, as has been rightly pointed out in parliamentary reports, their irreplaceable function in the family and in society gives housewives an unquestionable right to the assistance of the State in securing an untroubled future.

Under the Act of 5 March 1963, the State provides both indirect and direct assistance. The indirect assistance, which consists in basing the pensionable earnings on legal rules, in general offers the best guarantees to subscribers, but in special cases it offers the additional advantage of avoiding the reductions in the contributions of subscribers which would be inevitable if the insurance operations were carried out by undertakings with purely speculative aims. The direct assistance, on the other hand, takes the form of an increase, for which—within certain limits—the State itself assumes the responsibility, in the income gained from the contributions from female subscribers.

Under the above Act (article 1), a voluntary contributory pension scheme is established in the National Social Welfare Institution, for the purpose of administering voluntary pension insurance for housewives. Women between the ages of fifteen and fifty may join the scheme (article 2), as also those, without limitation as to age, who on the date of the entry into force of this Act had already entered into voluntary insurance in accordance operations were carried out by undertakings ber 1935, part IV, article 85, unless they are already subscribing to a compulsory social security scheme or already receiving a pension from it, or, having already joined one of the said schemes, have the right to continue voluntary payment of contributions. On joining the voluntary contributory pension scheme (article 3), a woman must indicate, *inter alia,* the minimum amount of the monthly pension which she wishes to have accumulated when she reaches the age of sixty-five.

The old-age pension (article 7) is granted, on request, upon attainment of the age of sixty-five. The disability pension (article 8) can be obtained —after five years in the scheme and after 120 minimum contributions have been paid—by subscribers whose ability to carry out the normal activities of a housewife has been reduced to less than the third.

Within the first year of the application of this Act (article 16) women under the age of fifty-five may join the pension scheme (for old-age pensions only). Moreover (article 15), within three years of the entry into force of the Act, housewives between the ages of fifty and sixty-five may establish a life income for themselves, to start, at the earliest, at the age of sixty-five, while housewives over sixty-four years of age may establish a life income for themselves, starting one year later.

Provision is made for the integration of pensions —through a special fund of the pensions scheme, to which is credited, *inter alia,* the contribution of the State (article 13)—in varying degree according to the amount of the pension and provided that certain economic conditions apply (articles 10, 11 and 15).

II. TREATIES AND CONVENTIONS RELATING TO HUMAN RIGHTS WHICH WENT INTO FORCE IN ITALY IN 1963

Convention on the Establishment of a Security Control in the Field of Nuclear Energy, with Protocol, signed at Paris on 20 December 1957. Made effective in Italy by Act No. 38 of 3 Janu-

ary 1963 (*Gazzetta Ufficiale* No. 40 of 12 February 1963).

European Convention on Extradition, signed at Paris on 13 December 1957. Made effective in Italy by Act No. 300 of 30 January 1963 (*Gazzetta Ufficiale* No. 84 of 28 March 1963).

Agreement between the Italian Republic and the Federal Republic of Germany on compensation for Italian citizens victims of German National Socialist persecution, with an Exchange of Notes, concluded at Bonn on 2 June 1961. Made effective in Italy by Act No. 404 of 6 February 1963 (*Gazzetta Ufficiale* No. 93 of 6 April 1963.

International Labour Convention No. 111, concerning discrimination in respect of employment and occupation, adopted at Geneva on 25 June 1958. Made effective in Italy by Act No. 405 of 6 February 1963 (*Gazzetta Ufficiale* No. 93 of 6 April 1963).

Exchange of Notes between Italy and the United States of America relating to the United States Government's contribution to the fourth Child Feeding Programme carried out by the *Amministrazione per le Attività Assistenziali Italiane ed Internazionali* (A.A.I.), done at Rome on 19 July 1960. Made effective in Italy by Act No. 558 of 4 March 1963 (*Gazzetta Ufficiale* No. 114 of 30 April 1963).

Social Security Convention between Italy and the Principality of Monaco, concluded at Rome on 11 October 1961. Made effective in Italy by Act No. 627 of 2 March 1963 (*Gazzetta Ufficiale* No. 122 of 9 May 1963).

Convention between Italy and Switzerland relating to social security, with Final Protocol and Joint Statements, concluded at Rome on 14 December 1962. Made effective in Italy by Act No. 178 of 31 October 1963 (*Gazzetta Ufficiale* No. 326 of 17 December 1963).

III. JUDICIAL DECISIONS

Decision No. 7 of 16 February 1963 of the Constitutional Court is of particular importance with regard to the equality of all human beings and, in particular, to the protection of the rights of children born out of wedlock (articles 1 and 2 (1) of the Universal Declaration; see also, in the same spirit, principle 3 of the Declaration of the Rights of the Child).

Against a decision of the Court at Vibo Valentia, which had refused to acknowledge his legitimacy, D. S. started proceedings to obtain a judicial paternity declaration with regard to his putative father D. C. The Public Prosecutor pointed out that, since the plaintiff was born before 1 July 1939 (date of the entry into force of the Book I of the Civil Code), the conditions required by article 123 of the transitory provisions of the Civil Code for the admissibility of the action did not apply.

On an objection being raised by the plaintiff, the Court issued an order referring to the Constitutional Court the question of the constitutionality of article 123, paragraph 1, of the transitory provisions of the Civil Code in that it conflicted with articles 3 and 30 of the Constitution.

The Constitutional Court held that the question was justified. In its decision, the Court said that the above-mentioned provisions relating to illegitimate children (and to children of adulterous unions within the limits of article 278 of the Civil Code) born prior to 1 July 1939 permitted investigation in respect of judicial paternity declarations only if the conditions laid down in article 189 of the Code of 1865 applied (abduction or rape). But since, under article 269 of the Code now in force, the provisions had been extended to cover the four cases indicated, it was clear that, in the transition from the earlier to the present legislation, different treatment had been laid down for persons within the same category, depending on whether they were born before or after the entry into force of the Code.

The Court then went on to consider whether, in this particular case, the contested provisions were or were not consistent with the fundamental principle of equality contained in article 3 of the Constitution, "a principle which ... certainly allows the ordinary legislator to issue different rulings relating to situations which are in fact different, provided that these rulings meet the requirement that the disparity in treatment is based on logical and objective premises which provide a rational justification for its adoption.

"Moreover, this requirement does not appear to be met by the contested provisions if one bears in mind, as is necessary, not only the reasons which determined the new provisions of illegitimacy but, in particular, the broader criteria adopted by the same legislator when they were made retroactive.

"... The Code now in force has extended the cases in which acknowledgement is permissible, allowing it also, with some limitations, in the case of children of incestuous or adulterous unions; it has even broadened the limits of the provisions relating to investigation into paternity (articles 269 and 278).

"Now, the transitory provisions (article 122) have made the provisions relating to acknowledgement fully retroactive, because (as is stated in the Minister's report) 'any other solution would have almost completely frustrated the purposes of the reform'. And in keeping with the spirit of the reform... they have also, by the application of *jus superveniens*, made valid acts of acknowledgement executed while the previous legislation was in force, in cases covered by subsequent legislation.

"Likewise, in so far as it relates to obtaining a life annuity from the succession of the natural father, article 136 of the transitory provisions establishes that articles 580 and 594 of the Code are applicable also to successions opened before 21 April 1940 (date of the entry into force of Book II on successions), except where such rights have already been settled on the basis of a judgement or agreement: the second paragraph of the article adds that natural children who, being in the circumstances mentioned in paragraphs 1 and 4 of article 269, cannot obtain a judicial paternity

declaration because they were born before 1 July 1939, may also avail themselves of the said provisions. And, in that connexion, it should be noted that the Minister's report points out that to make a distinction between successions opened before and those opened after the entry into force of the new regulations would create an unfair inequality within the same category of natural children, depending on the accidental fact of whether the father's death occured before or after 21 April 1940.

"From these observations, it follows naturally that the provisions in favour of illegitimate children established by the Code now in force... were considered so important by the legislator that, in the cases mentioned... the aforesaid changes had to be made retroactive. Hence, it cannot reasonably be denied that the limitation on investigation of paternity, established temporarily under the first paragraph of article 123, and the difference in treatment which results from it, represent a deviation from the legislator's expressly stated aim. There is logically no adequate or objective justification for such a deviation on the ground that the natural child was born before or after 1 July 1939. For the discrimination is linked to a natural event (the birth of the child) analogous to that to which the same legislator, in other provisions in favour of natural children, as has already been mentioned, did not see fit to attribute any effect which might exclude, or limit, the retroactivity of the new provisions.

The discrimination referred to, therefore, with regard to persons in the same category, proves to be in conflict with the principles laid down in the first paragraph of article 3 of the Constitution.[5]

"It should be added that the contested provisions are also inconsistent with the third paragraph of article 30 of the Constitution,[6] which meets the requirement for a legislative position in favour of illegitimate children, designed to eliminate any legal and social inequality in so far as that is compatible with the rights of the members of the legitimate family...

"Now, the provisions which have been challenged do in point of fact diminish that protection in the case of natural children born before 1 July 1939 in that they add subsequent and, as has been said, unjustified limitations to those already provided by the Code in force concerning investigation of paternity with regard to the last paragraph of Article 30 mentioned above.[7]"

The Court therefore declared unconstitutional the first paragraph of article 123 of the transitory provisions of the Civil Code; consequently (in application of the last part of article 27 of Act No. 87 of 11 March 1953)[8] it also declared the second paragraph of the above-mentioned article 123 and the second paragraph of article 136 of the transitory provisions [9] to be unconstitutional in relation to articles 3 and 30 of the Constitution.

The twofold right to personal freedom and to freedom of movement, proclaimed in articles 3 and 13 respectively of the Universal Declaration, was affirmed by the Constitutional Court in its decision No. 72 of 30 May 1963.

In an order of May 1962, the *pretore* of Chiavari raised the question of the constitutionality of article 162 of the Public Security Act [10] in relation to articles 13 and 16 of the Constitution.[11] The order was issued in the course of criminal proceedings against G.F., who had been accused of contravening the above-mentioned article 162.

In its decision, the Constitutional Court considered, that the provision in the second paragraph

[5] *Article 3 of the Constitution:* All citizens are of equal social dignity and are equal before the law, without distinction as to sex, race, language, religion, political opinions or personal and social status.

[6] *Article 30, third paragraph, of the Constitution:* The law guarantees to children born out of wedlock every form of legal and social protection compatible with the rights of the members of the legitimate family.

[7] *Article 30, last paragraph, of the Constitution:* The law shall prescribe rules and restrictions for the establishment of paternity.

[8] Regulations governing the constitution and operation of the Constitutional Court.

[9] Transitory provisions of the Civil Code:

Article 123, first paragraph: An action for judicial declaration of paternity may be brought by children born before 1 July 1939 only if the conditions laid down in article 189 of the Code of 1865 apply. If such conditions apply, an action may be brought also by children of adulterous unions to whom article 278 of the new Code applies.

Article 123, second paragraph: Natural children who are in the circumstances mentioned in paragraphs 1 and 4 of article 269 of the Code, but who are unable to obtain a judicial declaration of paternity because they were born before 1 July 1939, may bring an action only to obtain maintenance.

Article 136, second paragraph: Natural children who are in the circumstances mentioned in paragraphs 1 and 4 of article 269 of the Code, but who cannot obtain a judicial declaration of paternity because they were born before 1 July 1939, may also avail themselves of the provision of article 580 [rights of natural children whose paternity has not been or cannot be established] and article 594 [allowances for natural children whose paternity has not been or cannot be established].

[10] Consolidated text of public security laws:

Article 162, first paragraph: Those sentenced to imprisonment for a serious offence or to admonition for a lesser offence, or who are subject to supervised freedom, are obliged, as soon as they have been released from prison or from the establishments mentioned in the preceding article, to present themselves to the local public security authorities, which shall supply them, if necessary, with an obligatory travel voucher for return to their place of residence.

Article 162, second paragraph: Those with previous convictions who are considered a danger to society may be brought before the above-mentioned authorities under arrest.

[11] *Article 13, first paragraph, of the Constitution:* Personal freedom is inviolable.

Second paragraph: 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.

Article 16 of the Constitution: All citizens may travel and sojourn freely in any part of the national territory, subject to the general restrictions provided by law on grounds of public health or security. No restrictions may be imposed on political grounds. ...

of article 162 of the Public Security Act, on the basis of which those with previous convictions who were considered a danger to society could be brought before the public security authorities under arrest, conflicted with the principle stated in the second paragraph of article 13 of the Constitution, since the order of arrest provided for in the said article 162 was not issued by the judicial authorities but by the public security authorities.

Nor could the provision in the second paragraph of article 162 be held to be in keeping with the provisions in the third paragraph of article 13 of the Constitution [12] inasmuch as the said provision did not refer to any situation in which there is need or urgency, since the fact that a person was a danger not such as to create such a situation. It should be added that the provision in question entrusts to the public security authorities alone the task of assessing the danger and does not provide for any intervention by the judicial authorities either before or after the arrest.

Similarly, the provision in that part of the first paragraph of article 162 which stipulates that the public security authorities shall, if necessary, supply obligatory travel vouchers to those who present themselves is unconstitutional in relation to article 16 of the Constitution (which guarantees the citizen's freedom of movement and of sojourn in any part of the national territory). This provision clearly attributes an autonomous power to the public security authorities, which, if this provision remained in force, might be able to derive from it the power to issue obligatory travel vouchers also in cases not covered by Act No. 1423 of 27 December 1956.[13] The Court therefore declared that the provision under consideration was in conflict with article 16 of the Constitution, but at the same time it recognized that the deletion of the last sentence of article 162 did not mean that the measures to restrict personal freedom and freedom of movement stipulated in other provisions could not be enforced against those indicated in the said article, if the circumstances applied.

On the other hand, the Court held that the question of the legality of the first part of the first paragraph of article 162 was not justified: that provision is not in conflict with either article 13 or article 16 of the Constitution, inasmuch as the obligation to present oneself at the office of the public security authorities does not, in itself—and in the sense intended—constitute a restriction of personal freedom. It is in fact an obligation imposed by the Act, for reasons of security, on persons clearly defined by the Act itself on the basis of general criteria and absolute objectivity.[14]

The Court therefore declared that the provisions in the second paragraph of article 162 of the Public Security Act and in the part of the first paragraph of that article which states "which shall supply them, if necessary, with an obligatory travel voucher for return to their place of residence" were unconstitutional.

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* *

The equality of citizens before the law (Universal Declaration, article 7) was confirmed as applying also to matters of taxation by the Constitutional Court's decision No. 155 of 13 December 1963.

In the course of proceedings brought by a limited liability company, TIS (*Termo idraulica sanitaria*), against the Milan District Office of direct taxation, the Milan District Commission of direct taxation, in its order dated November 1962, raised the question of the constitutionality of articles 2 and 3 of Act No. 1346 of 10 December 1961 which provided for an increase in contributions to ECA (*Ente Communale di Assistenza*—Municipal Public Assistance Board), in that such regulations gave rise to a disparity in the treatment of contributors. That disparity was in conflict with article 3 of the Constitution (which establishes the equality of all citizens before the law) taken in conjunction with article 53 of the Constitution (under which "All persons are required to contribute to public expenditure in proportion to their taxable capacity"). In fact, under the provisions contested, on the income produced in the same period of time prior to 1961, those inscribed on the register *after* 1 January 1961 pay the contribution or increase in the contribution to ECA provided for in article 1 of Act No. 1346 of 1961, while those who were on the register *before* that date are exempt.

The Court considered the question justifiable, since the articles contested inevitably resulted in an obvious disparity in treatment, in respect of tax obligations, between contributors whose tax obligations were registered before a certain date and contributors who were placed on the register after that date.

After explaining the operation of the ECA tax, the Court stated as follows: "... there is no doubt that article 2 of Act No. 1346 of 1961 is in conflict with article 53, first paragraph, of the Constitution which, since it is, *inter alia*, a consistent and specific extension of the principle of equality set forth in article 3 of the Constitution, must be interpreted, with regard to taxation on income, as requiring equal taxation on equal incomes and different taxation on different incomes. In practice, under this system the contribution and its increase result, without any apparent justification, in an obligation which varies from contributor to contributor *on a given date* and by other contributor's tax assessment is based on objectively identical situations..."

The Court therefore declared that article 2 of Act No. 1346 was unconstitutional in relation to articles 3 and 53 of the Constitution, only in so far as it referred to taxation periods in respect of which the same tax was made payable by some contributors *on a given date* and by other contributors *prior to that same date.*

[12] *Article 13, second paragraph, of the Constitution:* In exceptional cases of need or urgency explicitly indicated by the law, the public security authorities may adopt provisional regulations, which must be communicated within 48 hours to the judicial authority, and, if not confirmed by the latter within the next 48 hours, they shall be deemed to be rescinded and rendered null and void.

[13] See *Yearbook on Human Rights for 1956*, p. 137.

[14] The Constitutional Court had already affirmed this point in its decisions No. 30 of 22 March 1962 and No. 20 of 8 March 1962.

With regard to article 3 of the above-mentioned Act (which governs the collection of the tax in question), the Court considered that the fact that article 2 had been declared unconstitutional implied an automatic restriction of the field of application of article 3 and that there was therefore no need for a special declaration of its unconstitutionality.

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* *

The right of a worker to periodic rest [15] (Universal Declaration, article 24) was further affirmed by the Constitutional Court in its decision No. 66 of 10 May 1963.

In an order dated February 1962, the *pretore* of Milan asked for the opinion of the Constitutional Court on the constitutionality, in relation to article 36, third paragraph, of the Constitution,[16] of that part of article 2109 of the Civil Code (concerning the worker's *rest period*) which entitles the worker to an annual period of paid holidays but limits it by the phrase "after a year's continuous work".

In its decision, the Court stated as follows: "The provision in article 2109 of the Civil Code which makes the completion of a year's continuous work a necessary condition of a worker's entitlement to an annual period of paid holidays is in conflict with article 36, third paragraph, of the Constitution.

"The above-mentioned provision of the Constitution entitles the worker to annual holidays and therefore to a period of rest to be enjoyed in every year of work; in other words, the intention is that the holidays should be taken during the year, not after year's work as the Civil Code stipulates. The plaintiff is correct in observing that the worker's entitlement to annual holidays serves the purpose of safeguarding his mental and physical strength, and that the reason for that entitlement exists even if a year's work has not been completed: it may be admitted that the need in such a case is less, but the fact that the need exists cannot be completely denied. It may also be admitted that it is for the head of the enterprise to choose the period during which holidays must be taken, bearing in mind both the needs of the enterprise and the interests of the worker, but never that the worker should be denied altogether the rest guaranteed to him by the Constitution.

"The best proof that such a conflict exists between the provision contested and the Constitution's provision is found in the legal interpretation given to the former. It has not been admitted that the discharge of a worker after less than a year's service entitles him to a period of leave or to compensation in lieu; thus article 2109 of the Civil Code has resulted in the fact that a worker might be deprived of his right to the special period of rest continuously for a number of years during which the worker might never succeed in completing twelve months of service with the same employer on account of recurrent short-term discharges at the end of separate engagements..."

The Court therefore declared the phrase "after a year's continuous work" in article 2109, second paragraph, of the Civil Code to be unconstitutional in relation to article 36, third paragraph, of the Constitution.

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[15] See Report for 1962, decision No. 76 of 22 June 1962, in which the Constitutional Court confirmed the worker's right to a weekly rest (*Yearbook on Human Rights for 1962*, p. 137).

[16] *Article 36, third paragraph, of the Constitution:* Workers are entitled to a holiday once a week and to be paid annual holidays; they may not renounce these rights.

IVORY COAST

ACT No. 63-1 OF 11 JANUARY 1963 AMENDING ARTICLE 64 OF THE CONSTITUTION [1]

Art. 1. The second paragraph of article 64 of the Constitution is amended as follows:

"The Supreme Court shall be competent to judge members of the Government for acts designated as crimes or offences committed in the exercise of their duties, with the exception of crimes and offences against the security of the State and related offences."

. . .

[1] Text published in the *Journal officiel de la République de Côte-d'Ivoire*, No. 3, special issue, of 14 January 1963.

ACT No. 63-2 OF 11 JANUARY 1963, ESTABLISHING A STATE SECURITY COURT AND REGULATING ITS ORGANIZATION AND PROCEDURE [2]

Title 1

ORGANIZATION

Art. 1. A State Security Court is hereby established with jurisdiction in cases involving serious offences (*crimes*) and less serious offences (*délits*) against the security of the State and related offences.

The offences within its jurisdiction shall not be pardonable.

The Court shall consist of a President and six regular judges.

The President shall be appointed for five years by the President of the Republic on the advice of the President of the National Assembly.

In case the President is unable to attend, he shall be replaced by the oldest regular judge.

The six regular judges shall be appointed for five years by the President of the Republic, three of them on the proposal of the President of the National Assembly.

Four deputy judges shall also be appointed for five years by the President of the Republic, two of them on the proposal of the President of the National Assembly.

The President and members shall be chosen from among persons known for their competence in political, legal or administrative affairs.

. . .

[2] *Ibid.*

Title 2

PROCEDURE

. . .

Art. 8. In cases involving serious offences (*crimes*) and less serious offences (*délits*) within the jurisdiction of the State Security Court, proceedings shall be instituted and a preliminary investigation conducted in accordance with the rules of ordinary law, subject to the following provisions.

. . .

Art. 11. The examining judge may investigate a case only upon an application by the representative of the *ministère public* attached to the State Security Court.

. . .

Art. 16. If the examining judge considers that a serious offence (*crime*), less serious offence (*délit*) or petty offence (*contravention*) has not been committed, or if an offence within the jurisdiction of the State Security Court has been committed by a person or persons unknown, or if there is not sufficient evidence against the accused, the examining judge shall dismiss the case.

An accused person held in custody pending trial shall then be released.

Art. 17. If the examining judge considers that there is evidence that the accused has committed an offence within the jurisdiction of the State Security Court, he shall give a decision to that effect, stating the exact legal description of the charges and the grounds on which he finds the evidence sufficient. The accused shall be acquainted with this decision within twenty-four hours and the council shall be informed of it within the same period.

The accused shall be arraigned before the State Security Court only on the basis of a writ.

In such cases, the matter is brought before the State Security Court by means of a summons issued directly to the accused by the *ministère public* for one of the next sittings. This summons shall refer to the examining judge's establishing the existence of sufficient evidence and to the writ of arraignment. It shall state the legal description of the charges.

If it does not, the accused shall be immediately released by order of the *ministère public.*

Art. 18. If the examining judge considers that there is evidence that the accused has committed an offence not within the jurisdiction of the State Security Court, he shall refer the case to the court normally competent.

In such cases, the institution of proceedings and the investigation and any formal procedures that have been executed or decisions that have been given previously shall remain valid and need not be repeated.

. . .

Art. 21. The hearings of the State Security Court shall be public unless public hearings would endanger law and order. If they would, the Court shall give a decision to that effect at a public hearing.

The President may, however, close the Court to minors in general or certain minors in particular.

If it is decided to hold closed hearings, any decisions on points of law shall also be given at closed hearings.

The decision on the substance of the case shall always be given at a public hearing.

Art. 22. The rules laid down by the Code of Criminal Procedure for correctional proceedings shall be applicable to proceedings before the State Security Court, subject to the modifications contained in the following paragraphs.

Civil proceedings in a criminal case before the State Security Court may be brought only before the court having jurisdiction in the case. Only individuals who have personally suffered injury caused directly by the offence may bring civil proceedings.

The President of the State Security shall have the discretionary power provided for in article 310 of the Code of Criminal Procedure.

When a case appears likely to take a long time, the President may issue an order, before the accused appears in court, that one or more deputies are to attend the proceedings so that they may replace the regular judges if necessary.

. . .

JAMAICA

NOTE[1]

During 1963, Jamaica continued to make improvements towards the broad objectives of social, economic and political progress envisaged in the Universal Declaration of Human Rights. There were no constitutional amendments, legislation, general governmental decrees or administrative orders having special reference to human rights. There was, however, an important judicial decision relating to human rights—the very first to be handed down by a court in this country.

The case referred to was that of *R.* v. *Patrick Nasralia,* the summary of which is as follows:

The accused was on 4, 5, 6, 7, 8 and 11 February 1963 tried in the Home Circuit Court at Kingston before Small, J., and a jury on an indictment which charged him with the murder of Gilbert Gillespie on 9 October 1962.

On 11 February 1963, the jury returned a verdict of not guilty of the offence of murder, but despite subsequent lengthy deliberation were unable to agree on a verdict of manslaughter and were accordingly discharged by the Trial Judge.

Counsel for the Crown thereupon applied to the learned Trial Judge for an order directing a retrial of the accused on the issue of manslaughter either during the sitting of the then current Home Circuit Court or at a subsequent sitting of the said court.

On 25 February 1963, an order was made by Small, J., adjourning the case for trial at the next sitting of the Circuit Court on the issue of manslaughter; the order purporting to be made under section 45 (3) of the Jury Law, Chapter 186, of the Laws of Jamaica, section 45 (1) of which makes it lawful for a judge on being satisfied that there is no reasonable probability that the jury will arrive at a verdict to discharge the jury at any time after the lapse of one hour from the first retirement of the jury.

The accused then sought the relief of the full court against the above order, averring that it constituted a contravention of his rights as an individual, as set out in section 20 (8) of the Constitution of Jamaica, quoted below:

> "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."

The above application was made pursuant to section 25 (1) and (2) of the Constitution which entitles a person whose constitutional rights have been infringed to apply to the Supreme Court for redress.

The full court refused the application on the ground that a person is not put in peril merely by being put in charge of the jury; at the applicant's trial, he was not in peril of conviction for manslaughter because there was no verdict on the issue of manslaughter, and there was no general acquittal. An appeal from this decision of the full court is pending.

[1] Note furnished by the Government of Jamaica.

JAPAN

NOTE[1]

I. LEGISLATION

1. *Act on the Welfare of Old Persons (Act No. 133 of 11 July 1963)*

In recent years, the lives of old people, mentally and physically handicapped by their age, have become unstable and insecure owing to the increase in the number of old people, the decrease in the support they receive from their relatives, the tendency of their social environments to become more complex, etc. Under these circumstances, this Act has been legislated to positively solve the problem of aged people.

The underlying idea of this Act is that old people should be respected for their long life which has contributed to the progress and advancement of society; that they should be afforded the guarantee of a healthy and peaceful life; that they should be expected to use care in order to remain mentally and physically in good health; that they positively take part in social activities by turning to account their abundant knowledge and experience which they have accumulated; and that society should give them the opportunity to perform activities according to their wishes and abilities.

The concrete measures, provided for by this Act and to be carried out by the State or local government or under its lead, are the enforcement of health examination in respect of old people, their accommodation in old people's homes, their domestic care if they live in their own homes by home service workers sent to them for that purpose, and the rendering of aid for the operation of old people's clubs and for the creation of other work which may promote the welfare of old people. This Act also designates 15 September as "Old People's Day", thereby enhancing the understanding and concern of the public in general about the welfare of the old.

2. *Act concerning Temporary Measures relating to the Procedure for Confiscation of Property Owned by a Third Party in Criminal Cases (Act No. 138 of 12 July 1963)*

On 28 November 1962, in a case of violation of the Customs Law, the Supreme Court rendered, through its Grand Bench, a decision to the effect that the confiscation of a property belonging to a third party contravenes articles 29 and 31 of the Constitution.[2] By this decision, the confiscation of a third party's property or the collection of its equivalent in lieu thereof is now no longer permissible.

With a view to guaranteeing the right of the third party under the Constitution, Act No. 138 has been enforced as a temporary remedial measure to modify the relevant provisions of the Code of Criminal Procedure pending the over-all revision of the Act and ordinances concerning the system of confiscation both in substantive and procedural laws.

The main point of this Act is that in a criminal case involving the confiscation of a property belonging to a person other than the accused, thus a third party in the case, the third party may, if he objects to the confiscation, be permitted to participate in the proceedings of the said criminal case, and to state his opinion, to make excuse and to take other measures for defence with respect to the confiscation, in so far as his participation does not affect the examination of the main matter of the case.

II. JUDICIAL DECISIONS

Decision of the Supreme Court of 22 May 1963 regarding the Autonomy of the University and the Limits of Police Power

This decision was rendered by the fact that the accused and several others, students of Tokyo University, inflicted violence on two policemen who had been looking at a theatrical performance given by a Tokyo University's theatrical group, *Poporo,* in classroom No. 25 of the Departments of Law, Literature and Economics, by such acts as taking hold of the right hand, or putting the hand into the pocket, or tearing buttons off the overcoat at about 7.30 p.m. on 20 February 1952. Both the first and second instance courts, basing their decision on the provision of article 23 of the Constitution, had judged the entry of the policemen into the university campus to be illegal and the acts of the students to be legally justifiable acts and acquitted the students. The Supreme Court quashed the decision of the Court of second instance and sent the case back to it.

[1] Note furnished by Mr. Shinjiro Suzuki, Director, Civil Liberties Bureau, government-appointed correspondent of the *Yearbook on Human Rights.*

[2] See *Yearbook on Human Rights for 1962,* p. 159.

The decision of the Supreme Court may be summarized in the following two points:

(1) The academic freedom guaranteed by article 23 of the Constitution [3] comprises freedom of academic research and freedom of publication of the results of such research, and the said article, while guaranteeing such freedoms to all people, purports especially to guarantee the university and its professors the freedom of such research and publication.

(2) Even though the gathering of students has been permitted by the university, in so far as the gathering is not for the genuine purpose of academic study or of the publication of the results of such a study but is aimed at performing activities corresponding to political and social acts in society, the university is not entitled to apply such specific academic freedom and autonomy to such a gathering.

III. OTHER EVENTS

1. *General Condition of the System of Civil Liberties Commissioners*

The number of Civil Liberties Commissioners as of 31 December 1963 is 8,970, 899 of them women, showing an increase of 163 as compared with the number on 31 December 1962. As a general rule, these Civil Liberties Commissioners are assigned to cities, towns or villages throughout the country and exert themselves to carry out the task of protecting human rights among the people in the community of the area where they are stationed.

The general meeting of All-Japan Federation of Consultative Assemblies of Civil Liberties Commissioners for 1963 was held on 11 October 1963 in Osaka City. The meeting, among other things, discussed the present state of compulsory education both at primary and secondary school level and adopted a resolution on the matter.

[3] Constitution: Article 23. Academic freedom is guaranteed.

2. *Human Rights Week*

During the 15th Human Rights Week, from 4 to 10 December 1963, various events were held throughout the country with the purpose of disseminating the idea of human rights.

3. *System of Legal Aid*

The results of the work in the field of legal aid show from year to year an upward curve. For 1963, the number of cases of applications for legal aid was 1,802 (herein included pending cases from the previous year), of which 505 have been decided upon to be given aid.

During the fiscal year 1963, a subsidy to the amount of 10 million yen was earmarked out of the National Treasury for this work.

It should be added that for the period covering the fiscal years 1958 to 1963 the total number of cases of application for legal aid was 6,487, of which 2,426 have been decided upon to be rendered aid. This means that the ratio of decisions to give legal aid to the whole number of applications was approximately 37 per cent.

As regards the kinds of suits, those involving monetary grievances were approximately 44 per cent, those involving immovable properties 24 per cent, those involving human relations 21 per cent and others 11 per cent. In approximately 95 per cent of these cases, the aim of legal aid was attained.

4. *Trend of Cases of Violation of Human Rights*

In 1963, like the previous year, cases of violation of human rights, herein included those involving persons in public service, tended to decrease. On the other hand, it is remarkable that the majority of the cases concerned disputes between private individuals in daily life, such as concerning the infringement of the inviolability of the home, the use of coercion and oppression and the violation of reputation and credit. It is characteristic that all these cases show exceedingly complicated aspects.

KENYA

THE CONSTITUTION OF KENYA [1]

CHAPTER I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

1. Whereas every person in Kenya is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin or residence or other local connexion, 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.

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 Kenya 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 Kenya or some other country, in respect of a criminal offence of which he has been convicted;

(*b*) In execution of the order of the Supreme Court or the Court of Appeal for Kenya or any court on which jurisdiction is conferred under section 166 of this Constitution punishing him for contempt of any such court or of another court or tribunal;

(*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 Kenya;

(*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 Kenya, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Kenya or for the purpose of restricting that person while he is being conveyed through Kenya 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 Kenya or prohibiting him from being within such an area,

[1] Text appears in Schedule 2 of the Kenya Order in Council 1963 and published as Legal Notice No. 245 in the *Kenya Gazette*, Extraordinary Issue, of 18 April 1963, Supplement No. 30, Legislative Supplement No. 20. Kenya became an independent State on 12 December 1963.

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 Kenya 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,

and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within twenty-four hours of his arrest or from the commencement of his detention, the burden of proving that the person arrested or detained has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in paragraph (*b*) of subsection (3) of this section 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.

(6) 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;

(*d*) Any labour required during any period when Her Majesty is at war or a declaration of emergency under section 17 of this Constitution is in force or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that he 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.

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 Kenya immediately before the coming into operation 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 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 aquisition for the prompt payment of full compensation.

. . .

7. (1) Except with his own consent, no person shall be subjected to the search of 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 quesion 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 Kenya, or of a Region, or of the East African Common Services Organization, or of a local government authority or of a body corporate established by law for public purposes 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, Region, Organization, authority or body corporate as the case may be; or

(*d*) That authorises, for the purpose of enforcing the judgement or order of a court in any civil proceedings, the entry upon any premises by order of a court,

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.

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 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 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 from punishing any person for contempt notwithstanding that the act or commission 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 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.

(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 subsection (10) 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 by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the preceedings; or

(*b*) May by law be empowered or required to do in the interests of defence, public safety or public order.

. . .

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) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides.

(3) 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.

(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 his 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.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

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 without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) 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 quesion 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 the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; 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; 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.

12. (1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughtout Kenya, the right to reside in any part of Kenya, the right to enter Kenya, the right to leave Kenya and immunity from expulsion from Kenya.

(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.

. . .

13. (1) Subject to the provisions of subsections (4), (5) and (8) 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), (8) and (9) of this section, no persons 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 attribuable wholly or mainly to their respective descriptions by race, tribe, place of origin or residence or other local connexion, 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.

. . .

14. (1) Nothing contained in or done under the authority of a law enacted by any legislature in Kenya shall be held to be inconsistent with or in contravention of section 3 or section 13 of this Constitution to the extent that he law auhorizes the taking during any period when Her Majesty is at war or when a declaration of emergency under section 17 of this Constitution is in force of measures that are reasonably justifiable for dealing with the situation that exists in Kenya during that period.

. . .

15. (1) Where a person is detained by virtue of such a law as is referred to in section 14 of this Constitution the following provisions shall apply, that is to say—

(*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 *Kenya Gazette* and in the Regional Gazette of any Region in which he is detained stating that he has been detained and giving particulars of the provision of law under which his detention is authorized;

(*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 from among persons qualified to be appointed as a judge of the Supreme Court;

(*d*) He shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and

(*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 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 auhority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1) (*d*) or subsection (1) (*e*) of this section shall be construed as entitling a person to legal representation at public expense.

16. (1) Subject to the provisions of subsection (6) of this section, if any person alleges that any of the provisions of sections 1 to 15 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

(*a*) To hear and determine any application made by any person in pursuance of subsection (1) of this section;

(*b*) To determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) 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 15 (inclusive) of this Constitution.

. . .

17. (1) The Governor may, by proclamation published in the *Kenya Gazette,* declare that a state of emergency exists for the purposes of this Chapter.

(2) Subject to the provisions of subsections (3) and (4) of this section, no declaration of emergency shall be made under this section except with the prior authority of a resolution of either House of the National Assembly supported by the votes of sixty-five per cent of all the members of that House, and every declaration of emergency shall lapse at the expiration of seven days, commencing with the day on which it was made, unless it has in the meantime been approved by a resolution of the other House supported by the vote of sixty-five per cent of all the members of that House.

(3) A declaration of emergency under this section may be made without the prior authority of a resolution of a House of the National Assembly at a time when the Central Legislature stands prorogued or when both Houses of the National Assembly stand adjourned, but every declaration of emergency so made shall lapse at the expiration of seven days, commencing with the day on which it was made, unless it has in the meantime been approved by a resolution of each House of the National Assembly supported by the votes of sixty-five per cent of all the members of that House.

(4) A declaration of emergency under this section may be made without the prior authority of a resolution of a House of the National Assembly at any time when the Central Legislature stands dissolved but any declaration of emergency so made shall lapse at the expiration of seven days, commencing with the day on which it was made, unless it has in the meantime been approved by a resolution of the Senate supported by the votes of sixty-five per cent of all the Senators.

(5) A declaration of emergency under this section made with the prior authority of a resolution of a House of the National Assembly in accordance with subsection (2) of this section and subsequently approved by a resolution of the other House in accordance with that subsection and a declaration of emergency approved by a resolution

of each House in accordance with subsection (3) of this section may at any time be revoked by the Governor by notice published in the *Kenya Gazette* but shall otherwise remain in force so long as those resolutions remain in force and no longer.

. . .

CHAPTER III

CENTRAL LEGISLATURE

Part I

Composition of Central Legislature

25. (1) There shall be a Central Legislature which shall consist of Her Majesty and a National Assembly.

(2) The National Assembly shall comprise two Houses, that is to say, a Senate and a House of Representatives.

. . .

31. (1) Subject to the provisions of subsection (2) of this section and of section 32 of this Constitution a person shall be qualified to be elected as a member of either House of the National Assembly if, and shall not be so qualified unless, at the date of his nomination for election, he—

(*a*) Is a British subject or a British protected person 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 English language well enough to take an active part in the proceedings of the National Assembly.

(2) A person shall not be qualified to be elected in any District or in the Nairobi Area as a Senator unless, at the date of his nomination for election, he is registered in that District or, as the case may be, in the Nairobi Area as a voter in elections to the Senate; and a person shall not be qualified to be elected as a member of the House of Representatives unless, at the said date, he is registered in some constituency as voter in elections of Elected Members to the House of Representatives.

32. (1) No person shall be qualified to be elected as a member of either House of the National Assembly who, at the date of his nomination for election—

(*a*) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to any foreign power or state; or

(*b*) Is under sentence of death imposed on him by any court in Kenya; or

(*c*) Is, under any law in force in Kenya, adjudged or otherwise declared to be of unsound mind; or

(*d*) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Kenya; or

(*e*) Subject to such exceptions and limitations as may be prescribed by the Central Legislature, has any such interest in any such government contract as may be so prescribed; or

(*f*) Is a public officer

(*g*) Holds or is acting in any office of emolument in the service of a local government authority.

. . .

THE REGULATION OF WAGES (GENERAL) ORDER, 1963 [2]

. . .

2. No person shall, except with the written permission of a labour officer, employ any male person of or above the age of 21 years in any of the areas specified in the first column of the Schedule to this Order—

(*a*) By the month, or other period, at a basic minimum wage less favourable than that specified in the second column of the said Schedule in relation to such area;

(*b*) On a ticket contract at a basic minimum wage less favourable than that specified in the third column of the said Schedule in relation to such area.

3. No person shall, except with the written permission of a labour officer, employ any male person below the age of 21 years, or any female person, in any of the areas specified in the first column of the Schedule to his Order—

(*a*) By the month, or other period, at a basic minimum wage less favourable than that specified in the fourth column of the said Schedule in relation to such area;

(*b*) On a ticket contract at a basic minimum wage less favourable than that specified in the fifth column of the said Schedule in relation to such area.

4. Any employer who does not provide housing accommodation for his employees shall, in addition to the basic minimum wages referred to in paragraphs 2 and 3 of this Order, pay a minimum housing allowance—

(*a*) To male employees of or above the age of 21 years, at a rate not less favourable than the respective amounts specified in the sixth column of the Schedule to this Order;

(*b*) To male employees below the age of 21 years, and to female employees, at a rate not less favourable than the respective amounts specified in the seventh column of the said Schedule.

5. An employer shall ascertain the basic minimum wage and minimum housing allowance to which any person employed by him is entitled under the provisions of this Order by reference to the particulars of date of birth or apparent age, and the date of registration, shown in the identity card issued to such employee under the provisions of the Registration of Persons Ordinance:

[2] Published as Legal Notice No. 31 in the *Kenya Gazette* of 15 January 1963, Supplement No. 6, Legislative Supplement No. 3.

Provided that where there is any doubt or dispute as to an employee's entitlement the matter shall be referred to a labour officer, whose written certificate as to such entitlement shall be conclusive.

6. For the purpose of this Order, the expression "ticket contract" has the meaning assigned to it by section 6 of the Employment Ordinance.

. . .

THE PRISONS RULES, 1963 [3]

PART I—PRELIMINARY

. . .

3. These Rules shall be applied, due allowance being made for differences in character and amenability to discipline of various types of prisoners, in accordance with the following principles—

(*a*) Discipline and order shall be maintained with fairness but firmness, and with no more restriction than is required for safe custody and to ensure a well-ordered community life;

(*b*) In the control of prisoners, prison officers should seek to influence them, through their own example and leadership, so as to enlist their willing co-operation; and

(*c*) At all times the treatment of convicted prisoners shall be such as to encourage their self-respect and sense of personal responsibility, so as to rebuild their morale, to inculcate in them the habit of good citizenship and hard work, to encourage them to lead a good and useful life on discharge and to fit them to do so.

. . .

PART V—TREATMENT OF PRISONERS

45. (1) No prison officer shall punish any prisoner unless authorized to do so under the Ordinance or these Rules.

(2) No prison officer shall deliberately act in a manner calculated to provoke a prisoner.

(3) If a prison officer strikes or uses force against a prisoner, he shall have the prisoner as soon as possible examined by the medical officer, and shall immediately report the incident to the officer in charge.

. . .

55. (1) The privilege of writing and receiving letters and receiving visits may, at the discretion of the officer in charge, be postponed at any time in case of misconduct, but shall not be subject to forfeiture.

(2) When a prisoner who becomes entitled to a letter or visit is at the time undergoing punishment, the officer in charge shall defer the privilege to a suitable time.

. . .

58. (1) Every letter to or from a prisoner shall be read by the officer in charge or by a responsible officer deputed by him and it shall be within the discretion of the officer in charge or the deputed officer to stop any letter on the grounds that its contents are objectionable or that it is of inordinate length; and in the case of an outgoing letter, the prisoner shall be informed and given the opportunity to rewrite the letter.

(2) No prisoner shall be permitted to write a letter to or receive a letter from a prisoner or an ex-prisoner without the permission in writing of the officer in charge.

59. (1) A prisoner who, after conviction, has given notice of appeal shall be given reasonable facilities to see his advocate concerning the appeal in the sight, but not in the hearing, of a prison officer.

(2) A prisoner who has been ordered to be repatriated to a place outside Kenya shall be given all reasonable facilities to see his advocate and a representative of his country concerning the order for repatriation in the sight, but not in the hearing, of a prison officer.

. . .

(6) For the purpose of this rule, "advocate of a prisoner" means either the prisoner's advocate himself or the advocate's clerk.

. . .

62. (1) Every prisoner on admission shall be required to state his religion and religious denomination, and he shall be treated as a member of such religion and denomination until such time as a minister of religion at the request of a prisoner certifies in writing that he belongs to another religious denomination.

. . .

63. (1) The officer in charge shall take all steps that he considers practicable to arrange evening educational classes for the prisoners in his charge, and shall permit prisoners in their leisure time to study by means of courses approved and arranged by him and to practise handicrafts; and special attention shall be paid to the education of illiterate persons.

. . .

64. The Commissioner may, on the recommendation of the officer in charge, appoint a sufficient number of prison visitors of either sex for the purpose of visiting prisoners regularly during their imprisonment and for conducting such classes as may be approved.

65. (1) Every prisoner may petition the Governor through the Commissioner, and such petition shall be written in such form as the Commissioner may direct.

(2) A prisoner may make a complaint to a visiting justice, the Commissioner, the officer in charge or such other class or classes of prison officer as the Commissioner designates to hear complaints.

. . .

PART VI—DISCIPLINE OF PRISONERS

. . .

81. Nothing in these Rules shall be so construed as to exempt any prisoner from being proceeded against for any offence by the ordinary course of law, but no prisoner shall be punished twice for the same offence.

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[3] Published as Legal Notice No. 60 in the *Kenya Gazette* of 29 January 1963, Supplement No. 8, Legislative Supplement No. 5.

THE KENYA (ELECTORAL PROVISIONS) (ELECTIONS) REGULATIONS, 1963 [4]

PART I—INTRODUCTORY

. . .

2. (1) In these Regulations, except where the context otherwise requires—

. . .

"election" means an election of one or more members of the Senate, or an election of one or more elected (as opposed to specially elected) members of the House of Representatives, or an election of one or more elected (as opposed to specially elected) members of a Regional Assembly;

. . .

"The House of Representatives" means the proposed Lower House;

. . .

"police officer" includes tribal police officer;

"polling station" means any room, place, vehicle or vessel set apart and equipped for the purpose of polling;

. . .

"Regional Assembly" means one of the proposed Regional Assemblies;

. . .

"the Senate" means the proposed Upper House;

"the Supervisor of Elections" means the Supervisor of Elections or a Deputy Supervisor of Elections appointed under regulation 4 of the Registration Regulations.

. . .

PART II—PRELIMINARY ARRANGEMENTS

3. The Supervisor of Elections shall—

(*a*) Exercise general direction and supervision over the administrative conduct of elections;

(*b*) Ensure that all election officers act with fairness and impartiality and comply with these Regulations;

(*c*) Issue to election officers such instructions as from time to time he may deem necessary to ensure the effective execution of these Regulations; and

(*d*) Execute and perform all other powers and duties which are conferred or imposed upon him by these Regulations.

. . .

PART III—PROVISION FOR ELECTIONS

. . .

7. (1) The qualifications for election as a member of the Senate or the House of Representatives shall be those set out in Part I of the First Schedule to these Regulations, and the qualifications for election as a member of a Regional Assembly shall be those set out in Part II of that Schedule.

(2) The disqualifications for election as a member of the Senate, the House of Representatives or a Regional Assembly shall be those set out in the Second Schedule to these Regulations.

. . .

PART IV—POLLING

18. (1) Every election shall be by secret ballot and shall be held in accordance with these Regulations.

. . .

29. No person, other than an election officer, a police officer, a public officer on duty or the companion of a blind or incapacitated voter, shall have any communication whatsoever with a voter while the voter is in the precincts of a polling station for the purpose of voting, except with the authority of the presiding officer.

. . .

FIRST SCHEDULE

PART I—QUALIFICATIONS FOR ELECTION TO THE SENATE OR THE HOUSE OF REPRESENTATIVES

1. Subject to paragraph 2 of this Schedule and to the Second Schedule to these Regulations, a person shall be qualified to be elected as a member of the Senate or the House of Representatives if, and shall not be so qualified unless, at the date of his nomination for election, he—

(*a*) Is a British subject or a British protected person 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 English language well enough to take an active part in the proceedings of the Senate or the House of Representatives, as the case may be.

2. A person shall not be qualified to be elected in any district as a member of the Senate unless, at the date of his nomination for election, he is registered in that district as a voter in elections to the Senate; and a person shall not be qualified to be elected as a member of the House of Representatives unless, at the said date, he is registered in some constituency as a voter in elections of elected members to the House of Representatives.

PART II—QUALIFICATIONS FOR ELECTION TO A REGIONAL ASSEMBLY

Subject to the Second Schedule to these Regulations, a person shall be qualified to be elected as a member of the Regional Assembly for a region if, and shall not be so qualified unless, at the date of his nomination for election, he—

(*a*) Is a British subject or a British protected person who has attained the age of twenty-one years; and

(*b*) Is able—

(i) To speak; and

(ii) In the case of all Regional Assemblies other than that for the North-Eastern Region, to read, unless incapacitated by

[4] Published as Legal Notice No. 206 on the *Kenya Gazette*, Special Issue, of 2 April 1963, Supplement No. 25, Legislative Supplement No. 17.

blindness or other physical cause, the English language or Kiswahili well enough to take an active part in the proceedings of the Regional Assembly; and

(*c*) Is registered in that region as a voter in elections to the Regional Assembly.

SECOND SCHEDULE

DISQUALIFICATION FOR ELECTION TO THE SENATE, THE HOUSE OF REPRESENTATIVES OR A REGIONAL ASSEMBLY

1. No person shall be qualified to be elected as a member of the Senate, the House of Representatives or a Regional Assembly who, at the date of his nomination for election—

(*a*) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to any foreign power or state; or

(*b*) Is, under any law in force in Kenya, adjudged or otherwise declared to be of unsound mind; or

(*c*) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Kenya; or

(*d*) Either—

(i) Holds or acts in any office or appointment in the civil employment or service of the Crown or in the employment or service of the Government, whether in an established capacity or not, and whether for the whole or for part of his time; or

(ii) Belongs to the regular armed forces of the Crown; or

(iii) Is an election officer:

Provided that a person shall not be so disqualified by reason only of the fact that he is—

(i) A Minister, a Parliamentary Secretary or the Deputy Speaker; or

(ii) In receipt of a pension or other like allowance in respect of such an office, employment or service as aforesaid; or

(iii) A special police officer or reserve police officer within the meaning of the Police Ordinance; or

(iv) A reservist within the meaning of any Ordinance for the time being in force in Kenya relating to the raising of any naval, military or air forces (whether he is recalled for service for which he is liable under such Ordinance or not); or

(v) An officer on the retired or emergency list of any of the armed forces of the Crown or holding an emergency commission in any of those forces or belonging to any reserve of officers of any of these forces; or

(vi) A naval, army, marine or air force pensioner who is recalled for service for which he is liable as such.

2. A person shall not be qualified to be elected as a member of the Senate if, at the date of his nomination for election as such a member, he is, or is nominated for election as, a member of the House of Representatives; and a person shall not be qualified for election as a member of the House of Representatives if, at the date of his nomination for election as such a member, he is, or is nominated for election as a member of the Senate.

. . .

LAOS

NOTE

The Minister of Foreign Affairs of the Kingdom of Laos has informed the Secretary-General of the United Nations that no new texts concerning human rights were promulgated in the Kingdom of Laos during 1963.

LEBANON

NOTE[1]

I. ECONOMIC RIGHTS

1. The Act relating to commercial property was approved by the Chamber of Deputies on 23 December 1963. It distinguished between commercial property and ownership without usufruct, and thus enabled the owner of a business to mortgage and assign property without the consent of the owner of the premises. The latter may however request the court to review the amount of the lease granted to the assignor, should the total or partial transfer of the business involve a change in the nature of the business.

Errors of a technical nature made it necessary to return the Act to the Chamber for a second reading, in accordance with article 57 of the Constitution.

2. On 27 March 1963 Decree No. 12362, issued under article 58 of the Constitution,[2] brought into force the Act which affords protection to persons selling movable property on the deferred payment system.[3] The following is a translation of the Act:

"*Art. 1.* Any seller of tangible or intangible movable property for which he has not received payment shall become the holder of a lien created by this Act.

"*Art. 2.* The lien shall attach to any movable property sold so long as it retains its identity, and to any compensation in respect of such property in the event of its disappearance or destruction.

"*Art. 3.* The lien shall be acquired only if the seller holds a notarized document, or a document bearing a legal date, describing the property sold and stating the forward price.

"*Art. 4.* This lien shall guarantee the selling price and incidentals.

"*Art. 5.* It shall enable the seller to secure payment by preference out of the price of the property sold. For this purpose, the seller may have recourse to a writ for the execution of judgement.

"*Art. 6.* The lien shall be extinguished if the ownership of the property sold is passed to a third person who takes in good faith.

"*Art. 7.* In any distribution of funds resulting from the sale of movable property where general liens would conflict with the lien established by this Act, the latter shall take precedence.

"If the beneficiary of the lien established by this Act should find himself in competition with a creditor whose claim originates in a contribution to the maintenance of the property, the latter shall be the first to exercise his rights in respect of the property.

"*Art. 8.* Any seller of movable property the price for which is payable in instalments may request the purchaser, if the latter is not a merchant, to undertake in writing not to transfer ownership or possession of the property to a third party before the price is paid in full.

"Such an undertaking shall be valid provided that it is incorporated in the deed of sale, that the property sold is not consumable and that its price, to be paid at a later date, is not less than L£300.

"Notwithstanding any clause to the contrary, such undertaking shall be extinguished on the expiry of two years from its date.

"No renewal or extension of such period shall be possible.

"*Art. 9.* Any person purchasing movable property on credit shall be punished for fraud if he violates the undertaking referred to in article 8, first paragraph, within the period of two years mentioned in article 8, third paragraph, of this Act.

"*Art. 10.* Businesses, motor vehicles and agricultural and industrial machinery governed by the Act of 20 May 1935 shall be exempt from the provisions of this Act.

"*Art. 11.* Any provisions contrary to this Act or incompatible with its tenor are hereby rescinded."

3. Two administrative judgements, as yet unpublished, have referred to the principle of freedom of trade and industry.

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[1] Note prepared by Mr. Hassan-Tabet Rifaat, Doctor of Laws, Deputy State Councillor, delegate to the Disputes and Legislation Board, Government-designated correspondent to the *Yearbook on Human Rights.*

[2] *Art. 58.* The President of the Republic may give executive force, by a decree already adopted on the advice of the Council of Ministers, to any bill which the Government has previously declared urgent by a decree of transmission adopted on the advice of the Council of Ministers, if the Chamber has taken no action on such bill during the forty days following its submission to the Assembly.

[3] Text published in the *Journal officiel* of 1 April 1963, p. 1006.

(*a*) The Lebanese Council of State [4] has once more endorsed a fixed legal principle: legislative texts affecting the freedom of trade and industry must be interpreted restrictively and in a manner most favourable to the preservation of this freedom.

(*b*) In another recent judgement,[5] the High Administrative Tribunal, which had been requested to give a ruling on the validity of the decrees confirmed by the Minister of Finance restricting the freedom to export tobacco-leaves,[6] declared them to be contrary to the principle of freedom of trade.

II. SOCIAL RIGHTS

1. *The Social Security Code of 26 September 1963*

The Social Security Code (comprising eighty-seven articles), which was promulgated one year after the Act on popular housing, constitutes the "backbone" of Lebanese social legislation and is designed to complete the "bloodless revolution" which is going forward in Lebanon.

The following is a summary of its main provisions, as contained in a communiqué published by the National News Agency:

Social Security comprises the following four forms of benefit:

(a) *"Sickness" and "maternity" insurance*

This benefit includes:

(i) Medical care in case of sickness or maternity;

(ii) Reimbursement of sickness and maternity expenses;

(iii) Reimbursement of funeral expenses.

Medical care covers treatment, analyses, X-rays, laboratory examinations, house visits, specialists' fees, dental care, drugs and hospitalization.

In maternity cases, medical care includes antenatal and post-natal examination and care, as well as drugs and hospitalization during confinement.

Medical care is provided as from the fourth day, for a period of twenty-six weeks. This period may be extended to thirty-nine or fifty-two weeks.

Sickness benefit is granted as from the fourth day and is continued, if necessary, for a period of twenty-six weeks. In serious cases, the benefit is paid up to the fifty-second week. During an initial and uninterrupted thirty-day period of illness, the benefit is equivalent to 50 per cent of the daily wage and to 30 per cent in the event of hospitalization. As from the thirty-first day, the benefit is increased to 75 and 50 per cent respectively.

The maternity benefit, payable only during a ten-week period, is equivalent to two-thirds of the daily wage.

In the event, of death, a lump sum of L£200 is paid for funeral expenses.

(b) *Employment injuries and occupational disease insurance*

This benefit provides for:

(i) Medical care in the event of illness;

(ii) Compensation in the event of disability;

(iii) Disability pension or compensation to be paid in the event of total or partial disability;

(iv) In the event of death, the payment of pensions to the beneficiaries and the reimbursement of funeral expenses.

Medical care is the same as that provided for in the event of sickness. In the event of disability due to an employment injury or occupational disease, the insured person received compensation equivalent to 75 per cent of his daily wage; such compensation is reduced to 50 per cent in the event of hospitalization. It is paid until the insured person has recovered, until payment of the disability benefit is begun, or until his death if death should take place first.

In the event of total disability due to employment injury or occupational disease, the insured person receives for the rest of his life an annual pension equivalent to two-thirds of his annual wage, provided that such wage does not exceed L£7,200 a year.

In the case of death, the beneficiaries receive a pension equivalent to two-thirds of the annual wage paid to the insured person. A lump sum of L£200 is paid to cover funeral expenses.

(c) *Family allowances*

Family allowances are granted to wives not in gainful employment, handicapped children up to the age of five years, boys up to the age of sixteen years (or twenty if they are continuing their studies), and girls not in gainful employment up to the age of twenty-five years.

(d) *Terminal compensation*

With regard to this benefit, the bill made a distinction between wage-earners engaged before and those engaged after the date on which social security came into effect.

The former, who are covered by the present Act, may choose between the compensation for dismissal or the terminal compensation provided for under the social security bill. Wage-earners in the second category are automatically covered by the latter provision.

Terminal compensation is granted to any wage-earner with twenty years of service, any wage-earner who suffers a 50 per cent disability, or any wage-earner who is sixty years of age.

This compensation is also given to every working woman who marries and leaves her service within twelve months thereafter.

Lastly, any wage-earner who is sixty years of age may request that the compensation be converted into a life pension.

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[4] Lebanese Council of State, 18 July 1963, Order of Chemists and Druggists, Judgement No. 1166 (unpublished).

[5] Lebanese Council of State, 19 March 1963, Hoirs Youseef Zein, Judgement No. 526 (unpublished).

[6] The principle of this freedom is laid down in Decree No. 16/L.R. of the High Comissioner (article 1, paragraph 2) of 30 January 1935.

The Social Security Code will applied in three stages: the first beginning eighteen months after publication of the Act,[7] the second beginning not later than two years after the first, and the third not later than two years after the second. The second stage will cover agricultural wage-earners, and the last stage all workers.

The first stage will cover only non-agricultural wage-earners and Lebanese general service personnel employed by the State, the municipalities or the autonomous offices. It should be noted that, during the first stage, employment injuries will be covered, so far as agricultural wage-earners are concerned, only in the case of an accident caused by a machine not driven by man or animal power.

The Act covers foreign wage-earners working in Lebanon, subject to reciprocity and provided that they hold a work permit.

However, except for terminal compensation, the Act does not cover those members of the family of the foreign wage-earner who do not permanently reside in Lebanon.

2. *The office of Social Development*

The practical activities of the Office of Social Development (ODS) have been summarized as follows by an authorized spokesman of the Office:

(*a*) The ODS has signed contracts with sixty-six institutions comprising 7,116 shelter-units of various kinds. At present, 2,120 students are attending courses at institutions specializing in vocational and technical training. The ODS allocated L£4.5 million at the beginning of the year for the purpose of establishing and equipping twenty-seven similar institutions located throughout the country. The Office co-operates closely in this field with the Department of Vocational Training in the Ministry of Education.

(*b*) Social services.—The Office has concluded agreements with thirty welfare associations which provide, *inter alia*, social and health services, medical services in centres set up for this purpose, home economics courses and assistance to needy families.

(*c*) Rural development.—The Office has adopted the principle of enlisting the participation of the people in its projects. To this end, camps of young volunteers have been established. Twenty-seven social workers were trained in 1962 and assigned to various rural development units. The role of these workers involves determining the needs of the people, recommending projects designed to meet those needs and directing the execution of such projects with the effective co-operation of the people.

(*d*) The Aramta Camp.—Lastly, the ODS spokesman stressed the importance of the Aramta Camp, which has brought together 500 students from various schools and universities who have helped the people to build roads. It should be pointed out that volunteers from Arab countries and France have been members of the Camp, a fact which is particularly promising for the future exchange of volunteers between Lebanon and other countries.

[7] The Act was published in the *Journal officiel*, addendum No. 78, of 30 September 1963.

LIBYA

AMENDMENT TO THE CONSTITUTION

On 26 April 1963, article 102 of the Constitution of the United Kingdom of Libya of 7 October 1951 was amended.[1] The amendment reads as follows:

> "*Article 102.* As specified by law, adult Libyans are entitled to vote. Women may exercise this right subject to the conditions set forth by the law." [According to information furnished to the Secretary-General by the Permanent Mission of Libya to the United Nations, the conditions mentioned in this article make no distinction on the basis of sex. Moreover, as a result of the Constitutional Amendment, women have an implied right to be elected to all public offices.]

[1] Text of amendment appears in *Constitution, Electoral Laws and Other Legal Instruments Relating to the Political Rights of Women,* Memorandum by the Secretary-General (A/5456/Add.1). For extracts from the Constitution of Libya, of 1951, see *Yearbook on Human Rights for 1951,* pp. 225-228, and *Yearbook on Human Rights for 1954,* p. 197.

ROYAL DECREE OF 22 NOVEMBER 1962 TO PROMULGATE A LABOUR ACT

SUMMARY

The text of this Royal Decree was published in *Al-Jarida al-Rasmiya,* No. 17, of 24 November 1962.

Section 2 of the Labour Act provides that, with certain exceptions mentioned in that section, it shall apply to all persons working under a contract of employment and also to persons employed by the Federal Government, the provincial administrations and public establishments, unless their status has been defined by regulations made by the competent authority.

Other provisions of the Act deal with the responsibility of directors of labour and labour inspectors for the enforcement of this Act within the province; the competence of employment offices; vocational training; individual contracts of employment; collective agreements; minimum wages; the protection of wages; health, safety and welfare; hours of work; annual leave and weekly rest; trade unions; industrial disputes; and strikes.

Translations of the text of the Labour Act into English and French have been published by the International Labour Office as *Legislative Series* 1962 — Libya 1.

LIECHTENSTEIN

OCCUPATIONAL DISEASES ORDINANCE OF 14 OCTOBER 1963 [1]

SUMMARY

This Ordinance repeals the Occupational Diseases Ordinance of 19 April 1956. Article 1 enumerates materials the production or the use of which may cause certain dangerous diseases. Under article 2, insurance companies, after having served notice in advance as required under article 22 of the Law of 16 January 1931 concerning Accident Insurance, are entitled to reduce or to discontinue insurance payments if an insured, because of the working of calcium-hydroxide or cement, has repeatedly become ill and, as a consequence, has drawn, in the course of five successive years, sick payments during 150 days. Article 3 contains a list of diseases to be considered occupational diseases.

[1] Text published in *Liechtensteinisches Landes-Gesetzblatt*, No. 36, of 6 November 1963.

LUXEMBOURG

ORDER OF THE GRAND DUCHY OF 22 APRIL 1963, ESTABLISHING AND REGULATING A NEW MINIMUM SOCIAL WAGE RATE [1]

Art. 1. The minimum rates of wages fixed in articles 2 and 3 shall be binding on employers and workers and shall not be subject to abatement by individual or by collective agreement.

They shall be applicable to industrial, commercial and craft establishments, to public establishments and public utilities, to the liberal professions, to companies and associations of all types, and in general to all branches of private or public activity, with the exception of domestic service and of work in agriculture, horticulture and viticulture.

They shall be adjusted to the index number of the cost-of-living, according to the procedure applicable to the salaries and pensions of State officials.

Art. 2. The minimum hourly wage rate shall be fixed at twenty-five francs, index number 130, for male and female wage-earners of normal physical ability and aged at least twenty-one.

For young wage-earners aged under twenty-one, the rates shall be established as a percentage of the wages fixed for adult wage-earners, as follows:

age twenty to twenty-one: 90 per cent;
age nineteen to twenty: 80 per cent;
age eighteen to nineteen: 70 per cent;
age seventeen to eighteen: 60 per cent;
age sixteen to seventeen: 50 per cent.

Art. 3. The emoluments of male and female employees and workers paid on a monthly basis shall not be less than 5,000 francs, index number 130, for wage-earners of normal physical ability and aged at least twenty-one.

For wage-earners aged under twenty-one, emoluments shall be fixed by applying the percentages set forth in article 2.

Art. 4. Minimum wages and emoluments shall be based on the maximum legal working week.

Art. 5. Workers who because of mental or physical handicap are unable to work to normal output may be employed for remuneration lower than the minimum wage, upon written authorization from the labour inspectorate indicating the amount and duration of the reduction, and after the views of the workers' delegation, if such exists, have been heard.

Art. 6. Employers who consider that the economic financial situation of their enterprise does not permit of the immediate and full application of the minimum rates of remuneration fixed by this Order may present a request for provisional dispensation, on which a ruling shall be given by joint decision of the Minister of Labour and Social Security and the Minister for Economic Affairs subsequent to an inquiry by the competent services of the two Ministerial departments.

Request for dispensation shall be addressed to the Minister of Labour and Social Security and shall include a detailed statement of the economic and financial situation of the enterprise making the request.

. . .

[1] Text published in the *Mémorial du Grand-Duché* of 17 April 1963, No. 19, pp. 263-264.

MADAGASCAR

NOTE [1]

ACT No. 62-033 OF 27 DECEMBER 1962, AMENDING THE PREAMBULAR PARAGRAPH OF THE CONSTITUTION OF THE MALAGASY REPUBLIC RELATING TO THE RIGHT TO OWN PROPERTY [2]

Art. 1. The preambular paragraph of the Constitution of the Malagasy Republic relating to the right to property shall be worded as follows:

"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, provided that in the case of unused or abandoned properties the State shall recover the same under the conditions determined by law. The State shall recognize duly established ancestral property rights."

[1] Texts of Acts and Decrees, with the exception of those of Acts Nos. 63-033 and 63-036, transmitted by the Malagasy Government.

[2] Text published in the *Journal officiel de la République malgache*, No. 268, of 18 January 1963. For extracts from the Constitution, see *Yearbook on Human Rights for 1959*, p. 193-194.

ACT No. 62-036 OF 27 DECEMBER 1962, TO AMEND PARAGRAPH I OF ARTICLE 32 OF THE CONSTITUTION RELATING TO PROPERTY RIGHTS [3]

Art. 1. Article 32, paragraph I (*b*), of the Constitution of the Malagasy Republic is amended as follows:

"The law governing property and real estate and the conditions under which wealth and possessions may be expropriated or requisitioned for public purposes or recovered because they have been abandonned and not exploited."

[3] See *Journal officiel de la République malgache*, No. 268, of 18 January 1963.

ACT No. 63-008 OF 15 JULY 1963, AMENDING CERTAIN PROVISIONS OF ORGANIC LAW No. 6 CONCERNING THE COMPOSITION OF, THE RULES FOR THE ELECTION AND APPOINTMENT OF MEMBERS TO, AND THE FUNCTIONING OF, THE SENATE [4]

Art. 1. Articles 1 and 27 of Organic Law No. 6 concerning the composition of, the rules for the election and appointment of members to, and the functioning of, the Senate [5] shall be repealed and replaced by the following provisions:

"*Art. 1* (new). No person may be elected or appointed a senator unless:

1. He is a Malagasy citizen;

2. He has attained the age of thirty-five years on the date on which his candidature is filed or he his nominated;

3. He has complied with the laws on national service recruitment;

[4] Text published in the *Journal officiel de la République malgache* of 20 July 1963.

[5] Extracts from the Organic Law appear in the *Yearbook on Human Rights for 1959*, p. 198.

4. He has complied with the fiscal legislation in force in the territory of the Malagasy Republic and, in particular, with his tax obligations for the preceding year.

"*Art 27* (new). The term of office of a senator shall be six years. Half of the number of senators in each category shall be replaced every three years.

. . .

"*Art. 3.* French citizens and citizens of the African and Malagasy Union who are at present members of the Senate shall remain in office until the expiry of their term of office."

ACT No. 63-016 OF 15 JULY 1963, AMENDING CERTAIN PROVISIONS OF ORGANIC LAW No. 3 OF 6 JUNE 1959 REGULATING THE EXERCISE OF THE FRANCHISE [6]

Art. 1. Articles 1 and 4, Title IV and Articles 95, 96, 97, 98 and 102 of Organic Law No. 3 of 6 June 1959 [7] are cancelled and replaced by the following provisions:

"*Art. 1* (new). All Malagasy citizens, without distinction as to sex, who have attained the age of twenty-one years and are in full possession of their civil and political rights shall be entitled to vote and to stand for election.

"French citizens and citizens of the *Union Africaine et Malgache (UAM)* who fulfil the general conditions laid down in the first sub-paragraph shall be entitled to vote and to stand for election on the same terms as Malagasy citizens in municipal elections, but in those elections only. This reservation shall not apply to French citizens and citizens of the UAM resident in Madagascar who have rendered outstanding services to the Malagasy Republic, or to members of the Malagasy National Order, who shall be entitled to vote and to stand for election in all elections on the same terms as Malagasy citizens.

"These privileges shall be granted individually by decree of the Council of Ministers.

"The offices of Mayor and First Deputy Mayor, however, may be held by Malagasy nationals only.

"Members of the land, sea and air armed forces shall be entitled to vote on the same conditions as other citizens. The same shall apply to citizens serving in the *service civique.*

"The voting conditions for women who have acquired Malagasy nationality by marriage are laid down in the Malagasy Nationality Code.[8]

"The voting conditions for naturalized aliens are laid down in Articles 37, 38 and 39 of that Code."

. . .

"*Art. 4* (new). The electoral roll shall comprise:

"1. All those eligible to vote under Articles 1 and 2 above whose principal residence is in the commune—the latter to be determined in accordance with the rules in force;

"2. All those who, although their principal residence is not in the commune, have resided there for more than six months. Absence as a result of national service shall not prevent registration on the electoral roll of the commune of the principal residence."

[Title IV (new) and Articles 95, 96, 97, 98 and 102 (new) contain provisions relating to rural communes.]

[6] Text published in the *Journal officiel de la République malgache* of 20 July 1963.

[7] Extracts from the Organic Law appear in the *Yearbook on Human Rights for 1959*, pp. 194-195.

[8] For extracts from the Code, see *Yearbook on Human Rights for 1960*, pp. 227-232.

ACT No. 63-020 OF 15 JULY 1963, AMENDING CERTAIN PROVISIONS OF ORGANIC LAW No. 5 CONCERNING THE NUMBER AND ELECTION OF MEMBERS TO, AND THE ORGANIZATION AND FUNCTIONING OF, THE NATIONAL ASSEMBLY [9]

Art. 1. Articles 2, 5, 9, 10 and 24 of Organic Law No. 5 concerning the number and election of members to, and the organization and functioning of, the National Assembly [10] shall be repealed and replaced by the following provisions:

"*Art. 2* (new). No person may stand for election to the National Assembly unless:

"1. He is a Malagasy citizen and registered on the electoral roll of an electoral district in the territory of the Malagasy Republic;

"2. He has attained the age of twenty-five years at the time when his candidature is filed;

"3. He has complied with the laws on national service recruitment;

"4. He has complied with the fiscal legislation in force in the territory of the Malagasy Republic and, in particular, with his tax obligations for the preceding year."

[9] Text published in the *Journal officiel de la République malgache* of 20 July 1963.

[10] For extracts from the organic law, see *Yearbook on Human Rights for 1959*, pp. 196 and 197.

. . .

"*Art. 4* (new). French citizens and citizens of the African and Malagasy Union who are members of the present National Assembly shall remain in office until the term of this Assembly expires."

"*Art. 5* (new). A naturalized alien may not stand for election until a period of ten years has elapsed from the date of the naturalization decree.

"The preceding paragraph shall not, however, apply to:

"A naturalized alien who has completed the period of active national service required for persons in his age-group;

"A naturalized alien who fulfils the conditions laid down in Article 39 of the Malagasy Nationality Code."

"*Art. 9* (new). [Deals with persons to be barred from standing for election while they are in office and for a period of three years thereafter.]"

"*Art. 10* (new). [Deals with persons to be barred from standing for election in all electoral districts in which they are now, or have within the past year been in office.]"

. . .

"*Art. 24* (new). The normal term of office of a deputy shall be five years except in the case of dissolution provided for in article 45 of the Constitution."

. . .

DECREE No. 63-124 OF 22 FEBRUARY 1963, INSTITUTING A FAMILY ALLOWANCES AND WORKERS' COMPENSATION CODE [11]

BOOK I

ORGANIZATION AND OPERATION OF THE NATIONAL FAMILY ALLOWANCES AND WORKERS' COMPENSATION FUND

General Provisions

Art. 1. Employers and other such persons as defined by the different compensation systems administered by the fund who employ in Madagascar one or more persons coming under article 3 of Ordinance No. 62-078 of 29 September 1962, regardless of the age, sex, family situation or nationality of such persons and regardless of whether or not they are receiving benefits provided by the fund, shall be required, under pain of legal sanctions, to:

1. Become affiliated with the national Fund within fifteen days following either the opening or acquisition of the enterprise, or the engagement of the first salaried employee;

2. Declare to the Fund, in the first month of each quarter of the calendar year, either the amount earned by the persons referred to above or, in the case of lump-sum contributions, the numbers employed in the course of the preceding quarter;

3. Pay to the Fund, at the time that the declaration is made, the amount of the corresponding contributions;

4. Pay to the recipients the benefits determined in the Fund's schedules;

5. Inform the Fund immediately of the engagement or dismissal of any workers receiving benefits.

. . .

Part I

Administrative Organization of the Fund

Chapter I

The Governing Body

Art. 3. The Governing Body shall be a joint body administering the affairs of the Fund through its deliberations or through those of its committees.

. . .

BOOK II

FAMILY ALLOWANCES SCHEME

. . .

Part III

Family Benefits

Art. 139. Family benefits shall comprise the following:

Pre-natal allowances;

Maternity allowances;

Family allowances;

Compensation in lieu of salary provided for in article 77 of the Labour Code;[12]

Reimbursement of confinement expenses provided for in article 77 of the Labour Code.

These benefits shall be inalienable and unattachable, except for the payment of alimony arrears provided for in the Civil Code.

. . .

Chapter I

Pre-natal Allowance

Art. 141. The pre-natal allowance, of an amount equal to nine monthly family allowances, shall be payable, on the occasion of each medically certified pregnancy, to the persons or spouses of persons fulfilling the conditions set out in part II of this Book.

. . .

Chapter II

Maternity Allowance

Art. 145. The Maternity allowance, equal to twelve monthly family allowances, shall be payable to the person fulfilling the conditions described in chapter I of this Book on the occasion of the birth, under medical care except where it is recog-

[11] Text published in the *Journal officiel de la République malgache* of 15 March 1963.

[12] A summary of the Labour Code appears in the *Yearbook on Human Rights for 1960*, p. 233.

nized that that is impossible, of a child born viable and duly registered at the Registry Office.

In the case of multiple births, the maternity allowance shall be multiplied by the number of children born.

. . .

Chapter III

Family Allowances

Art. 149. Family allowances shall be payable to persons fulfilling the conditions of part II of this Book, in respect of each living child from the first day of the month following the birth until the child has completed his fourteenth year.

The age limit shall be raised to:

1. Eighteen years of age, where the child has a regular apprenticeship contract;

2. Twenty-one years of age, where the child is still studying and attendance certificates are presented, or where the child is suffering from a disability or incurable disease which precludes the undertaking of any paid employment and in respect of which a medical certificate is provided; such medical certificate shall be required every year;

3. Twenty-one years of age, for an unmarried daughter of the beneficiary, or of his or her spouse, who is domiciled with the beneficiary and is engaged exclusively in household tasks and in the bringing up of at least two children of less than ten years of age who are dependent on the beneficiary receiving the family allowances, in cases where the mother is deceased, or has left the family residence, or finds it physically impossible either to attend to household duties or to assume them completely as a result of a prolonged illness or of the presence in the home of at least four children receiving family allowances.

. . .

Chapter IV

Half-pay Compensation

Art. 157. The daily half-pay compensation provided for in article 77 of the Labour Code shall be payable, on the occasion of their confinement and during the period in which they are absent from work, to women in paid employment fulfilling the conditions set forth in part II of this Book.

Payment of the compensation shall be limited to eight weeks before and six weeks after the confinement; it may be continued for an additional period of three weeks in the case of a duly certified illness resulting from the pregnancy or confinement.

. . .

BOOK III

INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES SCHEME

Part I

FINANCIAL ORGANIZATION OF THE INDUSTRIAL ACCIDENTS COMPENSATION SCHEME

. . .

Part II

APPLICATION

I. *Definition of industrial accident*

Art. 167. Any accident sustained by any employee shall, regardless of the cause of said accident, be deemed to be an industrial accident when it occurs:

1. In the course of, or arising out of, employment;

2. During the journey from the employee's place of residence to his place of work or *vice versa,* provided that he has not interrupted, or turned aside from the direct route of, his journey for reasons of personal interest not connected with his employment;

3. During journeys, the expenses of which are paid by the employer under article 87 of the Labour Code.

. . .

Part IV

COMPENSATION

I. *Extent of compensation*

Art. 191. The Compensation payable to the victim of an industrial accident or to his legal beneficiaries shall comprise:

1. Indemnities:

(*a*) Daily compensation paid to the worker during the period of temporary incapacity;

(*b*) The pension granted to the injured person in the case of permanent incapacity, or to his legal beneficiaries in the case of a fatal accident;

2. The payment or reimbursement of the expenses entailed in treatment, functional readaptation, vocational retraining and rehabilitation.

. . .

Chapter II

Care and Benefits, Functional Readaptation, Vocational Retraining and Rehabilitation

Art. 222. The Fund shall pay or reimburse the expenses entailed in the treatment, functional readaptation, vocational retraining and rehabilitation of the injured person, and in particular:

1. Medical, surgical, pharmaceutical and accessory expenses;

2. Hospital expenses;

3. Expenses entailed in the supply, repair and renewal of prosthetic or orthopaedic appliances;

4. Transport expenses.

. . .

Part V

PREVENTION OF INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

Art. 252. The Fund shall, in collaboration with the labour inspectorate:

1. Assemble all information relating to the different type of establishments which will serve as

a basis for statistics of industrial accidents and occupational diseases, taking into account the causes and circumstances of the said accidents and diseases, their frequency and effects, and in particular the duration and gravity of consequent incapacity;

2. Institute any inquiries which they consider appropriate in respect of the health and social welfare, and the hygiene and safety conditions, of the workers;

3. Ascertain whether the employers are observing the safety and hygiene measures established by the regulations in force;

4. Utilize all forms of publicity and propaganda suitable for disseminating preventive methods within undertakings and among the population as a whole;

5. Encourage, by means of subsidies or loans, the teaching of preventive methods.

. . .

DECREE No. 63-206 OF 11 APRIL 1963, CONTAINING GENERAL REGULATIONS FOR THE AWARD OF STATE SCHOLARSHIPS FOR STUDY IN LONG-TERM AND SHORT-TERM SECONDARY EDUCATIONAL ESTABLISHMENTS IN MADAGASCAR [13]

Art. 1. The purpose of state scholarships is to contribute to the maintenance of pupils who have been recognized as being fitted to undertake or continue classical, modern or technical studies.

Art. 2. State scholarships shall be awarded to pupils of Malagasy nationality.

In exceptional cases and without prejudice to the provisions of articles 3 and 4 of this Decree, they may also be awarded to foreign pupils whose parents are established in Madagascar and who furnish proof of services rendered to the Malagasy Republic.

Art. 3. State scholarships may be awarded only to pupils whose family or personal means have been recognized as insufficient in the light of the family responsibilities.

The insufficiency of the family means and the family responsibilities shall be regarded as established upon presentation of a declaration duly certified correct by the administrative authority of the place of residence of the parents or guardian applying for the scholarship.

Art. 4. State scholarships shall be awarded by decree of the Minister of Education, within the limits of the budgetary funds appropriated for that purpose, on the basis of proposals submitted by committees set up in each provincial capital.

Art. 5. The following educational establishments shall be authorized to admit pupils holding State scholarships:

1. Secondary schools (*lycées*) and supplementary courses;

2. Public technical schools, excluding schools specializing in medical and social sciences;

3. Private schools providing long-term, short-term or technical courses of secondary education at least up to the standard of the certificate of professional aptitude.

[13] Text published in the *Journal officiel de la République malgache* of 20 April 1963.

DECREE No. 63-485 OF 30 JULY 1963, CONTAINING REGULATIONS CONCERNING MILITARY DISABILITY PENSIONS [14]

Art. 1. Principle of entitlement to pension. In pursuance of the provisions of Decree No. 62-144 of 21 March 1962, regulations concerning military disability pensions are hereby enacted.

These regulations shall be applicable:

1. To soldiers, sailors or *gendarmes* of the Malagasy armed forces;

2. To their widows, orphans and heirs or assigns.

Part I

ENTITLEMENT TO PENSION

Chapter I. *Scope*

Art. 2. Beneficiaries. The following persons shall benefit from the provisions laid down in this Decree:

Regular soldiers, sailors and *gendarmes* of the armed forces;

[14] Text published in the *Journal officiel de la République malgache* of 10 August 1963.

Soldiers, sailors and *gendarmes* called up for statutory service in the army, navy or air force or in the national *gendarmerie*;

Military personnel in the inactive reserve, provided that the disability was contracted or aggravated during the period of active service;

Military personnel of the mobilized reserves.

. . .

MALI

SUMMARY OF THE LABOUR CODE OF THE REPUBLIC OF MALI [1]

The National Assembly of the Republic of Mali, at its meeting on 9 August 1962, unanimously passed Act No. 62-67/AN-RM promulgating a Labour Code.

This important measure was passed on the same day as Act No. 62-68/AN-RM promulgating a Social Welfare Code, which includes the Labour Code and protects workers against the main social hazards.

The Labour Code itself contains 400 sections divided into eight Parts. These Parts correspond to the fundamental principles laid down in the Constitution of 22 September 1960, which gives to all classes of workers a most important place in the national development of Mali.

Part I of the Code contains a very general definition of the term "worker", which excludes only State officials, and lays down measures for the complete elimination of forced labour.

Part II contains specific regulations for the different forms of contract: apprenticeship, contract of employment, collective agreement.

Special physical and moral protection is provided for apprentices. Minimum apprenticeship pay is granted to them, and their vocational training is supervised.

Special measures are prescribed with a view to guaranteeing the workers' contract period. One measure of particular interest is that provided for in section 38, under which the authorization of the inspector of labour is required for any dismissal. This measure, which exists in only a few countries, is particularly useful in ensuring stability of employment.

Part III regulates the general conditions of employment: wages and various bonuses; hours of work, which are forty per week; weekly rest; leave and transportation; and annual leave, which is of three weeks.

Part IV which consists of over fifty sections, prescribes all the necessary measures concerning hygiene and safety, based on the latest methods which have been developed in recent years as regards ventilation, lighting, cleanliness, precautions against fire, and accidents caused by dangerous machinery. Special protection is provided for women and children.

Part V prescribes the procedures for settling workers' disputes: in the case of individual disputes, the labour court, where the procedure is rapid and free of charge; in the case of collective disputes, conciliation and arbitration, the results of which may, in the more serious cases, be submitted to the Council of Ministers.

Part VI deals with industrial organizations, i.e., trade unions (which enjoy wide powers) and staff representatives. There are specific safeguards for freedom of association.

Part VII sets up public bodies to deal with labour questions: the Superior Labour Board; the Directorate of Labour and inspectorate of Labour; and the National Manpower Office. It defines the penalties of and offences against the Code.

Part VIII, the final Part, contains transitory and final provisions.

The Labour Code of the Republic of Mali therefore constitutes a complete, flexible and dynamic working instrument. It was advocated by all leading spirits in the *Parti de l'Union soudanaise R.D.A.* and the labour organizations, and forms part of our economic and social system, which is based on socialist planning and the development of co-operatives.

At the same time, it remains open to amendment and improvement.

The Labour Code of the Republic of Mali was published in the International Labour Office's *Legislative Series* 1962 of May-June 1964.

[1] Text of the summary communicated by the Government of the Republic of Mali.

MAURITANIA

ACT No. 63-023 OF 23 JANUARY 1963, TO ESTABLISH A LABOUR CODE

SUMMARY

The text of this Act was published in the *Journal officiel de la République islamique de Mauritanie*, No. 106, of 20 February 1963; errata: *ibid.*, No. 112, of is May 1963.

Section 1 of the Code states that its provisions "shall apply to the relations between employers and workers".

Section 3 reads as follows:

"Forced or compulsory labour is 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 Code further deals with contracts of employment; apprenticeship; collective agreements; wages and additions to wages; conditions of work; health and safety; occupational groups; and the settlements of labour disputes.

The text of the Code in French and a translation thereof into English have been published by the International Labour Office as *Legislative Series* 1963 — Mau. 1.

MONACO

DEVELOPMENTS IN THE FIELD OF HUMAN RIGHTS IN 1963 [1]

I. Diplomatic Instrument

On 11 October 1961, a protocol was signed at Rome between the Italian Republic and the Principality of Monaco provisionally regulating the system of old-age pensions and reversionary pensions for workers of the two countries.

This protocol provides that "for workers participating successively or alternately in one or more Italian systems and in the Monegasque system of old-age pensions and reversionary pensions, the period of qualifying service completed under the Italian system or systems, on the one hand, and the periods of qualifying service completed under the Monegasque system, on the other hand, may be added together provided that this is not done in order to gain eligibility for benefits when the period of service in one of the two countries is less than that required by the legislation of that country for eligibility to benefits."

Sovereign ordinance No. 3032, of 12 August 1963 (*Journal de Monaco,* No. 5524 of 16 August 1963), gave effect to the provisions of this protocol in Monaco.

II. Social Legislation

1. *Act No. 729 of 16 March 1963, respecting contracts of employment (Journal de Monaco,* No. 5504 of 29 March 1963).

The purpose of this Act is to increase security of employment by ensuring a large measure of stability and permanence. It is motivated by a desire to promote respect for human dignity in a type of contract in which one of the parties is generally governed by the contract, whether written or verbal, rather than a party to it.

If the duration of the trial period is not established by the contract or by a collective agreement it is fixed, under the Act, at six working days for employees paid by the hour and one month for employees paid by the month.

While the contract is in force, any breach of the contract on the part of the employer must be accompanied by one month's notice if the person concerned has been employed in the establishment for more than six months' continuous service; if the contract is terminated by the employee, the period of notice is only fifteen days.

For the purpose of seeking alternative employment, the worker is entitled to twelve hours' paid leave of absence per week during the period of notice.

Permanence of employment is assured in the event of an undertaking changing hands.

This new Act completes a programme of social legislation which has been widely developed during the last twenty years, often on the initiative of the Legislative Assembly, and which today deserves to be considered among the most liberal.

2. *Act No. 732 of 16 March 1963, increasing the pensions granted to the victims of industrial accidents or to their beneficiaries (Journal de Monaco,* No. 5504 of 29 March 1963).

Previous legislation relating to industrial accidents (in the last instance the Act of 6 August 1947) provided for the possible future increase of initial pensions granted, depending on the degree of disability after the wound had healed. The increase was made retroactive to the date of the entry into force of the above-mentioned Act only if a request was made during that year.

The new Act, with a view to providing better protection for the injured persons, makes the increase effective from the date on which the main pension was first paid, provided that a request is presented within six months from the date of the decision which established the original amount of the pension.

Furthermore, under the new Act the pension increase is also based on the revaluation of the wage which was used as a basis for calculating the amount of the original pension.

3. *Act No. 752 of 2 July 1963, extending the duration of the annual paid leave prescribed by Act No. 619 of 26 July 1956 (Journal de Monaco,* No. 5518 of 5 July 1963).

The duration of paid leave established by the Act of 26 July 1956 was already longer than that provided for under French legislation: twenty-one working days instead of eighteen. The Act of 2 July 1963 has extended this period still further.

The duration of annual leave has now been extended to two working days for each month

[1] Note furnished by Dr. Louis Aureglia, National Councillor, Monte Carlo, government-appointed correspondent of the *Yearbook on Human Rights.*

worked, with a maximum of twenty-four working days.

Young workers and apprentices under eighteen years of age are entitled to two and one-quarter working days for each month worked. Apart from the annual paid leave calculated on this basis, they are entitled, if they so wish, to additional unpaid leave extending their leave to twenty-seven days, irrespective of their length of service.

III. General Legislation

Act No. 747 of 2 April 1963, amending the Code of Criminal Procedure (Journal de Monaco, No. 5505 of 5 April 1963).

The Code of Criminal Procedure, promulgated on 25 October 1904, replaced the former Code of Criminal Procedure, which had been in force since 31 December 1873. It was, for its time, a very modern piece of legislation. Its bringing up to date by Act No. 747, which takes up 109 pages in the *Journal officiel,* is one of the outstanding events of 1963.

The salient features of the reform, clearly brought out by Mr. Jean-Charles Rey, Rapporteur of the Committee on Legislation of the National Council, are as follows:

(*a*) No one may be arrested except in accordance with the warrant of a judge establishing the reasons therefor. The warrant shall be produced at the time of arrest or at the latest within twenty-four hours.

(*b*) Preventive detention may not exceed two months, but may be extended for a further two months in exceptional circumstances on the warrant of a judge establishing the reasons therefor and based on the findings of the *Procureur général.*

(*c*) Any detention shall be preceded by an interrogation.

(*d*) Provisional release may be requested at any stage of the proceedings.

(*e*) Any accused person has a right to the assistance of counsel. He may refuse to make a statement unless counsel is present.

(*f*) The presence of counsel is mandatory in the case of any minor held under detention and in the case of any accused person whose case is referred to the Criminal Court.

(*g*) Documents obtained in the course of the judicial inquiry may not be communicated to an unauthorized person except with the permission of the accused.

(*h*) Respect for the professional secrecy of ministers of religion is absolute. Others who have been entrusted with confidential information may give evidence only if they have been released from the seal of secrecy by the accused and if they consider that their conscience justifies them in so doing.

(*i*) No minor may be imprisoned for debt.

(*j*) The counsel of an accused person must be notified two days before the interrogation and the records of the proceedings must be placed at his disposal the day before the interrogation.

(*k*) When the preliminary investigation has been completed, the counsel has the right to study the dossier, placed at his disposal by the Clerk of the Court for twenty-four hours.

(*l*) Notice of any order on points of law must be given to the counsel of the accused person and to the counsel of any civil plaintiff.

(*m*) In the case of an appeal against such an order, the accused must have the assistance of counsel.

(*n*) The statement by the President of the Court of the acts and of the charges against the accused, formerly made at the beginning of the hearing, is now omitted.

(*o*) If the defendant is acquitted, he may not be prosecuted again in respect of the same acts, even under a different classification.

(*p*) During a trial in a criminal action, the use of audio-visual recording or broadcasting equipment is forbidden.

(*q*) The death penalty is abolished.

The last measure, and some of the others summarized above, were adopted in pursuance of the Constitution of 17 December 1962.

Every page of the new Code of Criminal Procedure reflects a desire to strengthen the guarantees offered to an accused person as well as the rights of the defence and, more generally, reflects a respect for the human person in accordance with the principles of the Universal Declaration of Human Rights.

MOROCCO

NOTE[1]

First and foremost, the Constitution of the Kingdom of Morocco, which was submitted to a referendum, approved by the Moroccan people and promulgated on 17 Rajab 1382 (14 December 1962), is modelled on the Universal Declaration of Human Rights.

The fundamental principles laid down in the Constitution reflect those set forth in the Universal Declaration.[2]

As regards legislation, the Dahir of His Majesty the King of Morocco of 28 Jumada II 1382 (26 November 1962), promulgating the Penal Code applicable throughout the Kingdom with effect from 17 June 1963 and embodying the fundamental principles set forth in the Universal Declaration of Human Rights, is particularly noteworthy.

This Code completes the action taken in the field of penal law by the promulgation, in February 1959, of the Code of Criminal Procedure, analysed in the *Yearbook on Human Rights for 1959*.[3]

The new Moroccan Penal Code, in its preliminary provisions (articles 1 to 12), lays down the principles that "No person shall be convicted and sentenced for an act which is not expressly defined as an offence by the law, nor subjected to penalties which the law has not decreed"; that "No person shall be convicted and sentenced for an act which, under the law in force at the time of its commission, did not constitute an offence"; that "No person shall be convicted and sentenced for an act which, under a law enacted after its commission, no longer constitutes an offence; if sentence has been passed, the enforcement of the penalties, both principal and accessory, shall cease"; and that "When several laws were in force between the time when the offence was committed and the final judgement, the law with the least rigorous provisions shall be applied".

The above provisions also apply to security measures.

All these rules are based on the principle laid down in article 11 of the Universal Declaration of Human Rights.

From the humane point of view, the most salient provisions of this Penal Code include, in addition to the measures relating to the rehabilitation of juvenile offenders, inspired by the most modern legislative ideas, those designed to promote the social re-adaptation of persons who have been convicted and sentenced, such as the provisions giving judges the power to place them in an agricultural colony after they have served their sentence.

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[1] Information furnished by the Government of Morocco.

[2] For extracts from the Constitution, see *Yearbook on Human Rights for 1962*, p. 205.

[3] For the analysis of the Code, see *Yearbook on Human Rights for 1959*, pp. 207-208.

NETHERLANDS

NOTE[1]

A. LEGISLATION

1. Right to a Remedy

The Act on remedy against administrative rulings (*Staatsblad*, 1963, No. 268) is the result of efforts made as early as last century to establish an administrative procedure covering the whole field of Government activity in social life. In the Netherlands, there has for many years been an administrative procedure regulating certain important sectors of public administration such as tax collection and social insurance. In addition, there are many acts under which recourse may be had to administrative remedy. The Act on remedy against administrative rulings supplements this legislation in that with certain exceptions, it allows appeal to the Crown for remedy against measures taken by the central authority, against which the administrative procedure does not offer, or has not offered for the plaintiff, any other means of opposition. Remedy may be granted for four reasons: incompatibility with a provision of the law, abuse of authority, arbitrary treatment and incompatibility with the general principles of law by which a good administration should be guided. During the appeal, the measure contested may be suspended at the plaintiff's request. The Act on remedy against administrative rulings does not apply to decisions of a general character. It was adopted on 20 June 1963 and came into force on 1 January 1964.

2. Criminal Procedure as Applicable to Military Persons

An Act of 4 July 1963 introduced some modification into the legislation on military criminal procedure. These modifications strengthened the legal position of the accused and gave counsel a more important role in military criminal procedure.

3. Nationality

The Act of 14 November 1963, amending the Act on Netherlands nationality and residential status (*Staatsblad*, 1882, No. 268) after marriage (*Staatsblad*, 1963, No. 467), regulates in an entirely new manner the question of Netherlands nationality for women who marry or who are already married, taking into account the provisions of the Convention on the Nationality of Married Women. By enacting this legislation, the Netherlands has abandoned the principle that a married woman should acquire her husband's nationality, which was adopted in order to ensure unity of nationality within the family. Henceforth, Netherlands women may, upon marriage or during their marriage to non-Netherlanders, decide for themselves whether they wish to retain Netherlands nationality. Furthermore, non-Netherlands women may, upon marriage or during their marriage or during their marriage to a Netherlander, decide for themselves whether they wish to acquire Netherlands nationality.

4. Status of Foreigners

On 19 April 1963, a bill on aliens was submitted to the Second Chamber of the States-General. This bill is designed to provide a formal legal basis for Government policy regarding the admission and expulsion of aliens, and surveillance of aliens during their stay in the Netherlands. The bill is also designed to ensure the widest possible legal guarantees for aliens. It grants aliens several legal remedies against measures unfavourable to them taken by the Netherlands public authorities under regulations governing aliens, e.g., decisions involving denial or revocation of a residence permit or expulsion. The alien affected by such a measure may submit a request for review to the Minister for Justice and in a number of cases he may even appeal to the Crown. The Minister for Justice may submit the request for review to an *ad hoc* commission; in certain specified cases he is even obliged to do so.

5. Compensation for Tenants in the Event of Expropriation of Business Premises

Pending new legislation on expropriation compensation for tenants of business premises, the temporary measure mentioned in the Netherlands contribution to the *Yearbook on Human Rights for 1961*[2] was extended by the Act of 13 December 1963 until 1 January 1966.

[1] Note furnished by the Government of the Netherlands.

[2] See p. 248.

6. Right to take Part in the Government of his Country

Several amendments to the Netherlands Constitution have come into force since November 1963. Pursuant to these amendments (*Staatsblad,* 1963, Nos. 464 and 465):

(*a*) The minimum legal age for electors of members of the Second Chamber of the States-General of the Provincial States and of Municipal Councils has been reduced from twenty-three to twenty-one years (articles 90, 137 and 152 of the Constitution);

(*b*) The minimum age for membership of one of the two Chambers of the States-General has been reduced from thirty to twenty-five years (articles 94 and 100 of the Constitution).

7. Right to Education

(*a*) The Act of 27 June 1963 (*Staatsblad,* 1963, No. 288) introduces new regulations governing theology faculties in private universities. In the Netherlands, private education—i.e., education provided by institutions other than public institutions is financed by the Treasury, provided that qualitative standards laid down by law are met. The cost of primary, post-primary and preparatory education is entirely met by the Treasury. Ninety-five per cent of the cost of education at private universities is covered by the national budget. The theology faculties of the private universities did not formerly benefit from this regulation and the above-mentioned Act now makes it possible for the Treasury to pay 95 per cent of their costs.

(*b*) The Act on post-primary education of 14 February 1963 (*Staatsblad,* 1963, No. 40) completely reorganizes this type of education. It not only covers the fields hitherto regulated by different Acts (Act on secondary education, Act on technical and domestic science training, Act on teacher training schools and part of the Act on higher education, Act on nursery schools and Act on primary education) but also introduced even greater differentiation within the framework of post-primary education. This differentiation is exemplified in particular by certain new procedures. The new Act still allows parents' and teachers' associations, municipalities and school administrations to advise the Minister for Education. Schools which are not administered by the State or the communes are financed by the Treasury, provided that they meet certain qualitative standards laid down by law; these standards do not however, limit freedom of education.

B. ADMINISTRATIVE MEASURES

1. Right to a Hearing

In its letter of 25 October 1963 (*Records of the Chamber,* 1963-1964 session, No. 7472), the Committee on Appeals of the Second Chamber announced a modification of the procedure to be followed in connexion with the consideration of appeals. In this letter, the Commission explicitly establishes that petitioners, either alone or accompanied by counsel, may, whether at their request or not, be given a hearing by the Commission for the purpose of providing additional information relating to their appeal.

2. Right to Just and Favourable Conditions of Work

(*a*) The Royal Decree of 18 March 1963 (*Staatsblad,* 1963, No. 98), known as the Decree on Safety from Ionizing Radiations, amends the earlier decree on that subject in conformity with the instructions issued by Euratom concerning the protection of the population and of workers against the danger of ionizing radiations.

(*b*) The Royal Decree of 29 March 1963 (*Staatsblad,* 1963, No. 170), known as the Decree on Safety in Inland Navigation, regulates work safety on board inland waterways vessels, particularly safety during loading and unloading.

(*c*) The Royal Decree of 19 August 1963 (*Staatsblad,* 1963, No. 366), known as the Conveyor Belt Decree, ensures the greatest possible measure of safety for workers using conveyor belt machinery transporting materials or objects in a non-vertical direction.

(*d*) The Royal Decree of 27 September 1963 (*Staatsblad,* 1963, No. 409) amends the Royal Decree of 1946 on Employment of Minors on Board Ocean-going Vessels. This Decree provides that a work permit cannot be granted to a person fourteen years of age employed on an ocean-going fishing vessel unless such employment is for reward.

C. INTERNATIONAL INSTRUMENTS

1. (*a*) Second Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions (Strasbourg 6 May 1963). This Protocol was signed by the Netherlands on 6 May 1963.

(*b*) Third Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, amending articles 29, 30 and 34 of the Convention (Strasbourg, 6 May 1963). This Protocol was signed by the Netherlands on 6 May 1963.

(*c*) Fourth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto (Strasbourg, 16 September 1963). This Protocol was signed by the Netherlands on 15 November 1963.

2. Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (Strasbourg, 6 May 1963). This Protocol was signed by the Netherlands on 6 May 1963.

SURINAM

Right to take part in the Government of his country

(*a*) The Decree of 15 January 1963 (*Official Gazette,* 1963, No. 4) increased the membership of

the Parliament to thirty-six and modified the electoral system; some members are elected as representatives of electoral districts and others as representatives of political parties, according to the system of over-all proportional representation.

(*b*) The Decree of 15 January 1963 (*Official Gazette,* 1963, No. 5) amended the electoral regulations of 1948 in order to make provision for the election of some members of Parliament as representatives of political parties, according to a system of over-all proportional representation.

(*c*) The Decree of 15 January 1963 (*Official Gazette* 1963, No. 6) established twelve electoral districts.

NEW ZEALAND

NOTE[1]

I. LEGISLATION

1. *Charitable Trusts Amendment Act 1963—No. 21*

The Act widens the legislation relating to charitable trusts, making it clear that the term includes facilities for recreation or other leisure-time occupation.

2. *Indecent Publications Act 1963—No. 22*

The Act establishes an Indecent Publications Tribunal which is to have the responsibility of deciding, at the request of the Comptroller of Customs, the Secretary for Justice, or any other person with leave from the Secretary for Justice or the Chairman of the Tribunal, whether or not a book or sound recording is indecent and whether or not the distribution should be prohibited or restricted. Two of the five members of the Tribunal must have special qualifications in the field of literature or education.

3. *Penal Institutions Amendment Act 1963—No. 36*

The Act extends the provisions permitting release of inmates for outside employment on a part-time basis to preventive detainees.

4. *Destitute Persons Amendment Act 1963—No. 63*

The Act is a revision of previously existing legislation to facilitate the enforcement in New Zealand of maintenance orders made overseas in British Commonwealth and certain foreign countries and the enforcement of New Zealand orders overseas.

5. *Matrimonial Proceedings Act 1963—No. 71*

The Act consolidates and makes substantial alterations in the existing legislation relating to matrimonial proceedings. The alterations lie mainly in three directions: granting husband and wife equal rights in every respect; facilitating reconciliation by empowering the Court to adjourn the proceedings at any time for that purpose, by prohibiting the admission of anything said during reconciliation attempts as evidence in the Court proceedings and by providing that the resumption of cohabitation for not more than two months may be disregarded in cases where it would formerly have operated to prevent a divorce; prevailing on the parties to make satisfactory arrangements, wherever possible, about welfare of the children and maintenance before a divorce is made absolute. The wife's moral claim to a share in the family home by reason of a non-monetary contribution is also recognized in provisions for the making of a possession order in respect of the home or an order for sale and division of the proceeds between the parties. Another important amendment gives the Court a discretion to grant a divorce where the parties have been living apart for seven years, notwithstanding that the separation was the fault of the petitioner.

6. *Matrimonial Property Act 1963—No. 72*

The Act makes better provision for the settlement of property disputes between husband and wife by allowing the Court in making an order to take into account the contribution each party has made not only by way of money payments but also in services, prudent management, and otherwise. The Act also gives husband and wife a right of action in tort against each other.

7. *Bills of Exchange Amendment Act 1963—No. 75*

The Act repeals the special provisions in respect of Maoris living in the North Island of New Zealand that they can only be held responsible on a bill or note written in the Maori language. All Maoris are now on an equal footing with Europeans in respect of bills of exchange.

8. *Criminal Injuries Compensation Act 1963—No. 134*

The Act provides for the payment of compensation by the State to persons injured by criminal acts and the dependants of persons killed by such acts. The object is to compensate innocent victims of crime for pecuniary loss which is not met by other social services and cannot be recovered, at least for the time being, from the offender. Compensation is restricted to personal injury and does not include loss of or damage to property. Every claim is to be considered by a tribunal which has a wide discretion within certain limits as to the maximum amount which can be awarded.

[1] Note furnished by the Government of New Zealand.

9. *Juries Amendment Act 1963—No. 141*

The enactment alters the provisions as to jury service of women by providing for the automatic insertion of their names on the jury roll (instead of requiring them to volunteer, as at present), but allowing them complete exemption on request.

10. *Cook Islands Amendment Act 1963—No. 132*

The Act abolishes the sentence of exile in the Cook Islands. It also sets out new provisions relating to the adoption of children in the Cooks. Previously only the Native Land Court had power to make an adoption order and European children were not capable of being adopted by non-Europeans.

The separate European electorate in the Cook Islands is abolished by the Act. The Executive Committee of Niue is established and provision is made for the delegation to it of functions of the Resident Commissioner upon the direction of the Minister of Island Territories.

The act provides that the members of the Niue Island Assembly are to be elected by universal suffrage instead of being appointed by the Governor-General.

II. REGULATIONS

1. *Copyright (Record Royalties) Regulations 1963—1963/84*

The regulations prescribe the procedure for the payment of royalties for records to the authors of musical works before such records can be put on the market.

2. *Copyright (Customs) Regulations 1963—1963/85*

The regulations prescribe ways and means for prohibiting the importation of infringing copies of published literary, dramatic, musical and artistic works.

3. *Sale of Liquor Regulations 1963—1963/151*

The regulations regulate the control of the alcoholic liquor trade under the Sale of Liquor Act 1962—No. 139,[2] referred to in our memorandum of 17 May 1963 on the same subject.

III. ORDINANCES PASSED BY THE COOK ISLANDS LEGISLATIVE ASSEMBLY

Cook Islands Shipping Ordinance 1963

Certain provisions of this Ordinance relate to human rights. Sections 15 and 16 deal with the employment of young persons as seamen and apprentices and the discharge of seamen. Sections 78 and 79 concern punishment of crimes and offences.

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[2] See *Yearbook on Human Rights for 1962*, p. 211.

NICARAGUA

LAND REFORM ACT [1]

Chapter I

PURPOSES OF THE ACT AND AGRARIAN PLANS

1. The purpose of this Act is to bring about social and economic land reform in Nicaragua by making basic changes in the land tenancy system, in the juridical structure of land ownership and in methods of working the land so as to raise the living standards of the rural population and ensure their participation in the transformation of the country's economy and in the general development of the nation through the equitable distribution of the cultivable area and the income deriving therefrom and also through increasing production.

2. In pursuance of the aim set forth in the foregoing Article, the State shall, on the basis of this Act, implement plans for land settlement, for the preservation and extension of medium and small-scale landownership and for the distribution and redistribution of land for its technical and rational use. In doing this, the following means shall be used:

(*a*) bringing new land into production;

(*b*) expropriating and dividing up large uncultivated holdings (*latifundios*) and land with low yield resulting from inefficient working;

(*c*) diversifying production;

(*d*) processing rural products;

(*e*) organizing agricultural co-operatives;

(*f*) grouping together and redistributing the rural population;

(*g*) establishing family estates;

(*h*) gradually abolishing tenant farming and sharecropping;

(*i*) forming the indigenous communities into production co-operatives;

(*j*) providing technical aid and controlled agricultural credit;

(*k*) setting up agricultural machinery pools for lease to farmers;

(*l*) increasing the number of rural schools;

(*m*) promoting rural handicrafts;

(*n*) improving rural housing;

(*o*) organizing the market for agricultural products;

(*p*) promoting afforestation and forestry.

Chapter II

AGRARIAN INSTITUTE

3. For the application of this Act, the Agrarian Institute is hereby created as a self-governing body. It is established for an indefinite period, shall have its headquarters in the capital of the Republic and shall have jurisdiction throughout the territory of the country. It shall enjoy legal personality under public and private law and shall have its own property. It shall maintain relations with the Executive through the Ministry of Agriculture.

4. For the fulfilment of the purposes of this Act, the Institute shall have the following functions and powers:

(*a*) acquiring and diposing of property of all kinds;

(*b*) concluding agreements with public bodies to subject their property. in the manner stipulated, to the system established under this Act;

(*c*) managing its property and contracting obligations of all kinds;

(*d*) preparing agrarian development plans based on land settlement systems or by any other means considered suitable;

(*e*) seeking the co-operation of the State banks and institutions in the planning and application of agrarian credit or carrying out such functions itself when its resources so permit;

(*f*) granting loans for installation, for the construction of rural housing and economically necessary improvements and for the marketing and processing of products, and ensuring that land settlers who obtain loans from other sources enjoy the same conditions as established by the Institute;

(*g*) contracting loans for the financing of its programs;

(*h*) joining with the Ministry of Public Education in planning the building of new rural schools and the improvement of existing schools, and col-

[1] Promulgated by Decree No 797 of 3 April 1963 and published in *La Gaceta*, No. 85, of 19 April 1963. What appears under this heading constitute extracts from the English translation of the Land Reform Act published by the United Nations Food and Agriculture Organization in *Food and Agricultural Legislation 1963*, Vol. XIII, No. 1, V/1b.

laborating in the preparation of special training plans in rural schools so that the instruction provided shall make the rural inhabitants technically qualified in agriculture;

(*i*) establishing research, experimental and agricultural extension centers, seed nurseries, pilot processing plants and agricultural mechanization stations in the field or co-operating with the competent official bodies in such work;

(*j*) adopting measures within its sphere of competence to ensure the efficient use of surface and groundwaters for the efficient irrigation of land, and to bring about a more extended use of electric power in rural areas so as to meet the requirements involved in developing economic activity and providing for the welfare of producers;

(*k*) importing, selling and renting agricultural instruments and machinery and agricultural processing machinery so as to reduce costs and encourage their use;

(*l*) establishing relations with international agencies, groups of foreign families and private concerns and proposing to the Executive the conclusion of agreements for the installation of immigrant farmers in land settlement areas with the co-operation of the relevant national authorities;

(*m*) reaching agreements with the *Banco Nacional de Nicaragua*, with the Ministry of Agriculture, with the National Development Institute (*Instituto de Fomento Nacional*), with the Nicaraguan Housing Institute (*Instituto Nicaragüense de la Vivienda*) and other State, municipal and private institutions for the co-ordination of the services available to the rural population;

(*n*) encouraging the participation by co-operatives and representative producers' associations in the process of agrarian development;

(*ñ*) joining with the Nicaraguan Housing Institute in planning the improvement of rural housing by providing the rural population with suitable building plans, furnishing them the technical assistance required and instructions concerning the proper use of building materials and the utilization of materials available in their region, hygienic facilities and equipment, the allocation of the housing required and of furniture and household utensils, the construction of silos, stables, pigsties, hen coops and all types of agricultural facilities, gardens and orchards;

(*o*) deciding which of the agricultural areas of the country shall be used in agrarian planning and publicizing the decision;

(*p*) advising the Executive in connexion with the adoption of any proposed rural immigration plans and with all agricultural and land matters;

(*q*) joining with the Town Planning Office (*Oficina de Urbanismo*), the Nicaraguan Housing Institute, the Ministry of Health and other competent bodies, in planning the creation of new and the improvement of existing rural population centers;

(*r*) fulfilling any other task or activity in any way connected with the above-mentioned purposes of the Institute or with the social purpose of property.

. . .

Chapter IV

LANDS SUBJECT TO THIS ACT—EXPROPRIATION

Section 1—Lands subject to this Act

18. The following lands shall be subject to this Act for the fulfillment of agrarian plans:

(*a*) national lands whether unowned (*tierras baldías*) or the private property of the State, provided they are suited to the purpose of this Act. Unowned lands (*terrenos baldíos*) shall be national property, it being understood that such lands are on the mainland or islands within the boundaries of the Republic, are not intended for public use, and are not the property of any individual community or corporate body under any title;

(*b*) communal lands (*tierras ejidales*), lands that are the private property of the *Distrito Nacional* or of municipalities and lands belonging to autonomous State bodies;

(*c*) lands acquired by the Institute by agreements with their owners or lands offered to the Institute for land settlement or any other purpose of this Act;

(*d*) privately owned lands that do not fulfill the social purpose of property.

19. For the purposes of this Act, privately owned land shall be considered as failing to fulfill its social purpose in any of the following circumstances:

(*a*) if it remains uncultivated or idle, uncultivated being understood as land that by its nature is suitable for cultivation but nevertheless remains uncultivated for no good reason during two consecutive crop years; and idle land being understood as land which while not suitable for cultivation is suited to other types of economic exploitation but remains unused for the same period;

(*b*) if it is inefficiently worked, namely that methods of production are not properly applied on it in relation to the area where it is situated and to its characteristics, in accordance with specific indications furnished in advance by the Institute;

(*c*) if during two consecutive years the owner fails to work the land directly, assuming the economic risks of operation, save in the event of justified indirect exploitation or for reasons of *force majeure* or fortuitous events;

(*d*) if the excessive concentration of property in any particular zone, where each owner has more than 500 hectares, causes prejudice to groups of rural inhabitants through lack of land or of other means of subsistence and economic development;

(*e*) if the owner of the land fails to observe regulations for the conservation of renewable natural resources, after being enjoined so to do.

The Institute shall issue regulations for application of the provisions set forth in this Article.

. . .

23. The acquisition by the Institute of the lands referred to in Article 18 (*b*) and (*d*) for the execution of its programs is hereby declared to be of social interest for the purposes of expropriation in

accordance with the special procedure laid down in this Act.

. . .

Section 2.—Expropriation Procedure

31. Before proceeding with the expropriation of any real property, the Agrarian Institute shall attempt to reach an agreement directly with its owners. If it should fail to reach such agreement in a period not exceeding 30 days, it shall declare such property to be subject to the provisions of this Act and shall make application for its expropriation, no previous declaration of public interest being required, save as provided for in Article 23 of this Act.

. . .

NIGER

NOTE[1]

I. Inclusion in the Constitution of Declarations of Rights

The Preamble to the Constitution of the Republic of the Niger states the following:

"The people of the Niger proclaim their devotion to the principles of democracy and human rights as laid down in the Declaration of the Rights of Man and the Citizen of 1789 and the Universal Declaration of 1948, and as guaranteed by this Constitution".

A number of principles laid down in the Constitution[2] give specific form to this idea as stated in the Preamble:

. . .

"*Art. 2, para. 2.* The principle of the Republic is government of the people, by the people and for the people.

"*Art. 3.* Sovereignty is vested in the people.

. . .

"*Art. 5.* Suffrage [in the referendum] shall be universal, *equal* and secret.

"*Art. 6.* The Republic shall ensure equality before the law for all, without distinction as to origin, race, sex or religion.

"It shall respect all beliefs.

"Any propaganda advocating racial or ethnic separatism, or any manifestation of racial discrimination, shall be a punishable offence.

"*Art. 7.* Political parties and groups shall assist in the exercise of the franchise. They shall be free to organize and to engage in their activities provided that they respect the principles of national sovereignty and of democracy, and the laws of the Republic.

. . .

"*Art. 59.* In the exercise of their duties, the members of the Judiciary shall be governed only by the law.

. . .

"*Art. 62.* No person shall be subjected to arbitrary detention.

"Every person charged with an offence shall be presumed innocent until proved guilty in proceedings at which he has been provided with the guarantees essential to his defence. The judicial authority, as the guardian of personal freedom, shall ensure that this principle is observed in the manner prescribed by law."

II. Judicial Guarantees of Respect for Human Rights

The content of article 62 of the Constitution is reflected in the promulgation and publication of the Act of 14 August 1961 establishing the Code of Penal Procedure.

This Act defines and organizes the penal authorities and courts, regulates their competence and determines the procedure to be followed in proceedings before them.

The lengthy and complicated procedure laid down in the earlier Code of Criminal Procedure is replaced by simple provisions aimed at promoting the rapid and effective dispensation of justice while safeguarding the legitimate interests of the parties.

As in the past, the Code guarantees the essential rights of the defence, as also those of the individual. A number of innovations of a restrictive character have been introduced, but their purpose is to obviate certain difficulties which in practice had arisen. The most important innovations, however, strengthen and extend the guarantees in question in the case of specific procedures such as the preliminary investigation (arts. 69-71), *flagrante delicto* offences (arts. 48-68) and the *Chambre d'accusation* (arts. 183-211), in the case of summonses and notifications (arts. 546-562) and remand in custody (arts. 131-143), and, generally speaking, in regard to the means open to the examining judge, such as searches and seizures (arts. 87-95), interrogations and confrontations (arts. 108-115), warrants and their execution (arts. 116-130), the taking of expert opinion (arts. 149-160) and letters rogatory (arts. 144-148).

It should be added that the defence of individual freedoms is also ensured by Act No. 61-27 of 15 July 1961 establishing the Penal Code.

Articles 265-271 provide penalties for infringements of individual liberty in general. In particular, articles 265 to 268 provide penalties for persons who, without a warrant from the constituted authorities, except in cases in which the law pre-

[1] Note furnished by the Government of the Republic of the Niger.

[2] For extracts from the Constitution of 8 November 1960, see *Yearbook on Human Rights for 1960*, pp. 249-250.

scribes the arrest of an accused person, arrest, imprison or detain any person whomsoever (imprisonment for a term of one to ten years). If the arrest has been carried out pursuant to a wrongful order of the public authorities, or by a person wearing a false uniform, or with a threat to kill, the penalty is imprisonment for a term of ten to twenty years.

Article 269 provides that any person who has given or taken another person in pawn shall be punished by imprisonment for a term of two months to two years; article 270 specifies that any person who alienates the liberty of any other person shall be punished by imprisonment for a term of ten to thirty years; and article 271 provides that any person who gains entry into another person's domicile by resorting to threats or violence shall be punished by imprisonment for a term of three months to two years.

III. Procedures for the Exercise of the Right of Petition or Complaint

In legislative matters deputies have the right of amendment (art. 49), and in constitutional matters they have the right to initiate revision of the Contitution (arts. 71-76).

In the light of the above-mentioned articles, it is apparent that deputies may interpellate Ministers with respect to cases concerning private individuals, since "each deputy is a representative of the entire nation". In practice, moreover, they have access to all departments and even to the Presidency.

In administrative matters, there is a very marked advance over former French law with regard to the measures open to private individuals. While under the laws of French West Africa only the *Conseil du contentieux administratif* (Administrative Claims Council) had administrative jurisdiction, Act No. 62-11 of 16 March 1962, concerning the organization and competence of courts of the Republic of the Niger, extends the competence of the ordinary courts to administrative matters. Under article 58, paragraph 2, they "hear and rule on all disputes of an administrative nature with the exception of appeals in cases of excess of authority", subject to appeal to the Court of Appeals. In addition, the Administrative Chamber of the Supreme Court hears and rules on appeals on grounds of law (*pourvois en cassation*) lodged "against final decisions rendered by courts pronouncing on administrative matters"; it also hears and rules, "in first and final instance, on appeals lodged on grounds of excess of authority against decisions of administrative authorities" entailing violation of legal procedures, violation or incorrect application of the law, lack of competence or excess of authority, failure to render a decision, inconsistency of judgements, default, or insufficiency or obscurity of grounds.

IV. Measures to Prevent Discrimination in the Exercise of Rights

This principle was set forth earlier in article 6 of the Constitution, which ensures equality before the law for all without distinction as to origin, race, sex or religion, states that all beliefs shall be respected, and makes any propaganda advocating racial or ethnic separatism or any manifestation of racial discrimination a punishable offence.

In fact, article 102 of the Penal Code (Act No. 61-27 of 15 July 1961) provides that any act of racial or ethnic discrimination, any regionalist propaganda and any demonstration contrary to freedom of conscience and freedom of worship whereby discord among the citizens is apt to be aroused shall be punishable by imprisonment for a term of one to five years and by restriction of movement.

Finally, attention may be drawn to articles 30 and 31 of Ordinance No. 59-135 of 21 July 1959, enacting legislation on freedom of the Press, which make it a punishable offence to defame or slander persons belonging, by origin, to a particular race or religion.

Conclusion

The foregoing should suffice to show that respect for human rights and fundamental freedoms is definitely more developed in the Niger than in most Western countries.

NIGERIA

NOTE[1]

I. LEGISLATION

ACT NO. 20 OF 1963, TO MAKE PROVISION FOR THE CONSTITUTION OF THE FEDERATION OF NIGERIA

Entered into force on 1 October 1963[2]

In so far as Provisions on human rights are concerned, this Constitution differs from that of 1960[3] as follows:

1. In Chapter II, dealing with citizenship:

(*a*) A new section 10 has been inserted which reads:

"10. (1) For the purpose of determining the status of persons connected with the part of Northern Nigeria which was not included in the Federation on the thirty-first day of May 1961, the foregoing provisions of this Chapter and subsection (3) of section 17 of this Constitution shall have effect as if—

"(*a*) for any reference to a particular date there were substituted a reference to the last day of the period of eight months beginning with the day next following that date; and

"(*b*) for any reference to the former Colony or Protectorate of Nigeria (other than the second reference in section 7) there were substituted a reference to the part aforesaid; and

"(*c*) that other reference included a reference to the part aforesaid.

"(2) Nothing in subsection (1) of this section shall prejudice the status of any person who is or may become a citizen of Nigeria apart from that subsection." and

(*b*) The text of section 17 (1) has replaced that of section 16 (1) of the Constitution of 1960; it reads:

"17. (1) Without prejudice to the generality of section 165 of this Constitution, in this Chapter—

"'alien' means a person who is not a citizen of Nigeria, a Commonwealth citizen other than a citizen of Nigeria, a British protected person or a citizen of the Republic of Ireland;

"'the British Nationality Act' means the Act of the Parliament of the United Kingdom entitled the British Nationality Act, 1948; and

"'British protected person' means a person who is a British protected person for the purposes of the British Nationality Act."

2. In Chapter III, dealing with fundamental rights:

(*a*) The phrase "; or (*b*) chieftaincy questions" at the end of section 22 (1) has been added;

(*b*) The text of section 22 (5) (*c*) "to defend himself in person or by persons of his own choice who are legal practitioners" has replaced that of section 21 (5) (*c*) of the Constitution of 1960.

(*c*) The terms "State" in sections 25 (2) (*c*), 26 (2) (*c*), 28 (2) (*c*) and 31 (4); "Federation" in sections 25 (2) (*c*), 26 (2) (*c*), 27 (2) (*c*), 28 (2) (*c*), 33 and 45 (1) (*e*); and "Republic" in section 165 (1) have replaced the term "Crown" in sections 24 (2) (*c*), 25 (2) (*c*), 26 (2) (*c*), 27 (2) (*c*), 30 (4), 32, 40 (*e*) and 154 (1) of the Constitution of 1960.

3. In Chapter V, dealing with Parliament:

(*a*) The text of section 44 (*a*) does not contain the words "representing a territory" which appeared in that of section 39 (*a*) of the Constitution of 1960; and

(*b*) The text of section 45 (1) does not contain the phrase "Save for the purposes of a selection as a senator by the Governor-General" which appeared in that of section 40 (1) of the Constitution of 1960.

II. JUDICIAL DECISIONS

1. In *Chief Obafemi Awolowo* v. (1) *The Hon. Usman Sarbei* and (2) *The A. G. of the Federation* (1962), the plaintiff, who was the twenty-seventh accused person in a criminal charge for treasonable felony and conspiracy, directed that G., an English legal practitioner who was counsel of his choice and at the same time a barrister-at-law of the Federal Supreme Court, be instructed for the plaintiff's defence. For the purpose of defending the plaintiff, G. arrived at Lagos airport on 8 November 1962 but was refused entry into Nigeria by the first-named defendant, who was also the Minister of Internal Affairs in the Federal Government.

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[1] Note based upon texts furnished by the Government of Nigeria.

[2] Text of the Constitution published by the Ministry of Information, Printing Division, Lagos, 1963.

[3] For extracts from the Constitution of 1960, see *Yearbook on Human Rights for 1960* pp. 249-258.

The plaintiff brought his suit to challenge the authority of the first defendant as being in violation of the fundamental right guaranteed by Section 21 (5) (*c*) of the Second Schedule of the Nigeria (Constitution) Order-in-Council of 1960,[4] and as having been exercised out of malice. He, therefore, prayed the Court for a declaration that he was entitled to be defended in the criminal charge against him by G. or any other counsel of his choice whether British or indigenous and that the order of the defendant's prohibiting the entry of G. into Nigeria was *ultra vires* and, therefore, null and void. The plaintiff also prayed the Court for an injunction restraining the defendants from preventing G. or any other British counsel who might be counsel of his choice from entering into Nigeria for the purpose of defending the plaintiff.

The High Court of Lagos held that the first defendant's refusal of G.'s entry into Nigeria was legal as it was within his power conferred on him by section 13 of the Immigration Act, Cap. 84; that the exercise by the first defendant of the power conferred by section 13 of the Immigration Act was not in violation of section 21 (5) (*c*) of the Nigeria (Constitution) Order-in-Council, 1960, as "legal representatives" in that subsection meant "indigenous representatives"; and that malice alleged was not proved and even if proved, did not make the first defendant's refusal of entry to G. unlawful as he had acted within the power conferred on him by law.

2. In *Benjamin Shemfe* v. *Commissioner of Police* (1962) N.N.L.R. 87, the appellant, a cashier employed by the Ministry of Agriculture at Mokwa, was charged before the Magistrate's Court of the Kano Magisterial District sitting at Minna on two counts of fraudulent false accounting and on two counts of stealing money which had come into his possession by virtue of his employment. The appellant was first brought before the court on 14 December 1960, when Mr. S. appeared as his counsel. The appellant elected a summary trial and pleaded not guilty on all counts. The case was adjourned and next came before the magistrate on 8 February 1961, when Mr. S. again appeared for the appellant. Again adjourned, the case came before the court on 27 June 1961. On that day, the appellant appeared in person and asked for another adjournment to bring his counsel. This was refused and the trial proceeded. At this trial, three prosecution witnesses gave evidence. The appellant cross-examined one of them, and gave evidence in his own defence. He was convicted on all four counts and sentenced to imprisonment. The appellant appealed against this decision on the ground that he did not have a fair trial because of the absence of his legal representative.

The High Court of the Northern Region of Nigeria, in dismissing the appeal, held that the trial of the appellant was not unfair, because of the absence of the counsel in the circumstances of the case. Although the appellant had to take charge of his own defence, he had not been deprived by the court of his opportunity to have a legal representative, because the lack of assistance was occasioned by counsel himself. The magistrate properly proceeded with the trial in view of the fact that counsel's absence was unexplained and unjustified.

3. In *Dahiru Cheranci* v. *Alkali Cheranci* (1960) N.N.L.R. 24, the applicant, by way of motion, sought a declaration under section 245 of the Nigeria (Constitution) Order-in-Council, 1954, that sections 33, 34 and 35 of the Children and Young Persons Law, 1958, were void and unforceable upon the ground that these sections of the law were repugnant to paragraphs 7, 8 and 9 of the Sixth Schedule of the Order-in-Council. The applicant further sought relief from his emprisonment for a conviction of having incited a young boy to participate in politics, punishable under section 36 (3) of the Children and Young Persons Law, 1958, as that was dependent upon section 35 of the law which he claimed was void and unenforceable.

The High Court of the Northern Region of Nigeria held: (1) that paragraph 7 of the Sixth Schedule of the Nigeria (Constitution) Order-in-Council, 1954, dealing with freedom of conscience was not infringed by Part VIII of the Children and Young Persons Law, 1958; (2) that there is a presumption that the Legislature has acted constitutionally and that the laws which it has passed are necessary and reasonably justifiable; (3) that a restriction upon a fundamental human right must before it may be considered reasonably justifiable: (*a*) be necessary in the interest (in the present case) of public morals and public order; and (*b*) must not be excessive or out of proportion to the object which it is sought to achieve; (4) that the burden of proof rests on the person who alleges that the Legislature has infringed a fundamental human right; and (5) that the control of the political activity of juveniles was a matter in which the Legislature had a right to intervene to protect the public, and that the restrictions in Part VIII of the Children and Young Persons Law, 1958, were reasonably justifiable in the interest of public morality and public order as permitted by paragraphs 8 (2) (*a*) and 9 (2) (*a*) of the Sixth Schedule of the Nigeria (Constitution) Order-in-Council, 1954, and that the application must accordingly be dismissed.

[4] For the text of Section 21 (5) (*c*), see *Yearbook on Human Rights for 1960*, p. 254.

NORWAY

NOTE[1]

A. LEGISLATION

1. *Act of 8 February 1963, providing certain amendments to the rules under which a suspect or an accused may be apprehended or taken into custody*

The authority to effect apprehension and imprisonment under the general provisions of the Penal Procedure Act (§§ 228 and 229, cf. § 240) has been extended and supplemented—though this does not entail any substantial modification of present practice. In addition, a new provision has been included in the Penal Procedure Act (§ 228 *a*), authorizing apprehension and imprisonment pursuant to special rules in the case of particularly serious crimes even if the usual conditions provided by the Act have not been satisfied.

The position of the accused has been strengthened by a provision (§ 100, second paragraph) which gives him a right to have counsel in all cases of custody. Further, as has so far been the case, a definite period of time shall always be fixed for the custody. This period could previously be exceeded without any new court order provided a charge was brought, but in future the period cannot be exceeded by more than four weeks.

2. *Act of 22 March 1963 (No. 2), introducing amendments to Act of 26 April 1957, relating to advance payment of maintenance contributions*

The Act relating to advance payment of maintenance contributions has been amended, so that "advance payments" can now be claimed in full (Kr. 75 per month) even if the person liable to pay such contribution has only been ordered to pay a smaller contribution or none at all.

3. *Act of 26 April 1963 (No. 2), relating to maintenance insurance for children*

This Act supersedes an earlier Act from 1957. In several areas, the insurance system has been supplemented by new rules. The scope of the insurance has been extended so that maintenance insurance is granted on equal terms to a child whose mother is dead and to child whose father is dead. Double maintenance is granted if both parents are dead, or if one of the parents is dead and the obligation for the other parent to pay maintenance contributions has not been established by enforceable decree. Further, maintenance is granted to children born out of wedlock abroad provided an obligation to pay contribution is not paid. The communes (municipalities) have a statutory right to grant municipal supplements to the maintenance insurance, in the same way as in the old-age and disablement insurance. Among the other amendments we might mention is that the former rule statives that the claim for contributions under maintenance insurance can be rejected if the child's mother refuses to name his father, has been repealed. A statutory right of recourse has also been introduced against any person whose negligence causes a loss to the maintenance insurance organization.

4. *Act of 31 May 1963 (No. 3), relating to working conditions for housemaids*

This Act, which supersedes a provisional Act from 1948, covers housemaids, daily help, housekeepers, nurses and others who are engaged by a private employer to undertake housework or nursing in a private home or household.

The Act provides that a written contract of work can be demanded, specifying the nature of the work, the hours at which it begins and ends, the wages, etc. The ordinary working hours must not exceed nine per day; however, the employee may work for up to ten hours in return for a corresponding number of hours off. The normal working time shall end at 1900 hours.

The Act also contains provisions concerning overtime and care of children, etc., vocational risks, time off, disability and pregnancy, cessation of the employment and indemnity and compensation in the event of breach of contract or law.

5. *Act of 15 November 1963, relating to the enforcement of Scandinavian sentences, etc.*

Sentences pronounced in Denmark, Finland, Iceland or Sweden may upon petition be enforced in Norway. The Act applies, besides to sentences entailing deprivation of liberty, to pecuniary sentences and confiscation (whether the confiscation is punishment or not). It also provides for the supervising of persons released on probation or pursuant to a suspended sentence.

The enforcement shall take place in accordance with Norwegian law, but it is not required that the act be punishable in Norway, and the sentence is not tested by Norwegian courts.

[1] Note furnished by the Government of Norway.

B. INTERNATIONAL AGREEMENTS

Scandinavian convention relating to the collection of maintenance contributions signed in Oslo on 23 March 1962

Under this convention, maintenance contributions established in Denmark, Finland, Iceland, Norway or Sweden, can be made collectible in any of the other States along the same lines as those applying to contributions established within such other State. The convention supersedes and is a further development of a convention dated 10 February 1931 (amended on 1 April 1953). It came into force on 1 July 1963.

PAKISTAN

BACKGROUND NOTE ON THE POLITICAL PARTIES (AMENDMENT) ORDINANCE, 1963 [1]

The Political Parties Act, 1962 provided for the formation of political parties and was passed by the National Assembly of Pakistan in pursuance of Article 173 of the Constitution. At the same time, the Act sought to debar from being members or office bearers of a political party persons who had voluntarily retired from public life, in accordance with the option provided in the Elective Bodies (Disqualification) Order, 1959, or who had contested the charges of misconduct, e.g., bribery, corruption, nepotism, favouritism, wilful maladministration, abuse of power, etc., which were brought against them under this Order and had been found guilty by judicial tribunals and disqualified from being members or candidates for membership of any elective body up to 31 December 1966.

The Political Parties (Amendment) Ordinance, 1963 (Ordinance I of 1963), had the object of preventing disqualified persons from indulging in political activities by becoming a member of, otherwise associating with, any political party. The effect of this Ordinance has been that disqualified persons, who were taking part in politics and associating with political parties without being members or office bearers of a Political Party, are now debarred from indulging in political activity and will remain so till 31 December 1966.

It should be noted that these provisions of the law are not of a permanent nature and do not debar normal political activity in the country. They only exclude from political life persons, who have either voluntarily retired from politics for fear of facing a judicial trial, or have been disqualified by judicial tribunals.

ORDINANCE No. I OF 1963 TO AMEND THE POLITICAL PARTIES ACT, 1962 [2]

. . .

2. *Amendment of section 2, Act III of 1962.*— In the Political Parties Act, 1962, hereinafter referred to as the said Act, in section 2, for clause (*c*) the following shall be substituted, namely:

"(*c*) 'Political Party' includes a group or combination of persons who are operating for the purpose of propagating any political opinion or indulging in any other political activity."

3. *Amendment of section 5, Act III of 1962.*— In section 5 of the said Act, for sub-section (1) the following shall be substituted, namely:

"(1) No person who is disqualified under sub-section (2) shall be a member of office bearer of, or otherwise associate himself with, any political party."

4. *Amendment of section 7, Act III of 1962.*— In section 7 of the said Act, after sub-section (2), the following new sub-section (3) shall be added, namely:

"(3) If any person disqualified under section 5 participates in, or otherwise associates himself with, the political activities of a political party, or of any other person similarly disqualified, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both."

5. *Insertion of new section 8A, Act III of 1962.* —After section 8 of the said Act, the following new section 8A shall be inserted, namely:

"8A. (1) Notwithstanding anything contained in the foregoing provisions of this Act, where the Central Government is of the opinion that a person disqualified under sub-section (2) of section 5 is indulging, or is likely to indulge, in any political activity, it may, by order in writting, direct such person to refrain, for any period not exceeding six months, from—

(*a*) addressing any meeting including a press conference; or

(*b*) issuing any statement of a political nature to the press.

(2) An order made under sub-section (1) shall, before the expiry of the period for which it was made, be reviewed by the Central Government, and if the Central Government, after such review, considers it necessary so to do, it may extend the period for a further period not exceeding six months.

(3) Whoever contravenes an order under sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(4) An order under this section shall not in any way affect the liability of the person in respect of whom such order has been made for contravention of any other provisions of this Act."

[1] Note furnished by the Government of Pakistan.

[2] Text published in *The Gazette of Pakistan*, Extraordinary, No. S. 1033, of 17 April 1963. For extracts from the Political Parties Act, 1962, see *Yearbook on Human Rights for 1962*, pp. 231-232.

PANAMA

ACT No. 29 OF 29 JANUARY 1963, AMENDING THE LABOUR CODE [1]

SUMMARY

The text of the Labour Code was published in the *Gaceta Oficial,* No. 14,459, of 26 November 1947. Translations into English and French of the Code of the amendments of 1950 thereto appear in *Legislative Series* 1947-Pan. 1 and 1950-Pan. 1, respectively, of the International Labour Office.

The Code consists of two books, the first book being entitled "Substantial Law" and the second book "Adjective Law". The first book contains provisions on individual contracts of employment; collective contracts; employees; employers; rules of employment; suspension of contracts of employment; termination of the contract of employment; employment of women and young persons under age; domestic employees; homeworkers; employment of apprentices; employment at sea and navigable waterways; hours of work; compulsory rest periods; wages; minimum wages; hygiene and safety in employment; and occupational injuries. The second book deals with the organization and competence of labour courts and the Ministry of Labour, Social Welfare and Public Health.

Act No. 7 of 26 January 1950 amends and replaces certain provisions of the Labour Code respecting the merchant marine of Panama and provides for other measures connected therewith.

The present Act (No. 29 of 29 January 1963) amends articles 236, 621, 622 and 623 of the Code. As amended article 236 deals with rights and actions relating to occupational accidents and diseases; articles 621 and 622 with provisions in case of justifiable dismissal, disciplinary penalty or cancellation of contract; and article 623 with provisions in case of unjustifiable dismissal.

[1] Text of the Act published in the *Gaceta Oficial,* No. 14,806, of 30 January 1963.

PARAGUAY

ACT No. 854 OF 9 MARCH 1963, ESTABLISHING THE AGRARIAN STATUTE

SUMMARY

The text of this Act was published in the *Gaceta Oficial,* No. 32, of 29 March 1963.

Section 1 of the Act reads as follows:

"The general purpose of this Act shall be to stimulate and guarantee the private ownership of rural holding fulfilling a social and economic function and thus contributing to social welfare and to the development of the national economy. The Institute for Rural Welfare shall be entrusted with the implantation thereof".

Under section 2, rural welfare shall consist in the transformation of the agrarian structure of the country, achieved through the effective incorporation of the rural population into the economic and social development of the Nation, by means of a fair system of land distribution, technical and social assistance, and proper organization of credit, production and marketing, in such a manner as to allow the rural producer to achieve economic stability as a guarantee of his liberty and dignity and the basis of his social well-being.

Section 3 provides that private ownership of rural holdings shall fulfill its social and economic function when it meets the requirement of efficient operation and rational use of the land and that of compliance with provisions concerning the conservation and reconstitution of renewable natural resources.

Other provisions of the Act deal with large holdings (*latifundio*) and small holdings (*minifundio*); beneficiaries of the Agrarian Statute; land set aside rural welfare; rural housing; technical, economic and social assistance; the organization of the home market in agricultural products; land settlement; sale of land to persons other than beneficiaries under the Agrarian Statute and sale of non-settlement parcels and large land areas; private land settlement operations; leases, share-cropping and lease-labour arrangements; tenure of rural holdings; expropriation; recuperation of excess State land; and inheritance.

English and French translations of the Act have been published by the United Nations Food and Agriculture Organization as *Food and Agricultural Legislation,* Vol. XII-No. 4, V/2.

PERU

LEGISLATIVE DECREE No. 14491, DATED 24 MAY 1963
(On the obligation of illiterates to attend literacy centres) [1]

Art. 1. All illiterate persons of between sixteen and forty years of age must attend literacy centres (*Centros de alfabetización*) established for the purpose of literacy.

Art. 2. Fathers of families, parents, employers and, in general, any natural or juridical person preventing attendance at a literacy centre by an illiterate person who is under a legal obligation to attend it shall be punished in accordance with the provisions of article 6 of this Legislative Decree.

Art. 3. Any illiterate person who evades his civic duty of learning how to read and write may be taken by the law enforcement officers to the literacy centre nearest to his home or place of work.

Where circumstances so require, teachers and the political and police authorities shall co-ordinate their efforts for the purpose of organizing special centres for the eradication of illiteracy.

Art. 4. Employers or heads of undertakings who employ twenty or more illiterates of over sixteen years of age shall, regardless of the nature or place of the employment, be obliged to maintain adult literacy and education centres.

Where such illiterates are less in number or are domestic servants they shall be entitled to work to a special time-table that will enable them to attend the nearest literacy centres.

Art. 5. The public shall be encouraged to report any violation of this Legislative Decree to the authorities of the Ministry of Education.

Art. 6. The following penalties shall be applied in the event of failure to observe the provisions of this Legislative Decree:

(*a*) Employers or heads of undertakings who, while employing twenty or more illiterates of over sixteen years of age, fail to establish the necessary literacy centre shall pay a fine sufficient in amount to provide for the operation of such a centre, including the salaries of such teacher or teachers as may be required;

(*b*) Persons who do not allow their domestic servants to attend literacy centres shall pay a fine of two hundred (200) gold soles or of two thousand (2,000) gold soles, depending on the seriousness of the offence. In the event of the commission of a further such offence, the fine shall be doubled.

. . .

[1] Text published in *El Peruano*, No. 6619, of 27 May 1963.

PHILIPPINES

HUMAN RIGHTS DEVELOPMENTS FROM 1961 TO 1963 [1]

Human rights development in the Philippines, assured by the clear provisions of the Constitution adopted in 1935, took a great stride forward in 1963 with the passage by Congress of the Philippines of Republic Act No. 3844, otherwise known as the "Agricultural Land Reform Code." This law enacted by Congress pursuant to Section 4, Article XIII, of the Constitution and in conformity with the intent of Section 6, Article XIV, of the same basic law, to create favorable conditions for the advancement of the economic and social security of the people.

Its basic purposes are enumerated in Section 2 which is quoted hereunder:

Section 2. Declaration of Policy.—It is the policy of the State:

"(1) To establish owner-cultivatorship and the economic family-size farm as the basis of Philippine agriculture and, as a consequence, divert landlord capital in agriculture to industrial development;

"(2) To achieve a dignified existence for the small farmers free from pernicious institutional restraints and practices;

"(3) To create a truly viable social and economic structure in agriculture conducive to greater productivity and higher farm incomes;

"(4) To apply all labor laws equally and without discrimination to both industrial and agricultural wage earners;

"(5) To provide a more vigorous and systematic land ressettlement program and public land distribution; and

"(6) To make small farmers more independent, self-reliant and responsible citizens, and a source of genuine strength in our democratic society."

This revolutionary Code, consisting of 11 chapters and 173 articles, established the following:

"(1) An agricultural leasehold system to replace all existing share tenancy systems in agriculture;

"(2) A declaration of rights for agricultural labor;

"(3) An authority for the acquisition and equitable distribution of agricultural land;

"(4) An institution to finance the acquisition and distribution of agricultural land;

"(5) A machinery to extend credit and similar assistance to agriculture;

"(6) A machinery to provide marketing, management, and other technical services to agriculture;

"(7) A unified administration for formulating and implementing projects of land reform;

"(8) An expanded program of land capability survey, classification and registration; and

"(9) A judicial system to decide issues arising under this Code and other related laws and regulations." (Section 3).

From 1961 through 1963, the Supreme Court of the Philippines promulgated decisions which further strengthened and upheld the rights proclaimed in the Universal Declaration of Human Rights and guaranteed by the Constitution of the Philippines. During the same period, various Presidential proclamations and executive orders attested to the firm dedication of the Executive Department of the Philippine Government to further protect and give substance and meaning to those rights.

A. Judicial Decisions

(Supreme Court and Court of Appeals)

1. *Article 7.* All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Right to protection against discrimination

(*a*) In a case of infringement of trade-mark or unfair competition: "The marketing of thread in cylindrical cardboard bobbins of the size and type similar to plaintiff's and defendant's is the natural result of business demands among all dealers in the same product, and plaintiff has no right to appropriate for itself to the exclusion of all others such common fashion of labelling or the usual form of preparation of thread product for the market." (*Continental Manufacturing Corporation* v. *Jose Qui,* CA-G.R. No. 28607-R, 17 April 1962; 59 O.G. No. 7, p. 1093.)

(*b*) "In custody cases, where the father has been granted the right of visitation over the children pursuant to a compromise agreement, under some circumstances it is not error or abuse of discretion to grant the same right to the ailing mother

[1] Note furnished by the Government of the Philippines.

although she is abroad and has remarried after securing a divorce." (*Bigay* v. *Hon. Judge Arguelles,* CA-G.R. No. 30922-R, 19 July 1962; 59 O.G. No. 13, p. 2115.)

(*c*) "It has been said, and aptly too, that should a conflict arise between spouses, who are divorced and/or living separately, as to who should be given the care and custody of the minor children, both spouses shall stand on an equal footing before the court, which shall make the selection according only to the best interest of the child. (*Perkins* v. *Perkins,* 57 Phil. 217). That being the jurisprudence in custody cases, for more reason should the principle of equality apply to lesser right of visitation. Inasmuch, therefore, as the father has been granted the right of visitation over the children, we find no error or abuse of discretion on the part of the lower court for having granted the same right to the mother." (*Bigay* v. *Hon. Judge Arguelles,* supra.)

2. *Article 8.* Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Right to an effective remedy where right granted by law is violated

(*a*) The right to appeal should not be denied unless there are strong reasons to the contrary. No party should be deprived of his right to have his case reviewed by a higher court, unless it is unmistakable that he has waived such recourse. (*Pacific Star, Inc.* v. *Hon. Judge Jose Mendoza, et. al.,* CA-G.R. No. 29658-R, 22 May 1962; 59 O.G. No. 8, p. 1239.)

(*b*) The plaintiff is entitled to the remedies provided for by law who is dispossessed of his property by a person claiming to be the owner thereof by lawful occupation. The latter, as possessor in bad faith, is bound to remove the house and other constructions built thereon, vacate the premises, and pay the plaintiff damages. (*Castillo* v. *Centenera,* CA-G.R. No. 28102-R, 9 July 1962; 59 O.G. No. 9, pp. 1420-1427)

(*c*) Considering the spirit that underlies the rule that permis the amendment of a pleading, the lower court erred in refusing to admit plaintiff's amended complaint. Petitioner has reason to appeal from the ruling of the court which denied him his right to appeal. (*Monte* v. *Ortega,* G.R. No. L-15417, 29 August 1961; 59 O.G. No. 10, pp. 1562, 1564).

(*d*) "If the respondent judge was in error in denying due course to the appeal, then the petitioners should not be the victims of that error. Indeed, the remedy against an erroneous dismissal of an appeal is mandamus, and mandamus presupposes a ministerial duty which was not performed." (*Ouano* v. *Hon Judge Gomez,* CA-G.R. No. 30770-R, 17 July 1962; 59 O.G. No. 12, p. 1929).

(*e*) "Abandoned by the man who begot them and afterwards deserted them and their mother, (petitioners) find themselves still carrying his name. And to confound their already hapless lot is the fact that whereas they and their elder sister... are supposed to have the same father, their family name differs from hers. This is conceivably an embarrassment they will likely continue to bear unless something is done about it, and for situations such as this the law has provided a judicial remedy: petition for change of name.

"We believe it is but 'proper and reasonable' that the surname of (petitioners) be changed as petitioned, for their own benefit and in conformity with law. Incidentally, this change will in some way vindicate and comfort (the mother) who, faced with the ordeals of her fate, has gallantly geared herself to the discharge—single-handedly as it were—of the duties of parenthood. And if, in the long run, this should serve to dim in the minds of these children the memory of their supposed father, we say it matters not, for in the circumstances borne by the evidence in this case, we deem it even less deplorable that he is forgotten altogether rather than be remembered in bitterness and humiliation." (*Antig* v. *Republic,* CA-G.R. No. 28453-R, 31 July 1962; 59 O.G. No. 14, p. 2335.)

3. *Article 9.* No one shall be subjected to arbitrary arrest, detention or exile.

(*a*) Petitioner had been sentenced in nine criminal cases to a total imprisonment of ten years, eleven months and five days, and to pay certain indemnities, which if not paid, would entail subsidiary imprisonment of three years and seven months. Although she had served time for full term of ten years, eleven months and five days, the respondent-appellant detained her to undergo subsidiary imprisonment for non-payment of the indemnities. She filed the present petition for *habeas corpus* for her release. *Held:* The apparent theory of the law is that no prisoner shall be held in jail, after six years of imprisonment, to serve subsidiary imprisonment by reason of insolvency. Therefore, the aggregate penalties should be considered in bulk, not separately. This cumulation of sentences, it may be observed, aligns with the underlying principle in the matter of threefold duration of penalties under Art. 70 of the Revised Penal Code. (*Pura Toledo* v. *The Superintendent of the Correctional Institution for Women,* G. R. No. L-16377, 28 January 1961.)

4. *Article 10.* Everyone is entitled in full equaltiy to a fair, and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Right to a fair and public hearing (due process)

(*a*) A petition to set aside the decision on the ground that it was not supported by the evidence, is not a *pro forma* motion, and suspends the time to appeal. The appeal will be given due course where said decision was in violation of defendant's constitutional right to be heard before being deprived of his property right. (*Fonacier* v. *Surtida, et al.,* G. R. No. L-15944, 28 September 1961; 59 O. G. No. 5, pp. 692-693.)

(*b*) "Where the defendant was not given his day in court for the purpose of answering the complaint after the dismissal of the same at his instance had been set aside by the appellate tribunal, and was not apprised of the ex-parte petition for default, of the order of default, setting the case

for hearing to receive evidence for the plaintiff, and of the decision itself, the granting or denial of a petition for relief does not rest upon the discretion of the trial court. The petitioner as a matter of right is entitled to it, and the court proceedings starting from the order of default to the decision itself may be considered void and of not binding upon the petitioner." (*Insurance Company of North America* v. *Philippine Ports Terminal, Inc.*, G. R. No. L-14133, 18 April 1960; 59 O.G. No. 13, p. 2096.)

(*c*) A consideration of the pleadings clearly shows that the following issues, mostly of fact, cannot be decided without a trial of the case on the merits: "The plaintiff has a right to a trial of the issues of fact above set forth. Failure on the part of the court below to grant him such right is clearly a denial to him of the due process of law." (*De Leon* v. *Henson*, G. R. No. L-11639, 29 April 1961; 59 O. G. No. 13, pp. 2101-2103.)

(*d*) Appeal from a decision of the Court of First Instance of Manila convicting the defendant of damage to property through reckless imprudence and ordering him to pay fine and the value of the wares of the passenger of the jeepney.

"The decision appealed from suffers from a fatal infirmity, namely, it convicts appellant of a crime not alleged in the information. The information charges him with damage, through reckless negligence, to a jeep belonging to Librada Manalo, whereas the decision appealed from found appellant guilty of damage, through reckless imprudence, not to the jeep, but to the wares of the passenger thereof. The crime of damage, through reckless imprudence, to the wares of said passenger was not charged in the information and neither includes the facts alleged therein, nor is included in the latter. Thus, said decision punishes appellant for a crime of which he was not legally informed and, hence, denied him the due process of law." (*People of the Philippines* v. *Federico Despavellador y Dulot*, G. R. No. L-13814, 28 January 1961). Decision modified.

5. *Article 11.* (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Right to be presumed innocent until proved guilty according to law

(*a*) A witness who changes her testimony as easily and as capriciously as a chameleon changes its hues, who unabashedly contradicts herself here and there, whose testimony is fraught with incongruities, certainly is not one in the hollow of whose hands the fate of a defendant in such a serious offence as robbery, should be allowed to rest. As the people's evidence does not measure up to the test of proof beyond a reasonable doubt, the court voted to acquit the defendants. (*People* v. *Buenaventura and Dimalanta*, CA-G. R. No. 00557, 21 May 1962; 50 O. G. No. 7, pp. 1086-1087, 1088.)

6. *Article 12.* No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Right to protection of law against attack upon honor and reputation

(*a*) The accused remarked that the complainant was a prostitute and a thief. The filing of the present complaint by the complainant, immediately after the incident, as a means of seeking redress for the shame and dishonor cast upon her, indicates that complainant was in truth and in fact the very one offended. Accused is found guilty of light oral defamation. (*People* v. *Tejero*, CA-G. R. No. 02140-G. R., 9 August 1962; 59 O. G. No. 5, pp. 740, 741-742.)

7. *Article 17.* (1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

No one shall be arbitrarily deprived of his property

(*a*) "To require petitioner to remove his house from the parcel of land in question is to cause him irreparable injury in the event that (the case) is decided in his favor. In their actions, courts should always keep in view the paramount considerations of justice and equity; they must be slow in lending the assistance of their office in the issuance of judicial writs whose enforcement might cause incalculable damage to parties whose rights have not as yet been conclusively and definitely cut off and declared inexistent. Courts should not prejudice parties whose claim of actual ownership is a question *sub judice* in a case pending in another court." (*Vecino* v. *Geronimo et al.*, CA-G. R. No. 28407, 31 August 1962; 59 O. G., No. 4, p. 578.)

Unlawful withholding of possession under third party claim to frustrate judgement; Damages

(*b*) "Among the rights appurtenant to ownership is the right to enjoy the thing owned including its produce. After ownership over the homestead has been transferred, legally and effectively, to the buyer at public auction, the patentee and those claiming under him upon a third party claim evidently made to frustrate the execution of the judgement against the patentee, have no more right to possess the property, and if they refuse to surrender their possession of the land, especially after demand was made on them, without any valid and legal justification therefor, and appropriate for their benefits the produce of said land against the will of its owner, they are liable for whatever damages suffered by the rightful owner." (*Soria* v. *Consolacion et al.*, CA-G. R. No. 21060, 13 July 1962; 59 O. G. No. 10, p. 1588.)

(*c*) "A person who owns a land covered by a Torrens title cannot lose its ownership by adverse possession on the part of a third person because of the principle underlying the Torrens system that the title is imprescriptible, while, on the other hand, he can file an action to cover the same regardless of the period of prescription." (*Pasion* v. *Pasion,* G. R. No. L-15757, 31 May 1961; 59 O. G. No. 12, p. 1907.)

8. *Article 17.* (2) No one shall be arbitrarily deprived of his property.

(*a*) "As found by the trial court. Quines had been in the continuous and peaceful possession of the lot in question from 1918 to 1953 when he was forcibly ejected therefrom by Arturo Nieto. As a homestead applicant, he religiously complied with all the requirements of the Public Land Act and homestead patent was issued in his favor. While there was some delay in the ministerial act of issuing the patent and the same was actually issued only after the court had adjudicated the land to Florentino, nevertheless, having complied with all the terms and conditions which would entitle him to a patent, Quines, even without a patent actually issued, has unquestionably acquired a vested right on the land and is to be regarded as the equitable owner thereof." (*Arturo Nieto* v. *Bartolome Quines et al.,* G. R. No. L-14643, 28 January 1961.)

9. *Article 22.* Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

(*a*) Appeal from the resolutions of the Social Security Commission finding that charitable and religious institutions are included within the coverage of the Social Security Law.

"The Social Security Law is a social legislation enacted pursuant to the policy of the Government to provide protection to employees against the hazards of disability, sickness, old age and death. Such enactment is a legitimate exercise of the police power of the State." (*Roman Catholic Archbishop of Manila* v. *Social Security Commission,* G. R. No. L-15045, 20 January 1961.)

(*b*) "The inclusion of religious organizations under the coverage of the law does not violate the constitutional prohibition against the application of public funds for the use or support of any priest who might be employed by appellant. The funds contributed to the System are not public funds, but funds belonging to the members which are merely held in trust by the Government. At any rate, assuming that said funds are impressed with the character of public funds, their payment as retirement, death or disability benefits would not constitute a violation of the cited provision, since such payment shall be made to the priest not because he is a priest but because he is an employee." (*Id.*) Resolution affirmed.

10. *Article 23.* (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone has the right to form and join trade unions for the protection of his interests.

(*a*) Review of a resolution of the Court of Industrial Relations finding petitioner guilty of unfair labor practice and ordering the reinstatement of employee Celestino Blas with back wages

"It would appear that the immediate cause of dismissal was the fact that Blas absented himself from work without previous permission from management. However, the evidence shows that, on several occasions, Blas was approached and instructed by the superintendent of the corporation not to affiliate with complainant union; that to further discourage such membership, Blas was promised that, should he comply with the request of the management, he would be given a raise in salary; and that when the management came to know of his affiliation with respondent union, and because he testified in another unfair labor practice case against the corporation, he was served with a stern warning that any little infraction on his part would mean his outright dismissal from work. Therefore, as the record stands, the decision of the lower court is sustained by substantial evidence. As to the award of backpay, that matter rests within the sound discretion of the Industrial Court." (*National Fasterner Corporation of the Philippines* v. *Court of Industrial Relations et al.,* G. R. No. L-15834, 20 January 1961). Resolution affirmed.

(*b*) The close-shop agreement authorized under Section 4a (4) of the Industrial Peace Act should apply only to persons to be hired or to employees who are not yet members of any labor organization. It is inapplicable to those already in the service who are members of another union. To hold otherwise, would render nugatory the right of all employees to self-organization and to form, join or assist labor organization of their own choosing, a right guaranteed by the Industrial Peace Act as well as by the Constitution. Consequently, the dismissal of the ten employees concerned is unjustified. (*Freeman Shirt Manufacturing Co., Inc. et al.* v. *Court of Industrial Relations,* G. R. No. L-16561, 28 January 1961.)

11. *Article 23.* (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself

and his family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Protection against unemployment

"Executive Order No. 506 (reduction of personnel) is a statement of policy which is sound enough and whose object is to preserve the office tenure of office-holders and workers, be they in the government service or in that of government-controlled corporations. The latter are as much subjected to discrimination, if not more so, as the former; and this should be avoided or eliminated as much as possible." (*Velasco* v. *Board of Directors, Philippine Sugar Institute,* CA-G.R. No. 19442-R, 29 June 1962; 59 O.G., No. 3, p. 420.)

B. PROCLAMATIONS

(1) Proclamation No. 69, dated 27 December 1962 declaring 21 January of every year as Civil Liberties Day. (*Article 2.* Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.)

(2) Proclamation No. 75, dated 30 January 1963, declaring the period from 3 to 9 February 1963 as "Aid to the Blind and Handicapped Week".

(3) Proclamation No. 77, dated 6 February 1963, declaring the period from 5-11 May 1963 as National 4-H Club Week. An organization of young boys and girls from the rural areas who pledge their heads to clearer thinking, their hearts to greater loyalty, their hands to larger services and their health to better living for their club, community, and country, it has been found to be an effective force in improving the standard of living in the rural areas.

(4) Proclamation No. 79, dated 11 February 1963, authorizing the Children's Museum and Library, Inc. to conduct a national educational, membership, and fund campaign during the period from 1 March to 15 April 1963. It is provided that the funds will be used to provide the facilities and opportunities to develop children into good and useful citizens and potential leaders.

(5) Proclamation No. 86, dated 26 February 1963, declaring the period from 17 to 23 March 1963 as "World Freedom from Hunger Week". The proclamation is pursuant to Administrative Order No. 26, dated 3 October 1962, for the purpose of assisting in the United Nations' collective effort to eradicate the twin evils of hunger and malnutrition from the world.

(6) Executive Order No. 37, 20 March 1963, fixing office hours during the hot season. Issued pursuant to Section 564 of the Revised Administrative Code, as amended by Republic Act No. 1880 (which reduces the period of labor in the government service to five continuous hours), with a view to protecting the health and welfare of government employees without, however, impairing the interest of the public at large.

(7) Proclamation No. 100, 3 April 1963, declaring 30 April 1963 as Women's Rights Day. It is intended to arouse the people to the important role played by women in the economic, social and political progress of the nation.

POLAND

NOTE[1]

I. LEGISLATION

1. The *Journal of Laws,* No. 57, paragraph 309, has promulgated the Constitution of the Bar Act of 19 December 1963. This act regulates the organization of the bar on self-administrating principles, defines the powers of its executive organs, the methods of practice in law chambers or public legal aid bureaux, the division of the chambers' income, and makes members of the bar and their families entitled (on an equal footing with persons employed on the basis of nomination or contract) to social insurance covering sickness and maternity benefits, family allowances, retirement pensions, the contributions to be paid out of the funds of the chambers. In addition, the Act prescribes the qualifications for enrolment on the law register, the conditions of disbarment, the system of training for the legal profession, consisting in a term of apprenticeship in court and then in chambers, followed by professional examinations, and defines the disciplinary responsibility of lawyers and apprentices, prescribing the penalties and procedure in cases of infringement of professional duties or behaviour inconsistent with the law, the interests of the citizen or the principles of propriety. The Act came into force on 1 January 1964. It is of great importance in assuring the community of legal assistance of the required ethnical and professional standards.

2. The *Journal of Laws,* No. 30, paragraph 175, has promulgated the Ordinance of the Minister of Justice of 18 June 1963. This regulates the functioning of district social insurance courts and the Social Insurance Tribunal, being the implementing order to the Social Insurance Courts Act of 1961 (*Journal of Laws,* 1961, No. 41, paragraph 215). It defines the duties of the President of the Court, the powers of the departments and their chairmen, procedure at sessions, the functions of the court secretariats and the clerical staff. The second section deals with duties of the President of the Social Insurance Tribunal, the powers of the Tribunal's departments, the differences in the procedure of the sessions of the Tribunal. This order, by defining the practice of this type of court, is an important measure in ensuring the execution of its functions in accordance with the law and the interests of the citizen.

3. The *Journal of Laws,* No. 57, paragraph 308, has promulgated the Constitution of the Inferior Courts Amendment Act of 19 December 1963.

Following the Supreme Court Act of 15 February 1962, the Minister of Justice exercises supreme administrative authority only over the Voivodship and District Courts (the verdicts are reviewed by the Supreme Court). The new Inferior Courts Act clarifies certains questions related to the organization of Voivodship and District Courts, such as appointment and dismissal of judges by the Council of State on the recommendation of the Minister of Justice, the release of judges at their own request, their retirement for reasons of ill health or pensionable age (sixty-five years). In addition, with a view to strengthening the independence of the judiciary the Act makes provision for situations in which a judge is married to a practising lawyer. In such a case, a member of the bench, is to be released from his post, if his or her husband or wife were practising at the bar on the day the Act came into force and have not left practice within a year of its promulgation. The Act further stipulates that if a judge marries a practising lawyer after the law comes into force and the latter does not retire from practice within three months of marriage, the judge is to be relieved of his appointment. Other amendments introduced by the Act concern certain aspects of the disciplinary responsibility of judges. The Act came into force on 1 January 1964. Its main purpose is to strengthen the independence of the courts and assure the citizen of due process of law.

4. The *Polish Monitor,* No. 58, paragraph 300, has published the Ordinance of the Ministers of Justice and Internal Affairs of 28 June 1963. This sets out instructions on collaboration between the Citizens Militia and courts collectors in tracing the place of work of defaulters following executive proceedings. The Ordinance issued under Article 517 of the Code of Civil Procedure is primarily intended to help persons who have received maintenance orders to trace the place of work or residence of the person against whom the writ has been issued. Warrants may be taken out by the Citizens Militia on the application of the court collector for a specified area or, if need be, for the whole of Poland. The Ordinance will help to protect persons, including minors, entitled to maintenance payments.

[1] Note furnished by the Government of Poland.

5. Under Resolution 103 of the Council of Ministers of 16 March 1963 concerning wage increases for the lowest-paid employees of enterprises, institutions and offices and reduction of tax scales (*Polish Monitor*, No. 25, paragraph 124), the minimum monthly wage has been raised to 750 zlotys and the minimum amount of tax-free earning to 1,000 zlotys per month. The resolution is a further step in the continuing policy of raising the standards of living of the employed.

6. The Ordinance of the President of the Social Insurance Board of 11 May 1963 concerning recognition of cottage workers jobbing for certain trading enterprises as employees within the meaning of the Decree on general retirement pensions for employees and their families (*Polish Monitor*, No. 43, paragraph 218). Under this ordinance cottage workers will be entitled to pensions.

7. Resolution 396 of the Council of Ministers of 13 December 1962 amending the regulations on State assistance to housing built out of the population's own funds (*Polish Monitor*, No. 43, paragraph 5). This resolution introduces a regulation cancelling 20 per cent of the payments due for credits granted for the construction of houses in rural areas to employees of socialized enterprises engaged in these areas and owning less than one hectare of land, in particular agricultural engineers and technicians, zoo-technicians, veterinary surgeons, mechanization engineers, land improvement engineers and technicians, teachers, medical practitioners, nurses and midwives. This resolution provides substancial State assistance for the persons qualified under it. It will also help village dwellers to secure the services of needed specialists who are now given a further incentive to settle in rural areas.

8. Ordinance of the Minister of Culture and Art of 11 December 1962 concerning changes in the scale of fees for literary, scientific and technical works (*Polish Monitor*, No. 6, paragraph 32). Under this order, authors' fees are raised.

9. Ordinance of the Council of Ministers of 29 January 1963 concerning protection of ornamental designs (*Journal of Laws*, No. 8, paragraph 45). The Ordinance specifies what is meant by an ornamental design, how copyright is to be established and how long it runs.

10. The Ordinance of the Council of Ministers of 30 September 1963 concerning the salaries of teachers and educators (*Journal of Laws*, No. 44, paragraph 248).

11. Circular 25 of the Minister of Education of 3 July 1963 concerning the improvement of welfare conditions of teachers (*Official Journal of the Ministry of Education*, No. 9, paragraph 95).

12. Ordinance of the Minister of Education of 28 June 1963 concerning the organization of vocational instruction centres pursuing the syllabus of primary vocational schools for the employed. (*Official Journal of the Ministry of Education*, No. 9, paragraph 89).

13. Circular No. 13 of the Minister of Education of 19 February 1963 concerning the dissemination of knowledge about African countries and the promotion of friendship with peoples in Africa (*Official Journal of the Ministry of Education*, No. 4, paragraph 32).

14. Ordinance of the Minister of Health and Social Welfare of 26 June 1963 concerning the treatment in social health service institutions of former participants in national-liberation struggles and political prisoners and their families (*Journal of Laws*, No. 30, paragraph 174). The granting of free medical treatment to former participants of national liberation struggles and political prisoners reflects the State's concern for those who fought in the battles for freedom and for persons persecuted and imprisoned by Nazi occupation authorities.

15. Ordinance of the Minister of Health and Social Welfare of 11 July 1963 concerning the treatment in social health service institutions of members of the Association of Polish Journalists and their families (*Journal of Laws* No. 38, paragraph 215). Many members of the Association of Polish Journalists are free-lancers unentitled, since they are not permanently employed, to social insurance and so to free medical attention. Since journalism is a socially extremely useful occupation, journalists deserve to be accorded the same privileges in the field of medical care as those enjoyed by the insured.

16. Instruction 23/63 of the Minister of Health and Social Welfare of 20 May 1963 concerning the treatment in social health service institutions of foreigners attending Polish secondary vocational schools (*Official Journal of the Ministry of Health and Social Welfare*, No. 10, paragraph 65). This Instruction extends free medical care to foreigners studying at Polish secondary vocational schools.

17. Instruction 26/63 of the Minister of Health and Social Welfare of 1 June 1963 amending Instruction 99/51 on the principles of extending assistance by emergency stations (*Official Journal of the Ministry of Health and Social Welfare*, No. 11, paragraph 68). This Instruction widens the definition of accidents and hence broadens the range of free medical services. Under section 2, paragraph 4 of the Ordinance of the Minister of Health and Social Welfare of 18 August 1962 concerning the non-payability of certain services provided by social health service institutions (*Journal of Laws*, No. 55, paragraph 277) emergency stations are obliged to give first aid free of charge to all persons who have suffered accidents.

18. Instruction 12/63 of the Minister of Health and Social Welfare of 9 March 1963 concerning the treatment in social health service institutions of foreigners undergoing vocational practice in Poland (*Official Journal of the Ministry of Health and Social Welfare*, No. 6, paragraph 45). This instruction extends free medical care to foreigners undergoing practical training in Poland.

II. INTERNATIONAL AGREEMENTS

1. The *Journal of Laws* No. 33, paragraph 186, 1963 has promulgated the Government Declaration of 18 June 1963 on the ratification by Poland of the Supplementary Convention on the abolition of slavery, the slave trade and institutions and practices similar to slavery, signed in Geneva on 7 September 1956. The Act of ratification was

submitted to the Secretary-General of the United Nations on 10 January 1963. The appendix to this issue of the *Journal of Laws* contains the full text of the Convention.

2. The *Journal of Laws*, No. 17, paragraph 88 has promulgated the Agreement between the Polish People's Republic and the People's Republic of Bulgaria on legal aid, and legal relations in civil, family and criminal matters. It regulates cases of collision in private international law in the field of civil and family law, defines the jurisdiction of the courts, and settles major issues of international civil process, such as defence and legal aid and mutual recognition and execution of court verdicts in civil cases; in addition it regulates problems connected with the extradition of criminals and the extension of legal assistance in criminal cases. The Agreement was signed on 4 December 1961 and became effective on 19 April 1963.

3. The *Journal of Laws*, No. 27, paragraph 162 has promulgated the Agreement between the Polish People's Republic and the Socialist Federal Republic of Yugoslavia on legal defence in civil and criminal cases. The Agreement covers similar problems to those listed in paragraph 2 above on the Polish-Bulgarian agreement, and is based on the same principles of broad collaboration in the protection of the rights of citizens of both countries. The Agreement was signed on 6 February 1960 and became effective on 5 June 1963.

PORTUGAL

NOTE[1]

During the year 1963, no precept of a constitutional character was promulgated having any relation to the matter in question. However, acts, legislative decrees, decrees and notifications containing dispositions linked more or less with the theory of human rights were published.

As far as judicial decisions are concerned, it is naturally not possible, because of the inexistence of registers, to know all that have been given in the various tribunals of the country and may be of interest for the subject under consideration. The judgements reported below were passed by the highest Portuguese tribunal.

I. LEGISLATION

1. *Act No. 2,118 of 3 April 1963.* Promulgates the bases for the promotion of mental health with a view to ensure or reestablish the psychic equilibrium of the human person, including prophilactic, therapeutical and recuperative action. In this context, the law specifies the establishments, departments and private institutions for mental health, and enacts provisions for the treatment and internment of mental patients. Of special note are the Bases Nos. XXXVII, XXXVIII, XXXIX, XL and XLI.

2. *Act No. 2,119 of 24 June 1963.* Promulgates amendments to the Organic Law of the Portuguese Overseas. Amendments to Bases Nos. XXIV, XXV, XXX, XXXII, XLVIII, LXVIII and LXXXI are worthy of special attention.

3. *Act No. 2,120 of 19 July 1963.* Promulgates the bases for the policies of health and assistance.

4. *Legislative Decree No. 44,862 of 23 January 1963.* Approves for ratification the Convention No. 89 of the International Labour Organisation, regarding female labour in industry by night, reviewed in 1948.

5. *Legislative Decree No. 44,911 of 7 March 1963.* Creates the Agricultural Colony of Arnes, destined for the treatment of mental diseases and anomalies of long duration and to the prosecution of other assistential purposes of a psychiatric nature.

6. *Notification No. 19,756 of 12 March 1963.* Makes extensive to the overseas provinces Legislative Decree No. 44,427 and Legislative Decree No. 44,428, concerning the legal régime of emigration.

7. *Decree No. 44,916 of 14 March 1963.* Regulates the calculation of the time of service rendered to the State and to administrative bodies on the basis of a daily wage by individuals who have lost the status of *indigena* with the publication of Decree-Law No. 43,893.

8. *Legislative Decree No. 44,923 of 18 March* 1963. Gives a new wording to paragraph No. 4 of article 3 of the Decree-Law No. 31,913, admitting married women and widows having children to serve as apprentices and as female nurses in hospitals. Establishes, in accordance with this objective, the adjustment of the respective timetables to the respective family conditions of the apprentices or nurses.

9. *Legislative Decree No. 44,994 of 23 April 1963.* Introduces an adjustment in the Plan of school constructions for primary education, approved by Decree No. 43,674.

10. *Legislative Decree No. 44,999 of 24 April 1963.* Explains various precepts contained in Decree-Law No. 44,308 concerning the medical prevention of sylicosis.

11. *Legislative Decree No. 45,002 of 27 April 1963.* Creates the Department of assistance in case of illness to civilian employees of the State, destined to promote gradually the provision of assistance in all manner of illness to the menial staff serving in the civil Departments of the State, including those having administrative and financial autonomy.

12. *Notification No. 19,870 of 24 May 1963.* Lays down the priorities enjoyed in their postings by the primary teachers in the overseas provinces.

13. *Notification No. 19,892 of 12 June 1963.* Approves the programmes of professional training of complementary education for farm apprentices.

14. *Decree No. 45,177 of 3 August 1963.* Reorganises the services for combating sleeping-sickness and the brigade for pentaminization of the Province of Angola, which now constitute the Mission for combating trypanosomiasis.

15. *Legislative Decree No. 45,180 of 5 August 1963.* Promulgates the scheme for the functioning of the University General Studies of Angola and Mozambique.

[1] Note furnished by the Government of Portugal.

16. *Decree No. 45,240 of 11 September 1963.* Lays down the rules for the granting of scholarships and the creation of student hostels in the overseas provinces.

17. *Decree No. 45,348 of 12 November 1963.* Creates the Mission for the eradication of swamp-fever in Cape Verde.

II. JUDICIAL DECISIONS

1. Judgement of the Supreme Court of Justice, of 20 November 1933, published in the *Boletim do Ministério da Justica,* No. 131, p. 301.

States that any suspicion of a lack of mental soundness which may have determined the sense of irresponsibility in an accused is basis for a rescission of a penal sentence condemning the accused serving his sentence.

2. Judgement of the Supreme Court of Justice of 5 November 1963, published in the above-mentioned *Boletim*, p. 310.

Recognizes that if an accused who has been acquitted in a criminal trial has not applied soon after the reading of the decision acquitting him, for the condemnation of the complainant to pay him compensation, as allowed by article No. 453 of the Criminal Procedure Code, he may do so in the Civil Courts in terms of paragraph 2 of the said article.

DECREE No. 45,408 OF 6 DECEMBER 1963, REGULATING THE ELECTION OF MEMBERS OF LEGISLATIVE COUNCILS OF OVERSEAS PROVINCES [2]

THE ELECTORATE

Art. 2. I. The election of members of the legislative councils by employers' and workers' associations, ethical and cultural groups, economic associations, administrative and other legally recognized bodies performing administrative functions in the public service shall be governed by regulations promulgated by the provincial Governments.

II. Not later than sixty days prior to the day fixed for the elections, provincial Governments shall publish in the respective *Boletim Oficial,* lists of such bodies and associations which are eligible to vote.

III. An appeal against any omission in these lists may be lodged within fifteen days from the date of publication with the Minister for Overseas Portugal whose decision shall be final.

Art. 3. I. The following provisions shall apply in the election of members of the legislative councils by the authorities of the *regedorias:*

1. In provinces with Governors-General, the governors of each district shall draw up a list of these authorities sufficiently in advance of the election date; the list shall be publicly displayed at the offices of the *regedorias* and other customary places and published in the provincial *Boletim Oficial.*

2. An appeal against any omission may be lodged within ten days of the date of publication of the lists.

3. A final ruling of such appeals shall be given within the next fifteen days by the provincial governor after consultation with the State Counsel General (*Procurador da Republica*).

II. On the Sunday prior to that designated for the polls, the duly listed authorities of the *regedorias* of each district shall select from among their number two persons who shall represent them at the elections.

III. On the day of the elections the representatives of the authorities of the *regedorias* of each district shall elect the members of the legislative councils who, under the terms of the law, are to be elected by them.

Art. 4. In provinces with Governors, lists of the authorities of the *regedorias* shall be drawn up in each *concelho or circunscrição* by the local administrator and published in the provincial *Boletim Oficial* following, so far as this is applicable, the procedure laid down in article 3 above except that instead of the State Counsel General, as provided in I (3), the State Counsel General's representative for the court district of the provincial capital shall be consulted.

Art. 5. I. The election of members of legislative councils by the taxpayers shall be governed by regulations promulgated by the provincial Governments.

II. Within sixty days of the day fixed for the elections, provincial Governments shall publish, in the respective *Boletim Oficial,* lists of taxpayers eligible to vote drawn up by the provincial offices of the Treasury.

III. An appeal against any omission in these lists may be lodged within fifteen days from the date of publication with the Minister for Overseas Portugal whose decision shall be final.

Art. 6. I. The following are entitled to elect members of the legislative councils by direct suffrage:

1. Male Portuguese citizens of full age or *emancipados* who can read and write Portuguese;

2. Female Portuguese citizens of full age or *emancipadas,* who have completed the first cycle of secondary school or have an equivalent qualification;

3. Male and female Portuguese citizens of full age or *emancipados* who, though unable to read and write, are heads of families;

[2] Text published in *Diário do Governo,* No. 286, of 6 December 1963.

4. Female Portuguese citizens who are married, can read and write Portuguese, and pay, either on their own property or on property held jointly with their husbands, taxes amounting to not less than the minimum set by the provincial Governments.

II. For the purposes of the present decree, a head of a family is:

1. Any Portuguese citizen with a legitimately constituted family living with him under his authority and sharing his board who pays taxes amounting to at least the minimum set by the provincial Governments;

2. Any Portuguese woman, whether widowed, divorced, judicially separated or a spinster, of full age or *emancipada,* who, being a person of good character, is entirely self-supporting and has ascendants or dependants to maintain and pays taxes on her own property amounting to at least the minimum set by the provincial Governments;

3. Any Portuguese citizen of full age or *emancipado,* who owns and occupies a house and pays taxes on his own property amounting to at least the minimum set by the provincial Governments.

III. A person's status shall be determined in accordance with the law or local customs and usage, except that only one spouse, whether married, widowed, divorced or judicially separated, may be enrolled in the electoral register in respect or the same man. The regulations for establishing and proving such status shall be promulgated by the provincial Governments, having regard to the legislation on civil registration.

IV. For the purposes of the present article, the qualifying minimum amount of tax shall be determined in the light of the social conditions prevailing and the tax system in force in each province.

Art. 7. The following shall not be eligible to vote:

1. Any person who has forfeited his civil or political rights;

2. Any person who has been pronounced incompetent by a court and any person who, although not so certified, is well known to be insane;

3. Any bankrupt or insolvent person, unless discharged from bankruptcy;

4. Any person on trial and any person who has been convicted of a crime, unless he has served his sentence, even if he has been granted conditional release;

5. Paupers and, in particular, any person who is an inmate of a welfare institution;

6. Any person who has become a Portuguese national by naturalization or marriage less than five years prior to the date of the elections;

7. Any person professing ideas opposed to the existence of Portugal as an independent State and the social order;

8. Any person who is not permanently domiciled in a province and who has resided in that province for less than three years;

9. Any person of notorious turpitude.

Art. 8. The regulations governing eligibility for, resignation from and forfeiture of office shall be those specified in the political and administrative statutes of the overseas provinces.

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REPUBLIC OF KOREA

NOTE[1]

1. On 13 December 1963 the Code of Criminal Procedure was revised in order to bring it in conformity with the new Constitution of the Republic of Korea of 26 December 1962.[2]

Under article 33 of the revised Code, the Court has the obligation to provide an accused *ex officio* with a counsel, provided that the accused, not having a counsel, is a minor, over 70, deaf-mute, and mentally or physically retarded.

By virtue of article 34, counsel has the right to interview an accused or a suspect and have him consult a doctor.

Article 72 provides that an accused shall not be arrested unless he is given an explanation of the reason of his arrest and the opportunity to select a counsel and to defend himself.

The counsel's right to be informed of the arrest of an accused and his right to request the accused's release on bail are dealt with in articles 87 and 94 respectively. Article 94 also permits the accused himself to make a request for bail. Except in certain cases enumerated in article 95, a request for bail may not be rejected. Article 96 vests the Court with the right to deviate from the rules governing the cases enumerated in article 95, and grant the request for bail.

Article 101 contains a provision whereby the Court is empowered to entrust an accused, who has been arrested, to his relatives or to others whom it deems suitable and place him under house arrest. The same article also provides that the National Assembly, acting on the basis of article 41 of the Constitution, may request the release of an arrested member of Congress. Having been informed of this request for release, the Attorney-General shall immediately take action on the matter and inform the Court, which has jurisdiction over the case, of the reasons of the release.

Article 113 prohibits any seizure or search without warrant. Under article 116, the execution of a search or seizure warrant may not violate the rights of the accused to secrecy and honour. Article 124 provides that a woman may only be bodily searched in the presence of an adult female. Except when explicitly mentioned in the warrant, a seizue or search may not be carried out before sunrise and after sunset (article 125). The rules governing the execution of a search are contained in article 141.

Under article 198, the Public Prosecutor, the investigating police officer and any other person empowered by law are under an obligation not to infringe upon the rights of an accused. Under the same article, the Public Prosecutor must once every month order the inspection of houses of detention. Where such an inspection results in the discovery of cases of illegal detention, these cases shall be brought before the Public Prosecutor's office.

Article 208 guarantees that no one, after his acquittal, shall be rearrested for the same offence.

The Public Prosecutor and the investigating police officer, by virtue of article 242, shall interrogate a suspect about the circumstances and the facts of the offence committed and shall give him the opportunity to call witnesses to testify in his favour. Under article 289, an accused has the right to refuse making statements when being interrogated. After having heard the Public Prosecutor's indictment, the presiding judge shall give both the accused and counsel the opportunity to make a final statement (article 303).

Article 307 provides that facts shall be recognized as evidence. Even though the accused's confession has not been attained through pressure or violence, article 309 prescribes that such a confession, in case of doubt, shall not be treated as evidence of guilt. Where the accused's confession is sole evidence against him, this shall not be treated as evidence of guilt (article 310). Under article 317, any statement by the accused, unless made of his own free will, shall not be treated as evidence.

After the dismissal of a case, it is permitted, by virtue of article 329, to bring a new action with the purpose of finding out other evidence pertaining to the case.

Under article 369, a Court of Appeal shall not punish an accused more severely than the lower Court.

2. The Petition Act (Act No. 1283) of 26 February 1963 regulates the exercise of the people's Constitutional right to petition. Under article 4

[1] Note based on information furnished by the Government of the Republic of Korea.

[2] For extracts from the Constitution of 1962, see *Yearbook on Human Rights for 1962*, pp. 246-249.

of this Act, petition is admissible when it relates to the prevention of damage; to the punishment of wrong-doing Government officials; to the establishment, revision or abolishment of laws, orders or regulations; to the improvement in the management of public institutions; and to matters in the domain of public organizations.

Not admissible, by virtue of article 5, are petitions which interfere with the administration of justice and disrepute the national sovereignty.

Article 10 prohibits fallacious petitioning with the purpose ot causing injury to others.

Article 11 provides that no one shall be treated with discrimination by reason of having petitioned.

3. From the Prisoners Rules, 1963 the following provisions may be quoted:

(*a*) A prisoner may petition the Minister of Justice or the inspecting Government official on the fact that he has been misjudged (article 6).

(*b*) In executing education programmes in respect of prisoners, the head of a prison shall take into consideration the religion of the people concerned (article 31).

(*c*) A prisoner wounded or deformed in an accident shall, upon his release, receive as a compensation a certain amount of money. When the accident results in the death of the prisoner, his heir shall receive the money (article 40).

(*d*) A prisoner may be awarded a prize for good behaviour by the head of the prison. The Minister of Justice decides on the kind of the prize to be awarded (article 44).

(*e*) A prisoner who has served half of his sentence and has behaved well during that period may get three weeks deducted from the rest of his prison term (article 48).

POLITICAL PARTY LAW (No. 1246), PROMULGATED ON 31 DECEMBER 1962 AND ENTERED INTO FORCE ON 1 JANUARY 1963 [3]

Article 1. (Purpose)

The purpose of this Law is to ensure the necessary organization of political parties which participate in the formulation of the peoples political views and to guarantee democratic organization and activities of political parties, so that they may contribute to the sound development of a democratic form of government.

Article 2. (Definition)

A political party mentioned in this Law shall mean a voluntary organization of the people which participates in the formulation of political views of the people by promoting a responsible political assertion or policy and by nominating or supporting a candidate in an election for public office, for the benefit of the people.

. . .

Article 4. (Formation)

Paragraph 1. A political party comes into existence upon registration with the Central Election Management Committee by its central party.

Paragraph 2. Prior to the registration mentioned in the foregoing paragraph, the requirements prescribed in Articles 25 through 27 must be fulfilled.

Article 5. (Promoters)

There must be 30 or more promoters for the preparation for inauguration of a political party.

Article 6. (Qualification for promoters)

Any person who is eligible to vote for the election of members of the National Assembly may become a promoter.

However, this shall not apply to the public officials, officers of State-operated enterprises and enterprises the majority of shares of which are owned by the Government, as designated by a Cabinet Decree, and those persons whose political activities are prohibited by any other law and/or decree.

. . .

Article 17. (Qualification for party member)

Any person who is eligible to vote for the election of members of National Assembly may become a party member.

However, this shall not apply to the public officials, officers of State-operated enterprises and enterprise the majority of shares of which are owned by the Government, as designated by a Cabinet Decree, and those persons whose political activities are prohibited by any other law/or decree.

Article 18. (ditto—in case of alien)

No person other than nationals of the Republic of Korea may be a member of a political party.

Article 19. (Prohibition of forcible affiliation, etc.)

Paragraph 1. No person shall be forced to affiliate with or to resign from (excluding expulsion) a political party without his consent freely given.

Paragraph 2. No person shall be a member of two or more political parties concurrently.

Paragraph 3. No person whose name is not entered on the roster of party members shall be admitted as a party member.

. . .

Article 30. (Freedom of activities)

A political party shall enjoy freedom of activities in accordance with the Constitution and laws (of the Republic of Korea).

. . .

[3] An unofficial translation of the Law appears as annex IV B 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 and Corr.1).

Article 35. (Prohibition of receiving donations)

A political party (including the party inauguration preparatory committee) may not receive donations, support or any other contribution in terms of property from those who fall under one of the following sub-sections:

1. An alien, alien juridical person and organization of a foreign country. This, however, shall not apply to an alien juridical person or an organization of a foreign country which is under the leadership of a national of the Republic of Korea.

2. A state or public organization.

3. A state-operated enterprise, organization which is under direct control or supervision by the Government, or an enterprise the majority of shares of which are owned by the Government.

4. A financial institution or financial organization.

5. A labor organization.

6. A school foundation.

7. A religious organization.

Article 36. (Demand for submission or production or report and data, etc.)

The Central Election Management Committee or other election management committee concerned may, if necessary for supervision, demand a political party to submit or produce reports, account books, documents or any other data of the political party. This, however, shall not apply to the roster of the party members.

. . .

ELECTION MANAGEMENT COMMITTEES LAW (No. 1255), PROMULGATED ON 16 JANUARY 1963 [4]

Article 1. (Purpose)

The purpose of this Law is to stipulate the organization and duties of election management committees which take charge of fair management of elections and the affairs relating to political parties.

. . .

Article 3. (Duties of committees)

Paragraph 1. The Central Election Management Committee shall, in accordance with the provisions of laws and orders, control and manage election affairs and the affairs relating to the political parties, and shall direct and supervise its lower level election management committees.

Paragraph 2. Any other level of election management committee shall, in accordance with the provisions of laws and orders, manage the affairs falling under its jurisdiction, and shall direct and supervise its lower level election management committees.

Article 4. (Commission of Members)

Paragraph 1. The members of the Central Election Management Committee shall, in accordance with the provisions of the Constitution, be selected or appointed.

Paragraph 2. The members of the Seoul Special City, Pusan City and Provincial Election Management Committees shall be commissioned by the Central Election Management Committee, and each of the Committees shall consist of four persons, including two judges, recommended by the District Court having jurisdiction over the pertinent areas, and of one educator, one journalist, a person of learning and virtue, who shall be recommended by the Mayor of Seoul Special City, Pusan City or the Provincial Governor, and two persons recommended by political parties.

Paragraph 3. The members of the Election District Management Committees shall be commissioned by the Mayors of the Seoul Special City, Pusan City, or the Provincial Governor, and each shall consist of seven persons selected from among judges, educators, or men of learning and virtue, and two persons recommended by political parties, all of whom shall be resident within the electoral districts.

Paragraph 4. *Ku,* city, and country election administration committees shall be commissioned by Mayors of the Seoul Special City, Pusan City, or Provincial Election Management Committees, and each shall consist of five persons selected from among judges, educators or men of learning and virtue, residing within the pertinent area, and two persons recommended by political parties.

Paragraph 5. Each ballot district election management committee shall consist of five persons selected from among voters of learning and virtue residing within the area covered by the ballot district in a *ku* or city or within the area of *up* or *myon* having jurisdiction over the ballot district, and two persons recommended by political parties, and shall be commissioned by the *ku,* city, or County Election Management Committee in case there is a *ku,* city, or County Election Administration Committee established, or by the District Electorate Election Administration Committee having jurisdiction over the ballot district in case there is no *ku,* city, or County Election Management Committee established. However, in case there are no voters except military personnel within the area of the *up* or *myon,* members of such ballot district Election Management Committees may be commissioned from among voters residing within the area of the *ku,* city, county, or District Electorate Election Management Committee having jurisdiction over such ballot district.

Paragraph 6. Judges, Court officials and education public officials who are members of either District Electorate Election Management Com-

[4] An unofficial translation of the Law, as amended and promulgated by Amendment Law No. 1385, appears as annex IV C 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 and Corr.1).

mittees, *up*, city, county Election Management Committees, or ballot district Election Management Committees, shall not be subject to restrictions by area of residence.

Paragraph 7. Public officials, or judges, court and education public officials, may not become members of any Election Management Committee.

Paragraph 8. Members recommended by political parties under the provisions of paragraphs (2) through (5) shall be recommended by the party to which the President is affiliated (hereinafter referred to as the pro-Government party) and by the party to which the President is not affiliated and having a majority of seats at the National Assembly (hereinafter referred to as the first Opposition Party).

. . .

Article 8. (Cause of removing members from their office)

Members of every level of election management committees shall not be removed from their office and commission or shall not be dismissed except in the following cases:

1. If he has acceded to a political party or he has been involved in politics;

2. If he has been dismissed by reason of decision of impeachment;

3. If he has been sentenced to the punishment of imprisonment or heavier than that.

. . .

Article 11. (Guarantee of status of members)

Members of any level of election management committee shall not be detained except for *flagrante delicto* during the period from the date of public announcement of the election day until the completion of ballot-opening, excluding those cases falling under the crimes of rebellion, foreign aggression, foreign relations, explosives, arson, opium, currency, valuable securities, postage, seals, homicide, assault and battery, wrongful arrest, false imprisonment, theft, robbery and violation of the National Security Law, Anti-Communist Law and shall also enjoy deferment of draft and call to military service during the above period.

Article 12. (Enlightenment, etc., for election)

Every level of Election Management Committees shall always endeavour to enhance consciousness of exercise of sovereignty of the voters and especially in time of election, shall assist the voters in the procedures of voting and any other matters necessary for election and shall enlighten and lead them in voting matters.

. . .

NATIONAL ASSEMBLY ELECTION LAW (No. 1256) PROMULGATED ON 16 JANUARY 1963 [5]

CHAPTER I

GENERAL PROVISIONS

Article 1. (Purpose)

The purpose of this law is to seek the development of democratic political principals by assuring the fair election of National Assemblymen (hereinafter referred to as Assemblymen) by the free will of the citizens.

. . .

CHAPTER II

THE RIGHT TO VOTE AND THE RIGHT TO BE ELECTED

Article 8. (Right to vote)

Citizens 20 years of age and above shall have the right to vote.

Article 9. (Right to be elected)

Citizens 25 years of age and above shall have the right to be elected.

Article 10. (Determination of age)

The age of voters and of those who have the right to be elected shall be calculated as of the date of election.

Article 11. (Persons ineligible to vote)

The following persons shall not have the right to vote:

1. A person who has been declared to be incompetent in the management of property, or of part of property;

2. A person who has been sentenced to confinement or a greater penalty, and who has not completed serving his punishment, or a final decision has not been made concerning the execution thereof;

3. A person for whom two years have not elapsed yet after receiving the penalty of a fine in an amount exceeding 5.000 won as an election criminal, or a person sentenced to the penalty of a confinement or above for whom four years have not elapsed yet since the final decision not to receive the execution thereof, or since the completion or exemption of the execution thereof; and

4. A person who has been suspended from, or deprived of, the right to vote by court decision.

Article 12. (Persons ineligible for election)

The following person shall not have the right to be elected.

1. A person corresponding to Item 1, Item 2 or Item 4, of the foregoing article;

2. A person for whom four years have not elapsed since receiving the penalty of a fine in an amount exceeding 5,000 won as an election criminal, or a person sentenced to the penalty of a

[5] An unofficial translation of the Law, as amended and promulgated on 6 August 1963 by Amendment Law No. 1383, appears as annex IV D 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 and Corr.1).

confinement or above for whom seven years have not elapsed yet since the execution thereof was withheld, or the completion or exemption of the execution thereof (a person sentenced to a stay of execution of a penalty for whom three years have not elapsed yet since the expiration of the period);

3. A person sentenced to the penatly of a confinement or above for having dodged military service, for whom seven years have not elapsed yet since the final decision to withhold the execution, the completion or exemption of the execution of the penalty (a person sentenced to a stay of execution of a penalty for whom four years have not elapsed yet since expiration of the probation period). However, the provision of this item shall not apply to a person who has completed military service after the completion or exemption of the execution of the penalty, or after the final decision not to receive the execution; and

4. A person who has been suspended from, or deprived of, the right to be elected by a court decision or by law.

. . .

CHAPTER VI

ELECTION CAMPAIGN

NOTE:

Election office=campaign office.
Election expenses=campaign expenses.
Election liaison office=campaign liaison office.
Chief of election office=campaign chairman.

Article 31. (Definition)

Paragraph 1. Election campaign mentioned in this law shall refer to acts designed to have the candidate elected or not to be elected.

Paragraph 2. Simple expressions of opinions and thoughts concerning the election, or preparatory acts for candidacy shall not be considered as part of an election campaign.

Article 32. (Period for election campaign)

An election campaign may be conducted only during the period from the registration of a candidate is completed to the date previous to election day.

Article 33. (Extent of election campaign)

An election campaign shall not be conducted in any manner other than as prescribed in this law.

. . .

Article 40. (Posters)

Paragraph 1. Public relations posters to be used in an election campaign shall be drawn up by the Central Election Management Committee for the nationwide District election, and by the election management committees for the area districts in the area district elections, respectively, within the limit of one sheet per 100 persons of population, and shall be posted by the election management committees for the area districts.

Paragraph 2. The standard, drawing up, matters to be described therein, and the method of posting, of the posters referred to in the foregoing paragraph, and other necessary matters shall be stipulated in a cabinet decree.

Paragraph 3. Posters to be used for notification of speech gatherings pursuant to the provisions of Article 52 and Article 53 shall be drawn up by the election management committees of the area districts, and shall be delivered upon request of the political party or the district electorate candidates.

Paragraph 4. The number of sheets of the posters mentioned in the foregoing paragraph shall be 30 sheets, and the standard size and matters to be described therein shall be in accordance with the provisions of a cabinet decree.

Article 41. (Manuscript for poster)

Paragraph 1. Manuscripts to be carried in the posters referred to in Paragraph 1 of the foregoing article shall not be used unless submitted by the date on which period for registration of candidates expires; provided, however, that they may be submitted simultaneously with additional registration in case district candidates are additionally registered.

Paragraph 2. Manuscripts already submitted in accordance with the provisions of the preceding paragraph shall not be withdrawn, nor shall they be revised.

. . .

Article 46. (Prohibition of books or drawings made in law-evading methods)

Paragraph 1. No one shall, during the period for an election campaign, distribute, stage or post, through ways and means other than provided in this law, on notification, writings, dramas, motion pictures, advertisements or any other materials similar thereto, which express support, recommendation or rejection of any candidate or political party and other political organizations.

Paragraph 2. The election management committee of all echelons shall order suspension or withdrawal without delay for any violation of the provision of the foregoing paragraph, when it has been discovered, and take necessary measures.

Article 47. (Newspaper advertisements and banners)

Paragraph 1. The political party may put an advertisement in all daily newspapers concerning the election of its candidates for the nationwide district only once, and as for the platform, policies and election slogans of the political party, may put an advertisement in all daily newspapers five times.

Paragraph 2. A political party may put an advertisement in two daily newspapers only once for its candidates for the area districts.

Paragraph 3. A political party may prepare not more than 50 banners in the case of a city district electorate and not more than one per *up* or *myun* in the case of a *ku* electorate district, which shall be posted with seals of the competent election administration committees affixed thereto in order to conduct election campaigns.

Paragraph 4. Standards of advertisement to be put in newspapers, of banners, and of other necessary matters shall be stipulated by a cabinet decree.

Article 48. (Joint speech gatherings)

Paragraph 1. The election management committees for the area districts shall sponsor joint speech gatherings.

Paragraph 2. The joint speech gatherings mentioned in the foregoing paragraph shall be held, after the expiration of the period for registration of the candidates, for five times or more in *kus* and cities, and for one time or more in every *eup* and *myon* in the counties, with proper time and places fixed, and 20 minutes or more shall be equally allocated to every single candidate for his speech.

Paragraph 3. No one other than a candidate for the competent area district shall be allowed to take part in speech gatherings and make his political views public.

Article 49. (Announcement of holding joint speech gatherings)

The election management committee for the area district shall post notification on the time and place of a joint speech gathering, prescribed in the foregoing article, by two days before the date slated therefor, at 50 places or more in the district to be covered thereby, and shall notify the district electorate candidates and the chiefs of election offices.

Article 50. (Order of speech-makers at joint speech gatherings)

The priority order of the speech-makers at a joint speech gathering shall be decided by lottery, and when a speech-maker has not presented himself by the time he was scheduled to make a speech, he shall be considered as having forfeited his time.

Article 51. (Maintenance or order at joint speech gatherings)

When there is a person who hinders speeches or disturbs the order of a joint speech gathering, the chairman of the election management committee for the area district or a member of the committee designated by the chairman shall restrain the person, and may compel him to leave the place in case he does not obey the order to restrain himself.

Article 52. (Speech gathering sponsored by candidate)

Paragraph 1. A candidate for an area district may sponsor a speech gathering.

Paragraph 2. The speech gathering mentioned in the foregoing paragraph shall refer to a gathering for expressing personal political views, a discussion meeting, or a forum, which is to be held after having a number of people assembled in election campaigns, with the time and place fixed in advance.

. . .

Article 53. (Speech gatherings sponsored by political party)

Paragraph 1. A political party may sponsor speech gatherings during the period for an election campaign to conduct an election campaign for its recommended candidates.

Paragraph 2. The number of speech gatherings held pursuant to the foregoing paragraph shall not exceed the number of polling districts in the competent area district.

Paragraph 3. At a speech gathering held pursuant to paragraph 1, no more than three persons other than the candidates for the nationwide district or the area district may make speeches.

Paragraph 4. The provisions of paragraphs (2) through (5) and (8) of the foregoing articles shall be applied *mutatis mutandis* to the speech gatherings referred to in this article.

Article 54. (Restriction on holding other speech gatherings at the time of holding joint speech gatherings)

Any other speech gatherings for election campaign shall not be held in any district within 300 meters from the place of a joint speech meeting in case of *kus* and cities, or within 500 meters therefrom in case of counties, during the time from two hours before the scheduled opening of the joint speech gathering, as referred to in article 48, to two hours after the scheduled completion thereof.

Article 55. (Utilization of public facilities)

Paragraph 1. A political party or candidate may use the following facilities as a place for speech gatherings free and charge in accordance with the provision of a cabinet decree.

1. A school, public hall, park, stadium, or a market; and

2. Other buildings or facilities stipulated by a cabinet decree.

Paragraph 2. When a request for utilization thereof has been made pursuant to the provision of the foregoing paragraph, the administrator of a school or any other public facilities shall grant permission unless there are justifiable reasons not to do so.

Article 56. (Place where speech is to be prohibited)

No person shall make an election campaign speech in any of the following places.

1. Buildings and facilities owned or administered by enterprises administered by the state or local autonomous bodies, or by enterprises operated by the state;

2. Within the compounds of the stations for trains, streetcars, airplanes, vessels or for buses; and

3. Hospitals, medical clinics, libraries, research centres, experimentation stations and other facilities to conduct researches on medicine or culture.

Article 57. (Restriction on the use of public address system and automobile)

Paragraph 1. A public address system shall not be used except at joint speech gatherings or speech gatherings sponsored by the candidates or the political parties.

Paragraph 2. Automobiles, vessels and public address systems to be used for an election cam-

paign shall not exceed one of each of them for one candidate.

Paragraph 3. Automobiles, vessels and public address systems to be used by a political party shall not exceed one of each of them in any area district.

Paragraph 4. Public address systems shall not be used in an area within 8,000 meters from the Armistice Line.

Paragraph 5. Marks stipulated in a cabinet decree shall be put on the public address systems, automobiles or vessels referred to in paragraph 2 and paragraph 3 during the period for election campaign, and the automobiles or vessels shall not be subject to any restriction in terms of distances to be covered.

Paragraph 6. When a speech gathering is held, no one shall be allowed to use a public address system within the distance of 300 meters from the place of the gathering in case of *kus* and cities, or within 500 meters therefrom in case of counties.

Paragraph 7. A tape-recording machine shall not be used in election campaign.

Article 58. (Prohibition of false broadcast)

A person operating a broadcasting station shall not interfere with a fair election by means of broadcasting false matters, or of broadcasting distorted matters, concerning a candidate or the election.

Article 59. (Fair broadcasting of personal history)

Paragraph 1. An administrator of broadcasting facilities administered by the state shall, in accordance with the stipulation of a cabinet decree, broadcast the full names and ages of the candidates within the districts covered thereby, political parties they belong to, and other important parts of their personal history, in order to let the voters know about the candidates.

Paragraph 2. The broadcasting mentioned in the foregoing paragraph shall be made three times or more during the period from the date of expiration of the registration period to the day previous to the election day, and the number of broadcasts and the contents thereof shall be fair to all political parties and candidates.

Paragraph 3. When an operator of a broadcasting facility other than those operated by the State desires to conduct broadcasting shall be made free of charge, and the number of broadcasts and the contents thereof shall be fair to all political parties and candidates.

Article 60. (Utilization of broadcasting facilities)

Paragraph 1. A political party may utilize broadcasting facilities as provided for by the Central Election Management Committee for the election campaign of its candidates.

Paragraph 2. Except as prescribed in this law, no one may utilize broadcasting facilities for an election campaign.

Article 61. (Restriction on illegal utilization of newspaper, magazine, and the like)

No one shall, for the purpose of having a specific person elected or defeated, offer, or indicate the will or promise to offer, money or articles, entertainments and any other benefits to a person who operates, edits, covers news or writes stories for, a newspaper (including news agencies. Same hereinafter.), magazine or any other publication, thereby having news articles or reviews concerning the election of a specific political party or candidate carried therein.

Article 62. (Prohibition of false review or news report)

A person who operates or edits a newspaper, magazine or any other publications shall not be allowed to, for the purpose of having a specific candidate elected or defeated, carry false matters or carry the facts with distorted tones with regard to the election.

Article 63. (Prohibition of distribution, other than in the ordinary method, of newspapers or magazines)

No one shall distribute, in a method other than ordinary, newspapers or magazines in which articles concerning the election are carried.

Article 64. (Prohibition of election campaign making use of special relations)

Paragraph 1. No one shall conduct an election campaign utilizing special relations with a student or a minor.

Paragraph 2. No one shall conduct an election campaign making use of special relationship with an educational institution or cultural or trade organizations.

Article 65. (Prohibition of house-to-house visits)

Paragraph 1. No one shall be allowed to make house-to-house visits to conduct an election campaign.

Paragraph 2. No one shall be allowed to make house-to-house visits to tell about speech gatherings.

Article 66. (Prohibition of campaign to obtain signatures)

No one shall be allowed to obtain signatures for any purpose during an election campaign.

Article 67. (Prohibition of popularity vote)

No one shall conduct a popularity vote or sham vote by which election or defeat of any candidate is to be foretold.

Article 68. (Prohibition of supplying food and drink)

No one shall offer food and drinks at any place or under any excuse for an election campaign.

Article 69. (Prohibition of noisy acts)

No one shall parade the street in formation or commit the act of repeated shouting for any candidate for an election campaign.

Article 70. (Prohibition of making speech at night)

No one may hold a speech gathering at night —referring to the time from 10 p.m. through 6 a.m.

Article 71. (Prohibition of slandering candidate)

Paragraph 1. No one shall, for the purpose influencing the election or defeat of a candidate, state or spread false matters concerning the personal status, personal history or personality of any candidate or the political party to which he belongs, or make a personal attack on the candidate publicly pointing to any fact.

Paragraph 2. When a person delivers a speech violating the provisions of the foregoing paragraph at a joint speech gathering or a speech gathering sponsored by a candidate or a political party, the election management committee shall warn the person *ex officio* or upon the request of a candidate or a proxy therefor, and may suspend the person from continuing with the speech in case he does not comply with the warning.

. . .

CHAPTER XII

LEGAL SUITS CONCERNING ELECTIONS

Article 136. (Election suits)

Paragraph 1. A voter, political party or a candidate, who has objection as to the validity of the election, may bring a legal action to the Supreme Court with the chairman of the election management committee for the area district as the defendant, within 30 days from the election day.

Paragraph 2. The vice-chairman shall be the defendant in case the chairman, who is to be the defendant in accordance with the provision of the foregoing paragraph, has died or resigned from the post, and all the members of the competent election management committee shall be the defendants in case the vice-chairman has died or resigned from the post.

. . .

Article 138. (Judgement nullifying the election and so forth)

The Supreme Court shall make a judgement nullifying the whole or part of the election, or nullifying the fact of being elected, only in case a fact violating the provisions concerning the election is considered to have influenced the result of the election even when such a fact exists in the legal suit referred to in the two foregoing articles.

. . .

PRESIDENTIAL ELECTION LAW (No. 1262), PROMULGATED ON 1 FEBRUARY 1963 [6]

CHAPTER I

GENERAL PROVISIONS

Article 1. (Purpose)

The purpose of this Law is to seek the development of democratic political principals by assuring the fair and just election of the President "of the Republic of Korea" by the free will of the people.

. . .

CHAPTER II

FRANCHISE AND ELIGIBILITY

Article 8. (Franchise)

Any national who is twenty years or more of age shall have the right to vote.

Article 9. (Eligibility)

Any national who has lived continuously within the Republic of Korea for five years or more as of the election day and whose age is forty or above shall be eligible to be elected President. Any period during which a person has been dispatched for official duties to a foreign country shall be deemed as residence with the Republic of Korea.

Article 10. (Basis for computing age)

The age of a person entitled to vote and that of a person eligible for election shall be computed as of the election day.

Article 11. (Persons disqualified from voting)

The following persons shall have no right to vote:

1. A person adjudged incompetent or of limited competence;

2. A person sentenced to confinement or a heavier punishment and who has not completed serving his punishment or for whom it has not been finally determined that the sentence would not be executed;

3. A person for whom two years have not elapsed since receiving a punishment of a fine of not less than five thousand won for violation of an election law; or a person sentenced to punishment of confinement or heavier punishment and four years have not elapsed since it was finally determined that the sentence would not be executed or since execution of punishment upon him was completed or remitted;

4. A person whose right to vote was suspended or forfeited by a court decision.

Article 12. (Person not eligible for election)

The following persons shall not be eligible for elections:

1. A person who falls under sub-section 1, 2 or 4 of the preceding Article;

2. A person for whom four years have not elapsed since receiving a punishment of a fine of not less than five thousand won for violation of an election law; or a person sentenced to punishment of confinement or heavier punishment and that seven years have not elapsed since the execution thereof was withheld or completed or remitted (a person sentenced to a stay of execution of punishment for whom three years have not elapsed since the period of probation has terminated);

[6] An unofficial translation of the Law, as amended and promulgated on 6 August 1963 by Amendment Law No. 1384, appears as annex IV E 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 and Corr.1).

3. A person sentenced to punishment of confinement or above for having dodged military service, for whom seven years have not elapsed since execution of punishment upon him was withheld, completed or remitted (a person sentenced to stay of execution of punishment, or whom four years have not elapsed since the period of probation has completed).

However, this shall not apply to a person who has completed his military service since execution of punishment upon him was completed or remitted, or since it was finally determined that sentence would not be executed; and

4. A person whose right to be elected was suspended or forfeited by a court decision or by law.

. . .

TEMPORARY MEASURES LAW (No. 1307) FOR SETTLEMENT OF STATE EMERGENCY, PROMULGATED ON 16 MARCH 1963 [7]

Article 1. (Purpose)

The purpose of this Law is to temporarily restrict political activities to settle the state of national emergency caused by the political activities allowed as from 1 January 1963, so that political situation may be stabilized.

Article 2. (Suspension of political activities)

Political activities aiming at organization and expansion of a political party and attainment of its objectives and having elections as its object shall not be allowed.

Article 3. (Restriction on speech and publication)

Paragraph 1. Political speech and publication using the title of a political party, group or organization shall not be allowed.

Paragraph 2. The same shall apply to the political speech and publication by which an individual person abets another person [to do or not to do].

Article 4. (Restriction on assembly and demonstration)

Holding outdoor assembly shall be allowed only for such assembly as is sponsored by the Government or a local autonomous body or the assembly for which approval of the chief of police station having jurisdiction over the area is obtained, and no demonstration shall be allowed, irrespective of indoor or outdoor demonstration.

Article 5. (Penal provision)

Any person who violates this Law shall be punished by hard labor or confinement for not less than one year but not more than five years.

Article 6. (Court jurisdiction)

The case of accusation against the violation of this law shall be tried by the court martial having jurisdiction over the place of a crime committed.

. . .

[7] An unofficial translation of the Law, repealed on 5 April 1963 by Law No. 1315, appears as annex IV F 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 and Corr.1).

ROMANIA

NOTE[1]

I. LEGISLATION

A. The State budget of the Romanian People's Republic for 1963, (Act No. 2/1962 published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic,* No. 28, 30 December 1962) provides for revenue of 82,462.6 million lei and expenditure of 81,462.6 million lei, i.e., a budgetary surplus of 1 thousand million lei, whereas the budget for the previous year provided for revenue of 66,629.7 million lei and expenditure of 65,629.7 million lei. The revenue budget of the Romanian People's Republic shows an annual reduction in the rate of individual taxation, while the financial effort of State and co-operative enterprises and economic organizations is increasing.

The revenue derived from State and co-operative enterprises in 1963 amounts to 94.4 per cent of the budget, while revenue derived from individual taxation amounts to only 5.6 per cent.

Budget expenditure is distributed as follows: 51,794.1 million lei (or more than 63.6 per cent) are allocated for financing the national economy; 19,122 million lei (or more than 23.5 per cent) for financing social and cultural activities (State social insurance, education, science and culture, health, recreation and sports, social welfare, family allowances); 1,968.8 million lei for maintaining the State executive and administrative bodies, the judicial system and the State prosecutor's offices; and 4,120 million lei for national defence.

The sums allocated in 1963 for social and cultural activities are 1,365.1 million lei higher than the previous year.

B. The offences defined and punished by the Civic Code have been amnestied by Decree No. 5 published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic,* No. 1, 3 January 1963. In addition, in view of the fact that the forest resources of the Romanian People's Republic are wholly owned by the State, taxes on the value of timber and the financial compensation for amnestied offences have been abolished.

The same Decree abolishes sentences of deprivation of liberty in force on the date of its publication, for offences committed unintentionally, as well as sentences of deprivation of liberty for not more than two years in force for offences committed deliberately. Sentences of deprivation of liberty ranging from two to twenty-five years (the maximum sentence for a limited term) have been reduced by one-quarter to one-half and the sentences of persons sentenced to hard labour for life have been commuted to twenty-five years of hard labour. Fines for criminal offences have been totally abolished.

Article 10 of the Decree provides for total or partial reprieve for persons sentenced for offences against State security and for other offences if, while serving their sentences, they have given proof of good conduct, thus demonstrating that they have been rehabilitated.

Decree No. 13, published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic,* No. 5, 25 January 1963, cancelled the debts of collectivized peasants incurred during the period prior to their entry into collective agricultural enterprises for taxation as well as for loans received from banking institutions or other socialist organizations.

Debts to the State for taxation and those due to socialist organizations for loans, incurred by former handicraft workers, charters, self-employed professional workers and other categories of self-employed citizens who have in the meantime become employees or members of a co-operative, or who have retired have been cancelled; fines for civil offences (petty and other offences) applied to any individual have been annulled.

By an Order of the Council of Ministers (*Order No. 875, Collected Decisions and Regulations of the Council of Ministers of the Romanian People's Republic,* No. 37, 27 October 1963), the National Committee of Anti-Fascist Ex-Servicemen was established.

The aim of this Committee is to publicize the contribution made by Romania in the struggle to annihilate fascism and to represent the Romanian People's Republic at organizations of other countries established by ex-servicemen of the war against fascism. The funds needed for the Committee's operations are furnished by the State.

Under a decision of the Council of Ministers (*Order No. 753, Collected Decisions and Regulations of the Council of Ministers of the Romanian People's Republic,* No. 29, 28 September 1963),

[1] Note furnished by the Government of the Romanian People's Republic.

which was taken in connexion with the extension of universal compulsory education from seven to eight years, provision was made for supplying students and teachers with free school books for the eighth grade. Previously school books were provided free of charge only for the first to seventh grades.

II. ECONOMIC DEVELOPMENT

1. *Industrial Production*

The forecasts for the aggregate industrial production plan for the year 1963 were fulfilled by 101.7 per cent. The forecasts for the six-year plan (1960 to 1965 inclusive) are being successfully fulfilled. During the first four years, aggregate industrial production has increased by 74 per cent, i.e., at an annual growth rate of 15 per cent, instead of the 13 per cent rate forecast for the entire period 1960-1965.

2. *Agricultural Production*

Although climatic conditions were not favourable in all parts of the country, the application of advanced farming techniques on an increased scale—particularly for crop cultivation—in 1963 made it possible to achieve a total grain production of approximately 10.4 million tons, or 750,000 tons more than in 1962.

3. *Goods Turnover*

In 1963, goods sold through the socialist trade system amounted to 57,500 million lei or 7.7 per cent more than during the previous year; sales of foodstuffs, including sales by the public sector, increased by 10.1 per cent and sales of other goods by 5.8 per cent. During the period 1960-1963, considerable increases in sales have been recorded each year, the average annual rate being 12.7 per cent while the rate forecast in the plan is 12.2 per cent.

4. *Improvements in Living Conditions*

According to preliminary figures, the national income rose in 1963 by approximately 9.7 per cent over the figure for 1962.

The number of wage earners employed in the national economy was 3,930,000, an increase of 190,000 over 1962 and 870,000 over 1959.

Real wages increased by 4.6 per cent as compared with 1952.

Expenditure for social and cultural activities amounted to 18,900 million lei—or 7.8 per cent more than in 1962. These funds were allocated as follows:

Education: 5,500 million lei, or 10.1 per cent more than in 1962;

Cultural and scientific activities: 1,500 million lei, or 18.2 per cent more than in 1962;

Health: 4,100 million lei, or 7.6 per cent more than in 1962;

Social security: 4,500 million lei, or 6 per cent more than in 1962;

State children's allowances: 2,400 million lei, or 12.1 per cent more than in 1962.

The sum of 1,013 million lei was allocated for social and cultural facilities: 537 million lei for education and 365 million lei for health protection.

In the first four years of the six-year plan, more than 162,000 standard apartments were built with State funds.

During the same period, private citizens, especially in the rural areas, built 383,000 dwellings at their own expense.

The expansion of the educational infra-structure continued. In 1963, approximately 4,200 classrooms were built for general education; vocational and technical schools were also provided with new lecture halls, laboratories and workshops. New student dormitories with 2,300 beds have been built as well as several dining-halls, each accommodating 1,860 persons.

During the school year 1963/64, 3,443,000 students were enrolled at various levels of education.

The number of students enrolled in secondary general education courses was 13 per cent higher and the total number of students was 14 per cent higher than in the previous year.

The infra-structure of cultural and artistic activities was further expanded.

During 1963, cinema halls with a seating capacity of 3,600 were built in towns and the number of cinema installations increased in rural areas.

The total number of radio sets is 2,549,000, or 7.5 per cent more than in the previous year. The television network continued to expand. In 1963, four television stations were established, at Iassy, Oradea, Cluj and Timisoara respectively.

The number of television viewers increased by 64 per cent over 1962.

In 1963, 3,268 books and pamphlets were published totalling 57.2 million copies. The annual circulation of newspapers was 1,044 million copies and that of periodicals was 89 million copies.

Health and public hygiene services are continuously being improved. The number of health and public hygiene centres rose to 3,841; of these, 2,853 were in rural communities and 2,043 were maternity homes. In 1963, there was one doctor for every 700 inhabitants.

More than 740,000 persons during the last year rested and received treatment at spas, holiday camps and children's camps.

The local administrative authorities have expanded their activities as compared with 1962. More than 470 kilometres of piping have been laid for the water supply and more than 360 kilometres for the gas system. In the period 1960 to 1963, electricity was installed in 2,500 villages.

As of 1 January 1964, the population of the country was 18,877,000.

III. JUDICIAL PRACTICE

1. *Guarantee of the Right to Work*

In conformity with the provisions of article 25 of the Criminal Code of the Romanian People's Republic, the judge of the lower court may order, in the case of an offence, a correctional penalty of

suspension of rights for one to six years, in addition to the principal criminal penalty.

Under articles 58 and 59 of the Criminal Code, suspension of rights consists of disqualification from exercising certain rights, including the right to hold public office.

Application of these provisions—taking into account the provisions of article 183, paragraph 4, of the Criminal Code, which states that any person qualified to carry out any activity in the employment of a State body or service, may be a public official—would prohibit persons liable to this additional penalty from occupying a post in those services or bodies during the period of the sentence.

However, that interpretation would contradict the principle set forth in article 78 of the Constitution of the Romanian People's Republic which ensures citizens the right to work. For that reason, the provisions of article 58, paragraph 1, of the Criminal Code concerning disqualification from exercising, during the above-mentioned suspension period, any occupation or work in the employment of a State body or service are deemed to apply only to disqualification from holding executive positions or positions of authority in any socialist organization.

Any persons condemned to correctional suspension of rights and thus disqualified from holding public office may consequently hold any position except those mentioned above (Supreme Court of the Romanian People's Republic, Criminal Division, Decision No. 1344, 12 October 1963).

2. *The Right to Rehabilitation*

Article 175 of the Criminal Code of the Romanian People's Republic, in laying down the conditions under which a person sentenced for a criminal offence may obtain rehabilitation, does not take into account the gravity of the acts which prompted the sentence.

Consequently, if the person requesting rehabilitation fulfils the formal and substantive conditions established by law, the fact that he has been sentenced to a criminal penalty does not constitute an obstacle to his rehabilitation (Supreme Court of the Romanian People's Republic, Criminal Division, Decision No. 855, 19 July 1963).

IV. INTERNATIONAL AGREEMENTS

1. The Romanian People's Republic ratified (Decree No. 686, published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic*, No. 20, 31 October 1963) the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water, signed at Moscow on 5 August 1963.

2. The Romanian People's Republic acceded (Decree No. 427, published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic*, No. 19, 19 October 1963) to the Union Convention of Paris, 20 March 1883, for the Protection of Industrial Property, as revised at The Hague in 1925, London in 1934 and Lisbon in 1958, as well as to the Agreement concluded at Madrid, 14 April 1891, concerning International Registration of Commercial and Industrial Trade Marks as revised at The Hague in 1925 and in London in 1934.

3. The Romanian People's Republic ratified (Decree No. 1062/1962, published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic*, No. 4, 19 January 1963) the Consular Convention between the Romanian People's Republic and the Federal People's Republic of Yugoslavia, signed at Bucharest on 8 November 1962.

The main provisions of the Convention, concerning the rights of consuls, are as follows:

(*a*) Consuls are entitled, without special authority, to represent nationals of their 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, either personally or by proxy, within the appropriate time-limits.

(*b*) Consuls may draw up official documents concerning relations established between nationals of their State and even between nationals of their State and those of the receiving State or a third State, provided that such instruments are to have legal effect exclusively in the territory of the sending State. However, the competence of consuls to act as notaries 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.

SENEGAL

REVISED CONSTITUTION OF THE REPUBLIC OF SENEGAL
Promulgated by Act No. 63-22 of 7 March 1963 [1]

PREAMBLE

The people of Senegal formally proclaims its independence and its devotion to fundamental rights, as defined in the Declaration of the Rights of Man and of the Citizen of 1789 and in the Universal Declaration of 10 December 1948.

It proclaims inviolable respect for and guarantee of:

political freedoms;

trade union freedoms;

the rights and freedoms of the human person, the family and the local community;

philosophical and religious freedoms;

the right to private and collective property;

economic and social rights.

The people of Senegal,

anxious to prepare the way for the unity of the African States and to ensure the advantages promised by such unity; aware of the need for the political, cultural, economic and social unity essential to the assertion of the African personality;

aware of the historical, moral and material imperatives which unite the States of West Africa;

decides that the Republic of Senegal will spare no effort to achieve African unity.

. . .

TITLE II

CIVIL FREEDOMS AND FREEDOMS OF THE HUMAN PERSON

Art. 6. The human person is sacred. The State has a duty to respect and protect it.

The Senegalese people acknowledges the existence of the inviolable and inalienable rights of man as the basis of every human community and of peace and justice throughout the world.

Everyone shall have the right to the free development of his personality, provided that he does not violate the rights of others or act contrary to the rule of law. Everyone shall have the right to life and to physical integrity under the conditions defined by law.

The freedom of the human person shall be inviolable. No one may be convicted of an offence except by virtue of a law which entered into force before the commission of the offence. There shall be an absolute right of defence in all States and at all stages of the proceedings.

Art. 7. All human beings shall be equal before the law. Men and women shall have equal rights.

In Senegal there shall be no subject status or privileged status based on place of birth, person or family.

Art. 8. Everyone shall have the right to express and disseminate his opinions freely in oral, written or pictorial form. Everyone shall have the right to receive an education, unhindered and from sources accessible to all. These rights shall be subject to the limitations imposed by laws and regulations and by respect for the good name of others.

Art. 9. All citizens shall have the right freely to establish associations and societies, provided that they observe the formalities prescribed by laws and regulations.

Groups whose aims or activities are contrary to the penal laws or are directed against law and order shall be prohibited.

Art. 10. The secrecy of correspondence and of postal and telephonic communication shall be inviolable. Restrictions on such inviolability may be imposed only by law.

Art. 11. All citizens of the Republic shall have the right to freedom of movement and of residence throughout the Republic of Senegal. This right may be restricted only by law. No persons may be subjected to security measures except in cases provided for by law.

Art. 12. The right to property shall be guaranteed by the present Constitution. This right may be overridden only in a case of legally recognized public necessity and subject to the payment, in advance, of fair compensation.

Art. 13. There shall be inviolability of residence.

[1] Text of extracts from the revised Constitution furnished by the Government of the Republic of Senegal. For extracts from the Constitution of 24 January 1959, see *Yearbook on Human Rights for 1959*, pp. 258-259, and for extracts from the revised Constitution of 26 August 1960, see *Yearbook on Human Rights for 1960*, pp. 298-300.

A search of premises may be ordered only by a judge or other authority designated by law. Such search may be carried out only in the form prescribed by law. Measures infringing or restricting inviolability of residence may be taken only in order to ward off a collective danger or to protect persons whose lives are in jeopardy.

Such measures may also be taken, as provided by law, in order to guard against immediate threats to law and order, and particularly with a view to lessening the risk of epidemics or protecting young people who are in danger.

Marriage and the Family

Art. 14. Marriage and the family constitute the natural and ethical basis of the human community. They shall be protected by the State.

The State and the community have the social duty of safeguarding the physical and moral health of the family.

Art. 15. Parents have the natural right and the duty to bring up their children. They shall be supported in that task by the State and by the community.

Young people shall be protected by the State and the community against exploitation and moral neglect.

Education

Art. 16. The State and the community shall establish the prior conditions and the public institutions that will ensure the education of children.

Art. 17. The education of young people shall be provided by public schools. Religious institutions and communities shall also be recognized as means of education.

Art. 18. Private schools may be opened with the authorization and under the supervision of the State.

Religion and Religious Communities

Art. 19. Freedom of conscience and the free profession and practice of religion shall be guaranteed to all, subject to the requirements of law and order.

Religious institutions and communities shall have the right to develop without hindrance. They shall be exempt from State supervision. They may regulate and administer their affairs in independence.

Work

Art. 20. Everyone shall have the duty to work and the right to obtain employment. No one may, in his work, be subject to discrimination because of his origin, opinions or beliefs.

Every worker may join a trade union and defend his rights through trade union action.

The right to strike is recognized. It shall be exercised in conformity with the laws by which it is governed. It shall in no case impair freedom of employment.

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

The conditions for the assistance and protection afforded by society to workers shall be determined by special laws.

. . .

ACT No. 63-14 OF FEBRUARY 1963, SUPPLEMENTING ORDINANCE No. 60-54 OF 14 NOVEMBER 1960 CONCERNING THE GENERAL ORGANIZATION OF DEFENCE [2]

Sole article. An article 26 (a) in the following terms, is added to Ordinance No. 60-54 of 14 November 1960 concerning the general organization of defence:

"Military personnel of all ranks on the active list, as also military personnel under civil control, shall be permanently subject, during the period of their service, to the following regulations:

"1. They shall not be eligible either to vote or to stand for election;

"2. They shall have neither the right to strike nor that of organization in trade unions;

"3. Their freedom of expression, of movement, of assembly and of association shall be restricted by decree, as determined by the necessities of defence;

"4. They may not contract marriage without authorization through official channels granted under conditions determined by decree."

[2] Published in the *Journal officiel de la République du Sénégal*, No. 3584, special edition, of 28 February 1963.

ACT No. 63-32 OF 8 JUNE 1963 [3]

This Act authorizes the President of the Republic to ratify the Charter of the Organisation of African Unity signed at Addis Ababa on 25 May 1963 by the Governments of the Democratic and Popular Republic of Algeria; the Kingdom of Burundi; the Central African Republic; the Republic of Chad; the Republic of Congo (Brazzaville); the Republic of Congo (Leopoldville); the Republic of Dahomey; the Empire of Ethiopia; the Gabon Republic; the Republic of Ghana; the Republic of Guinea; the Republic of the Ivory Coast; the Republic of Liberia; the Republic of Libya; the Malagasy Republic; the Republic of Mali; the Islamic Republic of Mauritania; the Kingdom of Morocco; the Republic of the Niger; the Federal Republic of Nigeria; the Rwandese Republic; the Republic of Senegal; Sierra Leone; the Somali Republic; the Republic of the Sudan; the Republic of Tanganyika; the Togolese Republic; the Republic of Tunisia; Uganda; the United Arab Republic; and the Republic of the Upper Volta.[4]

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[3] Published in the *Journal officiel de la République du Sénégal*, No. 3609, of 20 June 1963.
[4] See pp. 421-423.

SOMALIA

NOTE[1]

The Somali Republic recognizes the principles of the dignity and equality of the human beings. The Somali Constitution which provisionally came into force on 1 July 1960,[2] when the Somali Republic was born, and was approved by popular referendum on 20 June 1961, embodies in Articles 8 to 46 most of the human rights and fundamental freedoms enshrined in the Universal Declaration of Human Rights and provides in Article 7 that the laws of the Republic "shall comply, in so far as possible, with the principles of the Universal Declaration of Human Rights. Laws and regulations have been passed since 1 July 1960 to implement the constitutional provision relating to human rights and fundamental freedoms. The extracts from the Constitution, laws and regulations relating to human rights and fundamental freedoms in the Somali Republic are given below in the order in which they are dealt with in the Universal Declaration of Human Rights.

Dignity of Human Beings

Constitution, art. 23 (Social Equality):

All persons are equal in social dignity.

Equality of the Citizens

Constitution, art. 3 (Equality of the Citizens):

All citizens, without distinction of race, national origin, birth, language, religion, sex, economic or social status, or opinion, shall have equal rights and duties before the law.

Right to Life, Liberty and Personal Security

Constitution, art. 16 (1) (Right to Life and Personal Integrity):

Every person shall have the right to life and to personal integrity.

Constitution, art. 17 (1) (Personal Liberty):

Every person shall have the right to personal liberty.

Prohibition of Slavery and Servitude

Constitution, art. 17 (2) (Personal Liberty):

Subjection to any form of slavery or servitude shall be punishable as a crime.

Prohibition of Torture or Inhuman Punishment, etc.

Constitution, art. 18 (Guarantees in Cases of Restriction of Personal Liberty):

Any physical or moral violence against a person subject to restriction of personal liberty shall be punishable as a crime.

Constitution, art. 44 (Social Purpose of Punishment):

Punishments restrictive of personal liberty shall not consist of treatment contrary to feelings of humanity or be such as to obstruct the moral rehabilitation of the convicted person.

Equality Before the Law

Constitution, art. 3 (Equality of the Citizens):

All citizens, without distinction of race, national origin, birth, language, religion, sex, economic or social status, or opinion, shall have equal rights and duties before the law.

Constitution, art. 38 (Right to Institute Legal Proceedings):

Every person shall have the right to institute legal proceedings under conditions of full equality, before a lawfully constituted court.

Effective Remedy Against Violations of Fundamental Rights

Constitution, art. 38 (Right to Institute Legal Proceedings):

Every person shall have the right to institute legal proceedings, under conditions of full equality, before a lawfully constituted court.

Constitution, art. 5 (3) (Supremacy of the Law):

Administrative acts contrary to law and legislative acts contrary to the Constitution may be invalidated on the initiative of the interested party in accordance with the provisions of the Constitution.

Constitution, art. 39 (Protection Against Acts of the Public Administration):

Judicial protection against acts of the public administration shall be allowed in all cases, in the manner and with the effects prescribed by law.

[1] Note furnished by the Government of Somalia.

[2] For extracts from the Constitution of 1960, see *Yearbook on Human Rights for 1960,* pp. 301-306.

Prohibition of Arbitrary Arrest, Detention or Exile

Arbitrary Arrest

Constitution, art. 17 (Personal Liberty):

3. No person shall be liable to any form of detention or other restriction of personal liberty except when apprehended *in flagrante delicto* or pursuant to an act of the competent judicial authority, stating the grounds thereof, in the cases and in the manner prescribed by law.

4. In cases of urgent necessity, expressly defined by law, the competent administrative authority may adopt provisional measures which shall be communicated without delay to the competent judicial authority and confirmed by it within the time and in the manner prescribed by law, failing which such measures shall be deemed to have been revoked and shall be void.

5. In each case of detention or other restriction of personal liberty, the reasons for the measure shall be communicated to the person concerned without delay.

6. No person shall be subjected to security measures except in the cases and in the manner prescribed by law and pursuant to an act of the competent authority, stating the grounds thereof.

Criminal Procedure Code,[3] art. 29 (Execution of Arrests):

1. A person to be arrested must be so informed, together with the reasons for the arrest.

2. If the person to be arrested:

(*a*) forcibly resists the arrest;

(*b*) attempts to escape;

the person making the arrest may use all lawfull means necessary to effect the arrest.

3. A person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

4. If it is absolutely certain that an arrest was made by mistake, the person arrested shall be released immediately, even by the person who carried out the arrest.

Criminal Procedure Code, art. 35 (Mandatory Arrest of Persons Caught in the Act of Committing (*in flagrante delicto*))

A person shall be arrested without warrant if caught in the act of committing (*in flagrante delicto*):

(*a*) any offence, attempted or committed, against the personality of the State for which the punishment is imprisonment or a more serious punishment;

(*b*) any offence, attempted or committed, of:

(i) escape from lawful custody;

(ii) devastation and pillage;

(iii) slaughter;

(iv) knowingly causing epidemics: poisoning of water or foodstuffs;

(v) carnal violence, acts of lust committed with violence, unnatural offences committed with violence, abduction for purposes of lust;

(vi) abortion without consent;

(vii) murder, infanticide, death caused to a person with his own consent with aggravating circumstances, grievous or very grievous hurt, preterintentional homicide, affray with aggravating circumstances;

(viii) insult with aggravating circumstances in respect of which proceedings are initiated by the State;

(ix) reduction to slavery, dealing and trading in slaves, enforced subjection;

(x) seizure of a person;

(xi) theft in respect of which proceedings are initiated by the State, robbery, extortion, killing or injuring of animals belonging to another in respect of which proceedings are initiated by the State;

(*c*) any other offence for which the law prescribes mandatory arrest of a person caught *in flagrante delicto.*

Criminal Procedure Code, art. 36 (Discretionary Arrest of Persons Caught *in flagrante delicto*):

1. A person may be arrested without warrant when caught *in flagrante delicto* for an offence:

(*a*) punishable with maximum imprisonment of more than one year or with a heavier penalty;

(*b*) punishable with imprisonment and the offence relates to:

(i) drunkenness;

(ii) firearms, ammunition or explosives;

(iii) games of chance;

(iv) unjustified possession of valuables, animals, altered keys, or pick-locks;

(v) harmful substances or narcotic drugs;

(*c*) punishable with imprisonment where the offence is committed by:

(i) a person released on bail;

(ii) a recidivist under the terms of article 61 of the Penal Code;

(*d*) for which arrest without warant is authorized by law.

2. In the cases referred to in the preceding paragraph, where the offence may only be prosecuted on the complaint of the injured party, arrest *in flagrante delicto* may be made when the injured party reports to the nearest Judge, the office of the Attorney-General or a Police Officer that he has the intention to make a complaint for such offence.

Criminal Procedure Code, art. 38 (Arrest of Persons Suspected of Having Committed an Offence):

A Police Officer may arrest a person without warrant:

[3] Promulgated by the President of the Republic on 1 June 1963.

(*a*) in case of urgent necessity when there are grounds to believe that:

(i) the person to be arrested has committed an offence for which the maximum punishment is imprisonment for more than two years or a heavier punishment;

(ii) a warrant of arrest cannot be obtained in time;

(iii) it is likely that the person to be arrested will not be able to be found if he is not arrested immediately;

(*b*) under the provisions of the second paragraph of article 50.

Criminal Procedure Code, art. 40 (Condition required for the Issue of a Warrant of Arrest and Authorities empowered to Issue Such Warrant)

1. A warrant of arrest may be issued when there are grounds to believe that:

(*a*) an offence has been committed;

(*b*) the offence was committed by the accused person.

2. A warrant of arrest may only be issued by:

(*a*) the competent Judge, up to the time of commencement of the trial in a Court of first instance;

(*b*) the President of the competent Court, at any other stage of the proceedings.

Criminal Procedure Code, art. 39 (Person Arrested Without Warrant to be taken before a Judge):

1. A person arrested without a warrant shall be taken immediately, and in any case not later than 48 hours from the time of his arrest, before the competent Court or before the Court nearest to the place of arrest: provided that the time necessary to travel to the Court from the place of arrest shall not be included in the forty-eight hours.

2. A Police Officer taking an arrested person before a Judge shall, at the same time, prepare and submit to him a summary report showing:

(*a*) the facts of the case and the reasons for the arrest;

(*b*) details of the evidence obtained;

(*c*) when possible the personal details of:

(i) the arrested person,

(ii) the injured party,

(iii) any person having information concerning the circumstances of the offence.

3. Having examined the summary report, the Judge:

(*a*) if the case falls within the provisions of the second paragraph of article 70, shall order that no proceedings shall be instituted against the person arrested, in accordance with the provisions of article 77 and order the immediate release of the person arrested;

(*b*) shall order the release of the arrested person on bail if:

(i) the offence committed is one for which a warrant of arrest cannot be issued in accordance with the provisions of articles 42 and 43; or

(ii) if the arrest was not carried out in accordance with the provisions of articles 35, 36, 38 or 50;

(*c*) in other cases shall confirm the arrest and remand the arrested person to custody in accordance with the provisions of article 46 unless he releases him on bail in accordance with articles 59 and 60.

Criminal Procedure Code, art. 45 (Person Arrested on a Warrant of Arrest to be taken before a Judge):

1. Unless he is released on bail in accordance with the provisions of the second paragraph of article 62, a person arrested on a warrant of arrest shall without unnecessary delay be taken before:

(*a*) a competent Judge, or

(*b*) a Judge of the Court nearest to the place of the arrest if the competent Judge is situated more than 50 kilometres from such place.

2. In so far as applicable, the provisions of sub-paragraph (*c*) of the third paragraph, and of the fifth, sixth and seventh paragraphs of article 39 shall apply: provided that if bail is granted by a Court other than the competent Court, such decision may be modified or revoked by the competent Court.

Criminal Procedure Code, art. 32 (Provisions relating to Arrest to be Strictly Observed):

1. A Judge to whom an arrested person is taken in accordance with articles 39 and 45 shall enquire whether:

(*a*) the provisions of sections 2 and 3 of this chapter were strictly followed in making the arrest, and

(*b*) there has been any unjustifiable delay in bringing the arrested person before him.

2. If he finds any violation of the said provisions or finds unjustified delay in the presentation of the arrested person, he shall:

(*a*) cause criminal proceedings to be instituted against the person responsible if such violation or delay amounts to an offence;

(*b*) order that disciplinary action be taken by the competent authority against the person responsible if the violation or delay does not amount to an offence.

Preventive Detention

Public Order Law (Law No. 21 of 26 August 1963), art. 71 (Power to Issue Ordinances):

1. During the state of emergency, the Minister of Interior, or the Governor territorially competent, with the authorization of the Minister of Interior, may, by ordinance, provisionally provide for:

. . .

(*b*) the arrest, of persons suspected of a crime or activities contrary to public order and security;

. . .

2. The Police Authorities or, in cases of more serious emergency, the Military Authorities, may

be empowered to enforce the measures referred to in the preceding paragraph.

Public Order Law, art. 72 (Confirmation of Restrictive Measures)

1. All measures concerning arrest ... of persons ... taken during a state of emergency under an ordinance referred to in article 71, paragraph 1 (*b*), shall be promptly notified to the competent Court for confirmation within thirty days from such notification.

2. Except in cases of criminal proceedings, the arrest of persons suspected of activities contrary to public order and security may be confirmed for such period as is necessary to prevent the danger of disorders; provided that such period shall not exceed ninety days. The Regional Court within whose territorial jurisdiction the arrest was made shall have exclusive jurisdiction in the matter.

3. An appeal against the confirmation referred to in the preceding paragraph shall lie to the Supreme Court and shall be filed in the manner prescribed by law.

Exile

Constitution, art. 11 (1) (Right of Residence):

Every citizen shall have the right to reside and travel freely in any part of the territory of the State and shall not be subjected to deportation.

Free and Fair Trial

Constitution, art. 38 (Right to Institute Legal Proceedings):

Every person shall have the right to institute legal proceedings, under conditions of full equality, before a lawfully constituted Court.

Constitution, art. 97 (2) (Judicial Procedure):

No judicial decision shall be taken unless all the parties have had an opportunity of presenting their case.

Presumption of Innocence in Criminal Proceedings

Constitution, art. 43 (2) (Penal Liability):

The accused shall be presumed innocent until the conviction has become final.

Criminal Procedure Code, art. 13 (2) (The Accused):

The accused is presumed innocent until the conviction has become final.

Retroactive Penal Law

Constitution, art. 42 (Non-retroactive Nature of Penal Law):

No person may be convicted for an act which was not punishable as an offence under the law in force at the time when it was committed; nor may a heavier punishment be imposed than the one applicable at that time.

Penal Code,[4] art. 2 (Time at which Penal Laws Take Effect):

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 paragraph shall not apply.

Protection from Arbitrary Interference with the Privacy, Family, Home or Correspondence and from Attacks upon Honour and Reputation

Privacy and Home

Constitution, art. 21 (Freedom of Domicile):

1. Every person shall have the right to the inviolability of his domicile.

2. No inspection, search or seizure shall be carried out in the domicile or in any other place reserved for personal use except in the cases and under the provisions laid down in paragraphs 3, 4 and 5 of article 17 and in other cases as prescribed by law for judicial purposes, and in the manner prescribed therefor.

3. Inspections for public health, safety or fiscal purposes shall not be carried out except in the cases and in the manner prescribed by law.

Criminal Procedure Code, art. 56 (Execution of Warrants of Search and of Seizure):

1. A warrant of search or of seizure may not be executed in a private dwelling house between the hours of 6 p.m. and 7 a.m. unless:

(*a*) there is some urgent necessity for its execution; or

(*b*) the issuing authority has authorized its execution at any hour.

2. One of the duplicates of the warrant shall be given to the person to be searched or to the person in charge of the place or thing to be searched or seized.

Criminal Procedure Code, art. 57 (Other Rules to be observed in Searches and Seizure):

3. In carrying out the search of a person:

(*a*) decency shall be fully observed, and

(*b*) the search of a female shall only be undertaken by a female.

4. If a female is in charge of the place to be searched, or of the object to be searched or seized, and such female does not, according to custom, appear in public, such female shall be given every reasonable opportunity to retire to a suitable place or to cover herself adequately.

[4] Legislative Decree No. 5 of 16 December 1962.

Penal Code, art. 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.

Penal Code, art. 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.

Correspondence

Constitution, art. 22 (Freedom of Correspondence):

1. Every person shall have the right to freedom and secrecy of written correspondence and of any other means of communication.

2. Limitations thereon may be imposed only in the cases and under the provisions laid down in paragraphs 3, 4 and 5 of article 17 and in other cases as prescribed by law for judicial purposes, and in the manner prescribed therefor.

Penal Code, art. 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. 300 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 the 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 provision of the present section, the term "correspondence" includes letters, telegram or telephone.

Penal Code, art. 473 (Fraudulent Ascertainment, Interruption and Prevention of Telegraphic or Telephonic Communications of Conversations):

1. Whoever, by fraudulent means, ascertains the contents of a telegraphic communication not addressed to him, or of a telephonic conversation between other persons, or interrupts or prevents the same, shall be punished with fine from Sh. So. 100 to 3,000.

2. Where the offender, without good cause, discloses, wholly or in part, the contents of the communication or conversation, he shall be punished, where the act results in harm, with imprisonment up to three years.

3. The crime shall be punishable on the complaint of the party injured.

Penal Code, art. 474 (Disclosing the Contents of Correspondence):

1. Whoever, apart from the cases referred to in article 472, having wrongfully ascertained the contents of correspondence not addressed to him, which ought to have remained secret, discloses the same, wholly or in part, without good cause, shall be punished, where the act results in harm, with imprisonment up to six months or with fine from Sh. So. 1,000 to 5,000.

2. The crime shall be punishable on the complaint of the party injured.

Penal Code, art. 475 (Interception, Removal and Suppression of Correspondence Committed by a Person Employed in the Postal, Telegraph or Telephone Service):

1. Any person employed in the postal, telegraph or telephone services who, by abusing his position, commits any of the acts referred to in paragraph 1 of article 472, shall be punished with imprisonment from six months to three years.

2. Where the offender, without good cause, discloses, wholly or in part, the contents of the correspondence, he shall be punished, where the act does not constitute a more serious offence, with imprisonment from six months to five years and with fine from Sh. So. 300 to 5,000.

Penal Code, art. 476 (Disclosure of Contents of Correspondence by a Person Employed in the Postal, Telegraph or Telephone Services):

Any person employed in the postal, telegraph or telephone services, who has, in such capacity, knowledge of the contents of open correspondence, or of a telegraphic communication, or of a telephonic conversation, and discloses the same, without good cause, to persons other than the one for whom it is intended, or to a person other than those between whom the communication or the conversation took place, shall be punished with imprisonment from six months to three years.

Honour

Penal Code, art. 451 (Insult):

1. Whoever offends the honour or dignity of a person by words or act in his presence, 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.

Penal Code, art. 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 of fine not less than Sh. So. 4,000.

Penal Code, art. 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 to be instituted.

3. Where the truth of the act attributed to the party injured is proved, the offender shall not be punishable.

Penal Code, art. 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.

Freedom of Movement and Residence within the State

Constitution, art. 11 (1) (Right of Residence):

Every citizen shall have the right to reside and travel freely in any part of the territory of the State and shall not be subjected to deportation.

Right to Leave any Country and to Return

Constitution, art. 11 (2) (Right of Residence):

Every citizen shall have the right to leave the territory of the State and to return thereto.

Asylum

Constitution, art. 19 (3) (Extradition and Political Asylum):

Any alien persecuted in his own country for political offences shall have the right to asylum in the territory of the State in the cases and under the conditions provided by law.

Nationality

Constitution, art. 2 (The People):

1. The people consists of all the citizens.

2. The manner of acquiring and losing citizenship shall be established by law.

3. No person may be denied citizenship or deprived thereof for political reasons.

Citizenship Law (Law No. 28 of 22 December 1962), art. 1 (Acquisition of Citizenship):

Somali citizenship may be acquired by operation of law or by grant.

Citizenship Law, art. 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.

Citizenship Law, art. 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".

Citizenship Law, art. 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.

Citizenship Law, art. 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.

Citizenship Law, art. 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 proposal 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 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.

3. The President and Members of the Commission shall be chosen from among qualified Somali citizens representing the various sections of the national community.

Citizenship Law, art. 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 voluntarily serving in the armed forces of a foreign country, continues to retain his post, notwithshstanding 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.

Citizenship Law, art. 11 (Deprivation 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 or 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.

Citizenship Law, art. 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 at least three years and proves that he has fulfilled the conditions laid down in this law for the acquisition of citizenship.

Citizenship Law, art. 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 who is a citizen and is the wife of a citizen who loses his citizenship, shall lose it too, 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.

Citizenship Law, art. 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.

Citizenship Law, art. 15 (Minors in Special Circumstances):

1. Any minor who is the child of unknown parents and was born in the territory of the Somali Republic, shall be considered a Somali citizen,

provided 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.

Citizenship Law, 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.

Regulation for the Implementation of Citizenship Law (D.P.R. No. 129 of 19 February 1963), art. 17 (Judicial Guarantees):

Appeals against final administrative decisions relating to the acquisition, loss, deprivation or recovery of citizenship may be filed by the persons concerned or by the Attorney-General in the Supreme Court according to the procedure laid down in the law on the Organization of the Judiciary.

Right to Marry and to Found a Family

Constitution, art. 30 (Personal Status):

1. Every person shall have the right to a personal status in accordance with his respective laws or customs.

2. The personal status of Muslims is governed by the general principles of the Islamic Sharia.

Constitution, art. 31 (Protection of the Family):

1. The family based on marriage, as being the fundamental element of society, shall be protected by the State.

2. Parents shall provide for the support, education and instruction of their children, as required by law.

3. The law shall provide for the fulfilment of the obligations set out in the preceding paragraph in case of death of the parents and whenever, by reason of incapacity or otherwise, the parents do not perform them.

4. Children who are of full age shall be obliged to support their parents when the latter are unable to provide for themselves.

5. The State shall protect motherhood and childhood and encourage the institutions necessary for this purpose.

6. The State shall recognize the protection of children of unknown parents as its duty.

Right to Property

Constitution, art. 24 (Property):

1. The right to own property shall be guaranteed by law, which shall define the modes of acquisition and the limits to the enjoyment thereof for the purpose of ensuring its social function.

2. Property may be expropriated only for reasons of public interest and in the manner prescribed by law, in exchange for equitable and timely compensation.

Freedom of Thought and Conscience

Constitution, art. 28 (Freedom of Opinion):

1. Every person shall have the right freely to express his own opinion in any manner, subject to any limitations which may be prescribed by law for the purpose of safeguarding morals and public security.

2. Expressions of opinion may not be subject to prior authorization or censorship.

Freedom of Religion

Constitution, art. 29 (Freedom of Religion):

Every person shall have the right to freedom of conscience and freely to profess his own religion and to worship it, subject to any limitations which may be prescribed by law for the purpose of safeguarding morals, public health or order. However, it shall not be permissible to spread or propagandize any religion other than the Religion of Islam.

Freedom of Assembly

Constitution, art. 25 (Freedom of Assembly):

1. Every person shall have the right to assemble in a peaceful manner for a peaceful purpose.

2. The law may provide that previous notice of public meetings be given to the authorities. Meetings may be forbidden only for reasons of public health, safety, morality, order or security.

Public Order Law, art. 13 (Public Meetings):

1. The promoters of a meeting to be held in a public place or in a place open to the public shall give notice thereof to the District Commissioner at least three days in advance.

2. A meeting shall be deemed public where, even though convened as a private meeting, it assumes the character of a meeting which is not private because of the locality in which it is held or the number of persons, or its purpose or object.

3. Meetings ordinarily held in their offices by associations, including political associations, shall be deemed private meetings, except where such meetings have the character of regional or national meetings or congresses.

4. For reasons of public health, safety, morality, order or security, the District Commissioner may prohibit or suspend a public meeting, or make it subject to special conditions as to the time and place, by a written order stating the grounds therefor, and shall give immediate notice thereof to the Governor.

Public Order Law, art. 14 (Religious Functions and Funerals):

The provisions of the preceding article relating to notice shall not apply to religious functions held in open places and to funerals.

Public Order Law, art. 15 (Prohibition to Carry Arms at Public Meetings):

1. No person shall be permitted to carry arms at public meetings, even though he is the holder of a licence to carry arms.

2. The District Commissioner may, however, grant special authorizations to carry arms, provided it is in accordance with custom.

Public Order Law, art. 16 (Dissolution of Public Meetings):

A public meeting may be dissolved:

where the promoters fail to give prior notice thereof; or

where the conditions referred to in paragraph 4 of article 13 are not complied with; or

where, at a meeting held in public place or a place open to the public, seditious manifestations occur or seditious shoutings are uttered which may in any manner disturb public order or safety; or

where an offence is committed during such meetings.

Public Order Law, art. 17 (Procedure for Dissolving Public Meetings):

1. Where, in the cases provided for under the preceding article, it is necessary to dissolve a public meeting, any Public Order Authority shall request the persons present at the meeting to disperse.

2. Where such request is not complied with, the above mentioned Authorities shall order the dissolution of the meeting by means of three distinct warnings, expressed in the most effective manner.

3. Where such warnings are not complied with, the meeting shall be dissolved by force and any person who refuses to obey may be arrested.

Public Order Law, art. 18 (Processions):

The provisions governing public meetings shall apply also to processions in public streets.

Public Order Law, art. 19 (Uniforms, Badges and Emblems):

1. Persons other than military or para-military personnel shall be forbidden to wear uniforms unless such uniforms are clearly distinguishable from those used by the above mentioned military or para-military personnel.

2. The District Commissioner may, by an order stating the grounds therefor, prohibit the wearing of clothes or badges, or the exhibition of flags or emblems in a public place, where in his opinion such clothes, badges, flags or emblems may disturb public order.

Public Order Law, art. 20 (Violations of the Provisions Governing Public Meetings and Processions):

1. Whoever contravenes the provisions of this chapter shall be punished, where the act does not constitute a more serious offence, with imprisonment for a contravention up to three months or with fine for a contravention up to Sh. So. 750.

2. Any arms carried at meetings or processions without the prescribed authorization shall be forfeited.

Freedom of Association

Constitution, art. 26 (Freedom of Association):

1. Every person shall have the right freely to form associations without authorization.

2. No person may be compelled to join an association of any kind or to continue to belong to it.

3. Secret associations or those having an organization of military character shall be prohibited.

Public Order Law, art. 58 (Information to be Furnished by Associations of Every Kind, Nature and Aim):

1. Associations of every kind, nature and aim shall submit in writing to the Regional Governor territorially competent:

the deed establishing the association;

the constitution;

a list of office-bearers of the association;

the names of promoters;

the location of the headquarters and local branches.

2. The aforementioned information shall be communicated within a month from the date of the *de facto* formation of the associations.

3. It shall be the duty of the promoters, directors or representatives of the associations concerned to submit such information.

4. Whenever the constitution is amended or the office-bearers are changed or the office of the headquarters or local branches are transferred from one place to another, notification thereof shall be given within the same time-limit.

5. The provisions of the preceding paragraphs do not apply to associations which are recognized as legal persons under law.

Public Order Law, art. 59 (Suspension of the Activities of Associations of Every Kind, Nature and Aim):

1. Associations of every kind, nature and aim, whose activities cause serious disturbance to public order or constitute a serious offence to morals may be suspended for a period not exceeding three months, by a written order, stating the reasons therefor, of the Governor territorially competent.

2. Except in cases of urgent necessity, the Governor, before issuing the order, shall notify the association concerned of the charges and hear its explanations, if any.

Public Order Law, art. 60 (Dissolutions of Associations which Violate article 12 of the Constitution):

Associations of every kind, nature and aim established or functioning contrary to the provisions of article 12 of the Constitution shall be dissolved by decree of the Supreme Court in a proceeding initiated by the Public Order Authority for the purpose.

Public Order Law, art. 61 (Dissolution of Other Associations):

Associations other than those referred to in article 12 of the Constitution, established or functioning contrary to law, or carrying on activities contrary to public order or morals, shall be dissolved by decree of the Minister of Interior, having heard the Council of Ministers.

Public Order Law, art. 62 (Penal Provisions and Judicial Guarantee):

1. Whoever contravenes the provisions of this Part, shall be punished, where the act does not constitute a more serious offence, with imprisonment for a contravention up to six months or with fine for a contravention up to Sh. So. 1,000.

Right to take part in Government

Constitution, art. 8 (Right to Vote):

1. Every citizen who possesses the qualifications required by law shall have the right to vote.

2. The vote shall be personal, equal, free and secret.

Constitution, art. 51 (National Assembly):

1. The National Assembly shall consist of deputies elected by the people by universal, free, direct and secret ballot, and of deputies as of right.

2. The number of deputies and the electoral system shall be established by law.

3. Every citizen who has the right to vote and who in the year of the elections has completed at least twenty-five years of age shall be eligible to be a deputy. The law shall prescribe the grounds for ineligibility and incompatibility with membership in the National Assembly.

4. Whoever has been President of the Republic shall become a deputy for life as of right, in addition to the elected deputies, provided that he has not been convicted of any of the crimes referred to in paragraph 1 of article 76.

Constitution, art. 52 (Term of Office and Elections):

1. Each legislature shall be elected for a period of five years starting from the proclamation of the electoral results. Any modification of this term of office shall have no effect on the duration of the legislature during which such decision is taken.

2. The date for the elections to the new Assembly shall be fixed by the President of the Republic and shall take place during the last thirty days of the legislature in session.

3. The new Assembly shall meet for the first time within thirty days of the proclamation of the electoral results.

Constitution, art. 53 (Dissolution of the Assembly):

1. The Assembly may be dissolved before the end of its term of office by the President of the Republic, having heard the opinion of the President of the Assembly, whenever it cannot discharge its functions or discharges them in a manner prejudicial to the normal exercise of legislative activity.

2. By the same decree dissolving the Assembly, the President of the Republic shall fix the date for the new elections and the elections shall take place within sixty days of the dissolution.

3. No dissolution shall take place during the first year in office of the Assembly, nor during the last year in office of the President of the Republic.

4. The outgoing Assembly shall retain its powers in all cases until the proclamation of the electoral results for the new Assembly.

Political Elections Law (Law No. 4 of 22 January 1964); art. 1 (Deputies Elected to the National Assembly):

1. The number of Deputies elected to the National Assembly shall be 123.

2. The system and mode of election of Deputies shall be governed by this law.

Political Elections Law, art. 2 (Qualifications of Voters):

1. Somali citizens,

(*a*) who have completed eighteen years of age in the year in which the elections are held;

(*b*) who have not been declared of unsound mind by judicial authorities;

(*c*) who have not been interdicted from public office or deprived of electoral rights as a consequence of penal conviction;

(*d*) who are not serving sentences of imprisonment;

shall be entitled to vote for the election of Deputies.

2. The Minister of Interior is authorized to make provisions and take the necessary steps to ensure that voting in an electoral district should, as far as possible, be restricted to persons normally residing therein.

3. Every voter shall have one vote.

4. The vote shall be personal, equal, free direct and secret.

Political Elections Law, art. 3 (Qualifications of Candidates):

1. Voters who have completed twenty-five years of age in the year in which the elections are held and who prove that they can read and write, shall be eligible to be elected as Deputies.

2. Members of the Judiciary, members of the armed forces or para-military organizations, Regional Governors, District Commissioners and Heads of Sub-Districts shall be ineligible to be elected as Deputies, provided that such grounds of ineligibility shall not apply if the services of the person concerned have been terminated before the presentation of the lists of candidates in accordance with article 12.

Political Elections Law, art. 4 (Incompatibility):

During their term of office, Deputies shall not hold any of the offices referred to in paragraph 2 of the previous article, and shall not be Chairmen of Local Councils or members of District or Local

Councils, or employees of the State or other public bodies. Where a deputy does not opt for his new office within fifteen days from his appointment or election to such office, he shall automatically forfeit such office.

Political Elections Law, art. 5 (Fixing of Elections):

1. The elections of Deputies shall be fixed by Decree of the President of the Republic, countersigned by the Prime Minister and by the Minister of Interior within the time-limits referred to in articles 52 or 53 of the Constitution.

2. Such Decree shall indicate the date of voting.

Political Elections Law, art. 6 (Subdivision of the Territory for Elections):

1. For electoral purposes, the territory of the Republic shall be divided into electoral districts.

2. Each electoral district shall be subdivided into electoral sections. The Minister of Interior shall arrange for the subdivision of the electoral district into electoral sections at least forty days before the date of elections, on the proposal of the District Commissioner territorially competent having heard the District and Local Councils concerned.

Political Elections Law, art. 7 (Electoral System):

1. The number of Deputies to be elected in each electoral district is established in the Schedule attached to this law.

2. Each political party, which is regularly constituted, may present a list of candidates in each electoral district. The number of candidates contained in each list shall not be less than twice, nor more than thrice, the number of Deputies to be elected in each electoral district.

3. The number of seats assigned to each list of candidates shall be proportional to the votes obtained by the list in the electoral district, and shall be calculated on the basis of the quotient and the highest remainder.

4. Where only one list is presented in an electoral district, no vote shall be taken and as many candidates as the number of Deputies to be elected in such electoral district shall be proclaimed elected in the order in which they are indicated in the list.

Right of Access to Public Office

Constitution, art. 9 (Right of Access to Public Office):

Every citizen who possesses the qualifications required by law shall be equally eligible for public office.

Civil Service Law (Law No. 7 of 15 March 1962); art. 6 (Requirements for Admission to the Civil Service):

1. Appointment to the civil service shall be open only to citizens who are at least sixteen years of age, physically fit for appointment to the office, of good moral conduct and who possess the following educational qualifications:

(*a*) a University degree or its equivalent for Division A;

(*b*) a Higher Secondary School diploma or its equivalent for Division B;

(*c*) a Lower Secondary School diploma or its equivalent for Division C;

(*d*) an Elementary School diploma or its equivalent for Division D.

2. An applicant for admission to the civil service must possess the prescribed qualifications on the date of the application.

Social Security

Constitution, art. 37 (Social Security and Assistance):

1. The State shall promote social security and assistance by law.

2. The State shall guarantee to its civil and military employees the right to pension; it shall also guarantee, in accordance with law, assistance in case of accident, illness or incapacity for work.

Constitution, art. 32 (Welfare Institutions):

The State shall promote and encourage the creation of welfare institutions for physically handicapped persons and abandoned children.

Right to Work

Constitution, art. 36 (Protection of Labour):

1. The State shall protect labour and encourage it in all its forms and applications.

2. Forced and compulsory labour of any kind shall be prohibited. The cases in which labour may be ordered for military or civil necessity or pursuant to a penal conviction shall be prescribed by law.

3. Every worker shall have the right to receive, without any discrimination, equal pay for work of equal value, so as to ensure an existence consistent with human dignity.

4. Every worker shall have the right to a weekly rest and annual leave with pay; he shall not be compelled to renounce it.

5. The law shall establish the maximum working hours and the minimum age for the various types of work and shall ensure that minors and women work only under suitable conditions.

6. The State shall protect the physical and moral integrity of the workers.

Right to form Trade Unions

Constitution, art. 13 (Right to Form Trade Unions):

1. Every citizen shall have the right to form trade unions or to join them for the protection of his economic interest.

2. Trade unions organized according to democratic principles shall be considered juridical persons according to law.

3. Trade unions being juridical persons may negotiate collective labour contracts binding on their members.

Labour Code (Legislative Decree No. 25 of 15 November 1958), art. 6 (Purposes of Trade Unions):

The organization of trade unions shall be free. The purposes of a trade union shall be to study and protect the legal, economic and moral interests of the branch of activity concerned.

Labour Code, art. 7 (Organization of Trade Unions):

Persons engaged in the same occupation or trade, or in related occupations or trades, may establish a trade union.

Every person shall be free to join a single trade union of his own choosing, within the framework of his occupation.

Labour Code, art. 8 (Trade Union Autonomy):

Every trade union shall have the right to draw up its constitution and rules to elect its representatives in full freedom, to organize its administration and activities, and to formulate its programme.

Labour Code, art. 9 (Freedom of Association):

It shall not be lawful to engage in any act of discrimination or any act restricting the right of freedom of association, and more particularly to:

(1) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(2) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities.

It shall likewise be unlawful for any employers' organization to engage in any act of interference, including financial interference, in the establishment or functioning of a workers' organization, and vice versa.

Labour Code, art. 10 (Establishment of Trade Unions):

Trade Unions shall be established by notarial act. They shall have a minimum of 50 members in the case of workers, and five members in the case of employers.

The founders of a trade union shall deposit the articles of association and constitution with the Labour Department of the Ministry of Social Affairs within a fortnight of the articles being drawn up.

The Ministry of Social Affairs, after checking that the articles have been drawn up in due form, shall make a decree authorizing the registration of the trade union in the appropriate register and shall order notice thereof to be published in the *Bollettino Ufficiale della Somalia.*

The same procedure shall be followed in the case of any amendment of the constitution.

Every subsequent document implying changes in the membership, representation or administration of the trade union, or the approval of the accounts, shall be deposited with the Labour Department of the Ministry of Social Affairs within a fortnight of its being drawn up.

Labour Code, art. 11 (Representatives and Officers):

The representatives and officers of a trade union shall be domiciled in Somalia, be in possession of their civil rights and not have been debarred from holding public office.

Labour Code, art. 12 (Affiliation to a Trade Union):

Any person who has reached the age of eighteen years may freely join a trade union.

Any person under eighteen but over fifteen years of age may join a trade union, if there is no objection from his father or the person legally substituted for his father.

Labour Code, art. 13 (Right of Withdrawal):

Any member of a trade union may withdraw from it at any time, notwithstanding any stipulation to the contrary.

Labour Code, art. 14 (Legal Status of Trade Unions):

The organization, administration, extinction, and dissolution of trade unions shall be governed by the general provisions relating to incorporated associations having their headquarters in Somalia.

Labour Code, art. 15 (Legal Personality of Unions):

Registered unions shall be endowed with legal personality.

They may sue and be sued at law and may acquire movable and immovable property, either by way of gift or purchase, subject to compliance with the legislation in force.

Right to Rest and Leisure

Constitution, art. 36 (4) (Protection of Labour):

Every worker shall have the right to a weekly rest and annual leave with pay; he shall not be compelled to renounce it.

Labour Code, art. 82 (Weekly Rest):

A weekly rest shall be compulsory. Subject to the exceptions mentioned in the fourth paragraph of this section, it shall consist of at least 24 consecutive hours each week.

As far as possible, it shall be granted simultaneously to all the workers employed in a given establishment.

Workers shall also be entitled to a rest day on public holidays recognized as such by the State.

The Minister of Social Affairs, in consultation with the Council of Ministers and the Central Labour Commission, shall make rules for the application of the foregoing paragraphs and shall more particularly specify the occupations in which the rest day may be granted in rotation or replaced by other traditional holidays or granted in respect of periods longer than a week.

Labour Code, art. 83 (Annual Leave):

Workers shall be entitled to a period of annual leave with pay. Such leave shall be granted by

the employer at the rate of a fortnight for every year of service in the case of salaried employees and ten days for every year of service in the case of other workers.

Labour Code, art. 84 (Restrictions on Entitlement to Leave):

An entitlement to leave with pay shall normally be acquired after a full year of continuous service: provided that aggregate service shall also be counted up to a maximum of two years.

Periods of leave may be added together up to a maximum of three years in the case of workers who are not natives of Somalia.

Where the employment relationship ceases before the worker has taken the leave to which he is entitled under the preceding section, he shall be paid compensation for any leave not taken.

Right to an Adequate Standard of Living

Constitution, art. 31 (Protection of the Family);

2. Parents shall provide for the support, education and instruction of their children, as required by law.

3. The law shall provide for the fulfilment of the obligations set out in the preceding paragraph in case of death of the parents and whenever, by reason of incapacity or otherwise, the parents do not perform them.

4. Children who are of full age shall be obliged to support their parents when the latter are unable to provide for themselves.

Constitution, art. 32 (Welfare Institutions):

The State shall promote and encourage the creation of welfare institutions for physically handicapped persons and abandoned children.

Constitution, art. 33 (Protection of Public Health):

The State shall protect public health and promote free medical assistance for indigent persons.

Motherhood and Childhood

Constitution, art. 31 (Protection of the Family):

5. The State shall protect motherhood and childhood and encourage the institutions necessary for this purpose.

6. The State shall recognize the protection of children of unknown parents as its duty.

Labour Code, art. 76 (Prohibited Work):

The Minister of Social Affairs, in consultation with the Council of Ministers and the Central Labour Commission, shall make provisions prescribing the types of work prohibited for women, expectant and nursing mothers, children and young persons.

For the purposes of this Chapter, the term "children" means persons of either sex who have not yet attained the age of fifteen years and the term "young persons" means those who have attained the age of fifteen years but have not attained the age of eighteen years.

Where the age is uncertain, an expert medical opinion on the child or young person shall be given.

The Minister of Social Affairs, in consultation with the Council of Ministers and the Central Labour Commission, shall prescribe the types of work that are dangerous or unhealthy or that demand considerable strength or concentration, thus necessitating changes in the minimum ages fixed for young persons in this Chapter. The maximum weights to be carried, pulled or pushed by young persons and women shall be prescribed in the same manner.

Labour Code, art. 77 (Expectant and Nursing Mothers):

No woman worker shall be discharged during a period of pregnancy, as duly confirmed by a medical certificate, until the end of the period of leave mentioned in the third paragraph of this section or until the child is one year old.

This rule shall no apply in the following cases:

(1) misconduct on the part of the woman worker, affording reasonable cause for the termination of the employment relationship;

(2) the cessation of the activity of the undertaking in which she is employed;

(3) he completion of the work for which the woman worker was engaged or the termination of the employment relationship on the expiry of the stipulated term.

A woman worker shall be entitled, on presentation of a medical certificate indicating the expected date of her confinement, to 14 weeks' maternity leave, of which at least six weeks shall be taken after her confinement.

If the confinement takes place after the expected date, the prenatal leave shall be extended until the actual date of the confinement; the six-week period of leave after the confinement shall not be reduced.

Labour Code, art. 78 (Nursing Breaks):

A woman worker who is nursing her own child shall be entitled, for a maximum of a year after the date of birth, to two daily breaks of one hour each.

Labour Code, art. 79 (Young Persons Under the Age of Fourteen Years):

Save in cases where a different age limit is prescribed in this Code or in special legislation, it shall not be lawful to employ children under the age of fourteen years.

This restriction as to age shall not apply to:

(1) pupils attending public and state-supervised trade schools or non-profit-making training workshops;

(2) members of the employer's family and his relatives by blood or marriage if they are living with him and are supported by him and are employed on work under his orders in an undertaking in which no other persons are employed.

Notwithstanding the first paragraph of this section, the Minister of Social Affairs, in consultation with the Central Labour Commission, shall have power to authorize the employment of children of

not less than twelve years of age, on condition that the work is compatible with the proper protection, health and moral welfare of such children and in cases where it is necessitated by special business or local conditions and by the special technical requirements of the work, or it is essential to the learning of the trade.

Labour Code, art. 80 (Minimum Age for Certain Types of Work):

The minimum age for employment on board ship as a stoker or assistant stoker or on underground work in quarries or mines shall be eighteen years.

Young persons under the age of sixteen years shall not be employed in work done on flying scaffolds, or portable ladders in connection with the construction, demolition, maintenance or repair of buildings.

Labour Code, art. 81 (Medical Examination as to Fitness for Work):

On the suggestion of the labour inspectorates, or at their own request, women workers, young persons and children may be given a medical examination to ascertain whether they are fit to undertake all or any of the duties on which they are, or are to be, employed.

Officials of the health services shall carry out such medical examinations and issue the appropriate certificates free of charge.

Where a person is found to be unfit to continue in his job, his contract of employment shall be automatically dissolved.

Right to Education

Constitution, art. 35 (Education):

1. The State shall encourage education, as being a fundamental interest of the community, and provide for the creation of State schools open to all.

2. Primary education in public schools shall be free.

3. Freedom of teaching shall be guaranteed by law.

4. Organizations and individuals shall have the right to establish, in accordance with law and without financial support from the State, schools and educational institutions.

5. Private schools and educational institutions may have a parity of status with State schools and institutions under the conditions laid down by law.

6. Teaching of Islam be compulsory for pupils of Islamic faith in primary and secondary State schools and in schools having a parity of status. Teaching of Holy Koran shall be a fundamental element in primary and secondary State schools for Muslims.

7. Institutes of higher education shall have their own autonomous organization within the limits prescribed by law.

SOUTH AFRICA

PUBLICATIONS AND ENTERTAINMENTS ACT

Act No. 26 of 1963, assented to on 28 March 1963 [1]

1. (1) In this Act, unless the context otherwise indicates—

(i) "board" means the Publications Control Board referred to in section *two*; (vii)

(ii) "cinematograph film" includes any words produced by letters or sounds upon or in connection with a cinematograph film, any picture intended for exhibition through the medium of a mechanical device, any portion of a cinematograph film exhibited for the purpose of advertising such film, and any exhibited illustration of any matter relating to any cinematograph film; (viii)

(iii) "department" means the Department of State administered by the Minister to whom the administration of this Act is for the time being assigned; (i)

(iv) "importer" has the meaning assigned thereto in the Customs Act, 1955 (Act No. 55 of 1955); (ii)

(v) "Minister" means the Minister of the Interior; (iii)

(vi) "place" includes any vehicle, vessel or aircraft; (v)

(vii) "prescribed" means prescribed by regulation under this Act; (ix)

(viii) "publication or object" includes—

(*a*) any newspaper published by a publisher who is not a member of the Newspaper Press Union of South Africa;

(*b*) any book, periodical, pamphlet, poster or other printed matter except a poster issued as an advertisement of a newspaper published by a publisher who is a member of the Newspaper Press Union of South Africa;

(*c*) any writing or typescript which has in any manner been duplicated or made available to the public or any section of the public;

(*d*) any drawing, picture, illustration, painting, woodcut or similar representation;

(*e*) any print, photograph, engraving or lithograph;

(*f*) any figure, cast, carving, statue or model; and

(*g*) any record or other contrivance or device in or on which sound has been recorded for reproduction; (vi)

(ix) "undesirable" means undesirable within the meaning of sub-section (2) of section *five*; (iv)

(2) For the purposes of this Act the importer of any publication or object, not being a publication or object—

(*a*) imported under the authority of a permit issued in terms of section *eight*; or

(*b*) which according to the decision of the board under sub-section (3) of section *twenty-one* of the Customs Act, 1955 (Act No. 55 of 1955), is not indecent or obscene or objectionable,

shall be deemed to be the printer, publisher, manufacturer, maker or producer of that publication or object, and to have printed, published, manufactured, made or produced that publication or object at the place where he is ordinarily resident.

2. (1) The Minister shall appoint a board to be known as the Publications Control Board, to perform the functions entrusted to the board under this Act.

. . .

3. The board shall—

(*a*) examine any publication or object or cinematograph film submitted to it under this Act;

(*b*) make such enquiries as it may consider necessary in regard to any public entertainment or intended public entertainment which is alleged to be or which the board has reason to believe is of a nature contemplated in section *twelve;*

(*c*) advise the Minister in regard to any matter arising out of the application of any provision of this Act which the Minister may refer to the board; and

(*d*) perform any other function assigned to it by this Act or any other law.

4. (1) The board may appoint such committees as it may from time to time consider necessary to examine and report to it on any publication or object or cinematograph film submitted to it or any entertainment referred to in section *twelve* which is brought to its notice.

. . .

5. (1) No person shall—

(*a*) print, publish, manufacture, make or produce any undesirable publication or object; or

(*b*) distribute, display, exhibit or sell or offer or keep for sale any publication or object if that publication or object—

[1] *Statutes of the Republic of South Africa, 1963*, pp. 276-301.

(i) has in a prosecution in respect of an offence under paragraph (*a*) been found to be undesirable; or

(ii) is in terms of a statement by the board under section *eight* (not being a statement under under paragraph (*b*) of sub-section (1) of that section) undesirable in its opinion or is in terms of a decision by the board under sub-section (3) of section *twenty-one* of the Customs Act, 1955 (Act No. 55 of 1955), indecent, obscene or objectionable, and such statement or decision has not been set aside under section *fourteen* of this Act,

and the board has caused such finding, statement or decision to be make known by notice in the *Gazette;*

(*c*) except under the authority of a permit issued in terms of section *eight*—

(i) import any publication or object with a soft cover of which the net selling price to an importer in the Republic does not exceed fifty cents; or

(ii) import any publication or object of which the importation has been prohibited by the board under paragraph (*d*) of sub-section (1) of that section.

(2) A publication or object shall be deemed to be undesirable if it or any part of it—

(*a*) is indecent or obscene or is offensive or harmful to public morals;

(*b*) is blasphemous or is offensive to the religious convictions or feelings of any section of the inhabitants of the Republic;

(*c*) brings any section of the inhabitants of the Republic into ridicule or contempt;

(*d*) is harmful to the relations between any sections of the inhabitants of the Republic;

(*e*) is prejudicial to the safety of the State, the general welfare or the peace and good order;

(*f*) discloses, with reference to any judicial proceedings—

(i) any matter which is indecent or obscene or is offensive or harmful to public morals or any indecent or obscene medical, surgical or physiological details the disclosure of which is likely to be offensive or harmful to public morals;

(ii) for the dissolution or a declaration of nullity of a marriage or for judicial separation or for restitution of conjugal rights, any particulars other than—

(*aa*) the names, addresses and occupations of the parties and witnesses;

(*bb*) a concise statement of the allegations, defences and counter-allegations in support of which evidence fas been given;

(*cc*) submissions on any point of law arising in the course of the proceedings, and the decision of the court thereon;

(*dd*) the judgment and the verdict of the court and any observations made by the judge in giving judgment.

(3) The provisions of sub-paragraph (ii) of paragraph (*f*) shall not be construed so as to permit the disclosure of anything contrary to the provisions of sub-paragraph (i) of that paragraph.

(4) The provisions of this section shall not apply with reference to—

(*a*) the printing of any pleading, transcript of evidence or other document for use in connection with any judicial proceedings or the communication thereof to persons concerned in the proceedings;

(*b*) the printing or publishing—

(i) of any notice or report in pursuance of the directions of a court of law;

(ii) of any matter in any separate volume or part of any *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law;

(iii) of any matter in a publication of a technical, scientific or professional nature *bona fide* intended for the advancement of or for use in any particular profession or branch of arts, literature or science; or

(iv) of any matter in any publication of a *bona fide* religious character.

(5) The board may on such conditions as it may deem fit in writing exempt any person or institution from any provision of this section either indefinitely or for a period determined by it, and may at any time by notice in writing to the person or institution concerned withdraw any exemption granted under this sub-section.

(6) Any person who contravenes any provision of this section shall be guilty of an offence.

6. (1) If in any legal proceedings under this Act the question arises whether any matter is indecent or obscene or is offensive or harmful to public morals, that matter shall be deemed to be—

(*a*) indecent or obscene if, in the opinion of the court, it has the tendency to deprave or to corrupt the minds of persons who are likely to be exposed to the effect or influence thereof; or

(*b*) offensive to public morals if in the opinion of the court it is likely to be outrageous or disgustful to persons who are likely to read or see it; or

(*c*) harmful to public morals if in the opinion of the court it deals in an improper manner with murder, suicide, death, horror, cruelty, fighting, brawling, ill-treatment, lawlessness, gangsterism, robbery, crime, the technique of crimes and criminals, tippling, drunkenness, trafficking in or addiction to drugs, smuggling, sexual intercourse, prostitution, promiscuity, white-slavery, licentiousness, lust, passionate love scenes, homosexuality, sexual assault, rape, sodomy, masochism, sadism, sexual bestiality, abortion, change of sex, night life, physical poses, nudity, scant or inadequate dress, divorce, marital infidelity, adultery, illegitimacy, human or social deviation or degeneracy, or any other similar or related phenomenon; or

(*d*) indecent or obscene or offensive or harmful to public morals if in the opinion of the court it is in any other manner subversive of morality.

(2) In determining whether any matter is indecent or obscene or is offensive or harmful to public

morals within the meaning of sub-section (1), no regard shall be had to the purpose of the person by whom that matter was printed, published, manufactured, made, produced, distributed, displayed, exhibited, sold or offered or kept for sale.

7. No prosecution in respect of an offence under paragraph (*a*) of sub-section (1) of section *five* shall be instituted except on the definite instruction of the Attorney-General.

8. (1) The board shall have power—

(*a*) at the request of any person and (except in the case of a person to whom any function has been assigned by this Act or the Customs Act, 1955 (Act No. 55 of 1955)) upon payment of the prescribed fee, to examine any publication or object and to state whether that publication or object is in the opinion of the board undesirable or not;

(*b*) at the request of any person investigating any offence under this Act or the Customs Act, 1955 (Act No. 55 of 1955), to examine any publication or object and to state wether that publication or object is in the opinion of the board undesirable or not;

(*c*) subject to the provisions of sub-section (2), to approve of the importation by any person during any specified period, of any publication or object referred to in paragraph (*c*) of sub-section (1) of section *five* which—

(i) is published by a specified publisher; or

(ii) falls within a particular class of publication published by a specified publisher; or

(iii) deals with any specified subject,

if in the opinion of the board that publication or object is not or is not likely to be undesirable, and at any time in its discretion to withdraw any approval granted under this paragraph.

(*d*) by notice in the *Gazette* to prohibit the importation, except under the authority of a permit issued by the board, of publications or objects which—

(i) are published by a specified publisher; or

(ii) deal with any specified subject,

if, in the opinion of the board, those publications or objects are undesirable or likely to be undesirable.

(2) Any approval under paragraph (*c*) of sub-section (1) shall be given by permit in the prescribed form the issue of which shall be subject to the payment of the prescribed fee.

(3) If after the submission to it of a copy of any specified edition of a publication or object referred to in paragraph (*c*) of sub-section (1) of section *five*, the board expresses the opinion that the edition in question is not undesirable, the board shall on payment of the prescribed fee cause to be issued to the person by whom that edition was submitted a permit in the form prescribed for the importation of that edition of the publication or object.

(4) Any person who imports any publication or object referred to in paragraph (*c*) of sub-section (1) or any edition referred to in sub-section (3), otherwise than under the authority of a permit issued in terms of sub-section (2) or (3), shall be guilty of an offence.

(5) Whenever the board has given any decision under paragraph (*a*) of sub-section (1) declaring any publication or object to be undesirable or has granted or withdrawn any approval under paragraph (*c*) of that sub-section, it shall without delay cause such decision, approval or withdrawal to be made known by notice in the *Gazette*.

(6) No prosecution shall be instituted under this Act in respect of any publication or object, if the board has in terms of paragraph (*a*) of sub-section (1) stated that such publication or object is in its opinion not undesirable, or has in terms of sub-section (2) or (3) caused a permit to be issued for the importation of such publication or object.

9. (1) No person shall—

(*a*) exhibit in public or at any place to which admission is obtained by virtue of membership of any association of persons or for any consideration, direct or indirect, or by virtue of any contribution towards any fund, any cinematograph film which has not been approved by the board; or

(*b*) publish any cinematograph film intended for such exhibition which has not been so approved.

(2) The board may in its discretion and on such conditions as it may deem fit, by notice in the *Gazette* exempt from the provisions of sub-section (1) any particular cinematograph film or any particular class of cinematograph films or any cinematograph film intended for exhibition to any particular class of persons or under any particular circumstances, and may in its discretion at any time withdraw any exemption granted under this sub-section.

(3) Whenever the board approves any cinematograph film, it shall make such approval known by means of a certificate given in the form and manner prescribed.

(4) The board may approve or reject a cinematograph film unconditionally or approve a cinematograph film subject to a condition that such film shall be exhibited only to a particular group of persons or only to persons belonging to a particular race or class or only after any specified portion or portions have been excised.

(5) If the board approves a cinematograph film subject to the excision of any portion or portions thereof, no person shall—

(*a*) exhibit or publish any advertisement of that film if such advertisement contains any reference to the portion or portions excised or to be excised, notwithstanding that the exhibition or publication of such advertisement has been previously approved; or

(*b*) exhibit or publish that film after the excision of the said portion or portions, unless it has thereafter again been submitted to the board for approval: Provided that the board may in its discretion authorize the exhibition or publication thereof after such excision without further examination.

(6) The prescribed fees shall be paid in respect of every cinematograph film submitted to the board for approval.

(7) Any person who—

(*a*) contravenes any provision of sub-section (1) or (5);

(*b*) without the authorization of the board exhibits or publishes any cinematograph film which after being approved by the board has in any way been altered or modified;

(*c*) exhibits any cinematograph film in conflict with any condition imposed by the board in respect of the exhibition thereof; or

(*d*) exhibits any film approved by the board without making known in the prescribed manner the board's approval thereof,

shall be guilty of an offence.

10. The board shall not approve any cinematograph film which in its opinion—

(*a*) depicts any matter that prejudicially affects the safety of the State;

(*b*) may have the effect of—

(i) disturbing the peace or good order;

(ii) prejudicing the general welfare;

(iii) being offensive to decency;

(iv) giving offence to the religious convictions or feelings of any section of the inhabitants of the Republic;

(v) bringing any section of the inhabitants of the Republic into ridicule or contempt;

(vi) harming relations between any sections of the inhabitants of the Republic; or

(vii) propagating or promoting communism, as defined in the Suppression of Communist Act, 1950 (Act No. 44 of 1950); or

(*c*) depicts in an offensive manner—

(i) the State President;

(ii) the Republic's armed forces or any member thereof;

(iii) death;

(iv) human figures;

(v) love scenes;

(vi) controversial or international politics;

(vii) public characters;

(viii) juvenile crime;

(ix) criminality and the technique of crime;

(x) brutal fighting;

(xi) drunkenness and brawling;

(xii) addiction to drugs;

(xiii) scenes of violence involving white and non-white persons;

(xiv) intermingling of white and non-white persons; or

(xv) violence towards or ill-treatment of women or children.

11. (1) Any person who is aggrieved by a decision of the board in respect of any cinematograph film which he has submitted to the board for its approval, may within thirty days after the decision of the board was given, on payment of the prescribed fee, appeal to the Minister against that decision in the prescribed manner.

(2) The Minister or a person delegated thereto by the Minister, shall thereupon enquire into and consider the matter and may confirm, vary or set aside the decision of the board or give any other decision which he may consider just.

(3) The decision of the Minister or a person delegated thereto by him shall not be subject to appeal to or review by any court of law and shall for the purposes of this Act be deemed to be a decision of the board.

12. (1) The board may by notice in writing or by telegraph addressed to any person who is or is believed by the board to be in charge of any public entertainment or intended public entertainment, prohibit the giving of such public entertainment if the board is satisfied that such public entertainment—

(*a*) may have the effect of—

(i) giving offence to the religious convictions or feelings of any section of the inhabitants of the Republic; or

(ii) bringing any section of the inhabitants of the Republic into ridicule or contempt; or

(*b*) is contrary to the public interest or is indecent or obscene or offensive or harmful to public morals.

(2) Any person who gives or permits the giving of any public entertainment contrary to any prohibition imposed under subsection (1), shall be guilty of an offence unless it is proved that he was unaware of such prohibition and could not reasonably be expected to have become aware thereof.

(3) In this section "public entertainment" includes any entertainment at any place to which admission is obtained by virtue of membership of any association of persons or for any consideration, direct or indirect, or by virtue of any contribution towards any fund, and includes the exhibition of a cinematograph film is not subject to the provisions of section *nine*.

13. (1) Any person who is for the time being in charge of any place where any cinematograph film is being exhibited or any public entertainment is being given, shall on demand admit free of charge thereto any policeman or any other person, including a member of the board, who exhibits to him such written or other authority for such admission as may be prescribed.

(2) Any person who fails to comply with the provisions of sub-section (1) shall be guilty of an offence.

14. (1) Any person who—

(*a*) is in charge of any public entertainment or intended public entertainment; or

(*b*) is the importer of goods referred to in subsection (3) of section *twenty-one* of the Customs Act, 1955 (Act No. 55 of 1955); or

(*c*) has in terms of sub-section (3) of section *eight* submitted a specified edition of a publication or object to the board,

and who is aggrieved by a decision of the board in respect of such entertainment, goods or edition, or any person who is aggrieved by a decision of the board in terms of paragraph (*a*) of sub-section (1) of section *eight*, may within thirty days after the decision of the board was given, appeal against that decision by way of application on notice of motion to any provincial or local division of the Supreme Court of South Africa.

(2) The division of the Supreme Court to which appeal is made shall enquire into and consider the matter and may confirm, vary or set aside the decision of the board or give such other decision as in its opinion the board ought to have given, and make such order as to costs as it may deem fit.

(3) Any judgment given or order made by a provincial or local division of the said Supreme Court in terms of sub-section (2), shall be subject to appeal to the Appellate Division of the Supreme Court of South Africa in the same manner and on the same conditions as if it were a judgment given or order made in a civil proceeding in that provincial or local division.

(4) Any decision by the court in terms of subsection (2) or (3) relating to any publication or object or any public entertainment or intended public entertainment or goods, shall for the purposes of this Act be deemed to be a decision of the board.

15. (1) Any person convicted of any offence under this Act shall be liable—

(*a*) in the case of a first conviction, to a fine of not less than three hundred rand and not more than five hundred rand or imprisonment for a period exceeding six months or to both such fine and such imprisonment;

(*b*) in the case of a second conviction, to a fine of not less than one thousand rand and not more than two thousand rand or imprisonment for a period not exceeding six months or to both such fine and such imprisonment; and

(*c*) in the case of a third or subsequent conviction, to a fine of not less than two thousand rand or imprisonment for a period of not less than six months or to both such fine and such imprisonment.

(2) The court convicting any person of any offence under this Act may declare any publication or object or cinematograph film in respect of or in connection with which the offence was committed, to be forfeited to the State, and any such publication or object or cinematograph film shall thereupon be disposed of as the board may direct.

. . .

RETREATS AND REHABILITATION CENTRES ACT

Act No. 86 of 1963, assented to on 28 June 1963 [2]

. . .

2. No person who has not attained the age of eighteen years shall be committed or transferred, or admitted as a voluntary inmate, to retreat, rehabilitation centre or certified retreat.

. . .

4. The inmates of a retreat or rehabilitation centre shall be detained therein for the purpose of improving their physical, mental or moral condition by—

(*a*) developing and improving their physical condition by means of physical training suited to their particular capacities and needs, and, where necessary, by appropriate medical and mental treatment;

(*b*) training them in habits of industry and work;

(*c*) correcting, under suitable medical, psychiatric, social or psychological supervision, behaviour disabilities, including alcoholism, which impede proper social adjustment;

(*d*) the application of any further measures which may be necessary to remove or overcome particular disabilities; and

(*e*) generally, training them in habits of social adaptation in the community and of good citizenship.

. . .

6. (1) As soon as may be after the commencement of this Act, the Minister shall establish a board to be known as the National Alcoholism Advisory Board (hereinafter referred to as the Advisory Board), the functions of which shall be—

(*a*) to advise the Minister in regard to any matter affecting alcoholism which the Minister may refer to it for its advice or in regard to which the Advisory Board considers it necessary to advise the Minister;

(*b*) to co-ordinate measures in connection with the combating of alcoholism or treatment of alcoholics;

(*c*) to plan research in the field of alcoholism and to give guidance to other bodies doing such research.

14. (1) Whenever there is lodged with or made before a public prosecutor a sworn declaration in writing by any person (including any social welfare officer) alleging that any other person who is within the area of jurisdiction of the magistrate's court to which such prosecutor is attached, is a person who—

(*a*) because of his own misconduct or default (which shall be taken to include the squandering of this means by betting, gambling or otherwise) habitually fails to provide for his own support or for that of any dependant whom he is legally liable to maintain; or

(*b*) is addicted to drinks or drugs and in consequence thereof squanders his means or injures his health or endangers the peace or in any other manner does harm to his welfare or the welfare of his family; or

(*c*) habitually begs for money or goods or induces others to beg for money or goods on his behalf; or

[2] *Statutes of the Republic of South Africa, 1963*, pp. 1177-1231.

(*d*) has no sufficient honest means of livelihood; or

(*e*) leads an idle, dissolute or disorderly life, the clerk of the court shall, at the request of the public prosecutor, issue and deliver to a member of the South African Police a summons to be served on such person calling on him to appear before a magistrate within such area at a time and place stated therein, or if the prosecutor does not request the issue of such a summons a magistrate of the court in question may, on the application of the public prosecutor, issue a warrant directing that such a person be arrested and as soon thereafter as practicable be brought before a magistrate within such area.

. . .

15. (1) (*a*) Subject to the provisions of this section, a magistrate before whom any person is brought in terms of sub-section (1) of section *fourteen* shall, in the presence of that person, enquire whether he is such a person as is described in that sub-section.

(*b*) A public prosecutor, or some other fit and proper person designated by the magistrate concerned, shall appear at the enquiry and such prosecutor or other person may call witnesses and cross-examine witnesses who give evidence at the enquiry.

(*c*) The person in respect of whom the enquiry is held, or his legal representative, shall be afforded an opportunity of cross-examining any witness, calling his own witnesses and of giving evidence himself and of showing cause why an order should not be made under sub-section (6).

. . .

(6) If it appears to the magistrate . . . —

(*a*) that the person concerned is such a person as is described in sub-section (1) of section fourteen; and

(*b*) that he is a type of person who requires and would probably benefit by the training and treatment provided in a retreat, rehabilitation centre or certified retreat; and

(*c*) that it would be in his own interest or in the interest of his dependants, if any, or in the interest of the community, that he be detained in a retreat, rehabilitation centre or certified retreat, he may . . . , if such person is a person described in paragraph (*b*) of sub-section (1) of section *fourteen,* order that he be detained in a retreat or certified retreat, or, if such person is a person described in paragraph (*a*), (*c*), (*d*), or (*e*) of sub-section (1) of section *fourteen,* order that he be detained in a rehabilitation centre.

. . .

17. (1) (*a*) A magistrate holding an enquiry under section *fifteen* may, if he deems it necessary or expedient, postpone or adjourn the enquiry from time to time for periods not exceeding fourteen days at any one time and may, at his discretion, order that, during the postponement or adjournment, the person concerned be detained in custody in a retreat, rehabilitation centre, certified retreat, hostel, approved hostel, prison, police cell or lock-up or other place regarded by the magistrate as suitable, or be released on bail *mutatis mutandis* as if he were a person whose trial on a criminal charge in a magistrate's court has been postponed or adjourned.

(*b*) Pending the removal to a retreat, rehabilitation centre or certified retreat of any person against whom an order has been made under sub-section (6) of section *fifteen* he may be detained in custody or released on bail as provided in paragraph (*a*) as if he were such a person as is referred to therein.

(*c*) No person shall in terms of this sub-section be detained in custody in a police cell or lock-up for a continuous period of longer than twenty-eight days.

. . .

19. (1) Any person who has been ordered to be detained in a retreat, rehabilitation centre or certified retreat under section *fifteen* shall be so detained for a period of three years as from the date of the order unless he has, prior to the expiration of that period, been discharged or released on licence in terms of any provision of this Act.

(2) The Minister may, after consultation with the management of the retreat, rehabilitation centre or certified retreat in question, discharge an inmate from the provisions of this Act at any time prior to the expiration of his period of detention.

. . .

SPAIN

NOTE[1]

In previous reports on this subject issued periodically and regularly by the Government of Spain over a period of many years, it has always been clearly indicated that all the rights proclaimed in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10 December 1948 are adequately recognized and appropriately regulated and safeguarded under the Spanish legal system.

It should also be noted that some of these human rights which have only fairly recently achieved universal recognition have nevertheless precedents of very long standing in Hispanic law. In this connexion, it will suffice to recall the so-called "Laws of the Indies", a veritable legal monument of which Spain is entitled to be proud. This code applied to the indigenous peoples of the Indies a policy of assimilation exceptional at the time, for which precedents would have to be sought in the legislation of the early Greek and Roman colonies. Taking as its basis the full recognition of the human personality of the Indian as identical in origin and aims to that of any other man in more civilized countries, this legislation proclaimed and regulated the human rights of the Indians, protecting their livelihood and property and safeguarding their conditions of work and remuneration through the introduction of European methods of wage earning employment, freely contracted or union-sponsored, promoting their education or schooling and declaring them equal before the law on the same footing as the Spaniards themselves.

The fact that events did not always reflect ideally the spirit of this humanitarian legal code—as can be readily understood in view of the time and place of application of the code—does not detract in any way from its great value as evidence of the fact that Spanish law has at all times proclaimed and regulated human rights. This becomes even clearer when we consider that, as an additional safeguard against possible infringements of the law by the authorities themselves and consequently as a guarantee of the enforcement of those rights, there existed the so-called "residence trials", by virtue of which charges could be made against high officials of the colonies for a certain time after the expiry of their term of office in respect of injuries done, and they were required to give an account of the use of the authority entrusted to them.

The new Spanish State, which is the legitimate heir to the traditional national spirit and keeps it refreshed with all the alertness and strivings of modern times, has not only preserved the whole of this historical legacy, but has made the very most of it. Its conception of human rights and of their regulation and protection is founded on political and legal principles which, as repeatedly mentioned in previous reports of this nature, are in keeping with those embodied in the preamble to the above-mentioned Universal Declaration of 10 December 1948 and providing the inspiration for it.

In conformity with this constant concern of the Spanish State in the field of human rights, further legal provisions have been enacted during the period since 31 August 1963, the date of our last report on this subject. Since the utmost brevity has always been the ruling principle for these contributions to the *Yearbook*, we describe below, in the most concise manner practicable, the provisions which we consider worthy of special mention.

A. RIGHTS TO FREEDOM, EQUALITY AND SECURITY OF PERSON

In previous reports it has been repeatedly indicated that the human right proclaimed in article 13 of the Universal Declaration of Human Rights—namely, the right to leave one's own country or return to it—is specifically defined and protected in Spanish law by the emigration legislation, of which the basic provision (the Act of 22 December 1960, text implemented on 3 May 1962) was described and explained in the previous report.

As Spain is a country with a strong emigratory flow, the State is constantly concerned with regulating and safeguarding the right to emigrate. This concern is reflected in the Regulations governing Contraventions and Sanctions relating to Emigration, approved by decree on 26 September 1963.

Proceeding from the explicit recognition of the right of every Spaniard to emigrate—a right which is the heritage of the citizens of all free countries—the Regulations in question safeguard the free exercise of that right, securing it fully

[1] Note furnished by the Government of Spain.

through a system of administrative control which defines the possible contraventions of the special emigration legislation and establishes the corresponding sanctions. This control is the responsibility of the Ministry of Labour. It is exercised by the Labour Inspectorate, under the supervision of the General Employment Service. In view of their administrative nature, the sanctions laid down are basically fines and suspension or disqualification from carrying out activities connected with emigration, and they are independent of those sanctions which the competent bodies are empowered to impose in respect of civil or criminal liability of other kinds.

To emphasize this special policy of protecting the right to emigrate, the Ministry of Labour Order of 26 July 1963, giving effect to the investment plan of the National Labour Welfare Fund of the same year, establishes and draws up regulations concerning a series of types of assistance which may be granted to emigrants and in certain circumstances also to repatriates both in Spain and in other countries. This assistance takes various forms and is extremely generous, including travel and installation expenses, loans, scholarships and grants for vocational training, hospitalization costs, medical and surgical allowances, expenses incurred by emigrants in obtaining legal advice and defence in respect of labour rights *vis-à-vis* foreign enterprises or organizations, grants to various Spanish institutions and associations carrying out work of a cultural, recreational or charitable nature on behalf of emigrants, the payment of emigration insurance premiums, etc.

The particular interest shown by the State in protecting the exercise of the freedom of residence is made clear by the Resolution of 2 December 1963 of the Spanish Emigration Institute, in which full support, including loans, was given to the National Co-operative for the Supply and Distribution of Agricultural Products to carry out a generous plan for the supply of typically Spanish articles at reasonable prices to emigrant workers in other countries who find particular difficulty in getting used to the local food.

With reference to the special circumstances applying to Spanish emigrants leaving the Kingdom of Morocco, the welfare of such emigrants was the object of the Order of 29 November 1963 of the Ministry of Labour, which provided for special assistance in respect of travel, documentation, acquisition of household articles and tools, also installation expenses for emigrants' families leaving Morocco at the same time as the emigrants and proceeding to Spain to await family reunion in due course. These various types of assistance may be made available also as unsecured loans.

As regards the right to freedom of residence within the national territory, with particular reference to workers, the Order of 26 July 1963 previously quoted, bearing in mind their relatively weak economic situation, safeguards the exercise of that right by providing a number of generous grants which incidentally facilitate the movement of manpower within the country and are essentially similar to those extended to emigrants.

Among these grants are the subsidies made available to institutions or organizations for the welfare of migrant workers, covering expenses incurred in respect of their board and lodging. For this purpose, a register of institutions for the welfare of internal migrant workers has been set up under the aegis of the National Labour Welfare Institute, and its operations are regulated by the General Employment Service in accordance with its Resolution of 14 November 1963.

With respect to the right to the free expression of opinion and participation by citizens in the public life and government of the country by means of the vote, the Decree of 7 December 1963 deserves special mention; under this decree, the articles of self-government in Equatorial Guinea, approved by the Spanish Parliament, were submitted to a plebiscite of all men and women over twenty-one years of age satisfying the twofold requirement of being nationals and residents of Fernando Po and Rio Muni and enjoying the exercise of their civil rights. Voting was by secret ballot, with white voting slips.

By virtue of the exercise of this right of political freedom of choice, and as a consequence of the plebiscite mentioned above, the Act of 20 December 1963 promulgated the articles of self-government in Spanish Equatorial Guinea. By the Decree of 11 January 1964, elections were convened for the constitution of local assemblies, municipal councils and provincial committees in Fernando Po and Rio Muni, and for this purpose arrangements were made beforehand (Governor-General's Instruction of 23 December 1963) for the Census of Heads of Families of those provinces to be revised. The Instruction of 25 February and 6 and 7 March 1964 determined the constitution of the local assemblies, municipal councils and provincial committees, in conformity with the above-mentioned Acts of 20 December 1963, the integral text of which was more recently confirmed by a decree dated 3 July 1964.

The system of self-government referred to above derives from the right of peoples to self-determination, which is a right explicitly proclaimed by the Spanish State. Faithful to its tradition, as referred to briefly at the beginning of this report, Spain, which is proud of its claim to be "the progenitor of a great family of peoples, with which it feels itself indissolubly linked", has always been concerned for the welfare of the inhabitants of Fernando Po and Rio Muni and has granted them the same rights as all other Spaniards enjoy, without prejudice to the advantage of having the revenues derived from their own natural resources reinvested in their territory with no contribution exacted from them for the general needs of the State.

In the Act defining this régime of self-government, the principle of equality is proclaimed first and foremost—article 2 stipulates that nationals born in Fernando Po and Rio Muni have the same rights and duties as other Spaniards under the Fundamental Laws of the State. Other nationals living in those territories have the same rights and duties as the native-born inhabitants. Article 4 specifies that the right of representation in the Cortes is guaranteed, in conformity with

the provisions of the Act constituting the Cortes, the parliamentary representatives of Equatorial Guinea being appointed in the same way as those of the other national committees and municipalities.

The government and administration of this autonomous region is of the representative organic type and is entrusted to a general assembly and a governing council (article 12).

In each of the territories of Fernando Po and Rio Muni there is a civil governor, who must necessarily be a national and an autochthonous native inhabitant of the territory in which he exercises his functions. The national committees, the municipal councils and the assemblies are constituted in accordance with representative organic principles. The clearest reflection of the complete disinterestedness and unbounded generosity of the central Government can be seen in relation to the economic administration of the territories. Article 44 of the Act with which we are particularly concerned provides that Equatorial Guinea shall be exempt from contributing in any way to general State services and shall control its own general budget of income and expenditure. The revenues derived from their own resources shall be invested wholly in Fernando Po and Rio Muni, without prejudice to any indirect subsidies which may be granted by the Spanish Government and direct ones which may be extended as a charge on the National Budget in order to supplement the financial resources of those territories. Expenditure under the heading of administration of justice and armed forces and also of the Commissariat General, shall be defrayed out of the National Budget.

With reference to the right to equality, it has already been made clear in the previous report that the basic text is the Act of 21 July 1960, by virtue of which the whole of the state revenue from important sources is earmarked for the promotion of the practical application of the principle of equality of access for all Spaniards to education, research and vocational training. The investment plan of the National Fund set up for this purpose, covering the current year, was approved by an Order of the Ministry of Education dated 15 June 1964. In view of the specific purpose of this provision, we shall make a brief examination of it later, when we come to deal with the right to education.

In connexion with the rights under review, two other legal provisions based on the principle of equality before the law must be mentioned—namely, two decrees of the Presidency of the Government, both dated 21 November 1963. Under the first of these, the country co-operatives in Fernando Po and Rio Muni were reorganized, their operations and legal structure being adjusted to the rules set forth in the Co-operation Act of 2 January 1924 and the relevant regulations. These rules apply in general in the whole of the national territory. Under the second of the decrees, the organization of the administration of justice in the Province of the Sahara is regulated on the principle of equality with the rest of the country, i.e., it is adapted to the system which applies generally in Spain, except in some small procedural matters connected with status and competence, in which some insignificant modifications were introduced by reason of physical and social factors based on distance and differing community groupings. Respect for and maintenance of the age-old institutions and customs of the Province in no way constitute an infringement of this principle of equality; rather the contrary. Examples of such institutions are the Alcoranic Jurisdiction and the Customary Courts which apply Moslem and customary law respectively.

The right to security of person (article 3 of the Universal Declaration cited above) is fully recognized and guaranteed by Spanish law. Due reference has been made to this right in previous reports. With specific reference to the safety of human life at sea, the following two enactments of the period covered by this report are of special interest:

The Order of 10 December 1963 provides for the possible replacement of radio-telephone receivers by directional receivers in fishing boats not exceeding 150 gross register tons and remaining at sea for over seventy-two hours, provided that such receivers, in addition to meeting the normal specifications laid down for such equipment, also satisfy the requirements regarding rainproofing specified for radio-telephone equipment in the current Spanish legislation on the subject (Order of 30 June 1962).

The Order of 17 March 1964 supplements provisions previously in force regulating the life-saving equipment which the fishing boats must carry and specifies which life-boats must be equipped with a motor, the maximum weight of the life-rafts and the equipment which life-boats and life-rafts must carry, according to the conditions under which the fishing operations are performed. All these provisions take into account the rules laid down in the International Convention for the Safety of Life at Sea.

B. RIGHTS CONCERNING THE FAMILY

The rights concerning the family proclaimed in the three paragraphs of article 16 of the Universal Declaration of Human Rights are fully recognized, suitably regulated and adequately safeguarded under the Spanish legal system. The family, as the primary unit of society, has at all times received preferential consideration in Spanish legislation. The Fundamental Laws of the State contain full and categorical declarations on family rights and on the safeguarding of those rights. Since the enactments in question and various other legal provisions developing and implementing the declarations and principles set forth in those Fundamental Laws have already been duly dealt with in reports covering previous years, we shall refrain from referring to those previous enactments, in order to avoid unnecessary repetition; and we shall confine our attention to the period covered by the present report. Legal provisions whose specific object is not precisely the family (e.g. the Decree of 2 January 1964 relating to rural administration; the trade union collective labour agreement of the National Press Movement —Resolution of 9 August 1963—which establishes family benefits for educational purposes; and

various provisions basically relating to labour affairs which, apart from the so-called "family bonus" or wage increment to cover family obligations, provide for special benefits to the families of producers, etc.) reflect a protective outlook and concern for the family as an institution and for the rights associated with the family. It is essential to point out, however, that, apart from this, the constant anxiety and concern on the part of the Spanish Government to safeguard this particular set of human rights is show clearly in a number of legal provisions, the main outlines of which we shall now proceed to consider.

The Orders of 17 July 1963 and 21 March 1964 of the Ministry of the Interior, which implement the investment plans of the National Social Welfare Fund for 1963 and 1964 respectively and allocate substantial sums to assistance or individual grants to children and young persons between the ages of four and sixteen years classified as sub-normal and living and receiving medical treatment either within the family or elsewhere.

The Order of 26 July 1963 previously mentioned, issued by the Ministry of Labour and regulating the implementation of the investment plan referred to. This Order provides for a series of generous grants to emigrant and migrant workers, as already mentioned in the section of this report dealing with the right of the individual to leave his own country and to return to it. Among these grants, the ones of particular interest to the family are those specifically designed to cover, wholly or partly, the removal or travel expenses of the families of those workers in connexion with their reunion with the head of the family; also the grants in respect of such families' initial installation costs, the purchase of household equipment, the provision of scholarships and educational benefits to family members, and medical, surgical and hospital expenses.

The Order of 29 November 1963 of the Ministry of Labour concerning the families of Spanish immigrants leaving the Kingdom of Morocco. As this legal provision has also been referred to previously, to avoid unnecessary repetition the reader is referred to the information already given on it. The protection afforded these families by the Order in question is such that the various types of assistance allowed for may be made available not only as advances or loans, but in outright form.

The Order of 24 June 1963 of the General Secretariat of the National Movement and the circular of the National Committee of Associations of 11 October 1963. These provisions apply to the Associations of Heads of Families which may be organized and may operate within each municipality. These Associations have legal personality and full capacity to act, with no restrictions other than those imposed by the provisions referred to. They exercise control over their own assets.

Admission to and separation from the Associations are voluntary. For admission, registration as a resident in the municipality concerned and possession of the right to be listed in the Census of Heads of Families (article 3) are necessary and sufficient qualifications.

These Associations are regulated on a self-governing basis and on the principle of representation through the following organs: a general council, a board of management and a presidency. To ensure greater efficiency, as many working committees as are considered necessary may also be set up within the Association.

The Associations of Heads of Families are responsible for performing a wide range of functions, the purpose of which is purely and simply to secure the maximum welfare of the family as an institution. In detail, their responsibilities are the following:

(*a*) To approach the public authorities and apprise them of the just claims of the Spanish family, and to press for the adoption of appropriate measures.

(*b*) To promote equitable social development which adequately and appropriately raises the standard of living and subsistence of the family.

(*c*) To represent the family interests of their members in all matters of mutual concern proper to them which do not go beyond the bounds of municipal jurisdiction, thus serving as local information centres in connexion with family matters.

(*d*) To co-operate in the smooth running of the educational institutions of the area; for this purpose they may transmit appropriate proposals or reports to the organizations concerned.

(*e*) To render aid to the authorities and boards responsible for public assistance in all its forms.

(*f*) To advise and assist emigrants, as far as possible maintaining contact with them and keeping them well informed; also to help their families until the latter can join them.

(*g*) To furnish moral and economic assistance to needy families, to grant scholarships and other educational assistance, and to contribute to the solution of housing problems, setting up benevolent societies or co-operating with existing ones.

(*h*) To collaborate in matters of public morality, the protection of minors and any questions which may affect the moral climate of the neighbourhood.

(*i*) To promote the interests of the consumer by all available legal means, including action to establish consumer organizations.

(*j*) To undertake any other activities calculated to strengthen the family as an institution and making for greater participation by the family in the life of the community.

The Act to Define the Basic Principles of Social Security, dated 28 December 1963. Taking into account the experience gained during the period since the Labour Charter gave new backing to the provisions for the protection of workers experiencing hardship, by imparting to those provisions a profoundly humanitarian purport identical with that which at a later date was to inspire the modern systems of social security, this Act of 28 December establishes the basic principles for a new administration and regulation of Spanish social security founded on national solidarity, setting targets for the scheme which are extremely generous and humanitarian in scope.

With specific reference to the institution of the family, the Act under review, by gradually fusing into a single scheme the present family allowances and bonuses without any change in the over-all amount of contributions by employers and workers, and leaving unaffected the existing position with respect to benefits in individual cases, establishes the principles which will make it possible, in the not very distant future, to apply fully the distributive justice principle that equal family burdens confer entitlement to equal allowances, thus promoting true national solidarity and eliminating the present danger of discrimination between workers, since neither the undertaking nor the fellow-workers of anyone applying for employment there will be placed at a disadvantage by reason of the size of the prospective employee's family.

The protection of the family is fundamentally laid down in Basic Provision XI, which contains the following provisions:

"The cash benefits under the scheme for the protection of the family, which shall include the present family benefits and allowances, shall consist of:

"(*a*) A uniform monthly allowance for each legitimate, legitimized, adopted or illegitimate but subsequently recognized child under sixteen years of age or incapable of working. A full orphan under sixteen years of age or incapable of working, whether or not in receipt of a pension from the social security scheme, shall be entitled to the allowance which his parents or other ascendants would have received;

"(*b*) A uniform monthly allowance in respect of a wife, subject to such conditions and limits as may be prescribed by regulations.

"The benefits referred to in the previous section shall be financed by:

"(*a*) A subsidy to be fixed, payable by the National Fund for the Protection of Labour;

"(*b*) A part contribution prescribed by regulations according to the principles laid down in the Act and taking into account the fact that the burden to be borne by the undertaking shall be the same for every undertaking.

"Every person employed by another shall also be entitled to the following benefits:

"(*a*) A grant on his marriage;

"(*b*) A grant on the birth of each child.

"The Government shall revise the existing system for the protection of large families by means of tax exemptions, financial assistance for attendance at educational centres, scholarships, priority entitlement to vocational training, reduced fares, social credit, priority in the allocation of State-aided housing, and any other similar measures of a social nature to contribute to the protection of such families. Special protection shall be given to families with mentally deficient or physically handicapped children.

"Orphans under eighteen years of age of a parent who, being a worker, died as a result of industrial accident or occupational disease, shall have absolute priority of access to education given by every type of public centre or institution.

"Annual special child-birth awards shall be made on the national and provincial levels."

Resolution of the National Council of Trade Unions of 10 December 1963, approving the by-laws of the National Trade Unions of Rural Workers in Family Undertakings, a body comprising growers cultivating small family holdings and hence in a special position in relation to other agricultural growers, in that family undertakings have peculiar needs in regard to agricultural training, credit facilities, social benefits and marketing.

The National Trade Union organization concerned is the Federation of Organizations of Family Undertakings, incorporated in the official Trade Union Agricultural Councils, to which are federated, in turn, the Associations of Rural Workers in Family Undertakings of the Guilds of Landworkers and Stock-breeders.

Within the National Trade Union, the Provincial Unions of Rural Workers in Family Undertakings perform a twofold task as provincial organ of the National Union and as representative and agent of the Federal Associations.

The owners of family agricultural and stock-breeding undertakings in a trade union guild may form an Association of Rural Workers in Family Undertakings if they consider it necessary for the defence of their special interests, and in such a case the Association will perform the twofold function of delegate of the Provincial Union and agent for the interests it represents, adjusting its operational procedure to the rules laid down in the by-laws referred to (article 23).

Subject to the overriding control of the National Guild of Landworkers and Stock-breeders, to which it will belong through its Agricultural Growers' Section, the primary task of the Union the defence and promotion of the interests of family undertakings (article 2), for which purpose it is responsible for the following matters:

(*a*) The representation of the interests of family undertakings as a whole and, at the national level, in relation to the State Administration, the trade union organizations and the organs with which it is connected.

(*b*) The study of measures taken in the various countries for the protection of family undertakings, with a view to the adoption of any which meet the requirements of Spanish farmers.

(*c*) Advice to members and, where the need arises, representation of their interests *vis-à-vis* the public authorities and other organs in the event of such advice or representation being applied for and duly accorded with respect to their special problems.

(*d*) Provision of properly organized agricultural instruction and training for the owners of such undertakings.

(*e*) The organization of consultative and information services designed to provide farmers with the practical knowledge they require.

(*f*) The provision of loans to family undertakings through the appropriate sections or through other channels open to them.

(*g*) The establishment of co-operatives, settlers' groups, associations and other types of farmers' unions with a view to setting up efficient marketing agencies.

(*h*) Any other matters of a like nature.

The National Trade Union of Rural Workers in Family Undertakings possesses the legal capacity needed to perform the functions indicated; it can engage in economic activities of any kind provided its commitments do not extend beyond its own assets (article 3).

In connexion with the human rights concerning the family, referred to above, mention might also be made of the Ministry of Housing Decree of 24 July 1963, redrafting and revising the previous legislation on controlled housing in the light of the target of the National Housing Plan approved on 20 October 1961. This is essentially to solve a serious social problem by ensuring that the family as an institution, or rather as a unit, is given an appropriate sphere within which to function, namely, a home of its own. As pointed out earlier, in the discussion of the Act to define the basic principles of social security of 28 December 1963 large families have priority in the allocation of this type of housing.

At the international level, the constant concern of the State with respect to this right is clearly shown in the conventions and agreements on social security signed with the Netherlands on 17 December 1962 and ratified on 20 September 1963; on the same subject with Portugal on 27 February 1963 (*Boletín Oficial del Estudo* dated 30 October 1963), and on family allowances with France on 8 July and 11 October 1963. All these conventions and agreements provide appropriate protection and safeguards in respect of social security for the families of Spanish workers abroad and for those of foreign workers in Spain, on the principle of reciprocity.

C. THE RIGHT TO WORK

Concern for this right and protection of it, with particular reference to those sections of the community classified in recent times as "economically weak", has ancient roots in the Spanish legal system. Among these, it will suffice to mention the following: the provisions contained in the Old Charter, where it is prescribed that "every master shall pay a servant double wages if he dismisses him from his employment without good reason, and if a servant is engaged for a set term and at a fixed wage and is dismissed without good reason before expiry of the term, he shall be paid wages in respect of the full year". No better provision for compensation for dismissal is to be found in even the most advanced of modern legislations. There are also the Ordinances of Pedro I and the catholic monarchs regulating salaries, restricting the length of the working day and prohibiting Sunday work; and the Laws of the Indies already referred to, which established an eight-hour working day—the length of the working day that Philip II himself established for the workers at the Monastery of El Escorial.

With the advent of modern social, industrial and labour legislation brought about, of course, by the urgent necessity of solving the serious problems raised by the great industrial revolution of the nineteenth century, the Spanish State took a full share in the new governmental legislative activity it entailed. Thus, although it can be said that Spanish law has at all times paid special attention to matters connected with the right to work, it must be recognized that this was greatly intensified with the advent of the New Régime. Even with the war of liberation still in progress, the Labour Charter was promulgated. Subsequently, the Charter of the Spanish People and the Fundamental Law of the State of 17 May 1958 confirmed the provisions of the Labour Charter, and from the very date of the establishment of the new Spanish State onwards, a full and varied series of enactments have expanded and applied the principles or precepts of these texts of paramount importance in our legal structure, thus establishing a complete legal code of safeguards and guarantees governing the right to work, the guiding principles being in essence the same as those on which the corresponding articles of the United Nations Declaration of Human Rights of 10 December 1948 is based.

During the period covered by this report, the provisions of particular interest promulgated concerning the right to work may be summarized as follows:

The Order of the Ministry of Labour of 26 July 1963, laying down regulations for the implementation of the investment plan of the National Labour Welfare Fund for 1963. This measure has been partly dealt with in section A of the present report. To what was stated in that section, it is appropriate to add here that the Order in question regulates all matters relating to general unemployment insurance; to grants to wage-earning workers to enable them to set up on their own account; to specialized vocational training in general and to the training of supervisors for such vocational training; to environmental preparation for workers taking part in migratory operations; to the training of workers for management; to instruction on industrial safety and hygiene; to the promotion of the co-operative movement; and to loans to workers for the various purposes set forth in the Order.

The Order of 24 July 1964, also issued by the Ministry of Labour, putting into effect the investment plan of the National Labour Welfare Fund for the year 1964, is likewise of great importance. In this measure can be clearly noted the upward trend which the investment plans, approved annually for the purpose of administering the National Fund in question, have followed without interruption.

This third investment plan provides for a total expenditure of 2,366,142,104.26 pesetas, the various items of expenditure being assembled under nine headings: general unemployment insurance, emigration, internal migration, social welfare of workers, family allowances, items of unspecified purpose but connected with labour welfare, allowances for serious incapacity through blindness resulting from industrial accidents, industrial safety and accident prevention, and appropria-

tion in respect of grants carried over from the previous financial year.

In view of the impossibility of reproducing the full text of these various chapters, owing to their length, it must suffice to observe that provision is made in them—one might say exhaustive provisions—for all matters concerning the protection of labour in its most varied aspects, on a truly generous scale. Grants are provided for workers affected by reconversion of undertakings and labour disputes. The award of grants and facilities to emigrant workers or internal migrant workers and their families is regulated. Particular attention is paid to the vocational or technical training of workers and of supervisors for such training, and to ways and means of enabling workers to acquire property, by forming independent concerns, by combining to set up managing partnerships, or by entering the co-operative field. Five hundred million pesetas are appropriated as a contribution to the financing of family allowances, in accordance with the provisions of the Act to define the basic principles of social security mentioned earlier, to which further reference will be made below. In conclusion, equally generous provision is made in respect of all matters relating to safety at work, accident prevention and payment of disability pensions for industrial accidents.

The particular concern show by the Spanish Government in regard to workers' vocational training can be noted in the measures enacted during the past twelve months, as briefly outlined below. In this connexion, it is appropriate to point out that, in the investment plan referred to above, the amount specifically allocated for such training totals 709 million pesetas; to this sum must be added the amounts—also substantial—allocated for such educational purposes in the National Budget.

With respect to this vocational training, government activity has developed in the direction of expanding the educational facilities of the establishments already in existence and of setting up additional new establishments. In the first of these directions, there are the Ministry of Education Orders of 13 August, 19 October and 27 November 1963 and 8 April 1964, in virtue of which the curricula of various industrial graduate and apprenticeship schools were extended, and courses were instituted in the women's department of workers' school certificate studies in the agriculture and stockbreeding division at the intermediate and vocational training centres of Cangas de Onís, Lebrija and Villa Robledo; and in the administrative division at the centres of Alcira, Betanzos and Constantina, also at those of Ribadeo and Saldña.

With respect to the establishment of new vocational training centres, the following measures apply:

The Order of 10 August 1963, establishing at Madrid two women's intermediate and vocational training centres in administration, which will provide the whole of the curriculum for the workers' higher elementary school certificate in administration.

The Order of 9 July 1963, setting up at Torrelavega an industrial apprenticeship school offering courses of study in the following subjects: die-setting, metal turning and milling, and electrical installation, fitting and winding.

The Decree of 30 January 1964, establishing seventeen workers' institutes for agricultural and stock-breeding studies, twenty-three for industry and mining, and two for deep-sea fishing, the institutes to be situated in the centres designated in the Decree, their economic characteristics determining the various types of studies specified.

The Decree of 20 February 1964 establishing thirty-one industrial apprenticeship schools and ten industrial graduate schools; one of the latter —that at Baracaldo (Vizcaya)—specializing in "mining proficiency" studies.

The Decree of 5 March 1964 which established an industrial graduate school at Centa, having regard to the special position of that city and its industrial development.

The Decree of 18 March 1964 and the Order of 14 April 1964 establishing and regulating the courses of study of a women's industrial proficiency school at Madrid.

Among the first type of measures referred to above dealing with the expansion of establishments already in existence, four orders of the Ministry of Education dated 7 April 1964 must be mentioned; these extend the curricula in various intermediate and vocational training centres, establishing preliminary courses for the higher workers' school certificate in the various subjects in accordance with the economic characteristics of the places where the centres are located.

The Orders of 26 July and 18 September 1963 of the Ministry of Education established the curricula and the time-tables of regular and specialized tuition for the degree of industrial apprenticeship and for the higher workers' certificate. The Resolution of 10 April 1964 of the Directorate General for Workers' Education regulated the final examinations for the diploma of *maestro industrial*.

In view of the importance of agriculture in the Spanish economy, it is natural that agricultural vocational training should have received special attention from the Government. The Order of 10 December 1963 of the Ministry of Agriculture and the Resolution of 6 March 1964 revised and brought up to date the regulations governing proficiency studies in agriculture. Schools offering these studies have a farm attached, on which the activities of all kinds related to the special subject taught are carried on, with the application of modern technical methods. For admission to these schools the candidate must be at least sixteen years of age and pass an examination to show that he has a knowledge of reading, writing and arithmetic to primary level and some rudimentary knowledge of agriculture. The particular subjects on which courses are available in these schools are: general agricultural supervision (farm superintendent course), horticulture and fruit-growing, forestry, agricultural engineering, stock-farming, aviculture, pest and disease control, wine-making and viticulture, dairy work, preserve canning, and

oils and fats industries. The practical aspect of instruction in these schools is of the utmost importance in all subjects. The practical courses are conducted by the chief tutor in the appropriate subject, and the pupils carry out personally all the farm work in accordance with schedules worked out by the directors of the school.

The main source of wealth of the territories of Fernando Po and Rio Muni being agriculture, the instructions of 13 March 1964 of the Governor-General established and organized courses of study in those territories for promoting agricultural proficiency, leading to the diploma of superintendent, which is granted to natives of that region between the ages of sixteen and twenty-two years who are engaged in agricultural work.

The importance attributed by the Government to vocational training is clearly demonstrated by the Order of 4 September 1963 of the Ministry of Labour, bringing the grants made to workers accepted for unemployment insurance into line with the scholarships or "incentive bonuses" which these same workers may receive in respect of their participation in any class providing intensive or accelerated vocational training.

With final reference to this right to work, the experiments initiated jointly by the Ministry of Labour and the Ministry of War, whereby intensive vocational training courses are organized for soldiers in various workers' universities, may be mentioned as being of particular interest; under this scheme workers can obtain this vocational qualification while performing their military service. The results obtained have been excellent, and for that reason this experiment, initiated on a local basis—at the Workers' University of Seville in 1962 to be precise—has now been extended to cover the whole country.

The most recent manifestation of the concern of the State for the establishment of harmonious relations between the human factors in industry —the producer and the undertaking—is the Ministry of Labour Order of 18 May 1964, approving the labour regulations for the coalmining industry. These regulations cover all matters relating to labour organization, grading, vocational training and rights and duties of workers, awards, deficiencies, sanctions and remuneration due to workers, also the medical and health care to which they are entitled. All the standards established in these regulations are on the minimum scale, so that at any time three is scope for their improvement by means of trade union collective agreements or other legal instruments.

The system of trade union collective agreements previously noted, which was established by the Act of 24 April 1958 and for which regulations were issued on 22 July of the same year, has been steadily extended during the period covered by the present report. Developments in this scheme have been as follows:

The inter-provincial trade union collective agreement of the Press industry of the National Movement, approved by the Resolution of 9 August 1963 of the Directorate-General of Labour Relations.

The trade union collective agreement of the retailers sub-group in the joint trading group of the trade union of the chemical, herbal and orthopaedic industries, approved by Resolution of the Directorate-General mentioned above dated 11 November 1963.

The inter-provincial trade union collective agreement of manufacturers of plywood, panels, laths, doors, agglomerates and sawn woods from Guinea, and allied industries, approved by Resolution of 14 December 1963 of the Directorate-General of Labour Relations.

The inter-provincial trade union collective agreement of publicity undertakings approved by Resolution of 28 February 1964 of the Directorate General of Labour.

The inter-provincial trade union collective agreement of the tanning, leather belting and industrial leather industries and the industry of pelt tanning for fur production, also approved by Resolution of the Directorate General of Labour Relations on 2 May 1964.

The inter-provincial trade union collective agreement of the sugar industry, approved by the Directorate General named above, by Resolution of 11 May 1964.

As stated in previous reports, this system of collective agreement is at all times of benefit to the workers, since it improves the general working conditions and minimum standards laid down in the various National Labour Regulations.

In the light of the Government's interest in the development of and in the importance taken on by the labour activities referred to hereunder, and in accordance with the provisions of the Trade Union Act of 26 January 1940 and of the Act on the basic principles of trade union organization of 6 December of the same year, the national trade unions for the Press, radio, television and advertising industries, for education, and for the health services were established by Decrees of the Secretariat General of the National Movement dated 23 April 1964.

In the sphere of social security and assistance, the Act of 28 December 1963 is of exceptional interest; this basic text regulates Spanish social security to accord with the principle of solidarity of the whole nation; the achievement of that solidarity is regarded as a task of national importance "entailing sacrifices by the young on behalf of the old, by the healthy on behalf of the sick, by those who work on behalf of the unemployed, by the living on behalf of families which are bereaved, by those who have no family responsibilities on behalf of those who have, and, in short, by those parts of the economy in the full flood of prosperity on behalf of those sectors experiencing depression".

The clear fact that at the present time no social security system is possible without the contribution of the State explains why the Act sets forth this principle in general terms and provides for the permanent appropriation in the National budget of subsidies earmarked for the purposes indicated, having regard to the aim of redistribution of the national income, since it is a well-known fact that social security can contribute

effectively to securing such a redistribution, in accordance with principles of justice and equity, and may indeed be regarded as one of the most appropriate means for minimizing inequalities in the levels of living between various sections of the populations.

This Act, superseding the previous system of social insurance, aims at the establishment of a national social security system on the basis of certain guiding principles which, in addition to providing the system with its most valuable features, epitomize the scope of the reform. The main guiding principles are: the move to achieve uniformity, the participation of those covered by the scheme in the management of its administrative organs, the elimination of any possible basis for profit-making operations on the part of the latter, the joint consideration of the contingencies and situations covered, the transformation of the financial structure, the increasing participation of the State in the maintenance of the scheme and the preference accorded to recovery and rehabilitation services.

This Act consists of nineteen Basic Principles, plus one Preliminary Principle and several final, additional and transitional provisions, and its content may be summarized as follows:

Preliminary Basic Principle. Under this heading, it is stated that through the social security scheme the Spanish State shall guarantee to those persons who on account of their activities fall within its scope and to their family dependents and other persons placed on the same footing and maintained by them, adequate protection in the contingencies and circumstances defined in the Act, together with the progressive raising of their standard of living as regards health, economic situation and culture. The State is responsible for organizing, exercising jurisdiction over and inspecting the social security scheme, the Ministry of Labour being competent to exercise the appropriate administrative powers and those conferred on it by regulations.

Basic Principle I. This provides that the social security scheme shall be organized and co-ordinated on the basis of joint consideration of the contingencies and situations covered and shall in no case be used as a basis for profit-making operations. In fixing the extent of protection and the type and amount of benefits to be granted and in prescribing its assets and financial structure, the scheme shall endeavor to promote the social justice proclaimed in the fundamental principles of the National Movement and to favour a just distribution of the national income in harmony with the economic development of the country.

Basic Principle II. This principle defines the scope of the Act, providing that all Spanish nationals, irrespective of sex, civil status or occupation, residing in the national territory shall be entitled to benefit under the social security scheme, whether they are persons employed by another in permanent posts or as casual or seasonal workers, being fourteen years of age or over, or self-employed workers or persons working on their own account (whether owners of individual or family undertakings or not) of eighteen years of age or over, who are registered as such with Trade Union Organization competent in their field of activity and who fulfil such other requirements as may be expressly prescribed. The provisions of the Act also cover working members of producers co-operatives, domestic workers, students and public officials (civil and military) of all ranks. Spanish nationals who are not resident in the national territory shall be covered by the scope of the Spanish social security scheme when this is prescribed by special legislation adopted for that purpose. The nationals of Latin American countries, Andorra, the Philippines, Portugal and Brazil residing in Spanish territory shall be placed on the same footing as Spanish nationals, in the manner and subject to the conditions to be prescribed in each case by the Government. The status of nationals of other countries shall be governed by the provisions of conventions or agreements ratified or concluded for this purpose or according to the standards applying to them by virtue of rules of reciprocity tacitly or expressly recognized. It is laid down that the persons covered by the Act cannot be made compulsory liable to insurance under provident schemes other than those covered by this Act on account of the same employment. The wife, children or grandchildren, parents or grandparents and other relatives by blood or marriage to the third degree of consanguinity or affinity of the employer occupied in his work-place or work-places, if they live together with him in his home and are maintained by him, are excluded from the scope of the social security scheme, unless evidence is furnished that they are treated as wage-earners.

Basic Principle III. This defines the special schemes and systems of social security applying to the following categories: civil servants, officials of autonomous State bodies, persons in the service of the organs of the Movement, working members of producers' co-operatives, domestic workers, persons working on their own account, students, civilian employees of military establishments other than civil servants, commercial agents, seafarers, agricultural workers and any other type of workers and persons that may be defined or authorized by the Ministry of Labour in the future.

Basic Principle IV. This provides that affiliation to the social security scheme shall be compulsory for every person falling within its scope and shall apply once and for all for the whole life of every person and for the entire system, without prejudice to any interruptions or changes which may occur in his activities after he has commenced the activity on account of which he is affiliated.

Basic Principles V. This principle defines the scope of the protection afforded by the social security scheme, which shall comprise: medical assistance in the case of maternity, occupational disease or other disease, industrial accident or other accident, cash benefits in the case of temporary incapacity for work, disability, old age, unemployment, death (survivors) and any other such benefits as may be granted in special circumstances and situations to be prescribed by regulations, the family protection scheme, and the social services for which the social security scheme will

assume responsibility, within the limits of financial means at its disposal, or which may be assigned to it, in the field of assistance, preventive medicine, industrial health and safety, rehabilitation of the disabled, employment and placement of manpower, training for promotion and in any other field where the establishment of such services appears appropriate or necessary. The benefits received by way of protective action in the field of social security are exempt from tax or excise duty or any other form of taxation.

Basic Principle VI. This defines the services concerned with general health, medical and hospital assistance, including prescriptions and pharmaceutical products, also the supply of prosthetic appliances and permanent or temporary orthopaedic apparatus, all on the most generous scale practicable.

Basic Principle VII. This principle deals with temporary incapacity for work, including under that heading ordinary sickness or occupational disease, ordinary accidents or industrial accidents, for so long as the worker receives health assistance from the social security scheme and is unable to work, the so-called observation periods and periods treated as such or equivalent thereto in the case of occupational diseases, and the optional or compulsory rest periods applying in the case of maternity. The amount of the cash benefit granted in these cases of temporary incapacity for work shall be a certain percentage calculated on the contribution base, the intervals at which such benefit is payable being defined.

Basic Principle VIII. This defines the circumstances or states amounting to disability, which, for the purpose of entitlement to the appropriate cash benefit, consisting of a pension for life, the amount to be fixed on a percentage basis by regulations, according to the findings with respect to the degree of incapacity, shall be assessed under the heads of: absolute incapacity for all work, and serious disability, if the worker as a consequence of loss of limb or disablement is unable to cope on his own with the basic acts of human existence and requires the permanent assistance of another person. In the latter case, the disability pension shall be increased by 50 per cent, this amount being intended for the remuneration of the person looking after him. It may, if the disabled person so desires, be replaced by hospitalization in a nursing home or the like. The findings as to incapacity are subject to revision at any time, on grounds of aggravation or improvement in the patient's condition or to rectify errors in diagnosis, except in the case where the person concerned has reached the age of sixty-five years.

Basic Principle IX. This principle is concerned with old age cash benefit, which shall consist of a life pension, the amount to be calculated in proportion to the contributions paid and the number of contribution years, a system being established to benefit especially the lower contribution bases. The minimum age for entitlement shall be sixty-five years, but this limit may be lowered in occupational activities where, on account of their type or nature, such measure may be deemed to be justifiable.

Basic Principle X. This covers cases of death and survivors. In the first case, a funeral grant shall be payable to enable the person making the funeral arrangements to defray their cost. With respect to survivors, widow's pensions are provided, either for life or on a temporary basis, according to the circumstances of age and personal capacity for work of the recipient, and orphan's pensions payable in respect of every child under eighteen years of age or incapable of working. All such pensions shall be compatible with any income the surviving spouse may receive from his or her work and, where applicable, the widow's or widower's pension drawn by the latter.

Basic Principle XI. This is exclusively concerned with the protection of the family. As this matter has been dealt with earlier in section B of the present report, the reader is referred to the contents of that section, so as to avoid unnecessary repetition.

Basic Principle XII. This deals with the situation of workers employed by another who are able and willing to work but lose their employment through no fault of their own or whose working hours are reduced to below the statutory rate, or rather the normal rate. In such cases, those concerned shall be entitled to the following benefits: cash benefit for termination, apart from any compensation payable by the undertaking or benefit for temporary lay-off, consisting of a percentage of the average contribution base under the social security scheme, an allowance payable during any period of part-time employment, calculated in the same manner, and continuation of payment of the workers' and employers' contributions to the social security scheme. In addition, certain supplementary benefits may be payable, these being fixed by regulation.

Basic Principle XIII. This principle relates to the contributions to the social security scheme, which shall be compulsory for all persons falling within its scope. The full contribution shall be composed of two elements; that payable by the undertaking and that paid by the workers covered by the scheme. In the scheme for industrial accidents and occupational diseases the full contribution shall be payable by the undertaking. A system of voluntary increased contributions to the social security scheme is provided for, as well as contributions to special schemes and systems, which shall be paid in accordance with rules to be laid down in each case.

Basic Principle XIV. This principle deals with the recovery of contributions to the social security scheme. This, whether concerning contributions on a regular or on a voluntary basis or those secured by distraint, are the responsibility of the administrative bodies in charge of the scheme.

Basic Principle XV. This provides that in addition to the benefits payable on the materialization of contingencies against which protection is specifically afforded by the social security scheme, the scheme may extend its action to other social services, such as: industrial health and safety, preventive medicine, rehabilitation of the disabled, and the training and general education of workers,

raising their cultural level and that of their families by means of scholarships or other kinds of assistance.

Basic Principle XVI. This principle deals with the arrangements for assistance which may be made for workers and their families in special cases. Assistance under this heading shall include arrangements for special treatment or surgery in cases of an exceptional nature, by a named specialist, compensation for loss of wages as a result of accidental breakage of prosthetic appliances, etc.

Basic Principle XVII. This deals with the administration of the social security scheme which, under the direction, supervision and protection of the Ministry of Labour, is entrusted to administrative bodies possessing full legal capacity and the right to administer their own assets for the purpose of accomplishing the tasks incumbent upon them. Such administrative bodies shall be: for the general scheme, the National Safety, Rehabilitation and Industrial Accident Institution and the labour mutual provident societies, and for the special schemes, such bodies as may be established by the rules governing those schemes. The Trade Union Organization shall collaborate in the administration of social security. The administration of the scheme covering industrial accidents and occupational diseases shall be the responsibility, within the general scheme, of the labour mutual provident societies, and within the special schemes the similar mutual provident bodies shall be responsible for its administration. This administration shall be compatible with the functions attributed to employers' mutual associations, in a manner to be prescribed by regulations.

Basic Principle XVIII. This principle defines the economic and financial rules for the social security scheme, the financing of which is based on the following resources: employers' and workers' contributions, State subsidies provided for in a permanent manner in the National budgets, or such other subsidies as may be granted for special purposes or may be required by the exigencies of economic trends, income and interest from the reserve funds, and any other income.

Basic Principle XIX. This refers to the jurisdictional system; the hearing of all litigation connected with the social security system is entrusted to the labour courts. To institute proceedings before the labour courts, it shall be necessary (except in the case of an industrial accident) to have previously laid a complaint through administrative channels. In matters which do not affect individual cases covered by the social security scheme, appeal may be brought against decisions of the administrative bodies through normal administrative channels via the various stage of the hierarchy and should this form of appeal be exhausted, by the administrative dispute procedure in accordance with the law in force.

The final, additional and transitional provisions of the Act are of no particular interest as far as the matters basically regulated by the principles summarized above are concerned. It need only be noted that the additional provision confirms that the special social security scheme for civil servants and members of the armed forces shall be the subject of special legislation.

In conformity with the Act discussed above, and specifically with the principle of uniformity which that Act aims to substitute for the previous complexity of procedure and administration, the Ministry of Labour Order of 13 June 1964 unifies and adjusts the general old age and disability pension payments for beneficiaries who at the same time are receiving retirement, disability or widow's pensions from the labour mutual provident societies. Such payments are to be made by the organs and agencies of the labour mutual provident service, jointly and simultaneously with its own pension payments.

The constant concern of the Spanish State for greater effectiveness and scope of social security was recently exemplified in the Resolution of 19 May 1964 and in the Ministry of Labour Order of 11 June of the same year. The former provides that temporary or short-term staff, whether the term is continuous or broken, engaged in olive dressing and filling processes, whose engagement for this type of work normally exceeds four months, must be insured under the national unemployment insurance scheme, which is under the obligation of paying the contributions to cover the period of duration of the season. The determination of that period, based on the advice of the undertakings concerned, is the responsibility of the jurisdictionally competent labour agencies. The Order of 11 June in question regulates the application of unemployment insurance to dock workers, taking into account the special nature of their work and also the special conditions in which it is performed; it extends insurance to cover seasonal work at the docks for whatever period a season may comprise. The dates of beginning and end of each season or short-term period of employment shall be determined by the Directorate-General of Labour, acting on the prior advice of the appropriate local technical board.

With specific reference to the labour mutual provident societies, interesting examples of the spirit which inspires the Act of 28 December 1963 considered above are to be found in the Orders of the Minister of Labour of 6 August and 7 October 1963. The first of these Orders amends the constitution of the societies so as to give it greater flexibility. The second regulates the option of workers affiliated to a mutual provident society for wage-earning workers who lose that status and become self-employed workers, to transfer to the appropriate mutual provident society for self-employed workers or to remain in the society in which they were originally registered, in conformity with the instruction contained in article 21 of the general regulations for labour mutual provident societies, approved by Ministry of Labour Order dated 10 September 1954.

With reference to the overriding management and control possessed by the Administration in all these matters, it is appropriate to mention the Resolution of 13 December 1963 of the Board of Social Development, which established a registry of educational centres and institutions for the training of workers in management, and the Min-

istry of Labour Order of 22 January 1964 which, within the framework established by the Act to define the basic principles of social security, established under the chairmanship of the Under-Secretary of Labour a co-ordinating committee consisting of members of the universities and the labour mutual provident societies and exercising the functions specified in the Order in question; these are, briefly, to promote relations between the parties concerned, reconciling differences of opinion and providing a normal channel of communication between the many mutual provident bodies and the universities. This committee will have powers of inspection *vis-à-vis* all the workers' universities and will be informed, for appeal purposes, of the decisions adopted by any governing body of those workers' educational institutions, involving any change in the existing relationship between scholarship students and the mutual provident bodies.

In conclusion, and with reference to all the various aspects of this human right to work, mention must be made of the Act of 28 December 1963 approving the economic and social development plan for the four-year period 1964-1967, since there can be no doubt of the close connexion between the two spheres of national activity and the great benefits which may accordingly be derived by labour and by everything appertaining thereto if, as is to be hoped, the plan in question achieves its ambitious purpose.

D. THE RIGHT TO EDUCATION

The concern shown at all times by the Spanish legal code for this fundamental human right, proclaimed in article 26 of the Universal Declaration of Human Rights, is likewise traditional. The Spanish Government has always displayed great activity in the field covered by this particular right, but there is no doubt that this activity has substantially increased in recent years as a result of the national school building plans, literacy and further education campaigns, the establishment and regulation of a comprehensive system of scholarships and bursaries, the constant setting up of new educational establishments at various levels and in various subjects, the constant expansion of the courses of instruction in the establishments already in existence, etc., etc.

This varied and comprehensive activity culminated in the Act of 21 July 1960 which established, in addition to other funds, the Fund for the Promotion of the Principle of Equality of Opportunity, specifically intended to promote the practical implementation of that principle of equality for all Spaniards in respect of the right to education. This most important legislative provision has already been considered in previous reports and we shall therefore refrain from discussing it further here and confine our attention to the 1964 investment plan of the Fund referred to, announced in the Ministry of National Education Order of 15 July 1964.

This fourth investment plan provides evidence of the increasing support being accorded to the right to education, the total amount of the budget under this heading—2,200 million pesetas—representing an increase of 200 million pesetas on the total provided under the plan for the previous year. With respect to the apportionment of the 2,200 million pesetas allocated to the Fund's budget for the current year, the following basic criteria have been adopted:

(*a*) Continuity with previous plans. This criterion derives from the necessity of maintaining continuity in the renewal of the grants made and of enabling a certain number of students from primary schools to begin their studies in various secondary establishments. In this connexion, the plan brings into relief the fact that whereas 80,000 scholarships were provided in the year 1962-1963, the number provided increased in 1963-1964 to over 115,000.

(*b*) Retention of the same allocations for scholarships. This is the consequence of the adjustments, always in an upward direction, achieved by previous plans. These have allowed of a more equitable adaptation of the amount of the scholarships to the real economic needs of the beneficiaries.

(*c*) The addition of new items. These include grants for students resident at boarding schools, the extension of educational insurance to the pupils of the higher secondary institutions and to technical assistants in the health service, grants for students at the schools for agricultural superintendents etc.

The plan in question is drawn up in seven sections dealing respectively with primary education, secondary education, vocational education, higher and technical education at the intermediate level, registration fees, special scholarships and expenditure not specifically allocated. The various articles and subjects dealt with under those sections cover all types of educational grants and scholarships, making it possible for any Spaniards in need of it to be given the wherewithal to make his personal right to education a practical reality.

Since it is virtually impossible to recapitulate one by one all the vast number of provisions enacted in regard to education during the past twelve months, we shall merely indicate those of major importance and omit all mention of those relating to vocational training, since this subject was dealt with in the foregoing section C in connexion with the right to work. For greater clarity, the provisions to be considered hereunder will be grouped under the various types of education concerned.

1. *Primary Education*

The noteworthy reduction in the illiteracy figures over the last few years as a result of the comprehensive and energetic policy pursued in education by the New State has not removed the need for exceptional measures to get rid of illiteracy altogether. This purpose is served by the national literacy campaigns, the most recent of which, regulated by the Decree of 10 August 1963 of the Presidency of the Government, represents a more difficult undertaking than the previous ones, since the standard of literacy (going beyond the minimum levels previously set) aims at providing illiterate persons with a genuine

ability to read, to comprehend, to restate and to reproduce what has been read, in writing and in a different form.

Article 9 of this Decree of 10 August 1963 provides that illiterate persons over fourteen and under sixty years of age in the case of men or fifty in the case of women, shall be obliged to take part in the adult literacy campaigns until they have overcome their disability. In order to meet this requirement, those affected by it who are not of school age must register in the "cultural promotion register", to be opened at the municipal boards for primary education and at other centres or offices to be specified. This obligation rests, secondarily, on those who have the paternal authority, custody, surveillance or guardianship over the persons concerned, and on the presidents, directors or heads of associations, institutions or undertakings to which those persons belong or with which they have any relationship of dependency, service or employment, including domestic service (article 10). Evidence of inclusion in the register in question will take the form of a "cultural promotion card", which will be issued free of charge. Failure to produce this card disqualifies the persons under the obligation of obtaining it from: (*a*) taking advantage of camping facilities, hostels, homes and similar institutions run by the State, the National Movement, the Trade Union Organization, local councils or municipalities; (*b*) obtaining a passport or a hunting or fishing permit; (*c*) receiving payments and securing loans, grants or compensation payments of a similar nature either from banks and savings institutions or from any other type of body, official or private; (*d*) receiving social security cash benefits; (*e*) obtaining any kind of educational welfare grant for persons placed under the authority or custody of Social Welfare; and (*f*) taking over a plot or piece of land allocated by the National Institute for Land Settlement. This card will also be required by undertakings from their employees who are illiterate, before employment agreements are concluded. When the holder of the card has assiduously participated in four courses and has not succeeded in reaching the required standard for the grant of the certificate of primary studies, he may obtain a certificate of assiduity equivalent to the certificate of schooling, valid exclusively for employment purposes (articles 11, 12 and 13).

The organization and operation of this national literacy campaign is in the hands of the Ministry of Education, and it is carried out by the National Board of the Ministry, the provincial cultural executive committees, the municipal education boards, the Professional Inspectorate of Primary Education and the National Organization of Primary Teachers, all the ministerial departments being under the obligation of contributing the maximum aid through all the components and services for which they are responsible (article 16). Through the Ministry of Education, the interest of the ecclesiastical hierarchy will be enlisted to secure the participation of the Church in the campaign, as also in the compilation and custody of the cultural promotion register (article 19). The Decree further provides that the possession of the certificate of primary studies shall be required for the exercise of the right to vote; for acceptance for voluntary military service; for appointment to any post in public administration and in the autonomous State bodies; for the conclusion of employment agreements and for entry into State educational establishments where such entry takes place after the person concerned has reached the age of twelve years and where no other diploma at a different level is required (article 7). Recruits in any of the branches of the armed forces who have not obtained the certificate of primary studies or the certificate of schooling may not be granted leave of absence until they have given proof of progress in the courses or studies for which they are entered, and their period of service will be extended by whatever time is necessary for obtaining the certificate of assiduity in the courses organized for that purpose by the various branches of the armed forces. This certificate will serve for all purposes as the "certificate of schooling" (article 17).

In connexion with this national literacy campaign, the following provisions are deserving of special mention:

The Decree of 24 July 1963 establishing special schools to promote adult literacy.

The Order of 15 October 1963 expanding the National Literacy Board established by the Decree of 10 August 1963, and defining its functions.

The Resolution of 17 October 1963 of the Directorate-General of Primary Education, laying down regulations for implementing the Decree of 10 August 1963. Since the national literacy plans can hardly be a success without municipal planning to bring all the facilities for overcoming illiteracy to bear directly on the real problem of each local group of illiterate persons, this Resolution provides that for that purpose the municipal education boards shall operate in every way as municipal boards for adult literacy and further education, working either in plenary or through a standing committee. In either case, the local administrative secretaries of the appropriate municipal authorities shall participate in the proceedings, having regard to the importance of the contribution they can make to the literacy campaigns (Resolution of 31 January 1964 of the Directorate-General of Primary Education). For the purpose of establishing the necessary and appropriate link between the Provincial Inspectorates of Primary Education and the instructors assigned to the special adult literacy schools, the above-mentioned Resolution of 17 October 1963 further provides that these inspectorates, on the advice of the Deputy Inspector for the Literacy Programme, shall appoint in each municipality or group of neighbour municipalities a chief instructor to exercise the functions defined by that same Resolution.

In order to ensure the continuity of this effort, the Order of 7 November 1963 authorizes the filling of any vacancies occurring in the teaching staff in the special literacy schools from the ranks of schoolmasters or schoolmistresses awaiting appointment to State schools, or with temporary teachers if the Inspectorate has no mobile teaching staff available for that purpose.

In order to bring primary education even to the most remote and inaccessible parts of the national territory, the Resolution of 9 November 1963 (Directorate-General of Primary Education) set up and organized school transportation and "home schools", the essential purpose of which is to make compulsory education available to children living in sparsely populated areas or in places having an insufficient number of inhabitants to support a school.

Of unusual interest is the Act of 29 April 1964, which extends the period of schooling and makes attendance at regular classes of teaching establishments compulsory for all Spaniards between the ages of six and fourteen years.

The major provisions quoted above are supplemented by the following:

The Order of 24 July 1963 instituting annual prizes of 10,000 pesetas for State and rural school teachers of any grade who distinguish themselves in the exercise of their profession.

The Order of 14 January 1964 establishing a Primary School Council, in which teachers qualified in the organization of school services will participate. The task of this Council be to co-operate in the solution of the complex problems of primary education, and to assist the National Inspectorate in its work.

The Resolution of 21 February 1964 of the Directorate-General of Primary Education, approved the constitution of the Centres for Educational Co-operation. These Centres consist of groups of State teachers in a single locality or from various localities, organized and directed within each province by the appropriate Inspectorate, with a view to holding regular meetings for the interchange of views and experience, with the general aim of studying, discussing and checking all matters relating to the improvement of the resources and efficiency of primary educational institutions.

The legislative Decree of 2 July 1964, amending the Act of 22 December 1953 relating to school buildings. This sets forth the requirements—representing an improvement on those previously applicable—with which the public schools and the economic framework of their construction, equipment and maintenance must comply.

Primary education for the blind has been a particular concern of the Spanish State. Pursuing the constant effort to improve its scope, the Decree of 12 December 1963 placed the responsibility for such education in the hands of the National Organization for the Blind, without prejudice to the overriding control which, as in all educational matters, pertains to the Ministry of Education. All those on the teaching staff of these special schools must hold the diploma awarded for specialization in the teaching of the blind.

II. *Secondary Education*

The broadening of the territorial scope of this grade of education has continued throughout the period under review. Various decrees (dated 24 July, 10 August, 7 and 26 September, 24 October and 12 and 26 December 1963, 16 and 30 January, 20 February and 9 April 1964) established sub-sections and branches of existing institutions, thus facilitating access to secondary education in districts where few if any establishments of that type existed.

With respect to secondary education for girls, the Order of 7 October 1963 also extended this, in particular by establishing schools of domestic science in various State secondary institutions. The curricula of these schools comprise basically needlework, dressmaking, cooking and music.

The general programme of evening studies in the State secondary educational institutes (studies organized for the purpose of securing the maximum extension of the scope of this type of education in relation to the individual) for the year 1963-1964 was instituted by the Ministry of Education Order of 25 July 1963. The duration of the periods devoted to the individual subjects in the day classes and the length of the school day in the secondary educational institutes were laid down by the Decree of 29 September 1963.

The rules governing the procedure of the General Board for the allocation of secondary educational scholarships for the academic year 1964-1965 were laid down by the Resolution of the General Commission on Student Welfare of 26 February 1964. The criterion for selection takes into account basically the lack of means and the academic suitability of which those concerned can provide evidence.

The policy of opening up the way for the spread of secondary education to new social groups led to the following two provisions:

The Decree of 26 December 1963, which set up an experimental industrial secondary education centre, through the establishment of a women's elementary secondary department of the "Infanta Isabel de Aragon" Institute at Barcelona at the Wool Carding and Spinning Co. (SAPHIL) factory in the parish of Ripoll (Gerona). The aim in view is the improvement of the personal efficiency of the workers and a consequent improvement in their vocational ability, together with qualification for access to higher social and economic status.

The Decree of 16 May 1963, which established the National Centre for Secondary Education by Radio and Television whose educational activities utilizing these broadcasting media were regulated by the Order of 16 August 1963. For the purposes of these courses of study, three kinds of students are recognized: (*a*) free students enrolled with the National Centre; (*b*) free students organized in listening groups; and (*c*) listeners not subject to supervision on the part of the National Centre. The rules for the end-of-term examinations for students in the first two categories are laid down in the Ministry of Education Order of 23 March 1964.

Taking into account the experience gained with previous measures, the Order of 22 April 1964 regulates the final examinations of the pre-university course, which will be of two types: the standard examination for all students, and special examinations for each of the departments of arts and sciences. The standard examination consists

of one written and one oral test, and the special examinations will comprise two written tests.

In connexion with the two grades of education (primary and secondary) considered above, the Order of 30 September 1963 of the Ministry of Information and Tourism is worthy of mention; this established within the National Press Council a special advisory committee on information and publications for children and young people, the specific purposes of which are to provide information on applications for the licensing of new periodical publications of that nature; to provide information on existing publications of the same type and to propose measures conducive to rendering them completely suitable for the purpose for which they are designed; to provide information on the distribution and sale in Spain of foreign publications of the type in question; to propose measures for encouraging the production of suitable specialized publications and to supply information on the award of prizes instituted in connexion with such publications; to propose any measures the Committee may consider necessary with respect to special training and extension study facilities for those engaged in the editing and compilation of such publications and to give prior information regarding the rules which may be devised in that connexion (article 3).

III. *University Education*

The activities of the Spanish Government in this branch of education during the period under review have comprised fundamentally the extension of the scope of university studies through the establishment of new departments, schools and similar institutions within the existing universities. The main provisions in this connexion, in chronological order, were the following:

The Order of 5 July 1963, establishing in the Faculty of Law of the University of Seville a University Institute of Business Sciences. The courses provided by this Institute are concerned with the study of the techniques and skills relating to the nature, constitution, management, organization and administration of public and private undertakings.

The Order of 27 July 1963, establishing in the University of Murcia a University Institute of Business Administration and Management, similar to that at Seville, but more limited in its scope.

The Orders of 13 December 1963, establishing and laying down regulations for medical schools specializing in the digestive system, pediatrics and puericulture, psychiatric, anaesthesiology, medical-surgical dermatology, diseases of the circulatory system, industrial medicine, obstetrics and gynaecology, and traumatology and orthopaedics in the Faculty of Medicine of the University of Granada; also specialist schools of radiology and ophthalmology in the University of Madrid, and a school of traumatology and orthopaedics in the Faculty of Medicine of the University of Valencia.

The Order of 5 February 1964, establishing at the University of Murcia, as a tribute to the great Spanish inventor, the Cierva-codorñiu Chair, in association with the General Academy of Aeronautics. The purpose of this Chair is the study of all subjects connected with aeronautics, in so far as those subjects serve to supplement or complete the professional training of the members of both institutions.

The Order of 29 February 1964, which established the department of mathematical sciences at the University of Granada; the departments of biological sciences at the University of Salamanca and at the University of Seville, and the department of physical sciences at the University of Valladolid.

The Order of 13 March 1964, which established the department of modern philology af the University of Zaragoza.

The Order of 25 May 1964, which established the school of ophthalmology in the Faculty of Medicine of the University of Granada, and also approved its constitution.

The Order of 9 June 1964, which established a school of paediatrics and puericulture in the Faculty of Medicine of the University of Salamanca, and approved its constitution.

In implementation of the provisions of the investment plan of the National Fund for the Promotion of the Principle of Equality of Opportunity, and in further pursuance of the policy of facilitating access to higher education for all Spaniards likely to be hampered in that respect by lack of means, the General Commission on Student Welfare resolution of 26 February 1964 laid down the rules governing competition for the award of university scholarships for the academic year 1964-65.

With reference to the Church universities established within the national territory under Canon 1736 of the *Codex Iuris Canonici* and recognized by the State in accordance with the Agreement of 5 April 1962 with the Holy See, the Decree of 5 March 1964 makes regulations for the comprehensive examination laid down in article 6 of the instrument of ratification of that Agreement as compulsory for students of those universities before their studies can be recognized for civil purposes.

IV. *Technical Education*

This type of education is receiving particular attention from the Spanish Government at the present time, in view of the prospects of industrialization which the present economic situation —as seen in the economic and social development plan already approved for the period 1964-1967— hold for the national economy.

As in the other educational fields, the salient feature to be noted in connexion with technical education during the past twelve months is its constant expansion. To avoid excessive length in this report, it is proposed to quote only a few of the provisions reflecting this expansion:

By the Decree of 12 December 1963, a school for agricultural engineers was established at Cordoba, a school for industrial engineers at Seville, a school for highway, canal and port engineers at Santander, schools for agricultural specialists at Lugo and Leon, a school for public works specialists at Burgos and a school for shipping

specialists at El Ferrol. The specialized nature of the courses at these specialist schools was determined in the light of the particular features of the area in which they were established.

The Orders of 30 December 1963 considerably expanded the curricula at the Cadiz school for specialists in industry, at the Mieres and Torrelavega schools for mining specialists and at the higher technical school of industrial engineering at Madrid.

The policy directed towards the improvement of this type of education, through the acquisition of staff with the highest possible qualifications, is reflected in the Order of 12 March 1964, approving the regulations for competitive examination for admission to the Association of Workshop or Laboratory Instructors and Technical School Supervisors.

The Act of 29 April 1964 for the reform of technical studies is of exceptional importance. It provides that direct access to technical studies at the higher level shall be available to holders of the higher school certificate in any group of subjects offered who have been successful at the final examination of the pre-university course or the equivalent examination in the workers' universities. Direct access to these studies, and to any entitlement resulting therefrom, will also be available to officers of the armed forces who have completed the regular courses of the General Military Academy and the appropriate Special Academies, or of the Naval School or the Aeronautical Academy, to intermediate level technicians in any subject and to teachers of commercial subjects. Direct access to intermediate level technical education shall be available to holders of the school certificate in any of its groups of subjects, to commercial specialists, to teachers in industrial schools and to primary school teachers. Holders of the workers' school certificate at the elementary level, with the exception of those in administration, shall also have access to this secondary level technical education, subject to their having previously taken an adaptation course. Subject to having undergone a preparatory course, industrial supervisory staff and agriculture and forestry supervisors who have qualified in State schools or recognized schools may also have access to this intermediate grade technical education (articles 1 and 2).

The studies in the higher grade will be spread over five academic years, and those in the intermediate grade will be of three year's duration. The higher technical schools and the institutes of applied research may offer courses in respect of which diplomas in some special subject may be awarded to qualified students, both at the higher and the intermediary levels, who may wish to supplement their studies. For admission to the degree of doctor in architecture or engineering, not only will qualification as architect or engineer be required, but also studies over a two-year period, as prescribed in regulations; in addition, a thesis must be submitted and accepted, which will be adjuged in accordance with the standards laid down by the regulations. Some of the studies in question may be undertaken at educational or research centres in Spain or abroad (articles 4 and 5).

V. *Arts and Crafts*

Education in the arts is also constantly being broadened and improved. The provisions of particular interest affecting this field of education enacted during the period which has elapsed since the date of our last report, are the following:

The Decree of 24 July and the Order of 27 December 1963 outlining and regulating the curriculum of the schools of applied arts and handicrafts. Taking into account the special nature of the studies and their variety and peculiarities, the new regulations establish, as a general principle, a number of departments within the current curriculum, comprising set courses of study and practical work which will have to be followed compulsorily by students who aim at certain educational qualifications. This does not affect the freedom of other students to register only in those branches of study or skill most adapted to their vocation or to the time available after their day's work. These new regulations take account of and implement the wish repeatedly expressed by some schools and handicraft undertakings that special courses for rapid artistic training should be organized, particularly in certain applied arts already widely practised in other countries and now in great demand in this country, with a view to the training of specialists such as experts in decoration, window-dressers, fashion-plate designers and many others.

The Orders of 19 October 1963 and 31 October 1963, extending the curricula of many schools of arts and crafts, the list of which is too long to be reproduced here.

The Decree of 4 July 1963 regulating admission to the associations of Teaching Staffs of Schools of Arts and Crafts and thus ensuring that those admitted are properly qualified.

With respect to the personal or private right to engage in practical educational activities, the Decree of 18 June 1964 guides and regulates personal or private initiative in the establishment of private institutions providing tuition in art; such institutions may be authorized or recognized by the State, provided that they fulfil the same requirements as State establishments of similar type and grade, or that the particular syllabus is approved by the Ministry of Education. The students of private establishments must register their enrolment with the secretariat of the appropriate State educational establishment for artistic studies in the district in which they are situated, or failing that, with that of the chief town of the province. The students of authorized establishments must take their course examinations and the final degree examinations at the State educational establishment for artistic studies at which their enrolment is registered. The students of recognized establishments take their course examinations at those establishments, but the final degree examinations are marked by boards appointed by the Minister of Education.

VI. *Social Measures*

Among the many provisions under this heading connected with education, the following were of

particular note during the period covered by this report:

Two decrees of 4 July 1963 of the Ministry of Education, by which the students of the State schools of journalism and cinematography and those of the teacher training schools, were declared to be covered by the social security scheme established under the Act of 17 July 1953, already discussed in previous reports.

The Orders of the Ministry of Aviation and the Admiralty of 26 November 1963 and 6 March 1964 respectively, extending the present student welfare scheme of grants and scholarships to the children of all grades of commanders, officers, warrant officers, senior non-commissioned officers and equivalent ranks, in the Air Force and the Navy.

Various other provisions relating to education could also be quoted, but the activities of the Spanish State in regard to this human right are so continuous and intensive that it becomes virtually impossible to include them in full in a report such as this. As examples, the Decree of 18 March 1964, establishing the Sephardic Museum in the city of Toledo, and the Decree of 30 April 1964, establishing schools for social workers, may be quoted. However, in view of the necessity for concluding this report, we must confine ourselves to summing up the whole of what has been said with reference to the right to education, and for this purpose it is considered sufficient to refer to the following two general provisions incorporated in current Spanish legislation.

The Act of 28 December 1963 approving the National budget. Among the general expenditure items are those of the Ministry of Education, with a total which places it in third place with respect to the amount of its estimate, this being exceeded only by the estimates of the Ministry of Public Works and the Ministry of the Interior.

The economic and social development plan for the period 1964-1967, approved by the Act of 28 December 1963. Among the sectoral aims of this plan is education in all its different aspects. A most generous policy is recommended, implying, from the economic standpoint, the investment of far greater sums than have been devoted to education in the past. There is reason to expect that the implementation of this plan will yield very beneficial results for education in Spain.

Such, in brief outline, are the main legislative provisions relating to the human rights proclaimed by the United Nations General Assembly on 10 December 1948 which have been incorporated into Spanish law since the submission of the previous report.

SUDAN

NOTE

The Ministry of Foreign Affairs of the Republic of the Sudan has informed the Secretary-General of the United Nations that the Government of the Republic of the Sudan was not in a position to contribute to the *Yearbook on Human Rights for 1963*.

SWEDEN

NOTE[1]

I. LEGISLATION

1. In order to curb unlawful activities amongst persons under eighteen, police authorities have been given the right to temporarily detain such youth until particulars concerning their age, name and home address have been ascertained. This regulation applies even when public order or safety is not at stake.

2. The right of police authorities to temporarily detain dangerous alcoholics has been extended through an amendment to the Temperance Act. New and more precisely defined regulations have been introduced concerning the duration of the keeping in custody of such alcoholics before an application to a public institution is made for taking them into its care. The responsibility of temperance boards for the after-care of persons after their discharge—whether on probation or for good—from a public institution has been confirmed by law. The amendment concerned contains also regulations dealing with consultations to be held between the director of the institution from which a person is going to be discharged and the temperance board which will be responsible for him with regard to the rendering of aid and help, if needed.

3. The Swedish Parliament has passed new legislation concerning holidays replacing the old legislation of 1945. The annual holidays, fixed by law, have been extended from three to four weeks with full effect as from 1965, when from then on a full four-week holiday will be granted. The qualifying period for the right to holidays has been made less rigid, in particular, benefiting short-time employees and employees with intermittant work. Conforming to previous notice, the employer decides at which time of the year the holidays may be taken and this is restricted to one single period every year. However, there still exists the possibility of making arrangements —both individually and collectively—regarding the division of holidays into several periods. In the new legislation the right of certain personnel, performing radioactive work, to a six-week holiday has been maintained.

The text of this Act (No. 114, of 17 May 1963) in French and a translation into English have been published by the International Labour Office as *Legislative Series* 1963—Swe. 1.

4. An amendment to the Act on Abortion has been adopted stating that if the fœtus has contracted a serious illness and become invalid, the mother may—at the discretion of the Royal Medical Board—get a legal abortion.

II. INTERNATIONAL AGREEMENTS

During 1963, Sweden has ratified the Convention (No. 118) adopted by the General Conference of the International Labour Organisation 1962, concerning equal treatment of nationals and non-nationals in the field of social security and more specifically regarding: (*a*) medical care, (*b*) sickness benefits, (*c*) maternity benefits, (*g*) employment injury benefits, and (*h*) unemployment benefits.

[1] Note furnished by the Government of Sweden.

SWITZERLAND

NOTE[1]

I. CONFEDERATION

A. LEGISLATION

1. *Social Security*

A Federal Order dated 4 October 1962 dealt with the status of refugees with respect to old-age and survivors' insurance and to disability insurance and entered into force on 1 January 1963 (*Recueil officiel*, 1963, p. 37), and an order of the Federal Council dated 10 June 1963 amended the regulations of 17 January 1961 [2] giving effect to the Federal Act respecting disability insurance (*Recueil officiel*, 1963, p. 418).

2. *Protection of Life and Wealth*

(a) *Protection against radiation*

The following ordinances were promulgated:

Ordinance of the Federal Council dated 19 April 1963 concerning protection against radiation (*Recueil officiel*, 1963, p. 275);

Ordinance of the Federal Department of the Interior dated 7 October 1963 concerning protection against radiation from medical X-ray equipment of under 300 kV (*Recueil officiel*, 1963, p. 895);

Ordinance of the Federal Department of the Interior dated 7 October 1963 concerning protection against radiation from foot X-rays (*Recueil officiel*, 1963, p. 917);

Ordinance of the Federal Department of the Interior dated 7 October 1963 concerning radioactivity of luminous dials (*Recueil officiel*, 1963, p. 914).

(b) *Prevention of accidents and occupational diseases*

The following legislation was adopted:

Ordinance of the Federal Council dated 27 August 1963 concerning occupational diseases (*Recueil officiel*, 1963, p. 753);

Ordinance of the Federal Council dated 13 Septembre 1963 concerning the prevention of accidents in excavation, drilling and smiliar work (*Recueil officiel*, 1963, p. 787);

Ordinance of the Federal Council dated 18 October 1963 concerning the prevention of accidents and occupational diseases among chimney-sweepers, and precautions to be taken during work on factory chimneys and heating plant (*Recueil officiel*, 1963, p. 851);

Federal Act dated 29 November 1963 on the protection of waters against pollution (*Recueil officiel*, 1963, p. 1077);

Ordinance of the Federal Council dated 20 December 1963 giving effect to the Federal Act concerning grants for the campaign against rheumatic diseases (*Recueil officiel*, 1963, p. 1147).

3. *Social Welfare*

The Orders of the Federal Council dated 18 March and 7 May 1963 established, respectively, a standard labour contract for doctors' assistants and a standard labour contract for qualified health workers (*Recueil officiel*, 1963, pp. 257 and 387).

B. INTERNATIONAL AGREEMENTS

1. *Political Rights*

An Order of the Federal Council dated 19 March 1963 dealt with Switzerland's accession to the Statute of the Council of Europe of 5 May 1949 (*Recueil officiel*, 1963, p. 769).

2. *Social Security*

A Federal Order dated 18 September 1963 approved the supplementary convention on social security between the Swiss Confederation and the Federal Republic of Germany (*Recueil officiel*, 1963, p. 939).

3. *Social Welfare*

A Federal Order dated 16 September 1963 approved the amendment of the Constitution of the International Labour Organisation (*Recueil officiel*, 1963, p. 647).

4. *Social Development*

A Federal Order of 20 December 1962 dealt with the conclusion of agreements for technical and scientific co-operation with developing countries. Date of entry into force: 1 May 1963 (*Recueil officiel*, 1963, p. 368).

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[1] Note submitted by Permanent Observer of Switzerland to the United Nations.

[2] For a summary of the regulations, see *Yearbook on Human Rights for 1961*, p. 323.

II. CANTONS

1. *Protection of Life and Health*

The *Canton of Neuchâtel* promulgated the following:

Order dated 22 October 1963 requiring prospective apprentice car mechanics to pass an aptitude test;

Regulations dated 8 March 1963 concerning meat inspection.

The following legislation was adopted in the Canton of Vaud:

Regulations dated 8 January 1963 on the exercise of the profession of assistant nurse in medico-social institutions;

Regulations dated 8 January 1963 on the exercise of the profession of hospital assistant;

Order dated 12 July 1963 applying to the *Canton of Vaud* the Federal Ordinance of 19 April 1963 concerning protection against radiation;

Act dated 20 November 1963 amending the Act of 9 December 1952 on the health services.

2. *Economic and Social Welfare*

In the *Canton of Neuchâtel,* an Order dated 15 October 1963 repealed article 4 of the regulations dated 6 July 1962 giving effect to the Act on compulsory paid holidays.

The following Orders were promulgated in the *Canton of Vaud:*

Order dated 4 January 1963 extending the scope of the collective labour agreement of horticultural workers in Vaud;

Order dated 22 January 1963 prolonging and modifying the order extending the scope of the collective labour agreement of marble workers in the Canton of Vaud;

Order of 22 January 1963 extending the scope of the collective labour agreement of fur workers in the Canton of Vaud;

Order dated 27 February 1963 extending the scope of the collective labour agreement of building and engineering foremen in the Canton of Vaud;

Order dated 12 July 1963 extending the scope of the collective labour agreement of shoe-workers at Lausanne;

Order dated 30 September 1963 extending the scope of the collective labour agreement and of the sickness insurance agreement of workers in the wine and spirits trade, and of cooperage workers, in the Canton of Vaud.

3. *Education and Vocational Training*

In the *Canton of Neuchâtel,* regulations concerning the apprenticeship, supervision and final examinations of apprentice pharmaceutical assistants were adopted on 31 May 1963.

The following regulations were promulgated in the *Canton of Vaud:*

Regulations dated 15 March 1963 on secondary teacher training;

Regulations dated 5 July 1963 on apprenticeship for the profession of farmer and on the final apprentice's examination for that profession;

Regulations of 5 July 1963 on apprenticeship for the professions of farmer-market gardener and market gardener and on the final apprentice's examination for those professions;

Regulations dated 5 July 1963 on appreticeship for the professions of cheese-maker and dairyman and on the final apprentice's examination for those professions.

4. *Freedom of Information*

The *Canton of Vaud* adopted the Act of 27 November 1963 on the cinema, and regulations to give effect to it.

5. *Inter-cantonal Convention*

An administrative convention concerning publicly assisted persons registered in several cantons was approved by the Federal Council on 6 December 1963 (*Recueil officiel,* 1963, p. 1223).

SYRIAN ARAB REPUBLIC

LEGISLATIVE DECREE No. 218 OF 20 OCTOBER 1963, TO AMEND CERTAIN PROVISIONS OF LEGISLATIVE ORDER No. 134 OF 4 SEPTEMBER 1958 TO ORGANIZE AGRICULTURAL RELATIONS (AGRICULTURAL LABOUR CODE)

SUMMARY

The text of the Legislative Decree was published in *Al-Jarida al-Rasmiya*, No. 48, of 31 December 1963.

Section 1 of the Legislative Decree repeals sections 89, 173, 175 to 178, 189, 191, 192, 199 to 201, 204, 207, 232 and 242 of Act No. 134 of 4 September 1958 and replaces them by a set of 269 new sections numbered consecutively, section of which reads as follows:

"Agricultural relations between landowners, tenant farmers and agricultural workers shall be reorganised in accordance with the provisions of this Act.

"The purpose of the above reorganisation shall be to ensure the efficient cultivation of the soil of the fatherland and equitable social relations between citizens."

The other new sections among other things, deal with agricultural trade unions; contracts of employment; collective agreements; wages; hours of work and leave; medical care and housing; dismissal; placement offices; and strikes.

Translations of the Legislative Decree into English and French have been published by the International Labour Office as *Legislative Series* 1963 — Syr. 1.

TANGANYIKA[1]

NOTE[2]

1. There is provision in the Criminal Procedure Code (Cap. 20 of the Laws of Tanganyika) guaranteeing the individual's freedom from arbitrary arrest.

A person may be arrested by a police officer for a number of specified offences and under certain specified circumstances. For instance, a police officer may, without an order from a magistrate and without warrant, arrest any person whom he suspects upon reasonable grounds of having committed a *cognizable offence* [section 27 (*a*)].

2. Section 22 of the Criminal Procedure Code provides as follows:

"The person arrested shall not be subjected to more restraint than is necessary to prevent his escape."

3. Provision exists for preventive arrest. The individual's liberty is, however, guaranteed by the requirement that such person arrested must be brought before a Court within 48 hours if not later released. This is preventive rather than punitive (sections 2,3 of Act 49 of 1963).

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[1] Now part of the United Republic of Tanzania.

[2] Note furnished by the Government of Tanganyika.

THAILAND

NOTE[1]

I. LEGISLATION

1. Arrest, Detention and Confinement

(a) *Act on the Procedure for Confinement under the Penal Code, B.E. 2506 (1963).* As the Penal Code provides that a person inflicted with the punishment of confinement shall be held in a determined place which is not a prison and that he must work according to the rules, regulations and discipline of the place, this law, therefore, has been adopted, laying down the required procedure concerning confinement. Under this law, the places of confinement as well as their categories shall be determined by the Minister of the Interior. The Director-General of Corrections shall have the power to lay down rules, regulations and discipline for the places of confinement, as well as the methods of treatment with regard to the confined (section 5). The use of weapons by authorities is permitted under certain conditions. The use of a gun is strictly prohibited, except in such cases where a confined person does not consent to be disarmed, or where more than three confined persons armed with weapons try to escape while there is not any way of stopping them, or where a confined person harms or tries to harm an authority or any other person with a weapon (section 7). Weapons other than guns are available to authorities only for use in cases of escape, disorder or violence caused by a confined person. Under these circumstances the use of such weapons is deemed reasonable (section 6). Furthermore, the law provides that the confined person may temporarily and conditionally be released from the place of confinement in case their lives and security are in danger (section 9).

(b) *Act amending Proclamation No. 12 of the Revolutionary Party, B.E. 2056 (1963).* Under this Act the superior officers mentioned in the Act on the Organization of Military Courts shall, like the investigating officials, have the power to place persons charged with an offence against the Act on the Prevention of Communist Activities, under detention as long as this is deemed necessary for the purpose of making an investigation regardless of the time limit prescribed by law with regard to detention.

(c) *Act on the Supervision of the Execution of Tax and Other State Revenue (No. 2), B.E. 2506 (1963).* The purpose of this law is to enlarge the power of the Board of Tax Supervision under Act B.E. 2503 (1960). Under section 6 as amended, a member of the Board shall have the power (1) to enter into any dwelling house, place or vehicle between sunrise and sunset or at the time when an act concerning the matter requiring inspection or investigation is being committed or when an offence is being committed, in order to interrogate any person, to examine or search any account books, documents or articles, as well as to seize or attach such account books, documents or articles; (2) to summon any person to testify or produce account books, documents or articles for supplementing his consideration, or to demand or order persons in the place or vehicle under inspection to perform any act as may be necessary in the interest of the inspection; and (3) in case of necessity or urgency in the interest of the carrying out of the functions of the Board of Tax Supervision to arrest any person on the reasonable ground that the person concerned is suspected of having committed an offence against the Law on Tax and Duty. Section 6 (2) also describes the methods of delivering summonses. The delivery of a summons by hand or by registered mail is permitted. In case it is impossible to deliver a summons to the intended recipient or to any person of legal age living in his house or office, the summons may be posted at a conspicuous place on the door of his house or office, or published in a local newspaper.

(d) *Royal Decree on the Organization of the Department of Corrections, B.E. 2506 (1963) and Order of the Ministry of the Interior, No. 232/2506 (1963).* These legal instruments establish in the Province of Bangkok a women's penitentiary as a division of the Department of Corrections. Its rules and regulations have been laid down to meet the required standards of treatment with regard to persons placed under detention as proclaimed by the United Nations in 1955.[2]

2. Childrens Welfare

(a) *Act on the Establishment of Children's and Juveniles' Courts (No. 2), B.E. 2506 (1963).* This

[1] Note furnished by the Government of Thailand.

[2] See *Report of the First United Nations Congress on Prevention of Crime and Treatment of Offenders*, annex I A (United Nations publication, Sales No.: 56. IV.4).

Act revises Act B.E. 2494 (1951) on the Jurisdiction of and the Procedure Governing Children's and Juveniles' Courts in civil cases which needs some adjustment and improvement in order to correspond to and to be in harmony with the new methods adopted by the Penal Code (1957) replacing Penal Code R.S. 127 (1908). Under the new Act, a Children's and Juveniles' Court shall have the same jurisdiction as a District Court in: (1) criminal cases in which a child or juvenile is charged with having committed an offence, and in which the District Court has transferred its jurisdiction over ordinary cases do the Children's and Juveniles' Court on the ground that the offender, being under legal age and not becoming *sui juris* through marriage, has the mental and physical state of a juvenile; (2) civil cases established by a complaint, motion, or any Court action involving a minor which requires the application of sections 27, 28, 1520, 1523, 1527, 1528 and so on [3] of the Civil and Commercial Code; and (3) cases in which the Court must give a judgement or order involving a child or juvenile in person under the laws on primary education on the control of children and students, and any other laws conferring jurisdiction on the Children's and Juveniles' Court (sections 8 and 9 as amended). The Chief Judge of the Central Childrens' and Juveniles' Court shall be responsible for the operation of the Children's and Juveniles' Courts and Probation Centres throughout the Kingdom. He may at his discretion delegate this power to a Regional Chief Judge, an action of which he has to inform the Minister of Justice (section 16). Unless the Chief Judge of the Children's and Juveniles' Court orders otherwise, under section 19 the quorum for the trial of cases shall be constituted at least by two ordinary judges, and two associate judges one of whom at least shall be a woman (section 18). Courts having jurisdiction over children's and juveniles' cases under this Act shall have the power to apply for children and juveniles the following measures in lieu of criminal penalties or safety measures: (1) to change a penalty of imprisonment or confinement under safety measure into detention and training in a place other than prison for a term as fixed by the Court but not longer than the time when such a child or juvenile will have reached twenty-four years of age; (2) to change a penalty of imprisonment to a commitment to a school or training centre for such a term as fixed by the Court but not longer than the time when such a child or juvenile will have reached twenty-four years of age; (3) to change a penalty of fine to whipping not more than twelve strokes in the presence of the Court, provided that in case the Court finds it proper to keep the child or juvenile under custody after he has reached twenty-four years of age, the Court in its judgement states that he thereafter shall be transferred to a prison for imprisonment for such a term as fixed by the Court (section 31). In fixing the term for detention and training or in committing a child or juvenile to a school or training centre, the Court may determine merely the minimum and maximum periods during which he may be released either unconditionally or subject to any conditions such as prohibiting him from entering any place or locality which would encourage misconduct; prohibiting him from associating with any persons or types of persons whom the Court finds improper; and requiring him to study or perform a substantive work (section 32). In case a child and juvenile fails to pay a fine, the Court shall not order a detention in lieu of that fine but shall place him under the custody of a Probation Centre, an Office of the Children's Probation and Protection Board, a school or training centre for such a term as found proper by the Court but not exceeding one year (section 34).

(b) *Act on the Procedure of Children's and Juveniles' Cases, (No. 2), B.E. 2506 (1963).* This amendment to Act B.E. 2494 (1951) is aimed at better protection for children and juveniles by improving the methods of investigation and inquiry, as well as those of detaining and training children and juveniles. Besides it has been necessitated by the revision of the Law on the Establishment of Children's and Juveniles' Courts (see above).

Probation Centres.—Probation Centres shall be under the control of its director and attached to the Ministry of Justice. Their location and jurisdiction shall be specified by Royal Decrees. In the interest of investigation aimed at obtaining information as to the past record and conduct of a child or juvenile charged with an offence or of his parents and in the interest of verifying facts under Court's order, the Director of a Probation Centre and the Probation officer are empowered to exercise their functions beyond the jurisdiction of the Probation Centre (section 7). Probation Centres shall have the power and duties provided for this Act and other laws. Under this Act, its power and duties are, for instance: (1) to investigate and submit a report to the Court concerning the past record, conduct, intelligence, education, health, state of mind, habit, occupation and situation of the child or juvenile charged with an offence against the law or of his parents, guardian or person with whom he lives, as well as the circumstances and causes relating to the offence; (2) to take custody of the child or juvenile charged with an offence against the law during the investigation or trial; (3) to supervise, train and instruct the child or juvenile according to the Court's judgement or order; (4) to investigate facts in connexion with a child or juvenile, his parents, guardian or person with whom he live; (5) to give supervision to Probation Officers in case the Court orders a suspension of the determination of punishment or a suspension of the punishment of the child or juvenile; (6) to report to the Court on information involving minors in the application of the provisions of the Civil and Commercial Code pertaining to minors; (7) to study and conduct research on the general causes of offence committed by children and juveniles, to collect statistics of criminal offences committed by children and juveniles and to publicize methods of prevention or reduction of offences committed by children and juveniles; (8) to follow up the care of children or juveniles released from a Proba-

[3] All the provisions of the Civil and Commercial Code relating to minors.

tion Centre, from an Office of the Children's Probation and Protection Board, from a school or training centre by improving their living conditions, such as giving possible assistance in the matter of dwelling places, means of living and education; and (9) to perform any activities similar to those mentioned above as may be specified by Royal Decrees (section 9). A Committee for Children's and Juveniles' Welfare may be appointed in respect of a Probation Centre or an Office of the Children's Probation and Protection Board by the Minister of Justice with the duty of advising the Director of the Probation Centre or the Office of the Children's Probation and Protection Board and of assisting the Probation Centre or the Office of the Children's Probation and Protection Board in their activities. A member of the Committee shall hold office for a term of two years but may be reappointed (section 10). While the children or juveniles are in the custody of a Probation Centre or of an Office of the Children's Probation and Protection Board, the Director or the Board shall have the power: (1) to provide children or juveniles with ordinary schooling so that they at least will be able to read and write, or with occupational or vocational training or other kinds of work as may be appropriate to their mind and health so that they will not idly spend their free time; (2) to issue disciplinary rules and regulations for children or juveniles under custody; (3) to inflict punishment of whipping, hard work or depriving of facilities on a child or juvenile who violates the law, misconducts, or fails to comply with the disciplinary rules and procedures prescribed in the Ministerial Regulations; (4) to send a child or juvenile whose conduct is incorrigibly dangerous to other children and juveniles for detention in a particularly provided place or a prison; (5) to grant children or juveniles, from time to time, a leave from the Probation Centre or Office of the Children's Probation and Protection Board according to the rules and procedures prescribed in the Ministerial Regulation, and (6) to permit, upon the approval of the Chief Judge of the Central Children's and Juveniles' Court or of any other Children's and Juveniles' Court as the case may be, children and juveniles to whom final judgement or order of the Court has been given to attend any educational course of non-boarding institutes outside the Probation Centre or office of the Children's Probation and Protection Board (section 16).

Investigation in criminal cases. — When a child or juvenile has been arrested with a charge of having committed an offence against the law and such a case is to be tried in the Children's and Juveniles' Court, the official who has arrested and kept custody of the child or juvenile shall without delay inform the Director of the Probation Centre or the Office of the Children's Probation and Protection Board having jurisdiction over him, as well as his parents, guardian or person with whom he lives of that arrest or custody. In such a case, the investigating official shall complete the taking of the statement of the child or juvenile within twenty-four hours from the time of that child's or juvenile's arrival at his office. After the taking of the statement, the child or juvenile shall be transferred to a Probation Centre or to an Office of the Children's Probation and Protection Board. The Director of the Probation Centre of the Office of the Board of the Children's Probation and Protection may either place such a child or juvenile under custody, or provisionally release him and put him in the care of his parents, guardian or person with whom he lives, with or without bail or both with bail and security, or commit him to any appropriate person or organization (section 24). The investigating official shall then proceed with the investigation according to the Criminal Procedure Code, provided that the responsible investigating official shall forward the file of the case to the public prosecutor who will bring action before the Children's and Juveniles' Court within thirty days as from the date of arrest (the period pending escape from custody, if any, shall not be counted). If it proves to be impossible to take action within such a period, the investigating official or public prosecutor may apply to the Court for a motion of postponement not exceeding fifteen days each, but the postponement shall not be made more than two times. In case the investigating official or public prosecutor is still unable after two postponements to bring action before the Court, two additional postponements may be granted by the Court, but only when the causes of necessity have been proved with adequate evidences to the satisfaction of the Court, provided, however, that in criminal cases with a minimum penalty of imprisonment of five years or more severe punishments the Court may grant several additional postponements (section 24 and 24 *bis*). An accused child or juvenile shall have the right to appoint a legal counsel to make a protest and examine witnesses (section 24 *bis*). Charges shall be entered in Court by the public prosecutor only after the expiration of the aforementioned periods, save by the permission of the Attorney-General (section 24 quarter). If it proves to be necessary to place an accused child or juvenile under the custody of the investigating official or administrative or police official prior to his transfer to a Probation Centre or to an Office of the Children's Probation and Protection Board, such a child or juvenile shall not be kept together with adults or in any cell provided for adult accused (section 25).

Trial of criminal cases. — Courts having jurisdiction over children's and juveniles' cases shall always regard matters of age, past record, conduct, intelligence, education and training, health, state of mind, habit and occupation of a defendant child or juvenile and of his parents, guardian or person with whom he lives, as well as all persons and circumstances relative to the child or juvenile as material points of issue, provided that, in criminal cases with a maximum punishment of imprisonment of not more than three years or fine of not more than six thousand baht or both, the Court may order the Director of the Probation Centre or the Office of the Children's Probation and Protection Board to seek information and submit his opinion on any point of issue as the Court deems fit (section 45). A child or juvenile charged with having committed an offence against the law

may not be represented by any advocate before the Court having jurisdiction over children's and juveniles' cases, but he may be represented by a legal counsel to perform duties analogous to those of an advocate. In the event that the child or juvenile has no legal counsel, the Court shall appoint one for him, except when he does not desire it and the Court finds it unnecessary (section 47).

Judgement of criminal cases. — In case the Court releases a child or juvenile on account of his not being guilty and considers it proprer in the interest of the well-being and future of the child or juvenile, to lay down some conditions to that release, it shall have the power: (1) to forbid him to enter any place or locality which would encourage misconduct; (2) to forbid him to leave his residence at night if not necessary; (3) to forbid him to associate with any improper persons or types of persons; (4) to forbid him to do any act which would encourage misconduct; (5) to require him to appear in person before the Court or Probation Officer periodically; and, (6) to order him to study or perform substantive work, provided that the period within which the conditions are effective shall not be longer than the time when such a child or juvenile will have reached twenty-four years of age (section 65).

Penalty. — Section 78 has been added to the effect that any person who assists in or does any act for the escape of a child or juvenile from the custody of officials under the Court's judgement or order shall be punished with imprisonment not exceeding six months or a fine not exceeding one thousand baht, or both; and if this has been done by a competent official in charge of the child's or juvenile's custody, he shall be punished with imprisonment not exceeding one year and a fine not exceeding two thousand baht, or both.

3. Education and Research

(a) *Proclamation of the Ministry of Education of 25 January 2506 (1963).* To elevate the educational standard, the Ministry of Education has proclaimed, under the provisions of the Primary Education Act, B.E. 2478 (1935) as amended by Act B.E. 2505 (1962),[4] that primary education of the second stage shall be compulsory in six other provinces: Chieng-Mai, Chieng-Rai, Nakorn-Rajasima, Nakorn-Sridhammaraj, Prachinburi and Srisaket. It means that the compulsory education for those provinces has been extended from four to seven years.

(b) *Royal Decree establishing New Courses in the Medical University, B.E. 2506 (1963).* Microbiology, Orthopedics and Physical Therapy Departments have been set up in the Medical University (Bangkok).

(c) *Act on the Thailand Institute of Applied Science Research B.E. 2506 (1963).* Before the coming into force of this Act, applied science research was done in a number Government Departments. By virtue of this legislation, an institute of applied science research was erected with a view to unifying dispersed operations. Consequently, research will become more efficient and can be kept in concordance with the government policy of national development. Amongst the objectives of the Institute are: (1) to initiate, conduct, promote and support research and study in applied science in connexion with or in furtherance of national development, national resources, industry and public administration, including public health and welfare, and to promote the utilization of the outcome of such research; (2) to provide training for science researchers; and (3) to provide a central service for experiment and evaluation in science (section 5). The Institute is a juristic person under the supervision of the Prime Minister (sections 6 and 11). Its works are directed and managed by the Board of the Thailand Institute of Applied Science Research, composed of not more than three directors and four expert advisers, and in proper case two additional special directors may be appointed. Directors, special directors and experts advisers are appointed by the Council of Ministers upon the suggestion of the National Research Council (section 13). A summary report on the results of research, study and other activities shall be made available to the Prime Minister annually, together with an outline of the projects for the year to come (section 26). Discoveries, inventions and improvement in processes, equipments and machinery made by the Institute's person on duty as well as the rights connected thereto shall be the property of the Institute, but this shall not affect a third person whose right derives from a juristic act between such a person and the Institute (section 24).

4. Status of Officials

(a) *Royal Decree on Municipal Official Organization, B.E. 2506 (1963).* To provide more simplicity and efficiency in local government, this law replaces Royal Decree, B.E. 2486 (1953) and its amendments. Under the present Royal Decree, the basis and rates of salary of municipal officials shall be similar to those of civil servants under the laws on civil servant organization. The administration of municipality officials is vested in the Board of Municipal Officials comprising the Minister of the Interior as chairman, the Deputy Minister, the acting Minister (if any), the Secretary General, the Director-General and the Chiefs of offices equivalent to Departments in the Ministry of the Interior, as members, and the Director of the Local Government Section of the Local Government Department, as member and secretary to the Board. The Board of Municipal Officials shall be assisted by Provincial Committees for Muncipalities headed by provincial Governors, and Municipal Committees headed by mayors. The municipal officials are divided into two categories: permanent and temporary. The recruitment, rates and promotion of salary, appointment, transfer, discipline and retirement of permanent municipal officials are provided for by Royal Decree, and those of temporary municipal officials

[4] See *Yearbook on Human Rights for 1962*, p. 291.

by Regulations of the Board of Municipal Officials.

(b) *Fine Arts University Act (No. 2), B.E. 2506 (1963).* By virtue of this Act, qualified employees of this University shall become civil servants under the laws on civil servant organization. The purpose is to promote the standing of educational workers which is considered part of the general policy of the Government in the educational development plan.

5. Economic and Social Matters

(a) *Royal Decree on Industrial Census B.E. 2506 (1963).* The purpose of this Royal Decree, enacted by virtue of section 9 of the Statistics Act, B.E. 2495 (1952), is to collect data concerning industrial basic structure for the purposes of national development planning.

(b) *Industrial Financing Corporation of Thailand Act (No. 3), B.E. 2506 (1963).* This amendment to Act B.E. 2502 (1959) has empowered the Corporation to receive loans from foreign sources other than the International Bank for Reconstruction and Development, in respect of which the Government may make a contract with the Corporation for securing the value of the baht (Thai money unit). In addition, the number of directors has been enlarged to correspond with the increase of share capital.

(c) *Act on the Control of Animal Food, B.E. 2506 (1963).* Since the raising of animals is increasing in importance with the Government promotion policy, the trade in animal food has become a profession which is continuously growing and which calls for a legal control. Under this Act, the animal foods production, the meaning of which includes the combination, transformation, seasoning or preserving animal food by any means and the trade in animal food, may be undertaken only under a licence issued by the competent official for the term of one year (sections 3, 4, and 5). The licensees are liable to comply with the Ministerial Regulations in respect of registration, quality, combination, process, packing, label, description and other matters as deemed fit by the Minister of Agriculture (section 6). The production and trade in deteriorated or adulterated animal foods are subject to punishment of imprisonment not exceeding one year and a fine not exceeding two thousand baht, or both (section 16). The official account on animal food analysis under the law may not be made public for commercial interest (section 8). To carry out their duties, the competent officials shall be empowered to enter between sunrise and sunset into the premises belonging to any licensee to examine animal food, production, equipment account books and other documents, as well as to take some appropriate amount of animal food as a sample for technical analysis (section 9). Any offence under this Act, committed by an agent or employee in the performance of his duty for the principal or employer, shall be considered committed by the principal or employer, provided that the principal or employer knew or ought to have known of the commission of such offence (section 12).

II. JUDICIAL DECISIONS

1. *Immigration Law* [Supreme Court Judgement, No. 150/2506 (1963)]. The plaintiff, having entered Thailand as an alien for business purposes, filed an application requesting for a permanent residence with the immigration authority, but the application was rejected. The Supreme Court ruled that the plaintiff was not debarred by law from testifying himself a Thai national thereafter.

2. *Detention under Proclamation No. 43 of the Revolutionary Party* [Supreme Court Judgement, No. 105/2506 (1963)]. The defendant was charged with hooliganism and ordered by the provincial Governor to detention in a training and rehabilitation centre, the management of which was operated by a Committee. Under the said Proclamation (No. 43), it was the duty of the Committee to consider and give an order every three months as to whether any detained person was to be released or further detained. Since the Committee neglected to do so, the defendant who escaped from detention, after three months was ruled not guilty by the Supreme Court on account of the fact that without such an order of the Committee, the defendant's detention was unlawful.

3. *Right to Property* [Supreme Court Judgement No. 169/2506 (1963)]. The defendant brought a number of buffaloes into the country through routes other than those authorized as determined by the customs laws in order to avoid the payment of customs duty. The Supreme Court ruled that such buffaloes must be forfeited irrespective of whether the interpleader who bought them afterward should connive at such commission or not. This was because the interpleader did not own the buffaloes prior to the time they were unlawfully brought into the Kingdom. The case, therefor, did not fall under sections 33 and 34 of the Penal Code.

III. INTERNATIONAL AGREEMENTS

1. Convention of the International Labour Organisation No. 116 is effective for Thailand as from 5 October 1962 [Royal Proclamation of 23 December, B.E. 2505 (1962), published in the *Government Gazette,* Vol. 80, part 4, p. 71, of 8 January B.E. 2506 (1963)].

2. Instrument for the Amendment of the Constitution of the International Labour Organisation, adopted on 22 June 1962 by the General Conference of the International Labour Organisation at its 46th session, is effective for Thailand as from 24 May 1963 [Royal Proclamation of 23 July, B.E. 2506 (1963), published in the *Government Gazette,* Vol. 80, part 79, p. 468, of 6 August B.E. 2506 (1963)].

TOGO

CONSTITUTION OF THE TOGOLESE REPUBLIC OF 5 MAY 1963 [1]

PREAMBLE

The Togolese people, independent and sovereign, placing itself under the protection of God, solemnly proclaims its devotion to the principles of democracy and of human rights as set out in the Universal Declaration of 10 December 1948.

Anxious to institute a political system excluding any idea of personal power, it proclaims its resolve to ensure respect for and to guarantee:

political freedoms;

trade-union freedoms;

the rights and freedoms of the human person, of the family and of the local communities;

philosophical and religious freedoms;

the right to property, both individual and collective;

economic and social rights,

The Togolese people,

Aware of the close solidarity which binds it to the other peoples of Africa, and wishing to prepare the way for African unity,

Decides to spare no effort to achieve that goal.

It also affirms its resolve to co-operate in peace and friendship with all peoples that share its ideals of justice, freedom, equality, fraternity and human solidarity.

TITLE I

THE STATE AND SOVEREIGNTY

Article 1

The Togolese Republic is indivisible, secular, democratic and social.

It shall ensure the equality of all citizens before the law, without distinction as to origin, race or religion.

It shall respect all creeds.

. . .

Article 3

Political parties and groups shall assist in the exercise of the franchise. They may be formed and engage in their activities freely, subject to the provisions of statute and regulation. They shall respect the principles of national sovereignty and democracy.

Article 4

Any act of racial, ethnic or religious discrimination and any regionalist propaganda which might threaten the internal security of the State, national unity or territorial integrity shall be punished by law.

TITLE II

CIVIL LIBERTIES AND THE HUMAN PERSON

Article 5

The human person is sacred. The State has a duty to respect and protect it.

Article 6

All Togolese nationals shall have equal rights, without distinction as to sex, ancestry, race, language, belief or opinion.

Article 7

The Togolese Republic shall recognize and guarantee the inviolable and indefeasible rights of man both as an individual and in the social groups in which he exercises his personality.

Every person shall have the right to the free development of his personality, subject to due respect for the rights of others and for law and order.

The liberty of the human person shall be inviolable. No person may be arrested and detained except by order of a competent authority, or in the case of a serious and flagrant breach of existing law.

No person may be arrested or convicted except by virtue of a law which entered into force before the offence was committed. There shall be an absolute right of defence at all stages and at all levels of prosecution proceedings.

Article 8

The residence shall be inviolable.

A search of premises may be ordered only by a judge or authority designated by law. Such search may be carried out only in the form and at the time prescribed by law. Measures infringing

[1] Text published in the *Journal officiel*, No. 220, Special, of 12 May 1963. Extracts from the Constitution communicated by the Togolese Government. For extracts from the Constitution of 14 April 1961, see *Yearbook on Human Rights for 1961*, pp. 330-331.

or restricting inviolability of the residence may be resorted to only for the purpose of warding off a collective danger or protecting persons whose lives are in jeopardy.

Such measures may also be taken, as provided by law, to defend law and order, to counteract the risk of epidemics or to protect young people in danger.

Article 9

The secrecy of correspondence and of postal, telephonic and telegraphic communications shall be inviolable. Restrictions on such inviolability may be imposed only by virtue of a law.

Article 10

All citizens of the Republic shall have the right to freedom of movement and of residence throughout the Togolese Republic. This right may be restricted only by law. No person may be subjected to security measures except in the cases provided for by law.

Article 11

The right to property shall be guaranteed by the Constitution.

It may be overridden only in a case of legally recognized public utility and on condition that fair compensation is paid beforehand.

Article 12

Every person shall have the right to express and disseminate his opinions freely in oral, written or pictorial form, subject to the provisions of statute and regulation.

Article 13

Freedom of association shall be guaranteed to all, subject to the conditions established by law.

Assemblies or groups whose aims or activities would be unlawful or contrary to law and order are prohibited.

Article 14

Marriage and the family form the natural basis of society. They shall be placed under the protection of the State.

The nation shall ensure the conditions necessary for the development of the individual and the family.

Article 15

Parents have the natural right and the duty to bring up their children. They shall be supported in that task by the State and the community. The State and the community must protect young people against exploitation and against moral, intellectual and physical neglect.

Article 16

Every child has the right to instruction and education.

The State and the community shall establish the prior conditions and the public institutions that will ensure the education of children.

The education of young people shall be provided by public, denominational and private schools. Religious institutions and communities shall also be recognized as means of education.

Private and denominational schools may be opened with the authorization and under the supervision of the State.

Article 17

Freedom of conscience and the profession and free practice of religion shall be guaranteed to all, subject only to the requirements of law and order. Religious institutions and communities shall have the right to exist and develop without hindrance, subject to existing statutes and regulations.

Article 18

Work is a right and a duty for all. No person may be endangered in his work because of his origin, beliefs or opinions.

Every worker shall be entitled to fair remuneration ensuring for him and his family an existence consonant with human dignity.

The right to strike is recognized for workers; it shall be exercised in conformity with the laws by which it is governed. It shall in no case impair freedom to work.

Every worker may join a trade union and defend his rights through trade-union action.

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

The conditions for the assistance and protection afforded by society to workers shall be determined by special laws.

Article 19

All citizens have duties from which none may be exempted. These duties arise essentially from national solidarity and respect for the law.

Defence of the country and of the territorial integrity of the Republic is a duty for every citizen.

Payment of taxes and contribution to public expenses constitute a duty for all.

TRINIDAD AND TOBAGO

NOTE

The Government of Trinidad and Tobago has informed the Secretary-General of the United Nations that no new texts concerning human rights were promulgated during 1963, but has referred to sections 1, 2, 3 (sub-section 1), 14, 15, 17, 18, 22, 24, 25, 29 (sub-section 1), 30, 31, 34 and 38 of the Constitution of Trinidad and Tobago of 1962.[1]

[1] The articles referred to have been published in the *Yearbook on Human Rights for 1962*, pp. 294-299.

TUNISIA

TUNISIAN NATIONALITY CODE

Promulgated by the Legislative Decree of 28 February 1963 (4 chaoual 1382) [1]

PRELIMINARY TITLE

GENERAL PROVISIONS

Art. 1. This Code shall determine which persons at birth possess Tunisian nationality as their nationality of origin.

Tunisian nationality is acquired, or is lost, after birth, through the operation of law or pursuant to a decision made by the constituted authorities in accordance with the procedure prescribed by law.

Art. 2. The conditions governing the acquisition and loss of Tunisian nationality after birth shall be those laid down in the legislative provisions in force at the time of the occurrence of the event, or of the execution of the instrument, which is capable of leading to the acquisition or loss.

Art. 3. The new legislative provisions relating to the attribution of Tunisian nationality as the nationality of origin shall apply even with respect to persons who were born before the date on which these provisions became operative, but who have not attained their majority by that date.

Nevertheless, the application of the said provisions shall not affect the validity of instruments executed by the person concerned or rights acquired by third parties on the basis of earlier legislative provisions.

Art. 4. For the purposes of this Code, a person who has attained his majority shall be deemed to be any person who has attained the age of twenty years.

Art. 5 For the purposes of this Code, the term "in Tunisia" means all Tunisian territory, Tunisian territorial waters, and Tunisian ships, vessels and aircraft.

TITLE I

TUNISIAN NATIONALITY

Chapter I

TUNISIAN NATIONALITY AS THE NATIONALITY OF ORIGIN

Section I. Attribution by reason of relationship

Art. 6. The following persons are Tunisian nationals:

(1) The child of a Tunisian father;

(2) The child of a Tunisian mother and an unknown father or a father who has no nationality or whose nationality is unknown;

(3) The child, born in Tunisia, of a Tunisian mother and an alien father.

Section II. Attribution by reason of birth in Tunisia

Art. 7. A child born in Tunisia whose father and paternal grandfather were born in Tunisia shall be a Tunisian national.

Unless he is born after this Code comes into force, the person concerned may renounce his Tunisian nationality in the year preceding his majority. He shall be released from his allegiance to Tunisia on the date on which he signs a declaration of renunciation in accordance with article 39 of this Code.

A Tunisian minor who enlists in the Army, or who is a party to recruiting operations without raising the objection of alienage, shall forfeit the right to renunciation.

The provisions of this article shall not apply to children of members of the diplomatic or consular corps.

Art. 8. A child born in Tunisia of stateless parents who have resided in Tunisia for at least five years shall be a Tunisian national.

Art. 9. A child born in Tunisia of unknown parents shall be a Tunisian national.

Nevertheless, he shall be deemed never to have been a Tunisian national if, during his minority, relationship is proved to exist with respect to a parent who is an alien and if, under that parent's national law, the child possesses that parent's nationality.

[1] Text published in the *Journal officiel de la République tunisienne*, No. 11, of 5 March 1963 (9 chaoual 1382). For extracts from the Tunisian Nationality Code of 26 January 1956, abrogated by the legislative decree of 28 February 1963, see *Yearbook on Human Rights for 1956*, p. 220.

Art. 10. A new-born child found in Tunisia shall be presumed, until the contrary is proved, to have been born in Tunisia.

Section III. Common provisions

Art. 11. A child who is a Tunisian national by virtue of the provisions of this chapter shall be deemed to have been a Tunisian national at birth, even if proof of the conditions prescribed by statute for the attribution of Tunisian nationality is not produced until after his birth.

Nevertheless, in the last-mentioned case, the attribution of Tunisian nationality at birth shall not affect the validity of instruments executed by the person concerned, or rights acquired by third parties on the basis of the child's apparent nationality.

Chapter II

ACQUISITION OF TUNISIAN NATIONALITY

Section I. Acquisition through the operation of law

Art. 12. A child born abroad of a Tunisian mother and an alien father shall acquire Tunisian nationality if during the year before he attains his majority he claims it by making a declaration as provided in article 39 of this Code.

Subject to the provisions of articles 15 and 41 of this Code, the claimant shall acquire Tunisian nationality on the date on which the declaration is registered.

Art. 13. An alien woman who marries a Tunisian national shall acquire Tunisian nationality upon the celebration of the marriage if under the law of her country she loses her nationality of origin through marriage to an alien.

Art. 14. An alien woman who marries a Tunisian national and, under the law of her country, retains her nationality of origin after marriage to an alien may claim Tunisian nationality by making a declaration as provided in article 39 of this Code, if the couple have resided in Tunisia for not less than two years.

Subject to the provisions of articles 15 and 41 of this Code, the claimant shall acquire Tunisian nationality on the date on which the declaration is registered.

Art. 15. In the cases referred to in articles 12 and 14 above, the President of the Republic may by decree object to the acquisition of Tunisian nationality.

The decree must forthcoming no later than two years after the declaration referred to in articles 12 and 14 or, if registration of the declaration was refused as provided in article 41 of this Code, no later than two years from the day on which the judicial decision affirming the validity of the declaration becomes final.

In the event of objection by the President of the Republic within the time-limit stated in the preceding paragraph, the person concerned shall be deemed not to have acquired Tunisian nationality.

Art. 16. In the cases referred to in articles 13 and 14 above, the woman concerned shall be deemed not to have acquired Tunisian nationality if her marriage is annulled by a final judgement handed down by a Tunisian court or enforceable in Tunisia.

Art. 17. Where the validity of a document which was drawn up prior to the judicial decision determining the nullity of the marriage or prior to the issue of the decree of objection depended on the acquisition of Tunisian nationality by the person concerned, such validity may both be challenged on the ground that he or she was not able to acquire Tunisian nationality.

Art. 18. A minor alien adopted by a person of Tunisian nationality shall acquire that nationality on the date of the adoption order, on condition that he has not contracted marriage.

Section II. Acquisition by naturalization

Art. 19. Tunisian naturalization shall be granted by decree.

Art. 20. Save as otherwise provided in article 21 below, naturalization may not be granted to an alien who cannot prove that he has been habitually resident in Tunisia during the five years preceding the submission of his application.

Art. 21. The following persons may be naturalized without meeting the residence requirement laid down in the preceding article:

(1) A person who proves that his nationality of origin was Tunisian;

(2) An alien married to a woman of Tunisian nationality, if the couple reside in Tunisia at the time the application is made;

(3) An alien who has rendered outstanding service to Tunisia or whose naturalization is of exceptional value to Tunisia. In this case, naturalization shall be granted on the basis of a report by the Secretary of State for Justice accompanied by a statement of reasons.

Art. 22. An alien against whom an expulsion order or a restricted residence order has been issued shall not be eligible for naturalization unless the order has been duly rescinded or annulled.

Residence in Tunisia while the said administrative order is in effect shall not be taken into consideration in calculating the period of residence referred to in article 20 above.

Art. 23. A person may not be naturalized:

(1) If he has not attained his majority;

(2) If he cannot give proof of an adequate knowledge of Arabic in keeping with his circumstances;

(3) If he is not found to be of sound mind;

(4) If his physical health is not found to be such that he is unlikely to constitute a burden on or a danger to the community;

(5) If he is not of good conduct and moral character, or if he has not been restored to his full rights after having been sentenced to a term of more than one year's imprisonment for an offence under the ordinary law. Nevertheless, sentences imposed abroad may not be taken into consideration.

Section III. Effects of the acquisition of Tunisian nationality

Art. 24. A person who acquires Tunisian nationality shall enjoy as from the date of such acquisition all the rights attaching to Tunisian nationality, subject to the disabilities peculiar to naturalized persons.

Art. 25. An unmarried minor child whose father or whose mother, if a widow, acquires Tunisian nationality, shall automatically acquire Tunisian nationality with his parents, unless the decree of naturalization provides otherwise.

Art. 26. A naturalized alien shall be subject to the following disabilities for a period of five years following the naturalization decree:

(1) He may not be appointed to an elective function or office for the discharge of which possession of Tunisian nationality is necessary;

(2) He may not vote in elections where registration on the electoral roll is conditional on possession of Tunisian nationality;

(3) He may not be appointed to a post in the Tunisian public service.

Art. 27. A naturalized alien may be relieved of some or all of the disabilities referred to in the preceding article by a decree enacted on the basis of a report by the Secretary of State for Justice, accompanied by a statement of reasons. The disabilities may be removed by the decree of naturalization or by a subsequent decree.

Section IV. Common provisions

Art. 28. The residence requirements referred to in articles 8, 14, 20 and 21 must be met in conformity with the law.

Art. 29. Nationality shall not be affected by marriage unless the latter is solemnized in one of the forms recognized either by Tunisian law or by the law of the country where the marriage takes place.

Chapter III

LOSS, DEPRIVATION AND WITHDRAWAL OF TUNISIAN NATIONALITY

Section I. Loss of Tunisian nationality

Art. 30. A Tunisian national shall lose Tunisian nationality if he voluntarily acquires a foreign nationality.

He shall be released from his allegiance to Tunisia on the date of the decree declaring him to have lost Tunisian nationality.

A Tunisian national who voluntarily acquires a foreign nationality or who renounces Tunisian nationality shall be obliged to leave Tunisian territory.

Art. 31. The loss of Tunisian nationality by virtue of the preceding article may be extended by decree to the wife and unmarried minor children of the person concerned if they themselves possess another nationality. If may not, however, be extended to his minor children unless it is also extended to his wife.

Art. 32. A Tunisian national who holds an appointment in the public service of a foreign State or in a foreign army and who retains the appointment six months after he has been directed by the Tunisian Government to resign it shall lose his Tunisian nationality unless it is proved that he was totally unable to resign the appointment. In the last-mentioned case, the six-month time-limit shall run only from the date on which the impediment was removed.

He shall be released from his allegiance to Tunisia as from the date of the decree declaring him to have lost Tunisian nationality.

Section II. Deprivation of Tunisian nationality

Art. 33. A person who has acquired Tunisian nationality may be deprived thereof by decree:

(1) If he is convicted of an act held to constitute a crime or offence against the internal or external security of the State;

(2) If he engages, to the advantage of a foreign State, in acts incompatible with Tunisian nationality and detrimental to the interests of Tunisia;

(3) If he is convicted in Tunisia or abroad of an act held to constitute a crime under Tunisian law, for which he is sentenced to a term of at least five years' imprisonment.

(4) If he is convicted of having evaded his obligations under the law governing recruitment for the Army.

Art. 34. A person shall not suffer deprivation of nationality unless the acts with which he is charged and which are specified in article 33 above occurred within ten years following the date on which he acquired Tunisian nationality.

Deprivation of nationality may not be ordered except within five years following the commission of the said acts.

Art. 35. Deprivation of nationality may be extended by decree to the wife and unmarried minor children of the person concerned, if they have retained a foreign nationality. It may not, however, be extended to his minor children unless it is also extended to his wife.

Section III. Withdrawal of Tunisian nationality

Art. 36. If it is discovered, subsequent to the decree of naturalization, that the person concerned did not meet the conditions required by law for naturalization, the decree may be revoked within two years following the date on which it was issued.

Art. 37. If an alien has made a false statement, resorted to fraudulent practices or knowingly submitted a document containing mendacious or erroneous information in order to obtain naturalization, the latter may be revoked by decree within two years of the discovery of the fraud.

Art. 38. Where the validity of a document which was drawn up prior to the decree of revocation depended on the acquisition of Tunisian nationality by the person concerned, such validity may

not be challenged on the ground that he or she has not acquired Tunisian nationality.

TITLE III

DISPUTES INVOLVING NATIONALITY

Chapter I

COMPETENCE OF JUDICIAL TRIBUNALS

Art. 48. The Court of First Instance dealing with civil cases shall be the only tribunal competent to deal with disputes involving nationality, subject to appeal.

The case shall be tried by the tribunal of the place of residence of the person whose nationality is in question or, if he does not reside in Tunisia, by the tribunal of the place of residence of the plaintiff.

Art. 49. Objections based on the possession of Tunisian nationality or the possession of a foreign nationality are questions of public policy and must be raised *ex officio* by the judge.

If such objections are raised before any court other than the Court of First Instance or the Court of Appeal dealing with civil cases, they constitute an interlocutory question, obliging the judge to stay judgement until the question has been settled according to the procedure laid down in article 52 *et seq.* of this Code.

Art. 50. If an objection based on possession of Tunisian nationality or on possession of a foreign nationality is raised before a criminal court, the latter shall refer to the competent tribunal for judgement within thirty days either the party raising the objection or the *Ministère public* in cases where the party claiming Tunisian nationality holds a certificate of nationality delivered in accordance with article 63 *et seq.* of this Code.

The criminal court shall stay judgement until the question of nationality has been settled or, in cases where the matter is not brought before the competent tribunal, until the expiration of the above-mentioned time-limit.

Chapter II

PROCEDURE BEFORE JUDICIAL TRIBUNALS

Art. 51. Any person may institute before the Court of First Instance proceedings whose principal and direct purpose is to secure a judicial decision on whether he does or does not possess Tunisian nationality.

It shall be mandatory for the *Procureur de la République* attached to that court to be a party to the case, without prejudice to the right of any person concerned to intervene.

. . .

Chapter III

PROOF OF NATIONALITY

Art. 59. In questions involving nationality the burden of proof shall be upon the person who, by instituting legal proceedings or by raising an objection, claims to possess or not to possess Tunisian nationality.

The burden of proof shall, however, be upon the person who by the same means challenges the Tunisian nationality of a person holding a certificate of Tunisian nationality delivered in accordance with article 63 *et seq.* of this Code.

. . .

Chapter IV

CERTIFICATES OF TUNISIAN NATIONALITY

Art. 63. The Secretary of State for Justice and the diplomatic or consular officials representing Tunisia abroad shall be the only persons qualified to issue a certificate of Tunisian nationality to any person proving his right to that nationality.

. . .

Art. 65. If the Secretary of State for Justice or the diplomatic or consular officials representing Tunisia abroad refuse to issue a certificate of nationality, the person concerned may appeal to the competent Court of First Instance, in accordance with article 48 *et seq.* above.

If the authorities mentioned in the preceding paragraph do not reply within a month of the request, this shall be taken to constitute a refusal.

. . .

ACT No. 63-17 OF 27 MAY 1963, PROVIDING ENCOURAGEMENT FOR AGRICULTURAL DEVELOPMENT

SUMMARY

The text of this Act was published in the *Journal Officiel de la République tunisienne,* No. 26, of 24, 28 and 31 May 1963.

Under section 1 of this Act, zones may be established for the execution of works for soil and water conservation and for the intensification of agricultural operations, when agricultural or collective holdings, population centers or public works are endangered by seepage, floods or erosion, or when the potential of an agricultural region is not being fully exploited for lack of land improvement measures.

Section 2 provides that associations of collective interest, the professional organizations of landowners and the landowners affected by the works referred to in section 1 may be grouped in agricultural development associations, either at the request of one or more of their number or on the initiative of the Secretary of State for Agriculture.

The purpose of agricultural development associations, as set out in section 3, shall be to execute or promote the joint or individual execution of works for soil and water conservation; drainage; organization of irrigated zones; and creation of

bush plantations, prairies and pastures in the North and grazing strips in the Center and South. These associations shall further be responsible for promoting the modernization of agriculture within their areas and for improving standard of living thereof.

Other provisions of the Act deal with state encouragement for developing the productivity of cultivated land and for rural housing and rural reconstruction.

The text of the Act in French and a translation into English have been published by the Food and Agricultural Organization as *Food and Agricultural Legislation,* Vol. XIII - No. 3, I/1.

ACT No. 63-19 OF 27 MAY 1963, RELATING TO CO-OPERATION IN THE AGRICULTURAL FIELD

SUMMARY

The text of this Act was published in the *Journal officiel de la République tunisienne,* No. 26, of 24, 28 and 31 May 1963.

Section 1 of the Act reads as follows:

"The purpose of agricultural co-operation shall be to provide for the employment by farmers, in common, of all technical and economic means with a view to facilitating their agricultural production and to increasing the value of the yield of their farms."

Under section 2, except for the provisions relating to bankruptcy, agricultural co-operatives shall be governed by the provisions of the Commercial Code.

Sections 3-8 set out the kinds and functions of co-operatives.

Other provisions of the Act deal with the rules governing the establishment, the administration and the operation of agricultural co-operatives.

The text of the Act in French and a translation into English have been published by the Food and Agricultural Organization as *Food and Agricultural Legislation,* Vol. XIII — No. 3, I/1.

TURKEY

NOTE[1]

I. LEGISLATION

A. *Protection of the Human Person*

1. *Act respecting freedom of rallies, meetings and demonstration marches*

Act No. 171 adopted on 10 February 1963, which was promulgated and entered into force on 18 February 1963,[2] consists of seven chapters regulating freedom of rallies, meetings and demonstration marches.

Under article 1 of this Act, everyone has the right to conduct rallies, meetings and demonstration marches organized for specified purposes without obtaining a permit, subject to the provisions of the Act in question.

Also in accordance with this Act, rallies, meetings and demonstration marches may not be held before sunrise and it is prohibited to hold rallies, meetings and demonstration marches on public thoroughfares, in parks, in holy places, on land used for public services or in places contiguous to the premises of the National Assembly.

Article 7 of the same Act prescribes the obligation to announce rallies and meetings at least forty-eight hours before they are to begin.

Under article 18, which is included in the fifth chapter entitled "Penal Provisions", persons conducting or directing unlawful rallies, meetings or demonstration marches, and those participating in them, are liable to one year and a fine of from 500 to 1,000 Turkish liras, provided that their acts are not subject to heavier penalties prescribed in special laws.

The same Act repeals Act No. 6761 of 27 June 1956 concerning rallies, meetings and demonstration marches,[3] and article 4 of Act No. 6187 of 24 June 1953 concerning the protection of freedom of conscience and of assembly.

2. *Act concerning the flight service allowance*

Act No. 144 adopted on 17 January 1963, which was promulgated on 19 January 1963 and entered into force on 1 February 1963,[4] provides an allowance for military pilots, pilot-trainees, members of flight crews and parachutists during their service in the Turkish Army and subject to the conditions set forth in the various articles of the Act.

Under the same Act, widows and orphans or legal heirs of persons killed in the service of the country receive an indemnity equal to 20,000 Turkish liras. An appendix to the Act shows the amounts of the payments in question.

3. *Act concerning pardons for certain offences and the remission of certain penalties*

Act No. 218 adopted on 23 February 1963, which was promulgated and entered into force on the same date,[5] deals in its various articles with the prohibition of criminal proceedings in respect of certain crimes and with the granting of pardons for certain others, in both cases committed prior to 15 February 1963.

Apart from this Act, there is a regulation[6] concerning the protection of the human person, adopted in accordance with article 4 of Act No. 7269 respecting measures to be taken and assistance to be provided in the event of catastrophes affecting the public.

The various articles of the regulation in question lay down the principles governing the programmes of organizations providing assistance, and their application in the event of catastrophes as specified in Act No. 7269.

B. *Right to Health*

1. *Act amending the Act respecting the establishment and functioning of the Ministry of Health and Social Welfare, and tables (1) and (2) annexed to Act No. 4862*

With a view to improving health services in Turkey, Act No. 225 adopted on 25 April 1963,

[1] Note prepared by Mr. Aydogan Özman, member of the Faculty of Law of the University of Ankara, on behalf of the Turkish United Nations Group for the Defence and Protection of Human Rights and Fundamental Freedoms, which has been appointed by the Government of Turkey to prepare the Turkish contribution to the *Yearbook on Human Rights*.

[2] Text in *Official Gazette* No. 11337, of 18 February 1963.

[3] See *Yearbook on Human Rights for 1956*, p. 231.

[4] Text in *Official Gazette* No. 11312, of 19 January 1963.

[5] Text in *Official Gazette* No. 11342, of 23 February 1963.

[6] Text in *Official Gazette* No. 11377, of 9 April 1963.

which was promulgated and entered into force on 30 April 1963,[7] establishes the following organizations, apart from those referred to in article 3 of Act No. 3017 respecting the establishment and functioning of the Ministry of Health and Social Welfare:

(*a*) The General Directorate of Tuberculosis Control, which is to organize all tuberculosis control activities;

(*b*) The General Directorate of Social Services, which is to co-ordinate social welfare and social security activities;

(*c*) The General Directorate of Education, which is to further the professional development and advancement of persons who have completed their studies;

(*d*) The General Directorate of the Establishment, which is to set up new health services wherever they are needed;

(*e*) The Bureau of Socialization, which is to co-ordinate and supervise the socialization of health services;

(*f*) The Bureau of External Relations, which is to co-ordinate the international relations of the Ministry and its organizations.

C. *Right to Education*

1. *Act respecting the establishment of a technical school in the town of Zonguldak in addition to two technical schools to be established by the Ministry of Education*

Act No. 165 adopted on 21 December 1962, which was promulgated and entered into force on 9 February 1963,[8] authorizes the Minister of Education to establish a technical school consisting of sections for electrical mining, mechanical and construction engineering.

2. *Act respecting the establishment of a Turkish Institute of Technical and Scientific Research*

Act No. 278 adopted on 17 July 1963, which was promulgated and entered into force on 24 July 1963,[9] establishes the Turkish Institute of Technical and Scientific Research. The Institute's purpose will be to develop, encourage and co-ordinate research in the positive sciences.

In addition to these two Acts, various regulations concerning the right to education were published in Turkey in 1963:

(*a*) The regulation concerning people's education centres was published in *Official Gazette* No. 11417, of 1 June 1963. Under this regulation, the people's education centres are to promote the social, cultural and economic development of society through education.

(*b*) The regulation concerning people's education organizations was published in *Official Gazette* No. 11419, of 4 June 1963. It states that they are organizations established to promote the advancement of people in the towns.

(*c*) Finally, the regulation concerning State education for children exceptionally gifted in the fine arts was published in *Official Gazette* No. 11472, of 5 August 1963.

D. *Right to Travel*

During 1963, the Turkish Government entered into an agreement with the United Kingdom[10] with a view to facilitating the entry of Turkish citizens into Trinidad and Tobago and vice versa, pending the conclusion of an agreement with the latter country.

E. *Protection of Rights*

1. *Act respecting trade unions*

The various articles of Act No. 274 adopted of 15 July 1963, which was promulgated and entered into force on 24 July 1963,[11] provide for trade-union freedom; under the terms of this Act, trade unions and other occupational organizations may be freely constituted.

After defining workers and employers, the Act recognizes the right of the former to constitute and become members of workers' trade unions and the right of the latter to constitute and become members of employers' trade unions.

The Act prohibits any discrimination based on race, family, language, religion, belief or political opinion with regard to the constitution or membership of such organizations or to employment therein.

After specifying the persons who are prohibited from joining trade unions (including members of the armed forces and persons performing religious functions), the Act makes it unlawful, subject to its provisions to the contrary, to dissolve or hamper the activities of occupational organizations constituted thereunder.

2. *Act respecting collective labour agreements, strikes and lockouts*

Article 47 of the Constitution of 1961 reads as follows: "Workers are entitled to bargain collectively and to strike.... The exercise of the right to strike... and the rights of employers shall be regulated by law." Act No. 275 respecting collective labour agreements, strikes and lockouts, which was adopted on 15 July 1963 and was promulgated and entered into force on 24 July 1963,[12] organizes relations between workers and employers as envisaged in article 47 of the Constitution.

Under the terms of article 1 of the Act, a collective labour agreement is an agreement concluded between a workers' organization and an employers' organization with the object of making provision for the conclusion, tenor and termination of contracts of employment; a collective labour agree-

[7] For the text, see *Official Gazette* No. 11394, of 30 April 1963.

[8] For the text, see *Official Gazette* No. 11330, of 9 February 1963.

[9] Text published in *Official Gazette* No. 11462, of 24 July 1963.

[10] For the text, see *Official Gazette* No. 11517, of 28 September 1963.

[11] Text in *Official Gazette* No. 11462, of 24 July 1963.

[12] For the text, see *Official Gazette* No. 11462, of 24 July 1963.

ment may also contain provisions concerning the rights and obligations of workers and employers.

Chapter IV, entitled "Strikes and Lockouts", specifies the circumstances in which strikes and lockouts may be called. Under the terms of article 17, which is included in this chapter, any strike called in accordance with the Act for the purpose of safeguarding or improving the economic and social position of the workers *vis-à-vis* their employer is a lawful one.

Similarly, any lockout ordered in accordance with the Act for the purpose of changing the conditions of work or the manner of their observance, of imposing new conditions or of maintaining the conditions already obtaining, is a lawful one.

The prohibition of strikes and lockouts is dealt with in article 20 of the same Act.

Thus the two Acts described above guarantee protection of the rights of workers and employers, respectively, in Turkey.

3. *Act respecting the right of Turkish citizens to petition the Grand National Assembly, the examination of such petitions, and decisions with respect to them*

Act No. 140 of 26 December 1962, which was promulgated and entered into force on 5 January 1963,[13] lays down the procedure to be followed with respect to written requests presented by Turkish citizens in accordance with the provisions of article 62 of the Constitution, which reads: "Citizens are entitled to petition the competent authorities and the Turkish Grand National Assembly in writing, singly or collectively, concerning requests and complaints involving themselves or the public."

4. *Act respecting the establishment and procedure of military tribunals*

Article 9 of Act No. 353 of 21 October 1963, which was promulgated and entered into force on 26 October 1963,[14] provides that military tribunals shall hear cases relating to military personnel and to offences committed on premises of the armed forces.

[13] For the text, see *Official Gazette* No. 11300, of 5 January 1963.

[14] Text in *Official Gazette* No. 11541, of 26 October 1963.

II. DECISIONS

A. *Decision of the National Assembly*

Following the events of the night of 20-21 May, the purpose of which was violation of the Constitution of the State, the National Assembly declared a state of siege in the cities of Ankara, Istanbul and Izmir for a period of one month as from 21 May 1963;[15] the duration of the state of siege was extended for two months as from 21 June 1963 [16] and for two more months as from 21 August 1963,[17] and was finally extended in the cities of Ankara and Istanbul for a further two months as from 21 October 1963.[18]

B. *Decisions of the Constitutional Court*

(1) Basing itself on articles 31 and 114 of the Constitution, which provide for the right of recourse to the competent judicial authorities by those whose rights or interests have been violated, the Constitutional Court declared unconstitutional and accordingly repealed article 39, paragraph (*b*), of Act No. 5434 respecting the Retirement Fund of the Turkish Republic, and article 114, paragraph (2), of Act No. 3499 respecting the exercise of the legal profession.[19] Article 39 (*b*) of Act No. 5434 prohibited appeals from retirement decisions rendered under the terms of that paragraph, and article 114 (2) of Act No. 3499 provided that the decisions of the disciplinary council should be final.

(2) Article 32, paragraph (*c*), of Act No. 6830 respecting expropriation was repealed by Constitutional Court Order No. 1962/286-1963/53 of 7 March 1963, on the ground that it was not compatible with freedom of contract and was therefore unconstitutional.

[15] For the text of this decision, see *Official Gazette* No. 11413, of 28 May 1963.

[16] For the text of this decision, see *Official Gazette* No. 11434, of 21 June 1963.

[17] For the text of this decision, see *Official Gazette* No. 11486, of 21 August 1963.

[18] For the text of this decision, see *Official Gazette* No. 11536, of 21 October 1963.

[19] For the texts of these decisions, see *Official Gazette* No. 11352, of 11 March 1963, and No. 11466, of 29 July 1963.

UGANDA

THE EMERGENCY POWERS ACT, 1963

Act No. 8 of 1963, assented to on 25 February 1963 [1]

. . .

2. In this Act, unless the context otherwise requires—

"emergency proclamation" means a proclamation under section 30 of the Constitution declaring that a state of public emergency exists;

"emergency regulations" means regulations made under section 3 of this Act.

3. (1) Whenever an emergency proclamation is in force the Governor General may make such regulations as appear to him to be necessary or expedient for securing the public safety, the defence of Uganda, the maintenance of public order and the suppression of mutiny, rebellion and riot, and for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by subsection (1) of this section, emergency regulations may so far as appears to the Governor General to be necessary or expedient for any of the purposes mentioned in that subsection—

(*a*) make provision for the detention of persons or the restriction of their movements, and for the deportation and exclusion from Uganda of persons who are not citizens of Uganda;

(*b*) authorise—

(i) the taking of possession or control on behalf of the Government of any property or undertaking;

(ii) the acquisition on behalf of the Government of any property other than land;

(*c*) authorise the entering and search of any premises;

(*d*) provide for amending any law, for suspending the operation of any law, and for applying any law with or without modification;

(*e*) provide for charging, in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the regulations, such fee as may be prescribed by or under the regulations;

(*f*) provide for payment of compensation and remuneration to persons affected by the regulations;

(*g*) provide for the apprehension, trial and punishment of persons offending against the regulations:

Provided that nothing in this section shall authorise the making of provision for the trial of persons by military courts.

(3) Emergency regulations may provide for empowering such authorities or persons as may be specified in the regulations to make orders and rules for any of the purposes for which such regulations are authorized by this Act to be made, and may contain such incidental and supplementary provisions as appear to the Governor General to be necessary or expedient for the purposes of the regulations.

(4) Emergency regulations shall specify the area to which they apply, and may contain provision for the exclusion of persons from the area so specified if it consists of only a part of Uganda.

. . .

[1] Text published in *Supplement to the Uganda Gazette, Extraordinary*, Vol. LVI, of 26 February 1963, Legal Supplement (Acts of Parliament) No. 2.

THE PENAL CODE (AMENDMENT) ACT, 1963

Act No. 13 of 1963, assented to on 4 March 1963 [2]

. . .

2. The Code is hereby amended by inserting after section 50A thereof, the following section—

50B. (1) Any person who—

(*a*) by word of mouth or by making a publication as defined in subsection (7) of section 49A of this Code incites any other person or any class or body of persons—

[2] *Ibid.*, Vol. LVI, of 5 March 1963, Legal Supplement (Acts of Parliament) No. 4.

(i) to refuse or to threaten to refuse to pay any lawful tax (however described); or

(ii) to delay, prevent or obstruct, or to threaten to delay, prevent or obstruct, the assessment or collection of any lawful tax (however described); or

(*b*) conspires with another to do any act mentioned in sub-paragraph (i) or (ii) of paragraph (*a*) of this subsection,

shall be guilty of an offence and shall be liable on conviction to imprisonment for a period not exceeding three years.

(2) A person shall not be prosecuted for an offence under this section without the written consent of the Director of Public Prosecutions.

. . .

THE CONSTITUTION OF UGANDA (FIRST AMENDMENT) ACT, 1963

Act No. 61 of 1963, assented to on 30 September 1963 [3]

PART II

CONSTITUTIONAL CHANGES

. . .

3. As from the 9th October, 1963, the independent sovereign State of Uganda shall cease to form part of Her Majesty's dominions and Her Majesty shall cease to exercise any sovereignty over Uganda.

4. The office of the Governor General is hereby abolished.

. . .

8. The Constitution is hereby amended by repealing Chapter IV (that is to say, sections 34, 35 and 36) and substituting therefor the following Chapter—

"CHAPTER IV

"THE PRESIDENT OF UGANDA

"34. (1) There shall be a Supreme Head and Commander in Chief of Uganda who shall be known as the President of Uganda and who is referred to in this Constitution as the President.

"(2) The President shall, subject to the provisions of section 123 of this Constitution, take precedence over all persons in Uganda and shall not be liable to any proceedings whatsoever in any court.

. . .

"35. (1) There shall be a Vice President of Uganda (referred to in this Constitution as the Vice President) who shall perform the functions and have the privileges of the President during any period when—

"(*a*) the President is absent from Uganda or is for any reason unable to perform the functions of his office; or

"(*b*) the office of the President is vacant.

. . .

"36. (1) Subject to the provisions of this section, the President and the Vice President shall be elected in accordance with such procedure as may be prescribed by Parliament from among the Rulers of the Federal States and the constitutional heads of the Districts by the members of the National Assembly for a term of five years."

. . .

9. Subject to the provisions of this Act, the word "President" shall replace the words "Governor General"... wherever they occur in the Constitution.

10. Section 37 of the Constitution is hereby amended substituting the words "the President" for the words "Her Majesty".

11. Section 40 of the Constitution is hereby amended by substituting the words "of Uganda" for the words "of the Crown" occurring in subsection (4) (*b*).

. . .

[3] *Ibid.*, Vol. LVI, of 1 October 1963, Legal Supplement (Acts of Parliament) No. 13.

UKRAINIAN SOVIET SOCIALIST REPUBLIC [1]

NOTE ON THE STATE BUDGET FOR 1963

On 26 December 1962, the Supreme Soviet of the Ukrainian SSR adopted an Act concerning the State budget of the Ukrainian SSR for 1963, extracts from which quoted below bear witness to the further increase in State allocations directed towards the satisfaction of social and cultural needs.

Art. 1. The State budget of the Ukrainian SSR for 1963 as amended according to the report of the Budget Commission (total revenue 7,958,711,500 roubles; total expenditure, 7,958,711,500 roubles; ready cash in hand, 154,950,000 roubles) submitted by the Council of Ministers of the Ukrainian SSR, is hereby adopted.

Art. 3. A total appropriation of 3,649,603,500 roubles shall be made under the State budget of the Ukrainian SSR for 1963 for the financing of the national economy: the continued development of heavy industry, the construction industry, light industry, the foodstuffs industry, agriculture, transport, housing and communal services and other branches of the national economy.

Art. 4. A total appropriation of 3,875,321,000 roubles shall be made under the State budget of the Ukrainian SSR for 1963 for social and cultural purposes: general education schools, technical training schools, higher educational establishments, scientific research institutions, vocational-technical schools, libraries, clubs, theatres, the Press and other educational and cultural facilities; 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, 4 January 1963, Act No. 14, p. 10.)

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

EXTRACTS FROM THE REPORT OF THE CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE UKRAINIAN SSR ON THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE UKRAINIAN SSR IN 1963

In 1963, the workers of the Ukrainian SSR made further progress in developing the national economy and raising the material prosperity and cultural level of the people.

The gross social product, i.e., the total output of all branches of material production, showed a rise of 4 per cent as compared with 1962.

While the plan for the growth of production and national income was overfulfilled in industry, in agriculture it was underfulfilled.

Over a five-year period, the gross social product has increased by 36 per cent.

As in previous years, the following were provided out of social consumption funds: free education and medical care; sick leave, maternity leave, and regular leave with pay; pensions and allowances paid to unmarried mothers and mothers with many children. Expenditure on these and other payments and benefits extended to the population amounted to 6,100 million roubles as compared with 5,700 million roubles in 1962. Some 800,000 public health workers and 1 million workers in education and culture were paid out of social consumption funds. Five million pensioners were being maintained by the State and in part by collective farms. Over 1 million students of higher, specialized secondary and vocational-technical educational establishments and lower schools received grants and dormitory accommodation. About 2 million children were cared for in crèches and open-air nurseries. More than 1.5 million working people and their children rested and received medical treatment in sanatoria, rest homes and pioneer camps, part or all of the cost being defrayed by social insurance and by collective farms. State allowances were also paid to over 700,000 unmarried mothers and mothers with many children.

The average annual employment figure for manual and non-manual workers in the Ukrainian economy in 1963 was more than 12.1 million, an increase of 425,000 over 1962. In the productive branches of the economy, the number of manual workers and of engineering and technical workers and other specialists increased by 235,000 over this period. The number of workers at schools and edu-

cational, scientific research and medical institutions rose by almost 100,000, while the number of workers engaged in trade and housing and communal services rose by 75,000.

Further progress was also made in public education, science and culture.

Almost 12 million people, or one-third of the population of the Republic (not counting children of pre-school age), were receiving education in some form or another. The number of students in general education schools alone totalled 8.3 million, or 350,000 more than in the preceding year.

In the past year 603,000 pupils completed eight years of schooling, and over 146,000 completed eleven years of schooling. Enrolment in boarding schools and extended day schools and classes totalled about 600,000 students, or 100,000 more than in the previous academic year.

The training of highly qualified specialists in all branches of knowledge was further expanded. Some 1.2 million persons are studying in higher educational establishments and specialized secondary schools—577,000 of them in the former. Of the students enrolled in day courses in higher educational establishments, 37,800 (or 69 per cent) had completed a period of practical work of not less than two years.

Over 1.4 million persons are studying without interruption of employment, including about 800,000 in schools for young workers and rural youth, and over 600,000 in higher and specialized secondary educational establishments.

In the past year, higher educational establishments turned out over 59,000 specialists, including 24,400 engineers; technical colleges and other specialized secondary schools turned out 112,000 specialists. Over 170,000 specialists with higher or secondary specialized education were absorbed into the national economy.

In the past year, 135,000 young workers completed courses at trade schools and vocational-technical schools. Over 2 million people received further training and learned new trades through individual and/or group apprenticeship and course instruction given in undertakings and on collective farms.

By the beginning of the seven-year plan, persons with higher and secondary education had constituted 44 per cent of the working population, while by the end of 1963 the figure had risen to 50 per cent. Thus, half the working population of the Republic has secondary or higher education: 49 per cent of the manual workers, 27 per cent of the collective farmers and 93 per cent of the specialists and non-manual workers.

Scientific workers employed in scientific institutions, higher educational establishments and other organizations numbered about 75,000 at the end of 1963.

The number of cinema installations rose to over 24,000. In the past year, the figure for cinema attendance was about 742 million, including 295 million in rural localities. The figure for theatre and concert attendances was 28 million. About 2.3 million persons took part in amateur art clubs and groups.

There was large-scale construction of housing. In 1963, a total of 13.9 million square metres of housing, or about 380,000 new apartments, financed by the State or by the population from its own resources and with the help of State loans, were brought into occupancy in towns and workers' settlements, including 6,000 apartments in houses built by housing co-operatives.

In addition, 114,000 dwellings were built in rural areas by collective farmers and the intelligentsia with the aid of State loans.

In 1963 alone, over 1.5 million persons in the towns and villages of the Republic obtained new apartments or improved their old dwellings.

In the last ten years, dwelling houses containing almost 4 million apartments have been built in towns and workers' settlements, and 1.3 million dwellings in rural areas. During the decade, more than 18 million persons in the towns and villages of the Republic moved into new houses or improved their old dwellings.

There was large-scale construction of schools, institutions for children of pre-school age, hospitals and polyclinics, sanatoria and rest homes and other cultural and social facilities.

Medical services to the population were further improved in 1963. The network of hospitals, maternity homes, dispensaries or health centres, women's and children's clinics, preventive medicine clinics and other health establishments was further expanded. The number of hospital beds increased by over 15,000 and the number of doctors by almost 5,000. Over the past year, the mortality rate of the population, and particularly infant mortality, declined throughout the Republic. The number of children who died in their first year was the lowest in the history of the Ukraine: 24 per thousand births.

The population of the Ukrainian SSR on 1 January 1964 was 44.8 million.

The results achieved in fulfilling the annual plan show that in 1963 the Ukrainian SSR attained new levels of cultural and economic growth, that the most important targets of the seven-year plan for the development of the Republic's economy over the first five years are being successfully fulfilled, and that with respect to a number of major indicators they are being overfulfilled.

(From the newspaper *Pravda Ukrainy*, No. 22, 26 January 1964.)

LEGISLATIVE ACTS OF THE UKRAINIAN SSR RELATING TO HUMAN RIGHTS ADOPTED IN 1963

By decree of the Presidium of the Supreme Soviet of the Ukrainian SSR of 21 March 1963, the Ministry of Justice of the Ukrainian SSR was abolished and the functions of judicial administration and direction of the system of notary's offices were entrusted to the Supreme Court of the Repub-

lic (*Gazette of the Supreme Soviet of the Ukrainian SSR*, 1963, No. 13, p. 242).

At its meeting of 28 March 1963, the Presidium of the Supreme Soviet of the Ukrainian SSR considered the question of the mass-organization work of the local Soviets of Working People's Deputies of the Ukrainian SSR. In the Order adopted, it is noted, *inter alia*, that:

"The local Soviets have begun to broaden the application of the principle of public participation in their work, encouraging more working people to take an active part in public affairs, economic and cultural construction and popular supervision of the work of the State apparatus.

"The executive committees and standing commissions of the Soviets are placing ever greater reliance in their work on the independent public organizations, whose number has greatly increased recently... (*Gazette*, 1963, No. 14, p. 254)

By decree of the Presidium of the Supreme Soviet of the Ukrainian SSR of 9 December 1963 (*Gazette*, 1963, No. 51, p. 732), amendments and additions were introduced in the Statute concerning the Comrades' Courts of the Ukrainian SSR.

The Statute concerning the Comrades' Courts had been adopted on 15 August 1961. The purposes of the Comrades' Courts are set forth in article 1 of the Statute:

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

One of the most important amendments and additions introduced in the Statute by the Decree of 9 December 1963 provides for a considerable expansion in the jurisdiction of the Comrades' Courts through the transfer to them of cases which had hitherto been considered by the judicial organs of the Republic. One result of this change is that for certain infringements of the law there is now provision for the application of measures of social pressure by an elective public body—the Comrades' Court—in place of the administrative or criminal liability previously existing.

On 18 July 1963, the second session of the Supreme Soviet of the Ukrainian SSR, sixth convocation, adopted an Act promulgating the Civil Code of the Ukrainian SSR (*Gazette*, 1963, No. 30, p. 463), and an Act promulgating the Code of Civil Procedure of the Ukrainian SSR (*Gazette*, 1963, No. 30, p. 464).

The Civil Code of the Ukrainian SSR previously in force had been adopted in 1922, and the Code of Civil Procedure in 1929. Since then radical changes have taken place in the economy, social structure and political organization of the Ukrainian SSR. The exploiting classes have been liquidated, socialism has won a full and decisive victory, and the dictatorship of the proletariat has given place to the popular socialist State. The Ukrainian people is now engaged in the successful construction of communist society.

This transformation has been accompanied by changes in civil and civil-procedural juridical relations. Many legal principles are now out of date and have ceased to be applied in practice. At the same time, new juridical relations have grown up which call for regulation by law.

The new Codes of the Ukrainian SSR reflect the profound changes that have taken place in the economy, the social relations and the political and intellectual life of society, and also the consequent further development of socialist democracy, extension of the rights of citizens and strengthening of the guarantees for such rights.

The following provisions of the new Codes of the Ukrainian SSR are representative of the position taken on human rights.

CIVIL CODE OF THE UKRAINIAN SSR

The purposes of Ukrainian Civil Code are defined as follows in article 1:

"The Civil Code of the Ukrainian SSR governs relationships based on property and personal relationships not based on but connected with property, in order to lay the material and technical foundations of communism and to satisfy progressively the material and spiritual needs of citizens. Where the law so provides, the Code also governs other personal relationships. The basis of property relationships in Soviet society is the socialist system of economy and socialist ownership of the tools and means of production. The economic life of the Ukrainian SSR is determined and guided by the State national economic plan."

Among the most important features of the new Civil Code relating to the development of human rights, reference should be made to the provisions of article 7, which the previous Civil Code of the Republic did not contain. Previously, the legislation of the Ukrainian SSR provided for the defence of the honour and dignity of citizens only by means of criminal procedure, under which persons offending against the honour and dignity of a citizen were liable to a criminal penalty. The new Code provides for a new kind of responsibility for offences against the honour and dignity of the person—responsibility under civil law.

"*Article 7. Protection of honour and dignity*

"A citizen or organization may move the court to compel withdrawal of a statement damaging to honour or dignity, unless the person who has published the statement proves it true.

"A defamatory statement that has been published in print shall, if untrue, also be denied in print. Otherwise the method of denial shall be determined by the court.

"A person who fails to comply with an order of a court may be compelled by the court to pay a

fine to the State. Payment of the fine shall not exempt the defaulter from performance of the act ordered by the court."

Chapter 2 of the Civil Code contains rules relating to the legal capacity of citizens, which is defined in article 9 as "capacity to possess civil rights and obligations (civil legal capacity)," and is recognized as belonging in equal measure to all citizens of the Ukrainian SSR and the other Union Republics. "The civil capacity of a citizen shall begin at birth and end at death."

It should be pointed out that article 10 of the new Code, which defines the incidents of civil capacity, differs substantially from article 5 of the Civil Code previously in force. It contains a series of new provisions extending the scope of civil capacity, for example, the right to inherit and bequeath property, to enjoy author's rights with respect to works of science, literature and art, and to hold patent rights over discoveries and inventions. At the same time, the article no longer refers to the right of citizens to organize industrial and trade undertakings since, as a result of the achievement of socialism in the Ukrainian SSR, ownership of industrial and trade undertakings is the exclusive prerogative of the State and co-operative and public organizations.

Article 12 provides that "no person's civil capacity or competence may be limited otherwise than in the cases and according to the procedure provided by law".

Article 16, which states that citizens may be declared incompetent only by decision of a court, is completely new. Under the legislation previously in force, legal incompetence was recognized by the executive committees of local Soviets of Working People's Deputies on the basis of a medical examination. The new procedure for the recognition of incompetence offers a better guarantee of the legality and correctness of the decision, inasmuch as the court is not confined to the conclusions of experts in forensic psychiatry and can call for other evidence. Cases are heard with the obligatory participation of a procurator and representatives of the guardianship and curatorship authorities.

The rules contained in chapter 10 of the Code, which govern the right to private ownership of property, are of great importance. Private ownership by citizens derives from socialist ownership and serves as one of the means of satisfying their material and cultural needs. Among the articles concerning private ownership we may note, for example, article 100.

"Article 100. Purposes of the right to private ownership

"Citizens may enjoy private ownership of property intended for the satisfaction of their material and cultural needs.

"Every citizen may privately own his earnings and savings, a dwelling (or part thereof) and a subsidiary plot for private use, household articles and utensils, and articles of personal use and comfort.

"Property which is privately owned by citizens may not be used as a source of unearned income."

Chapter 26 of the Code is devoted to questions of rented accommodations. This chapter represents a further effort to strengthen the protection of the rights and interests of the individual. Thus, for instance, article 296 states that before the terms of a lease can be changed it is necessary, *inter alia,* to secure the agreement of the tenant. The law also limits the power of the administrative authorities to evict citizens from their living quarters. It should in particular be noted that, by contrast with the legislation previously in force, article 316 of the new Civil Code of the Ukrainian SSR does not regard systematic non-payment of rent by tenants living in houses operated by local Soviets of Working People's Deputies, or by State, co-operative and public organizations, as grounds for eviction.

In addition to chapter 26, which governs the hire of property (rent), the Civil Code reflects a new institution characteristic of the interrelationships developing in a socialist society engaged in the construction of communism, namely, the free use of property (chapter 27 of the Civil Code).

New provisions have also been included in chapter 40: "Liability for Injury". *Inter alia,* attention is drawn to articles 440, 441 and 442 of the Civil Code:

"Article 440. General rules governing liability for injury

"Full compensation for damages caused to the person or property of a citizen, or to an organization, shall be paid by the person causing the damage.

"A person causing damage shall be released from liability to pay compensation if he proves that the damage was not due to his fault.

"Compensation shall be paid for injury caused by lawful acts only in the cases prescribed by law."

"Article 441. Liability of an organization for damage caused through the fault of its employees

"An organization shall be obliged to pay compensation for damage caused through the fault of its employees in the fulfilment of their obligations of work or service."

"Article 442. Liability for injury caused by the acts of officials in the sphere of administrative management

"State establishments shall be liable for the injury caused to citizens by the improper official acts of their functionaries in the sphere of administrative management, in accordance with the general rules (articles 440 and 441 of this Code), unless a special statute provides otherwise.

"For injury caused to organizations by such acts of their functionaries, State establishments shall be liable in the manner established by law."

The new Civil Code establishes complete freedom to bequeath property, as may be seen from article 534:

"Article 534. Testamentary inheritance

"Any citizen may leave all or part of his property (not excluding ordinary household articles and furniture) by will to one or more persons, who may or may not be heirs-at-law, or to the State, or to specific State, co-operative or public organizations. The testator may, in his will, deprive one, several or all of the heirs-at-law of their right of succession."

At the same time, the rights of heirs who are under age or incapacitated for work are guaranteed, for they may not be fully deprived of the inheritance. In any event they are entitled to two-thirds of the share which would have fallen to them as heirs-at-law (article 535).

Completely new provisions are contained in section 8 of the Civil Code: "Legal capacity of aliens and stateless persons. Applications of civil laws of foreign States and international treaties and agreements". The provisions contained therein clearly reflect the attitude of our legislation to aliens and stateless persons, who are accorded civil legal capacity on an equal footing with Soviet citizens, and respect for international treaties and agreements. We shall quote several articles from this section:

"Article 565. Civil legal capacity of aliens

"Aliens shall enjoy in the Ukrainian SSR equal civil capacity with Soviet citizens. Specific exceptions may be established by the law of the USSR.

"The Council of Ministers of the USSR (Article 122 of the Principles of the Civil Law of the USSR and the Union Republics) may impose reciprocal restrictions on nationals of States in which there are special restrictions on the civil capacity of Soviet citizens."

"Article 566. Civil legal capacity of stateless persons

"Stateless persons resident in the USSR shall enjoy equal civil capacity in the Ukrainian SSR with Soviet citizens. Specific exceptions may be established by the law of the USSR."

"Article 567. Foreign trade transactions of alien organizations

"Alien enterprises and organizations may without special permission conclude in the Ukrainian SSR foreign trade transactions and related operations in the settlement of accounts, insurance or other operations with Soviet foreign trade associations and other Soviet organizations authorized to conclude such transactions."

"Article 572. International treaties and agreements

"If the rules laid down by an international treaty or agreement to which the USSR is party are different from those of Soviet civil law, the rules of the international treaty or agreement shall apply.

"The same provision shall apply in the territory of the Ukrainian SSR if the rules laid down by an international treaty or agreement to which the Ukrainian SSR is party are different from those of the civil law of the Ukrainian SSR."

It should be noted that the new Code includes a series of new sections governing the author's rights of citizens, and the right to discoveries and inventions. These legal matters were previously governed by individual legislative acts, Government orders and enforceable enactments rendered by Government agencies.

CODE OF CIVIL PROCEDURE OF THE UKRAINIAN SSR

The Code of Civil Procedure of the Ukrainian SSR establishes the procedure for bringing civil actions in the courts of the Ukrainian SSR, and for hearing cases in disputes arising from civil, family, labour and collective-farm legal relationships, cases arising from administrative legal relationships and cases of non-contentions procedure; it also governs the procedure for the judicial defence of the rights and interests of citizens.

The purposes of the Code of Civil Procedure of the Ukrainian SSR are defined in article 2:

"Article 2. Purposes of civil procedure

"The purpose of Soviet civil procedure is to ensure that civil cases are heard and decided correctly and promptly in order to preserve the social and State structure of the USSR, the socialist system of economy and socialist property, and to protect the political, work housing and other personal and property rights and the legally safeguarded interests of citizens, and also the rights and legally safeguarded interests of State establishments, undertakings, collective farms and other co-operative and public organizations.

"Civil procedure must help to strengthen the rule of socialist law, to prevent violations of the law, and to foster a spirit of strict compliance with Soviet law and respect for the principles of community life in a socialist society."

Attention may also be drawn to articles 4, 6, 7, 9 and 100 of the Code of Civil Procedure, which are intended to protect the rights of citizens:

"Article 4. Right to apply to the courts for judicial protection

"Any person concerned has the right to apply to the courts in accordance with the statutory procedure for the protection of a right or a legally safeguarded interest which has been violated or disputed.

"Any renunciation of the right to apply to the courts shall be null and void."

"Article 6. Administration of justice by the courts alone and on the principle of the equality of citizens before the law and before the courts

"In civil cases justice shall be administered only by the courts and on the principle of the equality before the law and before the courts of all citizens, irrespective of their social, property or occupational status, sex, nationality, racial origin or religion."

"Article 7. Independence of judges, who shall be subject only to the law

"In the administration of justice in civil cases, judges and people's assessors shall be independent and subject only to the law. Judges and people's assessors shall decide civil cases on the basis of the law, in accordance with the socialist concept of justice, and under conditions which preclude the exercise of any extraneous influence upon them."

"Article 9. Language in which judicial proceedings are conducted

"Judicial proceedings shall be conducted in the Ukrainian language. Persons who do not know the Ukrainian language shall be guaranteed the right to make statements, give explanations and evidence, address the court and submit petition in their native language, and also to make use of the services of an interpreter according to the procedure laid down in this Code.

"Persons taking part in the case shall, in accordance with the statutory procedure, be provided with copies of the documents submitted in the proceedings, translated into their native language or into another language which they understand."

"Article 100. Legal capacity in civil procedure

"All citizens of the USSR, irrespective of their social, property or occupational status, sex, nationality, racial origin or religion, and organizations which are bodies corporate, shall be deemed capable of enjoying the rights and duties of civil procedure (legal capacity in civil procedure)."

A considerable number of articles in the Code of Civil Procedure emphasize the greater part played by the public, and also by the organs of State administration, the trade unions and various organizations, in the field of protection of the rights of citizens at various stages and in the various forms of judicial proceedings. In this connexion we quote below several articles and chapters of the Code which contain many new normative provisions:

"Article 25. Jurisdiction of comrades' courts and arbitration tribunals in civil cases

"Where the law so provides, civil cases may be heard by comrades' courts or arbitration tribunals according to the procedure established by the Statute concerning the comrades' courts and the Statute concerning arbitration tribunals of the Ukrainian SSR.

"Where the law or international agreements so provide, disputes arising from civil legal relationships may, with the agreement of the parties, be referred for settlement to an arbitration tribunal of the Marine Arbitral Commission or of the Foreign Trade Arbitral Commission of the All-Union Chamber of Commerce."

"Chapter 14

"PARTICIPATION IN THE PROCEEDINGS OF ORGANS OF STATE ADMINISTRATION, TRADE UNIONS, INSTITUTIONS, UNDERTAKINGS, ORGANIZATIONS AND INDIVIDUAL CITIZENS IN DEFENCE OF THE RIGHTS OF OTHERS

"Article 121. Purposes and forms of participation

"Where the law so provides, organs of State administration, trade unions, State institutions, undertakings, collective farms and other co-operative and public organizations or individual citizens may bring actions in defence of the rights and legally safeguarded interests of others.

"Organs of State administration may, where the law so provides, be summoned by the court to take part in the proceedings, or may join the suit on their own motion to present their conclusions on the case with a view to performing the duties incumbent on them and defending the rights of citizens and the interests of the State.

"The participation of the said organs of State administration in the proceedings for the purpose of giving their conclusions on the case shall be mandatory if the court deems it necessary."

"Article 122. Procedural rights of organs of State administration, trade unions, institutions, undertakings, organizations and individual citizens in defence of the rights of others

"When organs of State administration, trade unions, institutions, undertakings, organizations and individual citizens bring a court action in the interests of others, they shall enjoy the procedural rights and bear the procedural responsibilities of parties, with the exception of the right to terminate the case by amicable arrangement.

"Withdrawal by the said organs or persons of an action brought by them or a change in the claims made by them shall not deprive the person in defence of whose interests the action was brought of the right of requiring the court to consider the substance of the case. In that event, court fees shall be paid in the normal way."

"Article 161. Participation of the public in court proceedings

"Representatives of public organizations and working people's collectives who are not parties in a case may, if the court so decides, be admitted to participation in the proceedings for the purpose of stating the views of the organizations or collectives they represent on the case before the court.

"Representatives of public organizations and working people's collectives shall be entitled to acquaint themselves with the documents of the case, to be present at all court sessions, to present evidence and take part in the examination of evidence, to put questions to persons participating in the case, witnesses and experts, to present their arguments and considerations on all questions arising in the course of the proceedings, and to take part in the pleadings.

"The full powers of representatives of public organizations and working people's collectives shall be confirmed by extracts from the decisions of a general meeting or an elective body of the public

organization or collective, adopted in connexion with the case before the court."

"Article 192. Opinion of a public organization or working people's collective

"The court, after investigating the circumstances and checking the evidence, shall hear the representative of the public organization or working people's collective (article 161 of this Code) concerning the opinion of the organization or collective he represents on the case before the court. After that, the court and persons participating in the case may put questions to him with a view to ascertaining the opinion of the group concerned."

"Article 308. Participation of the public in courts of second instance

"A court of second instance may allow representatives of public organizations and working people's collectives to take part in court sessions in the cases and according to the procedure provided for by article 161 of this Code."

"Article 351. Participation of the public at the stage of execution of court judgements

"Representatives of public organizations and working people's collectives may be invited by judges and officers of the court to participate at the stage of execution of court judgements, if this is in the State or public interest and is likely to facilitate more rapid and correct execution of a court judgement.

"Representatives of the groups concerned may be admitted to participation in the execution of court judgements provided they have the proper authorization.

"Representatives of such groups shall be entitled to acquaint themselves with the materials of the executory proceedings and to be present at the executory acts carried out by the officer of the court."

Proper defence for the rights of citizens is also ensured by the requirements contained in the Code of Civil Procedure concerning the legality and validity of court judgements, the right to appeal against such judgements, the powers and obligations of courts of cassation and supervision, etc. (articles 11, 202, 289, 310, 311, 336 and 337 of the Code of Civil Procedure of the Ukrainian SSR).

In addition to contentions and non-contentions proceedings, the jurisdiction of the courts extends to cases arising out of administrative legal relationships. That is dealth with, in particular, in article 236 of the Code.

"Article 236. Cases arising out of administrative legal relationships to be heard by the court

"The court shall consider cases: (1) arising out of complaints of irregularities in the electoral registers; (2) arising out of appeals against the acts of administrative organs; (3) concerning the exaction of arrears from citizens in respect of State and local taxes and dues, compulsory property insurance, and self-taxation."

Like section 8 of the Civil Code, section 6 of the code of Civil Procedure of the Ukrainian SSR is completely new. It is entitled: "Civil Procedural Rights of Aliens and Stateless Persons. Suits against Foreign States, Letters Rogatory and Decisions of Foreign Courts. International Treaties and Agreements". Some of the articles from that section are reproduced below:

"Article 423. Civil procedural rights of aliens and foreign undertakings and organizations

"Aliens shall have the right to apply to the courts of the Ukrainian SSR and shall enjoy civil procedural rights equally with Soviet citizens.

"Foreign undertakings and organizations shall have the right to apply to the courts of the Ukrainian SSR and shall enjoy civil procedural rights for the defence of their interests.

In accordance with article 59 of the Principles of Civil Procedure in the USSR and the Union Republics, the Council of Ministers of the USSR may impose reciprocal restrictions on nationals, undertakings and organizations of States in which there are special restrictions on the civil procedural rights of Soviet nationals, undertakings or organizations."

"Article 424. Civil procedural rights of stateless persons

"Stateless persons resident in the USSR shall have the right to apply to the courts and shall enjoy civil procedural rights equally with Soviet citizens."

"Article 428. International treaties and agreements

"In accordance with article 64 of the Principles of Civil Procedure in the USSR and the Union Republics, when the rules laid down by an international treaty or agreement to which the USSR is a party differ from those contained in the said Principles and in this Code, the rules of the international treaty or agreement shall apply.

"The same provisions shall be applicable in the territory of the Ukrainian SSR if the rules laid down by an international treaty or agreement to which the Ukrainian SSR is a party differ from those established by the civil procedural legislation of the Ukrainian SSR."

Such are the most characteristic provisions of the Civil Code and the Code of Civil Procedure of the Ukrainian SSR, guaranteeing defence of the rights and legitimate interests of citizens.

UNION OF SOVIET SOCIALIST REPUBLICS[1]

DECISION OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF THE SOVIET UNION AND THE COUNCIL OF MINISTERS OF THE USSR ON MEASURES FOR FURTHER DEVELOPING HIGHER AND SPECIALIZED SECONDARY EDUCATION AND IMPROVING THE TRAINING AND USE OF SPECIALISTS

Dated 9 May 1963

The Central Committee of the Communist Party of the Soviet Union (CPSU) and the Council of Ministers of the USSR note that substantial progress has been made in recent years in the development of higher and specialized secondary education in the Soviet Union. In the past decade, there has been a 50 per cent increase in the number of specialists graduated with a higher education, including a 150 per cent increase in the number of engineers.

Higher and specialized secondary educational establishments have made some progress in implementing the Act concerning the Establishment of a Closer Correspondence between Education and Life and Further Development of the Educational System in the USSR. By arranging for students to combine study with socially useful work and for higher educational establishments and *tekhnikums* (specialized secondary schools) to be brought closer to life and production, it has been possible to improve the theoretical and practical training of young specialists. More young people with experience of work in various sectors of the national economy and culture have been admitted to higher and specialized secondary educational establishments. Evening and correspondence education has been substantially expanded. More than 50 per cent of all students are studying without interruption of employment.

However, there are major deficiencies in the development of higher and specialized secondary education and in the training and use of specialists.

In a number of cases, the distribution of higher educational establishments among the economic regions does not correspond to their level of economic and cultural development.

The number of specialists trained for the new technological sectors, such as instrument-making, electronics, chemistry, and production mechanization and automation, of economists and of teachers for the general-education schools is low. At the same time, training in the field of the arts is carried on without regard for actual needs and without relation to the problems of economic and cultural development.

The training of specialists with a specialized secondary education is lagging. Persons with a higher education often occupy posts which could be filled by specialists with a specialized secondary education.

Students at higher educational establishments and *tekhnikums* are overburdened with compulsory work, and there is duplication of material in the subjects studied. There is a shortage of textbooks and educational aids for a number of subjects.

There are serious shortcomings in the use of young specialists. Many graduates of higher educational establishments do not proceed to the places to which they are assigned by ministries and departments but find themselves posts primarily in large cities, sometimes not even in their field of specialization. The enterprises and organizations to which young specialists are assigned often put them to the wrong use and pay little attention to their housing requirements and other personal needs.

The Central Committee of the CPSU and the Council of Ministers of the USSR hereby decide:

1. To instruct the State Planning Committee of the USSR, the Ministry of Higher and Specialized Secondary Education of the USSR, the Councils of Ministers of the Union Republics and those USSR ministries and departments which have higher and specialized secondary educational establishments under their jurisdiction to ensure a further increase on a planned basis in the training of specialists with a higher or specialized secondary education in accordance with the need for personnel in the various sectors of the national economy and culture.

In planning for the training of specialists, to provide for specialized secondary education to be developed at a faster pace than higher education, so that by 1970 industry, construction, transport, communications and agriculture will have three or four specialists with a specialized secondary education for each specialist with a higher education.

To approve control targets for the training of specialists at Soviet higher and specialized secondary educational establishments in 1965 in accordance with annex 1.

2. To ensure that the increase in the number of students is brought about mainly by expanding the existing higher and specialized secondary educational establishments and establishing branches and general technical and general scientific faculties (departments) of higher educational establishments and *tekhnikums* at industrial enterprises,

[1] Texts furnished by the Government of the Union of Soviet Socialist Republics.

construction projects, large State farms, research institutes and other organizations.

To set up new higher and specialized secondary educational establishments, including factory-technical colleges, in areas where industry and agriculture are undergoing intensive development.

To adopt the proposals of the Councils of Ministers of the RSFSR, the Ukrainian SSR, the Byelorussian SSR, the Kazakh SSR, the Uzbek SSR and the Turkmen SSR, the Ministry of Means of Communication and the Ministry of the Marine on the organization of higher educational establishments in 1963-1970 in accordance with annex 2.

3. To instruct the Councils of Ministers of the Union Republics and those USSR ministries and departments which have higher educational establishments under their jurisdiction:

(*a*) To construct school buildings, dormitories and other facilities for the higher educational establishments newly organized in accordance with this Decision in the volume and within the time-limits indicated in annex 2;

(*b*) To construct school buildings for existing correspondence and evening colleges during the period 1964-1968. To draw up a list of correspondence and evening colleges and determine the volume of construction to be carried out for them in agreement with the State Planning Committee of the USSR and the Ministry of Higher and Specialized Secondary Education of the USSR.

To authorize the Councils of Ministers of the RSFSR and the Kazakh SSR, by way of exception, to construct in 1964-1966, out of the capital appropriations for the corresponding branches of industry, one school building of 40,000 cubic metres for each factory-technical college indicated in annex 2 to this Decision and for the factory-technical college at the I. A. Likhachev Automobile Works in Moscow.

4. To combine and reorganize higher educational establishments in 1963-1964 in accordance with annex 3 with a view to regularizing the system and increasing the size of such establishments.

5. To instruct the State Planning Committee of the USSR, the Councils of Ministers of the Union Republics and the Ministry of Culture of the USSR to ensure that specialists are trained at higher art schools in accordance with the need for such specialists in the various sectors of the national economy and culture.

To reduce to 200-250, as from 1963, the total annual number of admissions to day courses at higher art schools.

6. To adopt the proposal of the Writers' Union of the USSR that the A. M. Gorky Literary Institute should become the A. M. Gorky Correspondence Literary Institute.

To admit to the Institute persons working in the various sectors of the national economy and culture who have shown literary ability.

7. With a view to improving the range of qualifications of specialists with a higher or specialized secondary education, to instruct the Ministry of Higher and Specialized Secondary Education of the USSR, in agreement with the State Planning Committee of the USSR, the Councils of Ministers of the Union Republics and the competent USSR ministries and departments, to make necessary changes in the lists of subjects for specialization within six months, the aim being:

(*a*) At higher educational establishments, to train specialists with a broader range of qualifications and to reduce the total number of subjects for specialization;

(*b*) At specialized secondary schools, to train specialists with a narrow range of qualifications.

8. To instruct State sectoral and production committees and USSR ministries and departments to draw up and approve within six months, in agreement with the State Labour and Wages Committee of the Council of Ministers of the USSR, the State Planning Committee of the USSR, the National Economic Council (*Sovnarkhoz*) of the USSR, the Ministry of Higher and Specialized Secondary Education of the USSR and the Ministry of Finance of the USSR, standard lists of posts to be filled by specialists with higher and specialized secondary education for each sector of the national economy and culture. The standard lists of posts are to provide for wider use of specialists with a specialized secondary education.

To propose to the Councils of Ministers of the Union Republics and the USSR ministries and departments that they should bring staffing tables at enterprises, institutions and organizations under their jurisdiction into conformity with the approved standard lists of posts.

9. With a view to further improving long-term planning for the training of specialists with higher and specialized secondary education in accordance with the development of the various sectors of the economy, to instruct State sectoral and production committees to prepare and submit to the State Planning Committee of the USSR and the Ministry of Higher and Specialized Secondary Education of the USSR estimates of the long-term requirements of the corresponding sectors of the economy as regards specialists with higher and specialized secondary education, preliminary long-term plans for their training, and proposals for the necessary changes in the range of qualifications of specialists, taking account of technical progress, the achievements of science and technology, and production requirements.

10. To instruct the State Planning Committee of the USSR, the Ministry of Higher and Specialized Secondary Education of the USSR, the Councils of Ministers of the Union Republics and those USSR ministries and departments which have higher educational establishments under their jurisdiction to make provision in their long-term and annual plans for combining the training of specialists at higher educational establishments in fields in which there is little demand for specialists by certain Union Republics and USSR ministries and departments.

11. To instruct the Councils of Ministers of the Union Republics to regularize and accelerate the training of teachers for general-education schools at training colleges and to arrange for them to specialize, as a general rule, in one subject (mathematics, physics, chemistry, Russian language

and literature, their native language and literature, etc.) with a four-year course of study.

To authorize the Councils of Ministers of the Union Republics, in agreement with the Ministry of Higher and Specialized Secondary Education of the USSR, to organize the training of teachers at training colleges in two special subjects, with a five-year course of study, for schools with small enrolments.

12. To instruct the Ministry of Culture of the USSR, the Ministry of Higher and Specialized Secondary Education of the USSR and the Councils of Ministers of the Union Republics:

(*a*) To introduce changes in the training of specialists at higher art schools with a view to turning out artists capable of working in different areas of industry, education and culture. To this end, they shall convert the higher art schools primarily to the training of practitioners of the decorative-applied and monumental-decorative arts and of specialists in artistic industrial design;

(*b*) To concentrate the training of practitioners of the fine arts at the V. I. Surikov State Art Institute in Moscow and the I. E. Repin Institute of Painting, Sculpture and Architecture in Leningrad. For students taking painting, drawing and sculpture at these institutes, they shall introduce teaching or theatrical and film design as a compulsory additional subject;

(*c*) To convert the evening faculties of the higher art and industrial art schools completely to the training of specialists in the decorative-applied arts and artistic industrial design;

(*d*) To replace the present six-year course in all subjects for specialization in the field of the decorative-applied arts at higher educational establishments with a five-year course;

(*e*) To admit to higher art schools, on a competitive basis, persons who have shown creative talent, who participate actively in amateur art activities and who have received recommendations from their place of work or study;

(*f*) To convert secondary art schools during the period 1963-1966, primarily to the training of specialists in the decorative-applied and industrial arts;

(*g*) To introduce curricula at secondary music and dance schools which expand the study of arts subjects by reducing the number of hours devoted to subsidiary subjects.

13. With a view to improving the training of specialists, to relieve students of an excessive burden of compulsory studies, to encourage independent work and more active participation in scientific research, and to establish for full-time students at higher educational establishments a maximum workload for all types of study, including optional subjects, of thirty-six hours a week in the first to fourth years and thirty hours a week in the fifth and sixth years, and in the four-year course a maximum of thirty-six hours a week in the first to third years and thirty hours a week in the fourth year.

To prohibit a workload of compulsory studies of more than thirty-six hours a week for full-time students in all courses at specialized secondary schools.

14. To instruct the Councils of Ministers of the Union Republics, USSR ministries and departments, *sovnarkhozes*, bodies in charge of higher and specialized secondary educational establishments, and directors of enterprises, institutions and organizations to take the necessary steps to improve the organization of the production work of students in the lower years of higher educational establishments and the production and practical work of students at higher educational establishments and in the upper years of specialized secondary schools, to provide posts for them in accordance with their subjects of specialization at the educational establishments and to ensure that students acquire the necessary knowledge of the technology, organization and economics of production.

15. To instruct the Ministry of Higher and Specialized Secondary Education of the USSR to approve, in agreement with the bodies in charge of higher and specialized secondary educational establishments, summary long-range and annual plans for the publication of textbooks and educational aids for higher and specialized secondary educational establishments, regardless of the department having jurisdiction over the publishing houses and educational establishments. These plans shall be compulsory for all ministries, departments, publishing houses and educational establishments.

16. In view of the fact that a young specialist who studies full time completes his training with practical work in his subject at an enterprise, institution or organization, to recognize the desirability of awarding graduation diplomas to students at higher educational establishments only when, after defending their diploma projects (or equivalent work) or passing State examinations, they have completed a year of work as directed by the ministry (department).

Persons completing full-time study at higher educational establishments wo have defended their diploma projects (or equivalent work) or passed State examinations shall be issued temporary certificates in accordance with a model established by the Ministry of Higher and Specialized Secondary Education of the USSR.

To instruct the Ministry of Higher and Specialized Secondary Education of the USSR, in agreement with the Councils of Ministers of the Union Republics and those USSR ministries and departments which have higher educational establishments under their jurisdiction, to establish the procedure for the issue of temporary certificates and diplomas to persons graduating from higher educational establishments.

17. To instruct the Central Committees of the Communist Parties of the Union Republics, territorial and regional Party committees, the Councils of Ministers, of the Union Republics, USSR ministries and departments, *sovnarkhozes*, collective and State farm production administrations, and directors of enterprises, institutions and organizations to whose jurisdictions graduates of higher and specialized secondary educational establish-

ments are assigned to ensure that young specialists are given the right work in accordance with their qualifications, and that they are provided with accommodation, medical services and other cultural and welfare facilities.

18. To instruct the State Planning Committee of the USSR, the Councils of Ministers of the Union Republics and USSR ministries and departments:

(*a*) To make provision in the national economic plans, starting in 1964, for the capital expenditure necessary for building and equipping higher and specialized secondary educational establishments and to set targets for the opening of school plant and dormitories that will ensure the development of higher and specialized secondary education in the USSR;

(*b*) To make provision in the annual plans for the allocation to higher educational establishments and *tekhnikums* of new types of machinery, instruments and apparatus and of farm machinery and machine tools from the first lots of series production.

19. To instruct the State Planning Committee of the USSR and the National Economic Council of the USSR, in conjunction with State sectoral and production committees and the Ministry of Higher and Specialized Secondary Education of the USSR, to submit proposals to the Council of Ministers of the USSR within three months concerning the organization, beginning in 1964, of the production of standard educational and scientific equipment, instruments, apparatus and other modern technical facilities for higher and specialized secondary educational establishments at enterprises specially assigned to the work.

20. To authorize the directors of enterprises, institutions, organizations and exhibitions to transfer to higher and specialized secondary educational establishments without charge samples of machinery, machine tools, instruments and other equipment and displays, from the Exhibition of the Achievements of the Soviet Economy and other exhibitions which can be used for educational purposes.

21. To instruct the Ministry of Higher and Specialized Secondary Education of the USSR to work out and organize, through the bodies in charge of higher and specialized secondary educational establishments, a system for improving the qualifications of teachers at higher educational establishments and *tekhnikums* based on the major higher educational establishments and scientific institutions, using the most highly qualified scientific personnel and science teachers for this work.

To instruct the Academy of Sciences of the USSR, the Academies of Sciences of the Union Republics, State sectoral and production committees and USSR ministries to give the bodies in charge of higher and specialized secondary educational establishments any assistance they may require in improving the qualifications of teachers.

22. To instruct the Central Statistical Administration of the USSR:

(*a*) To carry out a census of specialists with higher and specialized secondary education as at 1 December 1963, using forms agreed upon with the State Planning Committee of the USSR and noting cases in which specialists are not working in the field for which they were trained.

To instruct the State Planning Committee of the USSR, in conjunction with the Ministry of Higher and Specialized Secondary Education of the USSR and State sectoral and production committees, to analyse the results of the census of specialists in employment and to submit proposals to the Council of Ministers of the USSR on ways in which better use can be made of them in the economy;

(*b*) To evaluate fulfilment of the plan for capital expenditure and for the opening of school plant at higher and specialized secondary educational establishments.

23. To instruct the Legal Commission of the Council of Ministers of the USSR to prepare in conjunction with the organizations concerned and submit to the Council of Ministers of the USSR a list of the decisions and orders which cease to have effect as a result of the publication of this decision.

DECISION OF THE COUNCIL OF MINISTERS OF THE USSR ON THE FUNDS OF ENTERPRISES (ORGANIZATIONS) IN INDIVIDUAL SECTORS OF THE ECONOMY FOR IMPROVING THE CULTURAL LIFE AND LIVING CONDITIONS OF THE WORKERS AND INCREASING PRODUCTION EFFICIENCY

Dated 22 May 1963

The Council of Ministers of the USSR hereby decides:

1. To approve the attached Regulations concerning the Funds of Enterprises (organizations) in individual sectors of the economy for improving the cultural life and living conditions of the workers and increasing production efficiency and to put them into effect as from the time when the results of economic activity for the first quarter of 1963 become known.

2. To provide that if the total fund of an enterprise (organization) for improving the cultural life and living conditions of the workers and increasing production efficiency established on the basis of the results of the enterprise's (organization's) work over the year does not exceed 500 roubles, the entire resources of the fund may be spent for one or more of the measures provided for in the corresponding fund regulations.

3. To provide that resources allocated for non-recurring assistance to managerial, engineering and technical personnel and non-manual workers and for the purchase for their benefit of passes to rest homes and sanatoria out of incentive funds (if

under the legislation in force the resources of the funds in question can be used for such purposes) shall not exceed the monthly salary of the person concerned in any given year, except in cases where the value of the pass exceeds his monthly salary.

4. To grant the State Production Committee for the gas industry of the USSR the right to centralize, by agreement with the Central Committee of the Petroleum and Chemical Workers' Trade Union, up to 30 per cent of the resources of the gas mains administration fund for improving the cultural life and living conditions of the workers and increasing production efficiency allocated for the construction of housing and cultural welfare facilities and facilities for housing repairs.

5. To instruct the Ministry of Finance of the USSR to publish within two months, by agreement with the National Economic Council of the USSR and the All-Union Central Council of Trade Unions, instructions on the application of the Regulations concerning the Funds of Enterprises (Organizations) in Individual Sectors of the Economy approved by this decision.

To instruct the General Union of Consumer Co-operatives to publish within two months, by agreement with the All-Union Central Council of Trade Unions, instructions on the application of the Regulations in commercial enterprises and procurement organizations of the consumer co-operative system.

6. To instruct the Legal Commission of the Council of Ministers of the USSR, in conjunction with the Ministry of Finance of the USSR, the National Economic Council of the USSR and the All-Union Central Council of Trade Unions, to submit to the Council of Ministers of the USSR a list of decisions of the Government of the USSR which cease to have effect as a result of this decision.

DECISIONS OF THE COUNCIL OF MINISTERS OF THE USSR CONCERNING THE FREE ISSUE OF DRUGS TO PERSONS UNDERGOING OUTPATIENT TREATMENT FOR DYSENTERY

Dated 11 September 1963

The Council of Ministers of the USSR hereby decides:

1. To adopt the proposal of the Ministry of Health of the USSR submitted by agreement with the Ministry of Finance of the USSR, concerning the free issue of drugs to persons undergoing outpatient treatment for dysentery in accordance with a list approved by the Ministry of Health of the USSR, the resulting expenditure to be covered by the general appropriations for health under the State Budget.

2. To rescind order No. 2287 of the Council of Ministers of the USSR of 10 August 1961.

DECISION OF THE COUNCIL OF MINISTERS OF THE USSR CONCERNING THE FREE ISSUE OF DRUGS TO PERSONS SUFFERING FROM RHEUMATISM FOR OUTPATIENT TREATMENT TO PREVENT A RELAPSE

Dated 14 September 1963

The Council of Ministers of the USSR hereby decides:

To adopt the proposal of the Ministry of Health of the USSR concerning the free issue of drugs (Bicillin) to persons suffering from rheumatism for outpatient treatment to prevent a relapse, the resulting expenditure to be covered by the general appropriations for health under the State Budget.

INFORMATION ON ACHIEVEMENTS IN RAISING THE MATERIAL AND CULTURAL LEVEL OF LIVING OF THE SOVIET PEOPLE IN 1963

In 1963, there was a rise in the real income of manual and non-manual workers and in the income of collective-farm workers. In the first five years of the seven-year plan, the average real income of all workers rose by 20 per cent.

As in previous years, the following items were paid for out of social consumption funds in 1963: free education and medical care; sick leave, maternity leave and regular leave with pay; pensions and allowances to mothers with large families and unmarried mothers. The cost of these and other payments and benefits was 34,500 million roubles, compared with 31,900 million roubles in 1962. Social consumption funds were used to maintain about 4 million health workers and 6 million educational and cultural workers. Pensions were paid to 26 million pensioners out of the resources of the State and, to some extent, of collective farms. Over 5 million students at higher, specialized secondary and industrial-trade educational establishments and at other schools were provided with grants and dormitory accommodation. There were about 10 million children at kindergartens, crèches and

playgrounds. Over 9 million workers and their children rested or received treatment at sanatoria, rest homes and Pioneer camps, their stays being paid for fully or partly out of social-insurance and collective-farm funds. Over 6 million mothers with large families and unmarried mothers also received State allowances.

The average number of employed manual and non-manual workers in 1963 was 70.5 million and showed an increase of 2.2 million for the year. In industry, the number of manual workers and engineering and technical personnel and other specialists rose by 1.3 million. The number of persons employed at educational establishments and other schools, scientific research institutes and medical institutions increased by 600,000, and the number employed in commerce, housing and municipal services rose by 300,000.

In 1963, as in previous years, there was no unemployment.

Further progress was made in the fields of education, science and culture.

Students undergoing training of various types numbered over 64 million, or a third of the population (not counting children under school age). The number of students attending general education schools alone was over 44 million, or 2 million more than in the previous academic year.

In the course of the year, the changeover to the universal compulsory eight-year schools was completed everywhere. Over 3 million students completed eight-year schools during the year, and some 900,000 completed ten-year and eleven-year schools. Boarding schools and extended-day schools and classes had an enrolment of 2.4 million, or 360,000 more than in the previous academic year.

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 6.2 million, of whom 3.3 million were attending higher educational establishments. Of the students enrolled in day courses at higher educational establishments, 177,000, or 52 per cent, had completed a period of practical work of not less than two years.

The number of persons studying without interruption of employment was 7.5 million, including over 4 million in schools for young industrial and agricultural workers and 3.4 million in higher and specialized secondary educational establishments.

A total of 330,000 specialists, including 125,000 engineers, graduated from higher educational establishments during the year. More than 510,000 specialists graduated from *tekhnikums* and other specialized secondary educational establishments. More than 840,000 specialists with a higher or specialized secondary education entered the economy.

About 900,000 young workers were trained at industrial-trade colleges and schools during the year. Over 11 million people improved their qualifications or were trained for new occupations by means of individual and group apprenticeship and course instruction directly at enterprises and collective farms.

Whereas at the beginning of the seven-year plan the proportion of the working population with a higher or secondary education was 43 per cent, by the end of 1963 it was 50 per cent. Thus, half of the working population of our country, including about 44 per cent of manual workers, 26 per cent of collective-farm workers and 92 per cent of specialists and non-manual workers, have a higher or secondary education.

At the end of 1963, about 580,000 scientific workers were employed at scientific institutions, higher educational establishments and other organizations.

The number of cinemas was 129,000. The number of cinema attendances during the year was about 4,000 million, of which 1,500 million were in rural areas. Admissions to theatres and concerts numbered 240 million. About 10 million people belonged to amateur artistic groups.

Housing construction was on a large scale. In 1963, over 77 million square metres of housing, or about 2 million new apartments with modern facilities, was brought into occupancy in towns and workers' settlements, including housing financed by the State and housing financed by the people and with State loans. Of this total, about 1.8 million square metres was built by house-building co-operatives.

In addition, collective-farm workers and the intelligentsia built about 400,000 dwellings in rural areas with the help of State loans.

In the past year alone, 11 million people took occupancy of new apartments or improved their living conditions in existing dwellings.

In the last ten years, over 17 million apartments have been built in towns and workers' settlements and about 6 million dwellings in rural areas; 108 million people have moved to new dwellings or otherwise improved their living conditions. State capital investment in the construction of cultural and welfare facilities has risen.

Medical services for the population were further improved in 1963. The network 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 100,000 during the year.

The USSR is still the country with the lowest mortality rate in the world. The rate fell during the year in most age groups. The drop in infant mortality was particularly marked. The number of children who died before the age of one was the lowest in the country's history—30 per thousand births.

The population of the Soviet Union increased by over 3 million during the year and on 1 January 1964 was more than 226 million.

UNITED ARAB REPUBLIC[1]

DECREE No. 2580 OF THE PRESIDENT OF THE UNITED ARAB REPUBLIC OF 1963, CONCERNING THE APPROVAL OF THE TREATY ON THE CESSATION OF NUCLEAR TESTS SIGNED AT MOSCOW ON 5 AUGUST 1963

Sole article. The President of the Republic has approved the Treaty on the cessation of nuclear tests signed at Moscow on 5 August 1963 and has authorized Dr. Mostafa Kamel, Ambassador of the United Arab Republic in Washington, Mr. Mohammad Awad el-Koni, Ambassador of the United Arab Republic in London, and Mr. Yahya Hassan Mohammad Abdel Kader, Minister Plenipotentiary, Chargé d'Affaires of the Embassy of the United Arab Republic in Moscow, to sign it, subject to ratification, on behalf of the Government of the United Arab Republic.

Done at the Office of the President of the Republic on 19 Jumada II 1383 (5 November 1963).

[1] Texts furnished by the Government of the United Arab Republic.

DECREE OF THE PRESIDENT OF THE UNITED ARAB REPUBLIC CONCERNING ACT No. 8 OF 1963 AMENDING THE VAGRANT MINORS ACT No. 124 OF 1949

Art. 1. The text of article 12 of the Vagrant Minors Act No. 124 of 1949 shall be replaced by the following:

"1. Without prejudice to any heavier penalty prescribed under any other law:

"(*a*) any person who conceals a minor whose delivery to a person or authority has been ordered *under this Act,* or who incites or helps him in any manner to run away;

"(*b*) any person who exposes a minor to any of the states of vagrancy specified in article 1 by preparing or training him for such a way of life or inciting or assisting him in any way to be a vagrant, even if a state of vagrancy does not in fact ensue;

"(*c*) any person who prepares, trains or incites a minor to commit a crime or an offence or to perform any act preparatory to or facilitating the commission thereof, even if the minor does not in fact commit the crime or offence aforesaid,

shall be sentenced to imprisonment for a term of three months to one year.

"2. In the cases referred to in sub-paragraphs (*b*) and (*c*) above, if the offender is a kinsman of the minor or is responsible for his education or the minor has been placed in his custody under the law, or if the offender has used force or threats against the minor, the penalty shall be imprisonment for a term of not less than one year."

. . .

EXPLANATORY MEMORANDUM OF THE MINISTER OF THE INTERIOR TO ACT No. 8 OF 1963

It is the policy of the State in modern times to protect minors, infants and the family in general, and funds are duly appropriated to ensure that this aim is achieved in every field, including the building of homes and reformatories. But these remedial measures must be preceded by preventive measures, including the protection of minors against persons who exploit them in depravity.

The Penal Code and the Vagrant Minors Act No. 124 of 1949 fail to impose penalties on persons preparing, training or inciting minors to commit an offence or exposing them to vagrancy by training them to beg, collect cigarette ends or other remains, etc. Under the Penal Code, preparation, training, incitement or similar activites are considered preparatory acts which are not punishable so long as the offence instigated is not actually committed. As a result, gangs and individuals arrested in the act of training minors to commit offences escape punishment.

Since such gang activities are a threat to youth and are at the same time immune from punishment, it has been considered necessary to add a new article to Act No. 124 of 1949 aforesaid, making it a punishable offence to expose a minor to vagrancy or to assist him to be a vagrant, even if a state of vagrancy does not in fact ensue, or to prepare, train or incite a minor to commit an offence, even if the minor does not in fact commit it.

DECREE OF THE PRESIDENT OF THE UNITED ARAB REPUBLIC CONCERNING ACT No. 50 OF PROMULGATING THE LAW RELATING TO THE INSURANCE AND PENSIONS OF STATE OFFICIALS, EMPLOYEES AND CIVIL WORKERS

. . .

Art. 11. The insurance benefits payable by the Fund shall be paid to the beneficiaries under this Act or their heirs and assigns in the following two cases:

1. the death of the beneficiary while in service: in this case the benefit shall be paid to his legal heirs unless he has designated other recipients before his death and if so the benefit shall be paid to them;

2. the beneficiary is separated from the service before reaching the age of retirement owing to physical unfitness for work, if caused by total disability; but if the disability is partial only, the beneficiary shall receive one half of the amount of the benefit.

Provided that for entitlement to benefit in this case separation from the service owing to physical unfitness for work shall be based on a decision by the competent medical authority made prior to the decision regarding separation.

. . .

Art. 25. If the beneficiary's service ceases and his period of service is insufficient to qualify him for a pension under this Act, he shall be entitled to a withdrawal settlement on the basis of 15 per cent of his annual salary or wage for each year of service, but shall not be entitled to any settlement at all if his period of service is less than three years.

. . .

Art. 29. If the beneficiary or pensioner dies, his heirs and assigns shall be entitled to receive benefits in the proportions and in accordance with the provisions prescribed in table 3 annexed hereto from the first day of the month in which the death occurs.

"Heirs and assigns" means:

1. the widow of the beneficiary or pensioner;

2. his children and dependent brothers who are under twenty-one years of age at the time of his death;

if they are over twenty-one years of age and are enrolled in a university or higher-education course, they shall be deemed to be entitled provisionally to benefit, until they attain the age of twenty-six years or until the completion of their course of study, whichever is the sooner, and in the latter case payment of benefit shall continue until the end of October of the year in which their course of study ends;

in the case of students who attain the age of twenty-six during the scholastic year, payment of benefit shall continue until the end of July of that year;

when the entitlement of students in either of the foregoing cases ceases, payment of the benefit shall revert to the other heirs and assigns who existed at the time of the beneficiary's death;

3. his children and dependent brothers over the age of twenty-one years who at the time of his death are suffering from physical disability which prevents them from earning a living; their disability shall be confirmed at the time entitlement begins by a decision of the competent medical authority, subject to the provisions of the last paragraph of article 31;

4. his widowed, divorced and unmarried daughters and sisters;

5. his parents.

In order to qualify for benefit, the mother may not be married to another than the father of the deceased. The brothers, sisters and parents may not at the time of the beneficiary's death be in receipt of private income equal to or greater than the amount of benefit to which they are entitled. If the income is smaller than the benefit, the difference shall be paid to them. The amount of income or the absence of any income shall be certified by a declaration to be made by the recipient accompanied by an administrative certificate confirming the declaration.

. . .

Art. 36. Notwithstanding the laws and decrees enacted on the principles governing deprivation of pension or benefit, a pensioner or beneficiary may not be deprived of the pension benefit except by a disciplinary decision and only to the extent of one quarter.

A pensioner may not be deprived of his pension pursuant to the first paragraph hereof except for acts committed by him prior to leaving the service.

. . .

DECREE OF THE PRESIDENT OF THE UNITED ARAB REPUBLIC CONCERNING ACT No. 112 OF 1963 ON THE CARE AND PAYMENT OF SALARIES TO OFFICIALS AND WORKERS SUFFERING FROM TUBERCULOSIS, LEPROSY, MENTAL DISORDERS OR CHRONIC DISEASES

Art. 1. Notwithstanding the provisions relating to sick leave for officials and workers of the Government and of public bodies and institutions, an official or worker suffering from tuberculosis, leprosy, mental disorder or a chronic disease as defined in an Order to be made by the Minister of Public Health, shall, with the approval of the General Directorate of Medical Commissions, be granted special sick leave on full pay until he is cured or his disease has become stabilized sufficiently to permit him to resume his functions. The Medical Commission shall carry out a medical examination of the person concerned not less than once every three months or whenever it considers it necessary to do so.

ACT No. 15 OF 14 JANUARY 1963, PROHIBITING FOREIGNERS FROM BEING OWNERS OF AGRICULTURAL LAND

SUMMARY

The text of this Act was published in *La Gazette fiscale, commerciale et industrielle,* Nos. 151-153, March-April-May 1963.

Article 1 of the Act states that foreigners, whether they be individuals or juridical persons, are prohibited from being owners of agricultural or similar land, uncultivated land or desert land in the United Arab Republic, this prohibition applying to full ownership, bare ownership, and to the right of usufruct. Article 1 further states that Palestinians are provisionally exempt from the application of the provisions of the Act.

Under article 2, ownership of any agricultural or similar land whether cultivable or uncultivated and of desert land belonging to foreigners at the time of entry into force of this Act, shall be transferred to the State.

Article 3 provides that the General Land Reform Agency shall take over the lands referred to in article 2. The owners of these lands, by virtue of article 4, shall receive compensation which, as stipulated in article 5, shall be settled in State bonds reimbursable over fifteen years.

Other provisions deal with the duty of the above-mentioned landowners to submit to the General Land Reform Agency, during the week following the entry into force of the Act, a declaration indicating the agricultural or similar cultivable lands, uncultivated lands or desert lands of which they are the owner or holder whatever their title of ownership or possession may be; and also with the duty of government authorities to advise the Agency of any case in which ownership of agricultural or similar land has devolved upon a foreigner by succession, inheritance or any non-contractual mode of acquisition of property.

Translations of the Act into English and French have been published by the United Nations Food and Agriculture Organization in *Food and Agricultural Legislation,* 1963, Vol. XII - No. 4, V/1C.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

NOTE[1]

1. *Article 3 of the Universal Declaration of Human Rights*

In Northern Ireland, The Civil Authorities (Special Powers) Act (Northern Ireland), 1943-52, and regulations made under them, enable special measures to be taken for the preservation of the peace and the maintenance of order, subject to the condition that the ordinary course of law, the avocations of life and the enjoyment of property are interfered with as little as possible.

These special measures include the power to arrest without warrant persons supected of being engaged in subversive activities, to detain them for questioning and, in certain cases, to intern them. These powers have not, however, been invoked since February 1962.

2. *Article 10 of the Universal Declaration*

An important court decision relating to the right to a fair hearing was reached in the case *Ridge* v. *Baldwin and Others* (1963), *All E.R.* 66.[2]

3. *Article 22 and Article 25 (1) of the Universal Declaration*

(*a*) In April 1963, the Minister of Health published the second of two plans for the modernization of the health and welfare services in the coming decade. This plan, which is a counterpart to the hospital plan published in January 1962, presented and analysed for the first time the separate plans of all local authorities for the long-term development of their health and welfare services. By showing the picture as a whole, the plan aimed to stimulate discussion and study of the future pattern of services for prevention and care within the community.

(*b*) National insurance and industrial injuries standard benefit rates, including dependants' allowances, were increased by the National Insurance Act, 1963, with effect from March 1963 for short-term benefits and May 1963 for long-term benefits. This Act also increased, both in amount and extent, the supplementary allowances paid from the Industrial Injuries Fund to certain workers whose disabilities arose from employment before July 1948 when the present insurance scheme came into force. Flat-rate contributions were increased correspondingly. From 1 June, the 1963 Act also increased, from £15 to £18 a week, the maximum earnings on which graduated contributions are paid in order to qualify for the earnings related graduated part of the National Insurance retirement pension, details of which were given in the 1961 *Yearbook*.[3] This change reflected the increase in average industrial earnings since April 1961, when, on the introduction of the graduated supplementary retirement pension, the £15 limit was fixed.

(*c*) The National Insurance (Contributions) Amendment Regulations, 1963, operative from 1 April, removed any liability for flat-rate national insurance contributions from people who are in employment after reaching minimum pension age (65 for men, 60 for women) but who do not satisfy the contribution conditions for a retirement pension. Exceptionally, where such persons may still be able to qualify for a flat-rate retirement pension under a reciprocal agreement with another country, they can contribute under the normal rules if they wish. They must in any case continue to pay industrial injuries contributions and, where appropriate, graduated contributions, and the employer must pay his full share of the total contribution. The people affected by these Regulations are those who entered insurance in time to satisfy the contribution conditions for flat-rate retirement pension but failed to qualify, for instance, persons whose small income obliged them to apply to be excepted from paying contributions.

(*d*) From 27 May, the National Insurance (Earnings) Regulations, 1963, provided for a further easement of the earnings rule to enable gainfully employed retirement and widow pensioners and widowed mothers to earn more without deduction from their pension or allowance.

(*e*) With effect from 29 July, the National Insurance (Non-Participation-Assurance of Equivalent Pension Benefits) Amendment Regulations, 1963, altered the rules governing the treatment of employment abroad as a "temporary interruption" of contracted out employment in this country. As explained in the 1961 *Yearbook*,[3] employees can

[1] Note furnished by the Government of the United Kingdom.

[2] For extracts from the House of Lords judgement, see p. 340.

[3] See *Yearbook on Human Rights for 1961*, pp. 375-376.

be contracted out of the graduated part of the National Insurance Scheme if their employment is covered by an occupational pension scheme which is financially sound and provides pension rights at least equivalent to those they would get by way of the graduated part of retirement pension under the National Insurance Scheme. Under earlier regulations, when a person was sent abroad to work for an employer in this country, his contracted out employment was treated as coming to an end after a period not exceeding 3 1/2 years and his employer had then to take formal action to preserve his statutory rights under the occupational scheme or to transfer them to the State scheme by making a "payment in lieu" to the National Insurance Fund. The general effect of the 1963 regulations was to enable larger periods of employment abroad to be treated, in appropriate cases, as temporary interruptions of non-participating employment.

(*f*) Similar extensions in the field of social security in Northern Ireland have been made by parallel legislation in Northern Ireland.

4. *Article 23 (1) of the Universal Declaration* [4]

(*a*) A Bill to make provision for the health, safety and welfare of persons employed in offices, shops and certain railway premises was published in November 1962 and became law on 31 July 1963 with the title "The Offices, Shops and Railway Premises Act, 1963". The main provisions of the Act will be brought into force on 1 August 1964. Following is a summary of the Act.

Premises to which the Act applies

The Act places obligations on owners and occupiers of a wide variety of premises which are used wholly or partly for office purposes or for the purposes of retail or wholesale trade. The premises to which the Act applies are defined in Section I of the Act. The definition includes offices or shops which are part of a building, even if only a minor part of premises mainly used for some other purpose. Thus an office or shop in a cinema, club or in a farm building will be covered even though the rest of the building is not. Similarly, offices and shops in factories, mines, quarries and other industrial enterprises are included.

Further, a part of a building which is occupied by the office occupier together with the office for the purposes of the office activities is treated as part of the office e.g. a storeroom. But premises which are not used solely or principally as an office or for office purposes are excluded e.g. clerical work which is merely incidental to other work such as the clerical work carried out by a sister in a hospital ward would not bring the premises within the scope of the Act.

The same principles apply to shops so that, for example, the covered forecourt of a petrol filling station is regarded as part of the building used for the sale of petrol, etc., but the selling of programmes in a concert hall does not transform the hall itself into a shop.

Definition of office

"Office premises" are defined as a building or part of a building solely or principally used as an office or for office purposes. "Office purposes" include administration, clerical work, handling money, and telephone and telegraph operating: and "clerical work" include writing, book-keeping, sorting papers, filing, typing, duplicating, machine calculating, drawing and the editorial preparation of matter for publication.

Definition of shops

"Shops" include not only places in which retail or wholesale trade is carried on, but such premises as a launderette, a hair-dressing establishment, or a dry-cleaning receiving shop as well as coal depots. The definition also includes all premises which sell meals or refreshments *to the public* for immediate consumption, for example, public houses, cafés, restaurants, and public dining-rooms of hotels, as well as premises occupied for the preparation of such meals.

But private residential hotels and boarding houses are excluded except in so far as they have offices, or bars and restaurants open to the public. Similarly a restaurant belonging to a private club is excluded. Canteens for staff working in premises covered by the Act are included.

Definition of railway premises

"Railway premises" are defined as railway buildings situated in the immediate vicinity of the permanent way, for example, stations, marshalling yards, buildings and signal boxes. The definition excludes office and shop premises (which are covered by the other definitions) premises covered by the Factories Act, hostels for railway staff, and railway hotels. A number of workers who do not actually do their work in railway buildings are brought within the protection of the Act by Section 90 (3) (*a*), for example, shunters, porters and permanent way maintenance men.

Premises excluded from application

The provisions of the Act apply to premises in which persons are employed. Premises in which only self-employed persons work are not covered. In addition, Section 2 excludes businesses where all the employees are close relatives of the employer. It also excludes outworkers working in their own homes.

Section 3 provides that the Act shall not apply to premises in which the sum of the periods of time worked by persons employed there is normally less than twenty-one hours a week. This removes from the scope of the Act, for instance, a small shop run by owners with a little paid help at weekends.

Requirements of the Act

Sections 4 to 27 lay down general provisions dealing, among other things, with cleanliness, overcrowding, temperature, ventilation, lighting, sanitary conveniences, washing facilities, drinking-water, accommodation for clothing, seats, first-aid,

[4] What appears under part (*a*) of this heading constitutes a note by the Ministry of Labour.

fencing of exposed parts of machinery and the training and supervision of young persons working dangerous machinery.

Section 5, which deals with overcrowding, provides that, the number of staff employed in a room to which members of the public are not invited to resort shall not exceed one for every 40 square feet of space or 400 cubic feet where ceilings are less than 10 feet high. These standards will not be enforced in existing premises until after a period of three years from the date this provision is brought into force, to enable owners and occupiers to undertake any necessary structural alterations.

Section 6 specifies, with certain exceptions, a minimum temperature of 16 °C.

Sections 28 to 41 deal with fire precautions, including means of escape, fire alarms, fire prevention and fire fighting. Some of the requirements apply only to premises where there is special risk.

Division of responsibility between owners and occupiers

Sections 42 to 44 deal with buildings not entirely occupied by a single occupier and make special provision for allocating responsibilities under the Act as between the owner and the occupier. They deal mainly with the provision of sanitary conveniences and washing facilities, and responsibility for "common parts" such as passages, stairways and lifts. Section 47 prohibits the levying of charges on employees for things done in compliance with the Act.

Requirements from which exemption may be granted

Section 45 enables the Minister, after consulting organizations representing employers, workers and others concerned, to exempt premises of any class from any of the provisions relating to overcrowding, temperature, sanitary conveniences and washing facilities (Sections 5 (2), 6, 9 and 10). Under Section 46, individual premises or rooms within those premises can be exempted from provisions of these four sections by the authority responsible for enforcement. The applicant for exemption must inform the workers concerned when he makes his application and a period of 14 days must elapse from the date of application to allow the workers concerned to state their views to the enforcing authority before a decision is made.

Notification of accidents

Occupiers are required by Section 48 to notify the enforcing authority of accidents to workers occurring in their premises.

Registration of premises

The basis of inspection will be a register of premises notified by employers under Section 49.

Information for employees

Section 50 is designed to ensure that employees should be aware of the provisions of the Act, and all regulations affecting the premises in which they work, by requiring the exhibition of abstracts of the Act or the issue of explanatory books or leaflets.

Enforcing authorities

Section 52 sets out the Enforcing Authorities for different premises and provisions of the Act. The inspection of most offices and shops will be carried out by local authorities (namely, the councils of boroughs and county districts, or in Scotland the councils of counties and burghs), except as regards fire precautions for which the fire authorities will be responsible. Railway premises and office and shop premises in factories and in premises occupied by local fire and police authorities will, in general, be inspected by the Factory Inspectorate.

Uniformity of enforcement

The Minister is given power in Section 57 to ensure uniform administration of the Act by local authorities through the making of regulations and the appointment of a central inspectorate to co-ordinate and advise on their work.

Annual reports

Under Section 60, every local authority and fire authority will be required to make an annual report to the Minister giving information on the progress of enforcement. Section 79 requires the Minister to present a report annually to Parliament.

Application to Crown premises

Section 83 applies certain provisions of the Act to premises owned or occupied by the Crown, in so far, as those provisions impose duties, failure to comply with which might give rise to a liability in tort. The section also excludes the armed forces from the scope of the Act.

Commencement

Under Section 91, the Minister may appoint different days both for bringing different provisions of the Act into effect and for applying them to different classes of premises.

(*b*) The Contracts of Employment Act 1963 came into force on Monday, 6 July 1964. It affects both employers and employees in two ways:

(1) it gives both employers and employees rights to minimum periods of notice to terminate employment; and

(2) it lays a duty on employers to give their employees written particulars of their main terms of employment.

Broadly speaking, the Act only applies if the employee is normally employed by his employer twenty-one hours or more a week. The Act applies to Great Britain (but not Northern Ireland), and also covers employees who are working abroad, provided that they normally work for the employer concerned in this country. Employees in certain occupations are not covered by the Act—registered dock workers, merchant seamen, fishermen and Crown servants. In addition, written particulars need not be given to an employee who is the father, mother, husband, wife, son or daughter of the employer.

Rights to notice

From 6 July 1964 the following scale of *minimum* notice of termination will apply:

Period over which the employee has been continuously with his employer	Minimum *notice which the* employer *is required to give*	Minimum *notice which the* employee *is required to give*
Less than 26 weeks	Nothing laid down by the Act	
At least 26 weeks but less than 2 years	One week	One week
At least 2 years but less than 5 years	Two weeks	One week
5 years or more	Four weeks	One week

Employment before 6 July will count for qualifying for these rights.

If anyone, wether employee or employer, already has a right to longer notice, the Act will not alter this. Nor does it prevent anyone from waiving his right to notice on any particular occasion, or from accepting a payment in lieu of notice.

The Act also contains detailed provisions about minimum pay during notice. These do not apply if an employee has a right under his contract to at least a week's notice beyond the minimum to which the Act entitles him. Nor do they affect an employee who is working his normal hours during notice. But they do apply if during notice an employee is not working for some or all of the normal hours because no work is provided for him or because he is sick or injured or because he is on holiday. They also apply if an employee has no "normal hours". The broad principle underlying the minimum pay provisions is that the employee should receive during notice not less than he is entitled to under his contract for a normal week's work.

Written particulars of the main terms of employment

From 6 July, employers will have a duty to give their employees written statements about their main terms of employment. An employer may choose whether to include in the statement particulars of those terms—namely, pay, hours holidays and holiday pay, sickness and sick pay arrangements, pensions and pension schemes and notice—or to refer the employee for any or all of the particulars to documents which contain them and which he keeps reasonably accessible to the employee. The object is to give employees a clear understanding of their rights and obligations under their contracts of employment.

Examples of reference documents which an employer might find it useful to use are copies of collective agreements, works handbooks, wages regulation orders, and booklets about sick pay or pension schemes.

The statements have to be given within thirteen weeks of the start of the employment. Existing employees on 6 July must be given statements, but employers have until 5 October at the latest in which to do this.

If the terms of employment change—for example, because of a pay rise or promotion—the employer has to inform the employee in writing about the change not more than a month later; however, if the employer makes use of reference documents he need only see that these are brought up to date within a month of each change, provided that he gives an undertaking in a written statement to do this.

Guidance about the Act

The Ministry of Labour has prepared a leaflet about the Act for the guidance of employers and employees. Besides explaining how the Act works, it gives an example of a possible form for use as a written statement and two examples of completed statements. The leaflet is available free of charge. Anyone who would like a copy should apply to his nearest Employment Exchange.

5. *Article 25 (2) of the Universal Declaration*

(*a*) The Children and Young Persons Act 1963 imposed a new duty on local authorities to make available such advice, guidance and assistance as may promote the welfare of children under 18 by diminishing the need to receive them into public care or to bring them before a juvenile court. It improved the law relating to the bringing before court in their own interests, of children who are in need of care, protection or control, and the measures available to a court in such cases. It also raised the age of criminal responsibility from eight to ten years.

The Act also contains provisions (which are not yet in operation) extending and improving the safeguards for children employed part-time, particularly those in the entertainment industry.

(*b*) Section 1 of the Criminal Justice (Scotland) Act 1963 provides for restrictions on the imprisonment of persons under 21. This section re-enacts with modifications the provisions of section 18 of the Criminal Justice (Scotland) Act 1949. The main modifications are that the restrictions are extended from the imposition of imprisonment to the imposition of all forms of detention and requires all courts of summary jurisdiction where detention is imposed on an offender under twenty-one to state and have recorded the reason for its opinion that no other method of dealing with him is appropriate.

The section also introduces a new form of detention, detention in a young offenders institution for persons aged seventeen or over and under twenty-one. The new form of detention, to a substantial extent, takes the place of imprisonment but the court must (in so far as those sentences are within its power) consider first the imposition of borstal training or detention in a detention centre and may impose detention in a young offenders institution only if satisfied that neither of those sentences should be imposed.

Also under the provisions of this Act, all boys and girls released from approved schools on or after that date are subject to a single two-year period of compulsory supervision. This may be followed by a period of voluntary after-care. Under previous arrangements, most pupils on

release were subject to supervision for at least three years and often for a longer period. The Secretary of State's consent to the release of pupils is now required only where this is proposed during the first six months of detention, instead of, as formerly during the first year.

The Act empowers the Secretary of State to give directions to managers where school arrangements appear inadequate or unsuitable, to regulate the constitution and proceedings of voluntary managers and to appoint additional managers where necessary.

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RIDGE *v.* BALDWIN AND OTHERS

[HOUSE OF LORDS (Lord Reid, Lord Evershed, Lord Morris of Borth-y-Gest, Lord Hodson and Lord Devlin), November 5, 6, 7, 8, 12, 13, 14, 15, 1962, and March 14, 1963.]

Police—County borough police force—Chief constable—Summary dismissal by watch committee—Whether rules of natural justice applicable to proceedings for dismissal—Chief constable previously indicted for alleged criminal offences—Acquitted, but conduct severely criticised by trial judge—Appeal against decision of watch committee dismissed by Home Secretary—Whether action by chief constable thereby barred—Municipal Corporations Act, 1882 (45 & 46 *Vict. c. 50), s.* 191 (4)—*Police Act,* 1919 (9 & 10 *Geo.* 5 *c.* 46), *s.* 4 (1)—*Police (Appeals) Act,* 1927 (17 & 18 *Geo.* 5 *c.* 19), *s.* 2 (3)—*Police (Discipline) (Deputy Chief Constables, Assistant Chief Constables and Chief Constables) Regulations,* 1952 (*S.I.* 1952 *No.* 1706), *reg.* 1 *and reg.* 18.

The appellant, who in March, 1958, was nearly fifty-nine years of age, joined Brighton Borough Police Force in 1925; thereafter he rose in the service and was appointed chief constable in 1956, the appointment being expressed to be subject "to the Police Acts and regulations". In October, 1957, he was suspended from duty after he had been arrested, together with two other officers of the same police force, on charges which were subsequently the subjects of two indictments, one for criminal conspiracy to corrupt the course of justice and the other for corruption. At the end of the trial of the first indictment in February, 1958, at which the appelant had given evidence himself but had called no other witnesses, he was acquitted, but the other two police officers were convicted. In passing sentence on the other two police officers, the trial judge intimated that they had not had from the appellant the professional and moral leadership which they should have had. At the trial of the second indictment on Mar. 6, 1958, the prosecution offered no evidence against the appellant, and the judge directed the jury to acquit him, but again he made certain observations about the appellant. On Mar. 7, 1958, the watch committee held a meeting at which, after considering matters relating to the appellant, they unanimously dismissed him from his office of chief constable under s. 191 (4) of the Municipal Corporations Act, 1882. The appellant was not present at this meeting, nor was he charged or given notice of the proposal to dismiss him or particulars of the grounds on which it was based or an opportunity of putting his case. By notice of appeal dated Mar. 12, 1958, the appellant appealed, under the Police (Appeals) Act, 1927, to the Home Secretary against his dismissal, the notice stating that it was without prejudice to the validity of the watch committee's decision, and reserving right to contend that the procedure was bad. On Mar. 18, 1958, the watch committee held a special meeting at which the appellant's solicitor requested them to re-consider their decision, particularly with regard to its consequences in relation to the plaintiff's pension, but by a majority the watch committee adhered to their previous decision. On July 5 the Home Secretary dismissed the appellant's appeal. In October, 1958, the appellant commenced an action against the watch committee, claiming that his purported dismissal was void, and also claiming payment of salary and pension, or alternatively, damages. His action was dismissed. On appeal,

HELD (Lord Evershed dissenting): (i) the decision of the watch committee on Mar. 7, 1958, to dismiss the appellant was null and void for the following reasons

(*a*) in exercising the power of dismissal conferred by s. 191 (4) of the Municipal Corporations Act, 1882 (at any rate where that power was to be exercised on the ground of negligence, which required to be proved) the watch committee were bound to observe the principles of natural justice, but in this instance the committee had not observed them, for the appellant had not been charged nor informed of the grounds on which they proposed to proceed and had not been given a proper opportunity to present his defence.

. . .

and (*b*) (per Lord Morris of Borth-y-Gest, Lord Reid and Lord Hodson concurring) once there was a report or allegation from which it appeared that a chief constable might have committed an offence against the discipline code, established by regulations under the Police Act, 1919, it became a condition precedent to any dismissal based on a finding of guilty of such an offence that the regulations should in essentials have been put into operation, but the watch committee had not complied with the regulations, for they preferred no charge against the appellant and gave him no notice and no opportunity to defend himself;

or (*c*) (per Lord Devlin) compliance with reg. 11 (1) of the Police (Discipline) (Deputy Chief Constables etc.) Regulations, 1952, but not all other of those regulations, was a condition precedent to dismissal, and here there had been no report or inquiry satisfying reg. 11 (1);

and (*d*) the proceedings at the meeting of Mar. 18, 1958, were not a full re-hearing and did not make good the failure on Mar. 7 to observe the rules of natural justice;

(*e*) (Lord Devlin dissenting) the consequence of the failure to observe the rules of natural justice was that the decision of Mar. 7, 1958, was void, not merely voidable;

(*f*) the same consequence flowed from disregard of the regulations.

(ii) the decision of Mar. 7, 1958, was a nullity, and the decision of the Secretary of State, although final and binding by virtue of s. 2 (3) of the Police (Appeals) Act, 1927, could not make valid that which was a nullity.

Decision of the Court of Appeal ([1962] 1 *All E.R.* 834) reversed.

Appeal

This was an appeal by Charles Field Williams Ridge ("the appellant") from a decision of the Court of Appeal (Holroyd Pearce, Harman and Davies, L.JJ.), dated Jan. 30, 1962, and reported [1962] 1 *All E.R.* 834, affirming the judgment of Streatfeild, J., dated Apr. 19, 1962, and reported [1961] 2 *All E.R.* 523, dismissing the appellant's claim against the respondent watch committee, the police authority of the county borough of Brighton, that their dismissal of him under s. 191 (4) of the Municipal Corporation Act, 1882, was invalid.

The Court of Appeal held that the watch committee, in dismissing the appellant under s. 191 (4) of the Act of 1882, were not bound to apply the Police (Discipline) Regulations, 1952, as those regulations required that, as a condition precedent to acting thereunder, a report or allegation must be received. In this case, however, the appellant had been dismissed after his acquittal on a criminal charge following which the trial judge had made certain observations on the fitness of the appellant for office as chief constable. Such observations, the Court of Appeal held, were not a report or allegation. Further the Court of Appeal held that the watch committee, exercising their power under s. 191 (4) of the Act of 1882, were acting in an executive or administrative capacity, not in a judicial or quasi-judicial nature with the consequence that the rules of natural justice did not apply to their proceedings for dismissal. The Court of Appeal also held that by appealing to the Home Secretary under the Police (Appeals) Act, 1927, the appellant had waived his right to bring the action in the courts, notwithstanding the appellant purported to reserve his right to contend that the decision of the watch committee was a nullity.

It was not contended before the House of Lords that the power of dismissal conferred by s. 191 (4) of Act of 1882 was impliedly repealed, by the joint effect of the Police Act, 1919, s. 4 and regulations thereunder; accordingly the decision of the Court of Appeal on that point stands.

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UNITED STATES OF AMERICA

HUMAN RIGHTS IN 1963

A Summary of Pertinent Actions Taken by Federal, State and other Governemental Authorities [1]

Introductory Note

Basic guarantees of human rights and freedoms are contained in the Constitution of the United States and also in the Constitution of each of the States, usually in special sections or articles known collectively as the Bill of Rights. The exercise of governmental power at each level of government is limited by and must conform to these constitutional guarantees of freedom of speech, Press, religion and assembly, fair trial, equal protection of the laws, and other civil and political rights.

Individuals may obtain protection of their rights by appeal to Federal or State Courts, which have traditionally been vigilant in preventing, invalidating or redressing official action which violates constitutional guarantees.

While the Federal Government shares responsibility for the general welfare, legislation on economic, social and cultural matters is in large part the responsibility of State and local governments. These authorities, with Federal co-operation, financially and otherwise, provide the basis for equal opportunity in education, employment, health, social security, enjoyment of acceptable living standards, and other conditions fundamental for individual development and respect for human dignity.

Human Rights Day

In recognition of the fifteenth anniversary of the Universal Declaration of Human Rights and of the one hundred and seventy-second anniversary of the Bill of Rights in the United States Constitution, President Johnson proclaimed 10-17 December as Human Rights Week. In calling upon the citizens of the United States to observe these anniversaries, he noted that many of the principles embodied in the Bill of Rights are likewise embodied in the Universal Declaration, and continued:

"*Whereas* the past year has seen a great surge of determination in this country to assure the full enjoyment of these rights and freedoms without distinction as to race, sex, creed, or color; and

"*Whereas* the ideals epitomized in the Bill of Rights and in the Universal Declaration of Human Rights were ever foremost in the heart of our gallant thirty-fifth President, John Fitzgerald Kennedy:

"*Now, therefore,* I, Lyndon B. Johnson, President of the United States of America, do hereby proclaim December 10, 1963, as Human Rights Day and December 15, 1963, as Bill of Rights Day, and call upon the people of the United States to observe the week of December 10-17 as Human Rights Week. Let us set aside time, in our places of worship, in our schools, and in our homes, and at gatherings of civic and patriotic organizations, to examine once again these cherished documents of human rights in order that we may cultivate a greater appreciation of our heritage of individual liberty and responsibility.

"Let us rededicate ourselves to the humanitarian precepts enumerated in those documents and let us resolve to devote our full energy to the task of assuring that each human being—regardless of his race, sex, creed, color, or place of national origin—shall be afforded a meaningful opportunity to enjoy fully the rights and benefits embodied in these instruments of liberty and to enjoy fully our heritage of justice under law. In so doing, we will erect an everlasting and vibrant memorial to our departed President."

The Governors of most of the States issued proclamations summoning their people, their schools and civic, patriotic and religious organizations to observe Human Rights Day and Bill of Rights Day. The Mayors of many cities also issued proclamations. The importance of the anniversary was further underscored by the opening of an exhibit in the National Archives of the United States, dedicated to the memory of Mrs. Eleanor Roosevelt and her work on behalf of the Universal Declaration of Human Rights.

Activities during the week took on added significance in memory of the late President Kennedy, who had been assassinated on 22 November 1963, and for whose death the Nation was still in official mourning during Human Rights Week. Among these events was the premiere performance of a work by the American composer Howard Hanson, "A Song of Human Rights". This had been planned some months in advance by the United States National Commission for UNESCO, as a special commemoration of the fifteenth anniversary of the Universal Declaration. It was presented by the National Symphony Orchestra in Constitution Hall in Washington on

[1] Note furnished by the Government of the United States of America.

10 December in a concert dedicated to the late President. The "Song" gave voice to words drawn from his inaugural address:

"Let the word go forth from this time and place, to friend and foe alike, that the torch has been passed to a new generation of Americans unwilling to witness or permit the slow undoing of those human rights to which this Nation has been committed, and to which we are committed today at home and around the world."

Equal Protection of the Laws

The year 1963 was marked by increased efforts to end discrimination throughout the nation. Additional measures were initiated to eliminate discriminatory practices which had continued in the absence of specific prohibitions, and to make the guarantees of the United States Constitution of meaningful and practical application equally for all. Many demonstrations, by white persons and Negroes alike, were held to protest instances of discrimination in education, employment, housing, hotels, restaurants and similar facilities. The United States Supreme Court handed down decisions during the year in various civil rights cases, including four "sit-in" cases arising from the arrest of demonstrators protesting segregated public accommodations. The Court reversed convictions by State Courts on the ground that the denial to Negroes of equal access to these places of public accommodation was the result of government action, as expressed in city ordinances and acts of public officials, and therefore a denial of equal protection of the laws guaranteed by the Federal Constitution.[2]

Similarly, the United States Supreme Court reversed the conviction of a Negro found guilty of contempt in a Richmond, Virginia, traffic court for refusing to sit on the side of the courtroom reserved for Negroes.[3] The Court said:

"Such a conviction cannot stand, for it is no longer open to question that a State may not constitutionally require segregation of public facilities... State-compelled segregation in a court of justice is a manifest violation of the State's duty to deny no one the equal protection of its laws."

The United States Supreme Court likewise reversed the conviction of six Negro youths who had been arrested when they refused to leave a city-owned basketball court. The youngsters were behaving properly and had been ordered to go solely because they were Negroes. The Court held that they had a constitutional right to use the facilities and that officials may not arrest or prosecute persons who peaceably attempt to use facilities which they have a right to use.[4]

Later, the Supreme Court rejected the plan of the Memphis, Tennessee, Park Commission for desegregating its public recreational facilities over a period of years. The Court declared that "the basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled."[5]

Twenty-six States enacted legislation prohibiting discrimination in such fields as employment, housing, public accommodations, and schools; some actions took the form of provisions in State constitutions. As of 31 December 1963, 31 States and the District of Columbia had laws prohibiting racial discrimination in hotels, restaurants, and other places of public accommodation.

Under a Federal statute and regulations adopted in 1946, hospitals constructed with the aid of Federal funds in States which regularly provided facilities for Negroes and whites on a "separate but equal" basis has been exempted from the general requirement of racial non-discrimination contained in the Act. In 1963, in a significant case in which the Federal Government joined plaintiffs in attacking this exemption, a Federal Court of Appeals held the "separate but equal" provisions unconstitutional. In the same case, the Court held that certain private hospitals largely constructed with the aid of Federal funds under this Act, because of the pervasive involvement of both Federal and State governments in their supervision and regulation, were likewise subject to the decision, and were therefore prohibited from denying staff privileges to Negro physicians and dentists, and from refusing Negro patients access to hospital facilities because of their race.[6]

During 1963, Alabama and South Carolina desegregated certain elementary schools under court order, in conformity with the 1954 Supreme Court decision in *Brown* v. *Board of Education*. Federal courts enjoined attempts by the Governor of Alabama to block the desegregation both of the State university and of public schools in several cities.[7] A State appellate court in Texas held [8] that the State courts had both the power and duty to restrain by injunction the spending of public funds for the erection and maintenance of school buildings for racially segregated use, even in the absence of any preceding court order directing desegregation; the decision was later vacated as moot by the Texas Supreme Court, since the schools had meanwhile been ordered desegregated and the school board had modified its building program accordingly.[9]

Attempts to preserve segregation in schools by rezoning of districts or by special transfer provisions were also held unconstitutional. In Tennessee, several school boards had changed boundaries of school zones on a nonracial basis, but provided that students affected by the zoning could transfer to a school where their race was in the majority. The effect of the transfer provision thus perpetuated segregation in the schools. The United States Supreme Court ruled that such transfers on the basis of the applicant's race were unconstitutional.[10] In California, a Pasadena school district was rezoned to result in the retention of one

[2] 373 U.S. 244; 373 U.S. 267; 373 U.S. 262; 373 U.S. 374.
[3] 373 U.S. 61, 62.
[4] 373 U.S. 284.
[5] 373 U.S. 526, 533.
[6] 323 F. 2d 959.
[7] 222 F. Supp. 485.
[8] 368 S. W. 2d 873.
[9] 369 S.W. 2d 916.
[10] 373 U.S. 683.

predominantly Negro school and another predominantly white school. When a Negro student attempted to transfer to the predominantly white school, which was in fact closer to his home, the California State Supreme Court permitted him to do so on the ground that the rezoning had been designed to maintain segregation in the schools and thus deprived the student of equal protection of the law.[11]

The courts and administrative authorities of several States considered cases involving the question whether school officials have an affirmative duty to alleviate racial imbalance in schools resulting from shifts in population or housing. In general, the courts have upheld school systems which had been developed honestly and conscientiously under a neighbourhood plan without intent to segregate on a racial basis.

Fair Trial and Hearing

The Sixth Amendment to the United States Constitution provides that "In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence." It has long been the law that a person accused of a Federal crime is entitled to have court-appointed counsel if he is unable to procure the services of an attorney for himself.[12] In 1963, the Supreme Court held that the assistance of counsel is so fundamental and essential to fair trial that the guarantee in the Sixth Amendment extends to persons accused of State crimes as well, so that an indigent defendant in a State court is likewise entitled to have counsel appointed for him.[13]

In another case, a State appellate court had denied the request of indigent defendants for the appointment of counsel to assist them in appealing their convictions. The court decided, after examining the record, that the appointment of counsel would not be "of advantage to the defendant or helpful to the appellate court". The United States Supreme Court vacated the judgement, holding that failure to provide counsel requested by a convicted indigent for the one and only appeal available to him constituted discrimination between rich and poor, in violation of the due process and equal protection guarantees of the Fourteenth Amendment to the Federal Constitution.[14]

The Supreme Court again considered the coercive effect of the detention of an accused *incommunicado* upon the admissibility of a written confession obtained from him during that period; it concluded that his confession had been involuntary and induced by threats and promises, and was hence inadmissible. The accused had been held for sixteen hours *incommunicado*, action which was itself in contravention of a specific State statute, and had been told that he could not telephone his wife until he had signed a confession. The Court held that admission into evidence of a confession obtained under those circumstances had violated the due process clause of the Fourteenth Amendment.[15]

The United States Court of Appeals for the District of Columbia held in *Communist Party* v. *United States*[16] that the privilege against self-incrimination, guaranteed by the Fifth Amendment to the Constitution, was available to officers of the Communist Party as legal justification for refusing to register the Party as required by the Subversive Activities Control Act of 1950,[17] since anyone of them who signed would have been admitting an incriminating association. Under the Act, persons other than officers and members might have signed the registration form on behalf of the Party (e.g., attorneys, agents). The case was remanded to the District Court for new trial if so requested by the Government.

Freedom from Bondage

The year 1963 was celebrated as the centennial of the Emancipation Proclamation, through which President Lincoln declared all persons held as slaves in States or parts of States then in rebellion against the Union to be "then, thenceforward, and forever free". The Emancipation Proclamation opened the way for the adoption in 1865 of the Thirteenth Amendment to the United States Constitution, which put an end to slavery and involuntary servitude within the United States and any place subject to its jurisdiction.

In calling for celebration of the centennial, President Kennedy proclaimed that the Emancipation Proclamation

"expresses our Nation's policy, founded on justice and morality, and that it is therefore fitting and proper to commemorate the centennial of the historic Emancipation Proclamation throughout the year 1963.

. . .

"I call upon all citizens of the United States and all officials of the United States and of every State and local government to dedicate themselves to the completion of the task of assuring that every American, regardless of his race, religion, color, or national origin, enjoys all the rights guaranteed by the Constitution and laws of the United States."

President Kennedy also requested the United States Commission on Civil Rights to plan and participate in the commemorative activities. In ceremonies at the White House on Lincoln's Birthday, 12 February, that Commission presented a special report on the century of emancipation, entitled "Freedom to the Free", which traced the long struggle of Negro Americans for full recognition and characterized the period 1948-1962 as the years of "breakthrough to equality".

Asylum and Nationality

The United States continued to provide asylum for refugees from various areas. The largest number of these came from Cuba. In line with

[11] 382 F. 2d 878.
[12] 304 U.S. 458.
[13] 372 U.S. 335.
[14] 372 U.S. 353.
[15] 373 U.S. 503.
[16] 331 F. 2d 807.
[17] Title I of the Internal Security Act of 1950, 64 Stat. 987, 50 U.S.C., § 781 *et seq.*

legislative action, government services were set up to provide emergency aid to Cuban refugees, including necessary financial assistance, medical care, vocational training and English instruction. Government loans were also made available to needy Cuban refugee students in the United States, and special courses were organized to retrain selected groups of professional persons such as physicians, lawyers and teachers. Through the combined efforts of Federal, State and local governments, by the end of 1963 new homes and job opportunities had been located in communities throughout the country for approximately 73,000 of the 250,000 Cuban refugees then in the United States.

During 1963, several thousand refugees arrived in the United States from countries of asylum in Europe and the Middle East. They were paroled into the country under a 1960 Act of Congress, extended indefinitely through amendment in 1962, which also permits them to seek permanent residence status after two years. By the end of 1963, some 13,300 refugees had arrived in the United States under this programme, of whom nearly 3,800 had been accorded permanent residence status.

Shortly after the massive influx of Chinese refugees into Hong Kong in 1962, President Kennedy directed the establishment of a special parole programme for Chinese refugees from Hong Kong, under the provisions of the Immigration and Nationality Act. This programme had permitted 9,300 Chinese refugees to enter the United States by the end of 1963, of whom several thousand arrived during the year.

Deportation was stayed for 42 aliens on the ground that they might be subject to physical persecution in the country of their proposed return.

One of the basic principles of United States immigration laws is the unification of families. In calendar year 1963, 59,207 relatives of United States citizens or resident aliens were admitted as immigrants.

In accordance with long-established recognition by the United States of the right to a nationality and a national homeland, 117,857 immigrants were granted United States citizenship in 1963 and 33,986 certificates of citizenship were issued to children of naturalized parents or children born in a foreign country to United States citizen parents.

The United States Supreme Court held unconstitutional a provision of the Immigration and Nationality Act of 1952 [18] which automatically deprived an American of his citizenship for "departing from or remaining outside of the jurisdiction of the United States in time of war or ... national emergency for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States." The Court found that the provision was penal in character and would inflict severe punishment without due process of law and without the safeguards guaranteed by the Fifth and Sixth Amendments to the Constitution, to anyone under criminal prosecution.[19]

[18] 8 U.S.C. 1481 (a) (10). A similar provision of the Nationality Act of 1940, section 401 (j), was also held unconstitutional.

Freedom of Religion

The First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." The United States Supreme Court has long held that the due process clause of the Fourteenth Amendment extends this prohibition to State governments.

In *Abington School District* v. *Schempp*,[20] the Supreme Court held that Bible reading and recitation of the Lord's Prayer in public schools, and the laws of the State of Pennsylvania requiring such practices, violated the Constitutional prohibition against governmental establishment of religion The Court also struck down in a companion case, *Murray* v. *Curlett*,[21] a rule of the Baltimore Board of School Commissioners requiring each day either the recitation of the Lord's Prayer or the reading of one chapter from the Bible. The fact that individual students were permitted to absent themselves from the religious exercises in both cases did not constitute a defence to the claim that they were unconstitutional.

The Court said:

"It is insisted that unless these religious exercises are permitted a 'religion of secularism' is established in the schools. We agree of course that the State may not establish a 'religion of secularism' in the sense of affirmatively opposing or showing hostility to religion, thus 'preferring those who believe in no religion over those who do believe.' We do not agree, however, that this decision in any sense has that effect. In addition, it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or religion, when presented objectively as part of a secular program of education may not be effected consistently with the First Amendment. But the exercises here do not fall into those categories. They are religious exercises, required by the States in violation of the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion."[22]

In another case, the United States Supreme Court recognized the right of an employee to receive unemployment benefits even though she refused to work on Saturday, the Sabbath-Day of her faith, and the State law conditioned eligibility for compensation on "availability for work". The record indicated that 150 or more members of her faith in the area had been able to obtain suitable non-Saturday work, so that her religious conviction could not be regarded as the sole cause

[19] 372 U.S. 144.
[20] 374 U.S. 203.
[21] 374 U.S. 203.
[22] 373 U.S. 203, 225.

of her unemployment. The Court held that it would be an abridgement of the Constitutional guaranty of the free exercise of religion for the State to deny unemployment benefits because she refused to work on her religious day of rest.[23]

Freedom of Speech, Press and Association

The First Amendment to the Constitution provides that "Congress shall make no law ... abridging the freedom of speech, or of the Press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances".

On 28 August 1963, more than 200,000 citizens marched in Washington, D.C., to demonstrate their concern for civil rights. Their right of free speech and of peaceable assembly was carefully protected by the local police and units of the National Guard. President Kennedy, who met with the leaders of the rally, voiced the public consensus when he said:

"One cannot help but be impressed with the deep fervor and the quiet dignity that characterizes the thousands who have gathered in the nation's capital from across the country to demonstrate their faith and confidence in our democratic form of Government."

The United States Supreme Court reversed the convictions of 187 Negroes who had held a protest parade on the State House grounds in Columbia, South Carolina. The Court held that the demonstrators' right to free speech and assembly and to petition for redress of grievances—rights protected against infringement by the states under the Fourteenth Amendment—had been violated by the arrests and convictions.[24]

A number of civil rights cases before the courts in the United States are initiated by a private organization, the National Association for the Advancement of Colored People (NAACP), which provides legal services for Negroes whose rights have allegedly been violated. A Virginia statute made it illegal for a person or corporation to solicit or procure business for an attorney. The United States Supreme Court said "in the context of NAACP objectives", soliciting litigation is "a form of political expression", and such expression is protected by the First and Fourteenth Amendments to the United States Constitution. It declared the State law unconstitutional as unduly inhibiting freedom of expression and association.[25]

Government by the Will of the People

The United States Constitution guarantees to the citizens of the United States a republican form of government chosen by the people and expressly provides that the right to vote shall not be denied or abridged on account of race, color or sex. Within these limitations, voter qualification is usually determined by the election laws of the several States.

In a decision further implementing the constitutional guarantees of equal protection with regard to representation, the United States Supreme Court held unconstitutional a Georgia statute regulating primary elections which allocated unit votes to counties. Under the Georgia law, candidates for State-wide office had to receive a majority of the county-unit votes in order to be entitled to nomination. The practical effect of this system was that the vote of a citizen in a city county counted for less than in a rural county. In its opinion the Court stated:

"... Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the equal protection clause of the Fourteenth Amendment...

"... The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote."[26]

Under the Civil Rights Acts of 1957 and 1960, which authorize suits by the Attorney General of the United States to prevent racial discrimination in the voting process, 25 new cases were filed and 14 cases went to trial in 1963. Of special significance is the decision regarding requirement by the State of Louisiana that an applicant for voting registration be able to give a reasonable interpretation of any section of the state or federal constitution. Voting registrars had arbitrarily rejected satisfactory answers of Negro applicants and refused to allow them to vote. A federal court held the state requirement unconstitutional and forbade its use.[27] Similarly, a United States Court of Appeals upheld a decision against the State of Alabama and a county Board of Registrars even where the Board had not, on the facts of the case, discriminated against Negro voters, since the conduct of the Board's predecessors and other factors created a "cognizable danger" that past discrimination against Negro voters might be repeated.[28]

Economic, Social and Cultural Progress

The people of the United States achieve the benefits of economic, social and cultural progress primarily through the freedom afforded individuals to choose their employment, to obtain an education and to take advantage of a variety of social and cultural opportunities provided through private enterprise or official action. Government authorities provide regulation as necessary in the interest of the general welfare, co-operate with citizens in study and research to encourage development of resources and solution of problems, and may also take the initiative in bringing about necessary executive or legislative action.

Among official actions affecting a broad area of opportunity was the Report of the President's

[23] 374 U.S. 203, 225.
[24] 372 U.S. 229.
[25] 371 U.S. at 429.
[26] 372 U.S. 368, 379-81.
[27] 225 F. Supp. 353 (E.D.La., 1963).
[28] 323 F. 2d, 733.

Commission on the Status of Women in the United States, issued 11 October 1963. This Commission, established by the late President Kennedy in 1961, had been charged with responsibility for developing plans to advance the full partnership of women with men in national life. Its report emphasized the broad scope of its consideration, and particularly that:

"In a great society, talents are evoked and realized, creative minds probe the frontiers of knowledge, expectations of excellence are widely shared. Higher quality in American life was a specific concern of this Commission both because of the potential contribution of outstanding women to it and because women in their families are transmitters of the central values of the culture."

The Commission recommended constructive action to expand women's opportunities as wives, mothers and workers, to remove outworn legal distinctions in family and other aspects of law, and to assure women full recognition in public service. As a sequel to the Commission's recommendations, President Kennedy established a Citizens Advisory Council on the Status of Women, along with an Inter-departmental Committee to stimulate action within the Federal Government.

Earlier in 1963 President Kennedy undertook consultations with representative citizens from many walks of life—business, labor union leaders, clergymen, women's organizations, and governmental officials—to enlist their support in opening employment and other opportunities to Negro Americans, whom he recognized as unable to achieve equal status because of educational, cultural, and other types of discrimination in many parts of the country. Follow-up committees of citizens planned action in response to the President's appeal, thus re-enforcing the efforts of Government through the efforts of voluntary organization and informed public opinion.

Just and Favourable Conditions of Work

The Federal Equal Pay Act of June 1963, for the first time assured women equal pay for equal work on a national basis. Adopted as an amendment to the Fair Labor Standards Act (Federal Wage and Hour Law), which applies to all employees engaged in certain interstate commerce activities, it requires the employer to pay equal wages within the establishment to men and women doing equal work on jobs calling for equal skill, effort, and responsibility, and performed under similar working conditions. Like other provisions of the Act, equal pay provisions are to be enforced through regular investigations and through court action on complaint of an employee, or if so requested, on complaint by the Secretary of Labor. In addition, twenty-four States had enacted equal pay laws by the close of 1963. Well over half of all women in the United States labour force live in these twenty-four States.

The Fair Labor Standards Act requires a minimum wage for workers in interstate commerce; as of September 1963, the rate was $1.25 an hour for a forty-hour week, with time and a half for overtime, with the exception of certain recently-covered employees, principally in retail trade, whose minimum was $1.00 an hour, with provision for later increase. Twenty-nine States, the District of Columbia and Puerto Rico have wage laws which apply to occupations within the State, with established minimum rates which may differ from the Federal standard. Increases in basic minimum wage rates established by State statutes or wage orders were obtained during 1963 in thirteen jurisdictions; at the end of 1963, five States and Puerto Rico had statutory rates equal to or higher than the Federal rate. Where the State standard is higher, it takes precedence over the rate set by the Federal Act.

Maximum hour laws were improved in five States. Maine extended coverage of the hour law to nursing homes. Idaho and Rhode Island amendments included a requirement for payment to women of time and one-half pay for hours worked in excess of 48 hours a week. Idaho also reduced the daily maximum for women from 9 hours to 8 hours. Colorado and Connecticut exempted women in specified types of jobs from the maximum hour law.

Prohibitions on child labour, which exist in all States, were strengthened. Wyoming set a sixteen-year age minimum for most employment outside school hours. Colorado raised the minimum age from fourteen to sixteen for employment during school hours and for factory employment at any time; it also set a new twelve-year minimum age for work in agriculture outside school hours and brought the provision relating to hazardous occupations for minors into close conformity with Federal provisions under the Fair Labor Standards Act.

Improvements were also made in laws for migrant workers. North Carolina and Oklahoma both passed mandatory laws setting housing and sanitation standards for migrant labour camps, making thirty States now having such laws. A California law recognized that housing centers for agricultural workers are necessary and empowered local housing authorities to acquire such housing projects and operate them on a rental basis.

In the field of industrial relations, Hawaii passed an act limiting Court authority to enjoin strikes, making twenty-six jurisdictions with such a law, most of which are patterned after the Federal Norris LaGuardia Act adopted in 1932. Hawaii also extended its labour relations act to cover employers of two or more employees, instead of eight or more. Rhode Island and Hawaii prohibited the use of professional strikebreakers. California and Oregon prohibited the use of lie detector tests as a condition of employment, and Connecticut authorized study of such a ban. Collective bargaining rights, already assured all workers in private industry and many in public employment, were extended to public employees in Connecticut and Oregon, to employees of non-profit hospitals in New York City, and to city and town policemen in Rhode Island.

Continuing the trend of recent years to regulate hazards resulting from the peaceful use of atomic energy, a number of States enacted laws providing for or strengthening control over activities involv-

ing radiation. Other States improved safety legislation relating to construction, work in mines, and work on elevators.

Workmen's compensation awards and medical benefits continued to rise. Twenty-three States raised cash benefits; seventeen strengthened medical provisions; three increased rehabilitation benefits; seven liberalized time limits for filing radiation-disease claims; and a number of States extended coverage to additional groups of workers, such as specified employees in hazardous occupations or public employees.

Equal employment opportunity

In 1963, President Kennedy reaffirmed the policy of the United States Government to encourage by affirmative action the elimination of discrimination because of race, creed, colour or national origin, to the end that employment opportunities created by Federal funds should be equally available to all qualified persons.

He extended the applicability of his 1961 Executive Order on Equal Employment Opportunity, which prohibited discrimination in employment under direct contracts with the Federal Government, to embrace construction employment aided by various forms of Federal loans or other financial assistance. A Presidential directive also prohibited discrimination in selecting applicants for apprenticeship training. A further directive prohibited racial discrimination in public employment assisted by the Federal government and subject to Federal standards at the State and local level. A Presidential Memorandum also directed each Government Agency to honour fully both the spirit and letter of official Federal policy to evaluate each older applicant or employee on the basis of ability, not age.

As a result of further actions by State legislatures, several of which enacted legislation dealing with discrimination in employment, by the end of 1963 twenty-one States and Puerto Rico had established fair employment practice laws enforceable by administrative procedures and others had laws enforceable by criminal penalties only.

In a case brought by a Negro pilot who was denied employment with an airline in violation of a Colorado State anti-discrimination law, the Colorado Supreme Court held that only federal controls could apply since the airline operated in interstate commerce and was subject to federal regulations. However, on appeal to the United States Supreme Court, the Negro's rights under the State anti-discrimination law were upheld. The Court held that the State law did not unconstitutionally burden interstate commerce or frustrate the purpose of any existing law.[29]

HOUSING

The supply of good housing continued to increase in 1963 in line with the needs of a growing population. Construction was begun on nearly 1,617,000 new public and private housing units, including farm units. The increase in new construction was 8.3 per cent over 1962, compared with an estimated population increase for the same period of 1.45 per cent.

Pursuant to the 1962 Executive Order on Equal Opportunity in Housing issued by President Kennedy, the Federal Government took action during 1963 to assure non-discriminatory access to housing and related facilities provided with government assistance. The principle was also upheld in a judicial decision: a United States District Court ruled that the private owner of a motel located on land which had been redeveloped under government supervision, with government funds, and which was under "comprehensive and far-reaching" controls of the municipal housing authority, was subject to the equal protection clause of the Federal Constitution and was therefore prohibited from discrimination.[30]

The District of Columbia adopted a fair housing ordinance and a number of States strengthened existing laws. By the end of the year, nineteen States maintained fair housing laws, twelve of which covered private as well as government-assisted housing, and numerous cities throughout the United States, such as Chicago, Duluth, Albuquerque and Philadelphia, had similar ordinances.

The Federal public housing programme, initiated in 1934, was providing by the end of 1963 for more than half a million low-income families in more than 2,000 different communities. In addition the programme for the elderly increased 40 per cent over 1962, to provide low-rent units especially designed for older persons. Federal loans under the college housing programme facilitated construction of dormitories for both students and faculty on campuses throughout the nation; since its inception in 1950, this programme has provided accommodations for more than 400,000 students.

Provision of government insurance for housing loans by private banks and financing institutions as a means of diminishing risks for investment capital has proved of continuing value. Commitments were made to insure private mortgage loans on a total of 767,000 homes, the second highest total since the inception of the programme in 1934.

Government authorities at all levels continued the attack on urban decay. The urban renewal programme is concerned with the well-being of cities and metropolitan areas and is designed to eliminate and prevent slums and urban blight within the context of comprehensive community redevelopment. Federal grants were reserved for projects in more than 700 different localities throughout the United States, representing a substantial increase over 1962.

Efforts continued to improve housing for American Indians. Two additional low-rent Indian housing projects were placed under construction, one of which has a "congregate" facility for older persons, a building with community kitchen and dining facilities. Under a new programme of mutual-help housing, Indians may acquire equities in homes by contributing labour to their construction. By the end of the year, fifty-eight tribes had formed their own housing

[29] 372 U.S. 714.

[30] 220 F. Supp. 1 (M.D. Tenn., 1963).

authorities, and construction was under way on fifty reservations.

The Virgin Islands enacted legislation to provide for a long-range land acquisition and home construction programme. Local authorities in Guam took legislative action to alleviate the shortage of houses due to losses suffered in the typhoons of 1963 and 1962, and Congress also took measures to assist the island in its recovery.

Social Services and the Right to Security

A comprehensive Federal old-age, survivors and disability insurance programme provides continuing support for individuals and their families whose income has been reduced through old-age or disability retirement or death. Almost all persons engaged in gainful employment are covered under this system. Benefits are payable in amounts related to the average monthly earnings of the insured persons.

Needy persons who do not qualify for payments under this programme or who do not receive sufficient income from this or other sources, receive financial assistance under the State-Federal public assistance programmes of Old Age Assistance, Aid to the Blind, Aid to the Permanently and Totally Disabled and Aid to Families with Dependent Children. The Federal Government also shares in assuring medical assistance to the aged.

The Welfare Administration was established in 1963 as a new unit of the Department of Health, Education, and Welfare to administer these and other related services, as well as to deal with special social problems such as juvenile delinquency.

In a message to the Congress on Aid to Elderly Citizens in February 1963, the President stated that the Advisory Council on Social Security Financing would review the status of the trust funds and report on protection and coverage at all levels of earnings, the adequacy of benefits, the desirability of improving the present retirement test and other aspects of the social security system in order to provide a sound basis for its improvement and to keep it abreast of changes in the economy.

Unemployment insurance, workmen's compensation, and various forms of assistance are provided under State laws, with Federal grants to help pay for certain aspects. Arrangements outside government complement government social insurance and public welfare programmes. Many business corporations provide additional retirement payments, disability and hospitalization plans for employees; pension plans and hospitalization benefits are often among the "fringe benefits" included in labour union negotiations with employers. In addition, a large number of American wage-earners, both "white collar" and "blue collar", purchase private insurance against accident, illness or other disability, or to provide income in their old age or to their survivors. A wide variety of social services are provided both on a community and on a nation-wide basis by voluntary social agencies and foundations and by annual public contribution campaign drives.

Health, Medical Care and Child Welfare

The health problems posed by a highly mobile and increasingly urban society with a lengthening life-span continue to challenge health programme administration, environmental engineering and medical research *per se*. Over 6 per cent of the national income is spent from public and private funds for health services. The Federal Government fosters and provides financial support for improvements, and aids States and communities to develop and maintain effective programmes for the prevention, treatment, and control of diseases and for the prevention or control of environmental health hazards.

Special emphasis was placed during 1963 on research and training relating to children, who constitute 40 per cent of the American population, and on solving the causes of mental illness and retardation and rehabilitating the sufferers. The National Institute of Child Health and Human Development was officially established in Washington, D.C., on 30 January 1963 as part of the National Institutes of Health, to foster and support research and training on maternal and child health and human development throughout life. The Mental Retardation Facilities and Community Mental Health Centers Construction Act increased resources for construction, for research and demonstration projects in the field and for training teachers of mentally retarded, and other handicapped children.

The majority of community health service projects in progress in 1963 under Federal grants were concerned with care for chronically ill and for aged persons not requiring hospital attention. Many such cases now add to the problem of hospital overcrowding, and a partial solution was sought through increasing the number and staffing quality of nursing homes.

The enactment by Congress of a Clean Air Act reflected growing national concern about air pollution as a threat to life and a cause of extensive property damage. The Act emphasizes the regional approach, recognizing that single communities cannot deal effectively with air pollution which overflows jurisdictional boundaries. At the request of the Federal Government and on the basis of government-industry research, automobile manufacturers began in 1963 to install blow-by devices on all new cars, thus reducing by approximately one-fourth the total emission of unburned hydrocarbons from motors.

Education

Public education in the United States is primarily a responsibility of State governments, which typically delegate provision and control of public schools to local school districts. Private schools are also available. Education is free to all in elementary and secondary public schools throughout the country. Compulsory school attendance to at least age sixteen is typical—almost universal—and most States provide free education to age twenty-one for those who have not completed secondary school.

To lessen the burden on local governments and to promote a uniformly high quality of education,

State governments, as distinguished from local school districts, are assuming increasingly larger shares of operating costs. In 1963, more than one-third of the States increased the amount of aid to public schools, directly and through furnishing free textbooks and instructional materials. The use of both open and closed-circuit television as a teaching tool continued to expand, and Statewide educational television networks were established in several areas. The quality of schools was further improved by reorganization of school districts into more efficient units, by raising salary scales, and expanding programmes for exceptional children. In addition to the State universities and colleges available throughout the country at small cost, an increasing number of communities provide city colleges and other higher education facilities within their local school systems. Student scholarship and loan programmes were strengthened in several States.

The Federal Government provides technical services and various forms of assistance for the use of school authorities. In 1963 Congress adopted two acts of far-reaching importance in broadening educational opportunities for young people. The Higher Education Facilities Act authorized grants and loans to institutions of higher education, for construction, rehabilitation, or improvement of classroms, laboratories, libraries and other facilities. The Vocational Education Act of 1963 carried further the Federal-State partnership in this field, first established in 1917. It authorized Federal funds for the first time for the construction of schools, and increased coverage by removing previous restrictions. Provision was made for in-service teacher training. In addition, the legislation provided for an experimental four-year programme of residential vocational schools and payments for student work-study programmes where there is severe unemployment and a high number of school dropouts. The aim of the programme is both cure and prevention, to break the cycle of poverty and dependency for disadvantaged youth.

The National Defense Education Act was amended to raise the permissible amount of student loans by 50 per cent by 1965. Guidance and counseling programmes were extended, and institutes were authorized for training teachers of pupils for whom English is a second language. The Manpower Development and Training Act of 1962 was amended to expand eligibility for training allowances and increase the percentage allocated for the maximum age group. The Act entitles illiterate trainees to twenty weeks of basic education in reading and writing without advance determination of precise occupational objectives. Since most of these trainees have family responsibilities, the new legislation authorizes payment of small training bonuses over the current average level of unemployment compensation for the State.

The Health Professions Educational Assistance Act of 1963 is also significant. Provision was made for a new loan programme to assist medical and dental students and, for the first time, for Federal grants to meet construction or modernization needs in training schools for needed health personnel.

The Federal Government has made a major effort in recent years to improve the quality of education available to American Indians who still live on reserved lands in order to eliminate their relative poverty. In 1963, the Federal Government expanded special school facilities for Indian children while continuing provision for many more in regular public schools.

The adult education programme also expanded in 1963, with participation in 140 communities, along with vocational programmes to prepare Indian youth for employment.

Another aspect of government support to schools in the school lunch programme, which in the absence of adequate local resources, depends upon Federal funds. Among the beneficiaries of new programmes initiated in 1963 were 7,500 children in isolated rural schools in eastern Kentucky mountain areas.

Culture and Science

Cultural activities in the United States are provided in large part through the co-operative efforts of private initiative and voluntary organizations, often with the aid of gifts from individuals and foundations and grants from municipal and State governments. For example, the Lincoln Center for the Performing Arts, inaugurated in New York City in 1962 with the opening of a Philharmonic Hall, received some 40 million dollars in grants from the City, State and Federal Governments and over 101 million dollars from corporations, other private sources and foreign governments. The Center celebrated its first anniversary in 1963 with construction progressing on a new Metropolitan Opera House and a new home for the American National Theater and Academy.

In addition to providing public libraries, museums and similar facilities, public authorities regularly make school auditoriums, amphitheaters, parks, and other gathering places available for the performing arts. The increasing interest of the Federal Government in expanding cultural activities was reflected in the establishment by President Kennedy, in June 1963, of a President's Advisory Council on the Arts to study needs throughout the United States and to recommend ways to encourage wider participation in their enjoyment.

In recent years, the number of communities supporting symphony orchestras and regular concert programmes has increased rapidly; there are now over 1,100 symphony orchestras of a professional or semi-professional nature, compared with some 100 in 1920. Of these, twenty-six are classified as "major" orchestras, playing a total of more than 2,300 concerts annually. One element in this expansion has been more effective recognition of musical instruction in the school curriculum. An estimated 85 per cent of elementary school children receive instruction in music, in playing musical instruments as well as singing and listening activities, and a large proportion of high school students take part in performing groups such as bands, *a capella* choirs, and school symphonic orchestras; some schools also have madrigal choirs, woodwind quintets, and similar groups in response to student interest. In January 1963, the Music

Educators Conference announced that the Ford Foundation would support a project designed to help develop creative musical talent of the future by encouraging young people to write their own music. At the adult level, an estimated 33,000,000 Americans play musical instruments as a leisure-time activity.

Scientific activity in the United States during 1963 generally continued progress in extending both the welfare and heritage of mankind, with co-operation between government and private agencies.

Of great significance both at home and abroad were advances relating to saline water conversion. The relative efficiency of virtually all processes exhibiting any promise were being explored. A task group contributed to knowledge on use of large nuclear reactors for producing electric power and heat for sea water distillation. Other scientists and engineers continued investigations of the economical separation from sea water of minerals such as potassium, calcium and magnesium.

The year 1963 marked the sucessful launching of the Syncom satellite in synchronous orbit with the earth, a difficult technical feat heralding progress in world-wide intercommunication. Further Telstar and Tiros launches advanced satellite television activity and weather forecasting. Man's knowledge of Venus and interplanetary space was enlarged by data analysed during the year from the precise signalling and navigation of Mariner II.

The United States continued large-scale participation in such co-operative enterprises as Antarctic exploration and research, the Upper Mantle Project and the International Indian Ocean Expedition. The United States Geological Survey collaborated with Brazil and with the International Association of Scientific Hydrology to measure the flow and other features of the Amazon. Important information about early man was gained in an expedition to South Africa sponsored by the United States National Geographic Society.

The elucidation of the molecular structure of DNA and of the genetic code in time may mark for the human species an even more significant development than nuclear energy. In the field of inorganic chemistry, the Argonne National Laboratory at Chicago discovered during its research on the rare gases that xenon, hitherto considered incapable of entering into chemical reaction, reacts with fluorine under relatively mild conditions to yield the stable crystalline xenon tetrafluoride X^eF_4; a new field of chemistry has thus been opened for future exploitation.

Realization through International Co-operation

The United States continued during 1963 its strong support for the various activities and programmes of the United Nations to promote social justice and economic well-being for all peoples.

In addition to its regular contributions to the United Nations and the specialized agencies, the United States contributed 40 per cent of the funds for the Expanded Programme of Technical Assistance and the Special Fund, 42 per cent of the UNICEF funds, 33 1/3 per cent of the funds supporting the United Nations High Commissioner for Refugees, and 70 per cent of the funds supporting the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

More than 7,900 persons received government travel grants in 1963 for the purpose of study, teaching, university lecturing, advanced research, and consultation and observation in specialized fields outside their own countries. Some 5,600 of these were foreign citizens who came to the United States from 130 countries and territories; about 2,300 were Americans who went abroad. Fields of specialization included science and engineering, social welfare, humanities and education. In addition, some fifteen groups in the performing arts travelled abroad, in most cases conducting workshops and seminars in connexion with their tours. Although official programmes represent only a small part of such exchange and travel, government assistance assures continuing contacts between cultural leaders in the United States and other countries in educational and cultural fields. Three new executive agreements for maintaining exchange programmes were signed in 1963 with Afghanistan, Malaysia and Tunisia, for a total of forty-nine countries with which the exchange-of-persons programme is in operation. In many of these countries, participating candidates are selected by bi-national educational commissions or foundations.

Among bilateral agreements entering into force in 1963 which recognized the importance of human rights were the Treaties of Friendship, Establisment and Navigation with Belgium and Luxembourg. These treaties guarantee equitable treatment and effective protection to nationals of either party within the other's territories, including freedom of conscience and worship, freedom to gather and transmit information for public dissemination abroad, and freedom of communication within and without the other's territories by mail, telegraph and other means open to general public use. Freedom from molestation and equal access to courts of justice, administrative tribunals and agencies are also accorded, as well as the right of an arrested person to communicate with his consular representative, the right to speedy trial, and the right to competent counsel. By the end of 1963, the United States was a party to at least thirty-two bilateral treaties containing some or all these guarantees. Among other bilateral agreements of importance for human rights were an agreement between the United States and Thailand establishing a clinical center to conduct continuous research on diseases affecting the health of man in South-East Asia; agreements with Brazil and Argentina for developing, respectively, a radiobiological and research programme and a nuclear research and training programme; and agreements with Canada, Sweden, Norway and Denmark providing for joint participation in intercontinental testing of experimental communications satellites. The Nuclear Test Ban Treaty, which entered into force 10 October 1963 for the United States, the United Kingdom and the Soviet Union as original parties, was a first step in bringing the forces of nuclear destruction under international control. Its most immediate beneficial effect was to reduce

the amount of radioactive fallout contaminating the atmosphere thus lessening threats to health.

Agreements also came into effect during the year providing for co-operation with thirteen countries in the peaceful uses of atomic energy. An agreement concluded jointly by the United States and Japan with the International Atomic Energy Agency applied agency safeguards to materials covered by the United States-Japanese agreement for co-operation. In addition, two agreements came into effect in 1963 regarding technical, economic and general assistance.

UPPER VOLTA

NOTE[1]

Part I

FUNDAMENTAL PRINCIPLES

1. The Constitution of the Upper Volta of 19 March 1959[2] declares:

Preamble: "The people of the Upper Volta proclaim their adherence to the principles of democracy and of human rights, as set out in the Declaration of 1789 and as guaranteed by the Constitution of the Community."

Art. 36. "The fundamental guarantees accorded citizens in the exercise of their civic freedoms", "the definition of crimes and offences as well as the penalties applicable to them, penal procedure", "the organization of the judiciary and administrative courts, the rules and regulations governing the judiciary and assistant judicial officers" as well as the fundamental principles "of the penitentiary system" shall be subject to the law, duly adopted by the Legislative Assembly.

Art. 58. "The Superior Council of the Judiciary shall guarantee the independence of the Judiciary. Its composition and duties shall be determined by law.

"The rules and regulations governing the Judiciary shall be laid down by law."

Art. 59. "Members of the Judiciary shall be appointed by the President of the Council on the proposal of the Superior Council of the Judiciary. Members of the Judiciary shall be irremovable."

Art. 60. "The Superior Council of the Judiciary shall be the disciplinary body with jurisdiction over the judges. When exercising its disciplinary functions, the Superior Council shall be presided over by the judge holding the highest judicial position in the State."

In its comments dated 5 July 1962 on the draft monograph on Freedom from Arbitrary Arrest, Detention and Exile in Upper Volta, the Government of the Upper Volta declared:

"The new Constitution of November 1960[3] no longer refers in its preamble to the Constitution of the Community but to the Universal Declaration of 1948.

"Article 36 of the former Constitution is reproduced in article 41 of the new Constitution: the penitentiary system is no longer included in the list of matters coming under the law, which on the other hand comprises the procedure before the judicial and administrative courts as well as the regulations governing the law officials.

"The former article 58 is replaced by articles 41, 59 and 60. The President of the Republic shall guarantee the independence of the judges. He shall be assisted by the Superior Council of the Judiciary (article 59). The organization, composition and duties and procedure of the Superior Council of the Judiciary shall be laid down by law article 60). The rules and regulations governing the Judiciary shall be laid down by law (article 41).

"The former article 59 has been replaced by the new article 61. Members of the Bench shall be appointed henceforth by the President of the Republic upon the nomination of the Keeper of the Seals, Minister of Justice, after consultation with the Superior Council of the Judiciary.

"The former article 60 is replaced by the new article 60, which refers to a law to determine the composition, organization and duties and procedure of the Superior Council of the Judiciary, without specifying its powers."

2. In accordance with law No. 7-59-AL of 19 May 1959, the Superior Council of the Judiciary has five members: the Minister of Justice, President; the Judge and the member of the *ministère public* who have the highest rank and the most seniority; a judge designated by the President of the Council of Ministers and chosen from a list established by the presidents of the courts of the Upper Volta; a person who is not a member of the Judiciary, appointed under the same procedure (art. 1). The Superior Council must make a nomination to the President of the Council of Ministers for each appointment or assignment of judges (art. 4). It is the only authority competent to take disciplinary action (including dismissal) against judges (art. 7). Moreover, the Council must be consulted on "all

[1] The government of the Republic of the Upper Volta has indicated in its note that it would like the monograph on Freedom from Arbitrary Arrest, Detention and Exile in Upper Volta (Conference Room Paper No. 82, 11 July 1962, drafted by the United Nations Secretariat) to be published in the *Yearbook on Human Rights for 1963.*

[2] For extracts from the 1959 Constitution, see *Yearbook on Human Rights for 1959*, p. 322.

[3] For extracts from the 1960 Constitution, see *Yearbook on Human Rights for 1960*, pp. 372-373.

matters concerning the independence of the Judiciary as well as on matters concerning criminal law, the organization of the Judiciary, the procedure and carrying out of sentences" (art. 6).

Part II

ARREST AND DETENTION OF PERSONS SUSPECTED OR ACCUSED OF A CRIMINAL OFFENCE

INTRODUCTION

3. The arrest and detention of persons suspected or accused of a criminal offence still appear to be governed by the provisions of the French Code of Criminal Instruction of 1808, amended, as made applicable to Upper Volta. To date, no text seems to have repealed or replaced the Code of Criminal Instruction of 1808, as amended.[4] The same applies to the Penal Code of 1810 as amended.

4. It may be helpful first of all to give some information on criminal procedure and terminology.

5. Criminal offences are divided into three categories: "petty offences" (*contraventions de police*), "correctional offences" (*délits correctionnels*) and "crimes" (*crimes*) in ascending order of gravity of the penalties applicable. These are tried respectively by the "correctional court" (*tribunal correctionnel*) and the "Assize court" (*Cour d'assises*).

6. The "officers of the criminal police" receive complaints and accusations. They collect evidence and report to the *ministère public*.

7. The *ministère public* is a body of law officers who rank according to a hierarchical system and are subordinate to the Minister of Justice. Its members (*procureur général, procureurs de la République*) and their deputies are responsible for taking proceedings in cases of crimes and offences. The *ministère public* decides whether or not to institute proceedings. If it decides to institute proceedings and if the act is designated a "crime", the *ministère public* should refer the matter to the examining judge in an introductory charge. If the act is an offence, a preliminary examination does not appear compulsory and the *procureur de la République* may summon the accused person directly before the correctional court (art. 182).

8. The "examining judge" is a member of the Bench who enjoys the guarantees of independence prescribed for that office. Cases are brought before him either by a charge made by the *ministère public* or on a complaint of the injured party as the civil claimant (art. 182). At the conclusion of his investigation, the examining judge decides either to dismiss the case "if the act does not constitute a crime, a correctional offence, or a petty offence or if there are no charges against the accused" (decision that no action should follow, art. 128) or the accused person should be brought before the competent court (decisions to remand to the correctional court, art. 129, 130 and 133).

9. If it is considered that the act is likely to entail a penalty under the criminal law, the case is brought before the *Chambre des mises en accusation* (art. 133). This body consists of three judges who are members of the Appeals Court and nominated by the president of that Court. If the *Chambre* finds sufficient grounds, it commits the accused person to the assize court (art. 231). The *Chambre* also rules on appeals by the *procureur de la République*, the civil claimant and the accused against various decisions of the examining judge (art. 135).

10. In the territories which formerly constituted French West Africa, a decree dated 2 September 1933 provided that cantonal judges could, in certain circumstances, exercise the functions of *procureur de la République* and of examining judge ("cantonal judges with extended powers"). The same decree of 2 September 1933 provided that, outside the *cercle* of the Courts of First Instance and of the cantonal judges with extended powers, the *commandants du cercle* could, for the purposes of the preliminary examination, concern themselves *ex officio* with any crime or offence committed in their district provided that they immediately informed the *procureur de la République* and the examining judge. The *commandants du cercle* were obliged to hand over the case to the examining judge upon the request of the *procureur de la République* or the cantonal judge with extended powers. It is not known whether the decree of 2 September 1933 has been repealed or amended. In its observations, the Government declares: "The decree of 2 September 1933 is still applicable. However, subsequent to a decree of 22 August 1958, cantonal judges were replaced by section judges and cantonal judges with extended powers by sections of the court."

A. *Grounds on which a person may be arrested or detained in consequence of a criminal offence and applicable procedures*

1. ORDINARY PROCEDURE

(a) *Deprivation of liberty ordered before appearance before the judicial authority*

11. The law does not define the nature of the grounds which may justify the arrest of a suspect. These matters are left to the discretion of the competent authority, who is as a rule the examining judge.

12. According to articles 91 and 92:

Art. 91. "In criminal and correctional cases, the examining judge may merely issue a summons to the defendant to appear before him, subject to conversion of this summons upon conclusion of the interrogation into any other summons as appropriate.

"If the defendant fails to appear, the examining judge shall issue a warrant to compel his attendance."

Art. 92. "He may also issue warrants to compel the attendance of witnesses who refuse to attend

[4] In the body of this monograph, the expressions "article... of the Code" or "article..." should be taken as referring to the relevant article of the Code of Criminal Instruction of 1808, as amended.

after receiving a summons in accordance with article 80 and without prejudice to the fine mentioned in that article."

13. The summons to appear is merely a written invitation to visit the examining judge's chambers at a specified time on a specified day; it does not involve measures of compulsion. A warrant to compel attendance, on the other hand, is an order directing the police to bring the suspect by force if necessary before the examining judge (art. 99). The use of a warrant to compel attendance seems compulsory only in cases when the accused person, having received a summons to appear, has failed to do so.

14. If the accused is a fugitive, the examining judge may issue an "order for committal to prison or a warrant of arrest". The "order for committal to prison" or the "warrant of arrest" are orders given to the police force to ascertain the whereabout of the accused, to arrest him and to hold him in a house of detention. As a general rule, its issue marks the beginning of the accused person's "detention pending trial" after his first appearance. Nevertheless, under article 94, the examining judge may make such an order before the first appearance if the accused is a fugitive and if the offence is punishable by imprisonment or a heavier penalty. Before issuing this order, the examining judge should consult the *procureur de la République.*

15. All these orders must be signed by the judge who delivers them and be stamped with his seal: the accused person must be named or designated as clearly as possible. Such orders must be served upon and shown to the accused to whom a copy must be delivered (art. 97).

16. Article 93, sub-paragraphs 1 and 2, provides that:

"In the case of a summons to appear, the examining judge shall conduct his interrogation forthwith; in the case of a warrant to compel attendance, he shall conduct his interrogation within 24 hours from the time that the accused entered the house of detention or place of custody. At the expiration of that period, the accused shall automatically and immediately be brought by the chief warden before the *procureur de la République* who shall request the examining judge to conduct the interrogation forthwith. In the case of refusal by the examining judge, or duly established absence or hindrance, the accused person shall be interrogated forthwith by the president of the court or by the judge designated by him. Within the jurisdiction of cantonal judges with extended powers, the chief warden shall bring the accused person before the cantonal judge with extended powers.

"Any accused person arrested by virtue of a warrant to compel attendance who, in violation of the previous paragraph, has been held in a house of detention or a place of custody for more than 24 hours without being interrogated by the examining judge or brought, as mentioned above, before the *procureur de la République*, shall be deemed to be arbitrarily detained."

17. Articles 3 to 5 of the decree of 5 July 1930 lay down the procedure for cases in which the accused person is apprehended at a place outside the jurisdiction of the court in which the warrant to compel attendance was issued. The accused person must be brought before the *procureur de la République* or the cantonal judge with extended powers of the court within whose jurisdiction he has been apprehended (art. 303 of the decree). This judge shall interrogate the accused person concerning his identity, receive and record his statement, after having warned him that he is free not to make a statement, and "ask him whether he is willing 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 who is dealing with the case. If the accused person declares that he is unwilling to be transferred, the judge who signed the warrant is notified forthwith" (art. 4 of the decree). The requisite documents, together with the record of appearance, are forwarded to the examining judge. Article 5 of the decree provides that "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."

18. These articles show that in such circumstances the first appearance before the examining judge may be delayed to a certain extent; nevertheless, the law provides that the requisite documents must be forwarded and the appropriate decisions taken with the utmost speed.

19. The issue of the various orders and warrants is, in principle, within the competence of the examining judge or the cantonal judge with extended powers. As indicated, however, the decree of 2 Septembre 1933 authorized the *commandants du cercle,* under certain conditions, to issue summonses to appear and warrants to compel attendance.

(b) *Deprivation of liberty ordered after appearance before the judicial authority (detention pending trial)*

(i) *Conditions governing detention pending trial and applicable procedure*

20. Before the accused person may be detained pending trial under an "order for committal to prison" or a "warrant of arrest" he must first appear before the examining judge (art. 94, para. 1). At that first appearance, the examining judge shall limit himself to establishing the identity of the accused person, notifying him of the offences of which he is accused, taking his statement and advising him that he has the right to counsel (decree of 5 July 1930, art. 2): he may not interrogate him concerning the facts.

21. In addition, the offence must "be punishable by imprisonment or a heavier penalty" (Code, art. 94, para. 1).

22. Before issuing a warrant of arrest, the examining judge must consult the *procureur de la République* (art. 94, para. 2).

23. If these conditions are fulfilled, it appears that the examining judge has discretionary power to decide whether or not the circumstances justify detention pending trial.

24. Cantonal judges with extended powers may also issue warrants of arrest; and in doing so, "they are not bound to abide by the above provisions concerning the issue ... of warrants of arrest" (art. 94, amended by decree of 2 September 1933).

25. Article 56 of the Code (amended by decree of 2 September 1933) provides that the *commandants du cercle,* who may, in certain cases, execute the functions of examining judges, may not issue orders for committal to prison or warrants of arrest; they must request their issue from the examining judge of the relevant area of jurisdiction. This article notes, however, that, "they may detain the accused person until the issue of the order of committal to prison which they must request immediately."

26. Detention pending trial may be ordered also by the correctional court in the case of an accused person who is free if it appears, at the hearing, that the act is punishable by a criminal penalty; the court may then immediately issue an order for committal to prison or a warrant of arrest, and must bring the accused person before the competent examining judge (art. 193, para. 1).

27. Finally, if the act charged is designated a crime, the accused person who is brought before the assize court must be taken into custody under a warrant of arrest delivered by the *Chambre des mises en accusation* (art. 126); it appears that this is the only case in which detention pending trial is compulsory.

28. These provisions make it clear that, under ordinary procedure, the competent authority to order detention pending trial is in every case the judicial authority.

(ii) *Duration of detention pending trial; provisional release*

29. Provisional release is accorded *ipso jure,* "in correctional matters ... five days after the interrogation at the first appearance, in favour of the accused person who has a domicile where the maximum penalty provided by law will not exceed two years imprisonment. The preceding provision shall not apply to accused persons who have already been convicted of a crime, nor to those who have already been sentenced to a term of imprisonment exceeding one year" (art. 113, paras. 2 and 3). The accused person must undertake "to appear immediately at any stage of the proceedings and for the execution of judgement when his presence is required" (art. 113, para. 1).

30. If the foregoing conditions are not fulfilled, detention pending trial may last until the final decision of the court. It may be terminated, however, before that date under the provisions which are summarized as follows:

31. During the preliminary examination, the examining judge may, "whatever the nature of the charge, revoke the order for committal to prison or the warrant of arrest, provided that the accused person undertakes to appear immediately at any stage of the proceedings and for the execution of judgement when his presence is required. Nevertheless the examining judge may only take such a decision "with the concurrence of the *procureur de la République*" (art. 94, para. 3). Cantonal judges with extended powers are also entitled to exercise the same power, but, under article 94, paragraph 5, they are not obliged to obtain the concurrence of the *procureur.* A revocation order is not subject to appeal (art. 94, para. 4).

32. In all cases and at any stage of the proceedings, provisional release may be granted on the application of "any untried prisoner or any prisoner committed for trial before the correctional court or assize court" (art. 113 and 116).

33. The detained person may make this application to the authority or to the court of examination or trial which is dealing with the case. The application is decided by the court sitting in chambers (i.e., at a closed meeting), after consultation with the *ministère public* and taking into account the observations written to the civil claimant (art. 117 and 118). It will be seen later that the accused person may appeal against a refusal to grant provisional release.

34. Provisional release upon application by the accused person—but not provisional release accorded *de jure,* nor the revocation of an order for committal to prison or a warrant of arrest—may be made conditional upon the deposit of a security which, under article 114, guarantees:

"(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 incurred by the prosecution;

"(*b*) costs advanced by the civil claimant;

"(*c*) fines."

35. Article 120 provides that this security must be furnished in cash, either by a third party or by the accused person; the decision granting provisional release should determine the amount allocated to each of the two parts of the security (art. 114 and 120).

36. Pursuant to article 122, if the accused person is duly summoned and does not appear, without a legitimate reason, "the first part of the security becomes the property of the State". However, this article continues, "in the event of a transfer of proceedings, discharge or acquittal, the examining judge or the trial court may order the repayment of that part of the security".

37. Article 123 provides that "the second part of the security is always returned in case of acquittal, discharge or a transfer of proceedings".

38. Upon the conclusion of the preliminary examination the accused person must be released: if the examining judge considers that the act imputed, although a correctional offence, does not entail the penalty of imprisonment (art. 131); if he considers that the act in question is a petty offence (art. 129); or if he considers "that the act is not a crime nor a correctional offence nor a petty offence, or that there are no charges against the accused person" (dismissal of the charge, art. 128).

39. In all the above cases, except in those covered by articles 128 and 129, the accused person after release must undertake to appear at any

stage of the proceedings and for the execution of the judgement.

40. The *procureur de la République* may oppose any decision by the examining judge. An accused person who has been granted provisional release, under articles 113, 128, 129 and 131, shall remain in detention until a ruling has been given on the opposition of the *ministère public* to the orders for release, or until the expiration of the time-limit for opposition which is twenty-four hours (art. 135).

(iii) *Re-imprisonment of an accused person*

41. Article 125 provides that if "after having been granted provisional release, the accused person who has been duly summoned to appear or has been summoned on pain of a penalty fails to appear, the examining judge, or the court, according to the circumstances, may issue a warrant for his apprehension or an order for his committal to prison or an order to take him into custody".

42. Moreover, even if the accused person does appear, article 115 provides that "provisional release shall not prejudice the right of the examining judge during his preliminary examination to issue a fresh warrant to compel attendance, an order for committal to prison, or a warrant for arrest if new and serious circumstances render that measure necessary. However, if provisional release was granted by the *Chambre des mises en accusation* thereby reversing the decision of the examining judge,[5] the examining judge may not issue a new order until the court, at the request of the *ministère public,* has withdrawn the benefit of the decision from the accused person".

43. This article does not appear to cover a possible case in which the accused is released, upon the conclusion of the preliminary examination, by virtue of a decision discharging the case. In such a case, the case is closed. The reopening of the preliminary examination may only be ordered after a new introductory charge is made by the *ministère public*; the examining judge may not himself take charge of the proceedings nor may he immediately issue a warrant to compel attendance or a warrant for arrest.

44. If the accused was released upon the conclusion of the preliminary examination because the act charged did not appear to entail the penalty of imprisonment (case set forth in art. 131), he may nevertheless be re-imprisoned by the correctional court, if it appears at the hearing that "the offence is one against the ordinary law and the sentence is not less than one year of imprisonment" (art. 193). The same article provides that the correctional court may, while transferring the case to the examining judge, issue a warrant for arrest or an order for committal to prison if the act seems to entail a criminal penalty.

45. In a case where the person accused of a crime has been released provisionally during the preliminary examination, re-imprisonment of the accused person appears compulsory as soon as the *Chambre des mises en accusation* has decided to send him before the assize court.

2. Special Procedures

(a) *Arrest and detention in the case of* flagrante delicto

46. Article 41 defines *flagrante delicto* as "an offence which is in the process of being committed or has just been committed.... An offence is also deemed to be *flagrante delicto* if the suspect is being pursued by hue and cry or is found in possession of articles, weapons, instruments or papers which give reason to believe that he is the principal or an accomplice, provided that it is soon after the offence". Moreover, according to article 46, the regulations concerning *flagrante delicto* also apply "each time that any crime or offence, although not a case of *flagrante delicto,* which has been committed in a house the head of which requests the *procureur de la République* to establish the fact."

47. Article 106 provides:

"Any member of the police force, and indeed any person, is bound to apprehend an offender taken *flagrante delicto* or pursued by hue and cry or in cases deemed to be *flagrante delicto,* and to bring him before the *procureur de la République* without requiring a warrant to compel attendance, if the crime or correctional offence entails the penalty of death or rigorous imprisonment" (i.e., a criminal penalty).

48. The *procureur de la République,* who proceeds *in situ* (or, under his authority, an assistant officer of the criminal police under the *ministère public*) "shall apprehend the persons present against whom there is serious evidence" (art. 40, para. 1). If the suspected person is not present, the *procureur* shall issue a warrant to compel his attendance (art. 40, para. 2).

Paragraph 3 of the article, however, specifies that "a mere accusation is not a sufficient ground for the issue of this warrant against a person having a domicile". These powers can only be exercised if the *flagrante delicto* seems to entail a criminal penalty.

49. The *procureur de la République* must interrogate the suspect brought before him "immediately" (art. 40, para. 4). He must transmit "forthwith" all the relevant records and documents to the examining judge, whose duty it is to rule on detention pending trial (art. 45). The examining judge may "re-draft the documents or those documents which do not appear to him to be complete" (art. 60).

50. In the case of an offence punishable by a correctional penalty in the commission of which the accused is discovered in *flagrante delicto,* the law of 20 May 1863, as amended, provides that the *procureur de la République* may, after having interrogated the accused person, bring him immediately before the correctional court. In this case, the *procureur* may issue an order for committal to prison. The law stresses the speed of the procedure. If the court considers that the case is

[5] This provision covers a case in which, on appeal by the accused person, the *Chambre des mises en accusation* has granted provisional release which had been refused by the examining judge (see section C "Remedies available..." p. 1176).

insufficiently prepared, it refers it to one of the next hearings, and may order the provisional release of the accused person. The latter must be given sufficient time and the facilities to prepare his defence.

(b) *Powers of arrest of certain administrative authorities*

51. Article 10 provides:

"The governor may personally take all steps necessary to establish the commission of a crime, correctional offence or petty offence or instruct the officers of the criminal police, each according to his competence, to do so and to deliver the guilty persons to the courts competent in such cases in accordance with article 8."

52. This article appears to authorize certain administrative authorities to exercise powers of arrest and examining functions. The Government declares that: "These powers have been transferred to the President of the Council of Ministers on the accession of Upper Volta to independence."

B. Rights of the person detained or arrested in consequence of a criminal offence

1. RIGHT OF AN ARRESTED OR DETAINED PERSON TO BE INFORMED OF HIS RIGHTS AND OBLIGATIONS

53. No general rule has been found requiring the authorities to inform the person arrested or detained of all his rights and obligations. However, the decree of 5 July 1930, article 2, provides that at the first appearance, the examining judge must inform the accused person of his right to choose a counsel. Article 4 of that decree provides that if the accused person is arrested outside the area of the jurisdiction in which the warrant was issued, he shall be brought before the *procureur de la République* who must hear his statements, "after having warned him that he is free not to make a statement". This warning is not required by the law if the accused person is arrested within the area of jurisdiction of the examining judge who delivered the warrant.

2. RIGHT OF THE ARRESTED OR DETAINED PERSON TO BE INFORMED OF THE OFFENCE OF WHICH HE IS ACCUSED

54. The law does not require that a summons to appear or a warrant to compel attendance should mention the offence in question.

55. In accordance with the decree of 5 July 1930, article 2, the examining judge must, during the first appearance of the accused person, inform him of the acts with which he is charged.

56. Orders for committal to custody and warrants for arrest ordering the detention of the accused person pending trial must contain "a description of the act for which they are issued, and a quotation from the law specifying that this act is a crime or a correctional offence" (Code, art. 96).

57. Article 134 of the Code specifies that decisions by the examining judge (a decision that no action should follow or transfer of the case to the competent court) must contain "a summary statement (of the facts) together with the qualification that there is or is not sufficient evidence". In accordance with articles 10 and 12 of the decree of 5 July 1930, any decision made by the examining judge must be transmitted to the counsel of the accused person.

58. Where the accused person is accused of an act designated a crime, the order to transfer the case to the assize court and the formal charge drawn up by the *procureur général* must state the nature of the offence and the facts (Code, art. 232 and 241). These documents must be served on the accused person and must receive copies thereof. (Code, art. 242.)

3. RIGHT TO COMMUNICATION

59. In accordance with article 7 of the decree of 5 July 1930, the examining judge, after the first appearance and detention pending trial, may issue an order forbidding all communication with the accused person for a period not exceeding ten days. The judge may renew this order, but only for a further period not exceeding ten days. It is specified that this measure shall in no circumstances be applied to the defendant's counsel. The law does not require that the order forbidding communication should give the grounds therefor.

4. RIGHT TO COUNSEL

60. It is not known whether the arrested person may select counsel and communicate with him before his appearance before the examining judge. The Government declares that: "No provision authorizes a person arrested by the police or *gendarmerie* to select counsel and communicate with him; the inquiry is still only a preliminary investigation."

61. The decree of 5 July 1930, article 2, requires the examining judge to inform the accused person at his first appearance before the court "of his right to select counsel from among the defence barristers residing at the place where the examining court meets".

62. An accused person under detention may, "immediately after the first appearance, communicate freely with his counsel. If his counsel does not reside at the place where the examining court meets, he may write to him freely and receive his replies" (decree of 5 July 1930, art. 6). It has already been indicated that in no circumstances shall the prohibition on communications apply to counsel.

63. Counsel have the right to be present at the interrogations and confrontations of the accused person. At these interrogations and confrontations, counsel may only speak after having been authorized to do so by the judge. If authorization is refused, the fact is mentioned in the record. Counsel may call on the services of an interpreter of their choice who has been placed under oath (decree, art. 8). Article 9 of the decree specifies that in order to ensure their presence at interrogations and confrontations "counsel, if they reside at the place where the examining court meets, must be notified by the examining judge of the time and date of interrogations and confrontations...

Such notification shall be transmitted by letter at least twenty-four hours in advance."

64. Article 9 of the decree continues, however, "the examining judge may proceed forthwith to undertake interrogations and confrontations if the situation is urgent either because a witness or co-defendant is in danger of death, or because certain evidence is on the point of disappearing or if the judge travels to the scene in cases of *flagrante delicto*".

65. The counsel "may acquaint themselves with the procedure on the day preceding each interrogation or confrontation" (decree, art. 9). Moreover, counsel must be advised of any decision made by the examining judge not later than three days after they have been notified that the file concerning the case is at their disposal in the office of the clerk of the court" (decree, art. 10).

66. Article 11 of the decree specifies that counsel for the accused, both during the preliminary investigation and after having examined the documents supplied by the clerk of the court, may "indicate in writing that he wishes to hear new witnesses, to hold confrontations, to hear expert opinions and to conduct any investigations he may consider useful for the defence of the accused... The judge must state the grounds for his decision if he refuses to carry out the supplementary investigations requested. The accused person (and his counsel) may appeal against such a decision. The appeal must be lodged with the clerk of the examining court within a time-limit of twenty-four hours from the time when notice of the decision is given to counsel by the clerk of the court. It may be lodged by counsel, if necessary, with the clerk of the court of his place of residence."

5. Rights relating to interrogations

67. Except with regard to the presence of counsel (see above), neither the Code of Criminal Instruction nor the decree of 5 July 1930 specify the accused person's guarantees at interrogations. On the other hand, the Penal Code (art. 344) prescribes the penalty of forced labour for life "if the person arrested, detained or illegally confined has been threatened with death", and the death penalty "if the persons arrested, detained or illegally imprisoned have been subjected to bodily torture".

68. There is no information concerning the protection of the arrested or detained person against other abusive methods of interrogation: promises, unduly prolonged interrogations, leading questions, methods of exploring the subconscious of the interrogated person (hypnotism, "lie detector", narco-analysis, etc)... The Government declares:

"The general principles concerning the rights of the human person as defined by the French Court of Cassation before the independence of Upper Volta will certainly be maintained by the courts of a State which is still imbued with the same principles. These principles prohibit the practices mentioned above."

69. The Government declares:

"Confessions obtained by the procedures mentioned in paragraph 68 would certainly be declared inadmissible by the courts."

6. Treatment in places of custody

70. The Code of Criminal Instruction provides that "places of detention and places of custody" for accused persons, "should be quite distinct from prisons in which sentences of imprisonment are served" (art. 604).

71. The governors should ensure that "these various prisons are not only secure, but clean and not liable in any way to affect the health of the prisoners..." (Code, art. 605). Various administrative authorities must ensure "that the food for prisoners is healthy and of sufficient quantity" (Code, art. 613).

72. Article 614 of the Code provides that a detained person who is guilty of "threats, insults or violence" towards the warders or the other prisoners will be "more closely guarded, placed in solitary confinement, or even put in irons if he exhibits rage or is guilty of serious violence".

73. The Code provides that the *procureur général* shall supervise prisons (art. 605), and that the governor "shall visit, at least once a year, all the places of detention and prisons, and all the prisoners" (art. 611).

C. Remedies available to an arrested or detained person, and penalties laid down in case of violation of his rights

1. Procedures to terminate wrongful detention

74. Under article 135, paragraph 3, the accused person may lodge an appeal against an order refusing him provisional release.

75. The time-limit for the appeal is twenty-four hours from the time that the order is communicated to the detained person (art. 135, para. 4), and the order must be communicated to him within twenty-four hours after its issue (art. 135, para. 5).

76. The appeal is brought before the *Chambre des mises en accusation*, which must give a ruling "forthwith" (art. 135, para. 6).

2. *Annulment of the proceedings in case of violation of the rights of the arrested or detained person*

77. Articles 407 *et seq.* of the Code provide that decisions made in criminal and correctional cases "as well as during the preliminary examination and the proceedings which have preceded them", may be annulled if there has been any "violation or omission of any of the procedures prescribed in this Code on pain of nullity". Annulment is also provided in criminal cases, "both in cases of incompetence and when a ruling has been refused or omitted either on one or several applications by the accused person or on one or several requests by the *ministère public* concerning the exercise of a faculty or a right

granted by law, although the penalty of nullity may not be textually attached to the absence of the formality for whose execution a request or an application has been made".

3. Criminal sanctions

78. Article 341, paragraphs 1 and 2, of the Penal Code provides: "If a person acting without the instructions of the constituted authorities and in cases other than those in which the law requires the arrest of a person charged with an offence, arrests, detains or illegally holds any persons whatever he shall be liable to hard labour for a specified term. If any person lends premises for the purpose of such detention or illegal holding of another, he shall be liable to the same penalty." Paragraph 3 (to which was added a decree of 19 November 1947) provides the same penalty for any persons who "have entered into an agreement having as its object the deprivation of liberty of a third person, either freely or for payment".

79. The penalty is hard labour for life if the detention has lasted for more than a month (art. 342), if the arrest was carried out under a false uniform, under a counterfeit order of the public authority or if the person detained was threatened with death (art. 344, paras. 1 to 3). The death penalty is incurred if the detained person has been subjected to bodily torture (art. 344, para. 4).

80. The above articles are applicable to private persons and to officials not acting in the exercise of their duties.

81. Articles 10 to 18 of Law No. 15 AL of 31 August 1959 are applicable to officials acting in the exercise of their duties. This law strengthens the penalties provided by articles 114 to 122 of the Penal Code, now repealed.

82. Article 10, paragraph 1, of this law provides that "if a public official ... has ordered or committed some arbitrary act or an act prejudicial to the freedom of the individual..., he shall be punished by rigorous imprisonment."

83. Paragraph 2 specifies that: "If the official can prove that he acted on the orders of his superiors in a matter within their jurisdiction in regard to which, as a subordinate, he was required to obey, he shall be exempted from punishment which shall, in such case, be applied only to the superiors who gave the order."

84. Article 11 of this law stipulates that if a Minister ordered or committed one of these arbitrary acts, and if he neglected or refused to make reparations for those acts, he shall be sentenced to hard labour for a specified term.

85. If the act has been committed with the use of a forged signature of a Minister or public official, those responsible for the forgery and any persons who have knowingly taken advantage of it shall be punished by a term of hard labour which in such cases shall always be the maximum term (art. 14 of the law).

86. If an official in charge of the administrative or criminal police refuses or neglects "to comply with a lawful request for an investigation of unlawful and arbitrary detention, either in the establishments intended for the detention of prisoners, or anywhere else, and cannot prove that he has reported such detention to the superior authority, he shall be punished by hard labour for a specified term..." (art. 15 of the law).

87. According to article 16 of the law, "if a prison guard or warder of a house of custody, jail or prison, accepts a prisoner without a warrant or judgement, or without a provisional order from the Government, or continues to hold a prisoner or refuses to deliver him to the police officer or a person acting on his behalf, without being able to prove that the *procureur de la République* or the judge has prohibited such delivery, or refuses to produce his register to the police officer..." he shall be liable to imprisonment for a term of not less than six months nor more than two years and a fine.

88. If any public official or judge, except in case of apprehension in *flagrante delicto*, not having legal authorization for the purpose, orders the arrest of a Minister or member of the National Assembly (art. 17 of the law), he shall be liable to hard labour for a specified term. Those who have "held a person or caused him to be held in a place other than a place prescribed by the Government or by the public administration, or who have brought a citizen before an assize court when he has not first been legally committed for trial, shall be liable to rigorous imprisonment (art. 18 of the law).

89. The Code of Criminal Instruction provides, in article 112, that "failure to comply with the formalities prescribed for a summons to appear, warrant committing a person to prison, order to appear on pain of arrest, and a warrant for arrest", and any violation of the measures for the protection of the freedom of the individual prescribed in articles 113, 114, 116, 119, 37, 38 and 88, "shall be punishable by a fine of 5,000 francs against the clerk of the court".

90. Articles 479 to 503 of the Code of Criminal Instruction institute special and solemn procedures applicable in the case of crimes or offences committed by judges and members of the *ministère public* in the exercise of their duties or at other times.

4. Disciplinary sanctions

91. Under article 60 of the Constitution, the Superior Council of the Judiciary (whose membership was set forth in the first part) is the disciplinary authority "of members of the judiciary" (*magistrats*), a term which seems to include both judges and members of the *ministère public*. Article 7 of Law No. 7-5-9-AL of 19 May 1959 specifies that in disciplinary matters, the Minister of Justice does not attend the proceedings of the Council and that that body is presided over by the judge holding the highest judicial position in Upper Volta. The Government declares:

"The new Constitution does not specify the disciplinary powers of the Superior Council of the Judiciary. Law No. 7/59/AL of 19 May 1959 grants authority to the Superior Council of the Judiciary in disciplinary matters only concerning judges which excludes members of the *parquet* (members of the *ministère public*)."

92. The Government declares:

"Sanctions and disciplinary procedure applicable to officers of the criminal police are determined by articles 279 to 282 of the Code of Criminal Instruction. Article 279 places them under the supervision of the *procureur général*: in cases of negligence, the *procureur général* will send them a warning letter which will be entered in a register (art. 280). In the case of a further offence for which the conditions are laid down in article 282, the *procureur général* will charge the officers of the criminal police at the appeal court which will decide, sitting in chambers, and may make an order against them."

5. Compensation for wrongful arrest or detention

93. In accordance with the ordinary law under article 1382 of the Civil Code, any fault or negligence which causes injury to another person may give grounds for compensation. If the act concerned constitutes a criminal offence, the action for damages may be brought either before the criminal court at the same time as the prosecution, or separately before the civil court.

94. Article 70 of the Code of Criminal Instruction specifies that an accused person who has benefited from a decision that there are no grounds for prosecution may sue for damages from the person who made the accusation.

95. If the person accused is a judge or member of the *ministère public* acting in the exercise of his duties, the action for compensation is governed by the special and restrictive rules of the *prise à partie* (art. 505-516 of the Code of Civil Procedure). It appears that the *prise à partie* is authorized for any failure to comply with the formalities prescribed for a summons to appear, warrant committing a person to prison, orders to appear on pain of arrest and warrant for arrest and for any violation of the measures for the protection of the freedom of the individual prescribed in articles 113, 114, 116, 119, 37, 38, 87 and 88 of the Code of Criminal Instruction and for the offences mentioned in articles 10 and 15 of Law No. 15-AL of 31 August 1959 (see the preceding section).

96. Article 13 of the Law of 31 August 1959 states that damages in the cases of the offences laid down in articles 10 and 15 of that law cannot be less than 1,000 francs for each day of illegal detention and for each individual.

97. The Government declares:

"The civil liability of the State for wrongful arrest or detention committed or ordered by public officials may be challenged before the judicial courts."

Part III

DETENTION OF GROUNDS UNCONNECTED WITH CRIMINAL LAW

98. Law No. 13-AL of 31 August 1959 authorizes the Government to exercise, permanently it appears, certain superior police powers concerning "any person whose actions appear dangerous to public policy (*ordre public*) or security or might compromise the unity of the Republic of Upper Volta or the good repute of its institutions or the cohesion of the Community" (art. 2, para. 1, of the law). Such persons may "be interned in an establishment prescribed by the Government in accordance with measures taken by a decree which has been duly submitted to the Superior Council of the Judiciary for its opinion (art. 2, para. 3, of the law). These measures are only applicable to members of the Legislative Assembly has authorized the arrest (art. 34 of the Constitution mentioned in art. 1 of the law).

99. Internment is ordered by a decision of the President of the Council, countersigned by the Minister of the Interior (art. 3 of the law).

100. It is not known if the order should state the grounds for internment and if the grounds should be communicated to the person concerned. The Government declares:

"Without prejudice to the sovereign discretion of the administrative authorities, it appears that it is possible for the administrative courts to investigate the legality of administrative internment orders. Therefore these orders should state the grounds even if only in a summary fashion."

101. The law does not fix any maximum term for internment. The measure may be "revoked at any time" by an order of the president of the Council countersigned by the Minister of the Interior (art. 3 of the law).

102. A Committee of Investigation, acting *ex officio*, must, within eight days, "give its opinion on the retention, transformation or withdrawal of the measure in question" (art. 5, para. 1, of the law). The law also provides that "the Committee, as well as the Council of Ministers, may at any moment be called on to conduct a further inquiry into the case" (art. 5, para. 3, of the Law). This Committee consists of the Minister of Justice, as chairman, a representative of the Legislative Assembly, a representative of the Minister of the Interior, a member who is not a judge designated by the Superior Council of the Judiciary, and a member having special qualifications designated by the Constitutional section of the Legal and Administrative Appeals Council (*Conseil juridique et du contentieux*) (art. 4 of the law).

103. There is no information concerning the procedure followed by the Committee of Investigation nor concerning the rights of the person interned before that body and in particular his right to be informed of the evidence against him, to enter a protest, to make observations, to have the assistance of counsel, to appear in person before the Committee, and to be confronted with the accusers and witnesses.

104. The Government declares with regard to other cases of arrest and detention on grounds not connected with criminal law:

"A. *Imprisonment for debt* (contrainte par corps)

"In criminal matters imprisonment for debt only exists to guarantee the payment of fines and costs of the proceedings; in addition at the request of the civil claimants, after they have made a deposit,

imprisonment for debt may be ordered to guarantee the payment of damages. The duration of imprisonment depends on the amount of the fines and costs or damages. The basic texts in this matter are the law of 22 July 1867, the law of 19 December 1871 and the law No. 54/293 of 17 March 1954.

"B. *Internment of persons of unsound mind*

"Persons of unsound mind are interned under an order of the Minister of the Interior and of Security in accordance with order No. 2125/S/SM of 28 June 1958.

"C *Detention of drug addicts*

"The law of 24 December 1953 added article 117 *ter* to the law of 16 November 1951 which provides that a person recognized as a drug addict and duly charged by the examining judge might be compelled by an order of that judge to undergo a cure in a specialized establishment and under conditions determined by a public administration regulation which, subject to correction, has never been pronounced.

"D. *Detention of alcoholics*

"Subject to correction, this is not authorized by any text.

"E. *Detention of persons suffering from communicable diseases*

"The health authorities, if they deem it necessary, may prescribe isolation measures in places set apart for that purpose under the decree of 14 April 1904 and an application order which appeared in the *Journal officiel* of French West Africa of 1906, page 293.

"F. *Detention of aliens about to be deported*

"Subject to correction, no text exists on the matter."

Part IV

ARREST AND DETENTION IN EMERGENCY OR EXCEPTIONAL SITUATIONS

105. Law No. 14-AL of 31 August 1959 provides that "a state of emergency may be declared either in the case of imminent danger as a result of grave threats to law and order or in the case of events which by their nature and gravity constitute a public disaster" (art. 1 of the law).

106. In accordance with article 37 of the Constitution, reproduced in article 2 of the law, "a state of emergency is decreed by the Council of Ministers—the continuation of a state of emergency beyond twelve days may be authorized only by the Legislative Assembly which, in that case, meets of its own accord". Article 6 provides that a state of emergency may refer to all or to part of the national territory.

107. Under article 3 of the law, during the state of emergency "the President of the Council may, by an Order in Council, take all measures likely to restore order, in particular:

"(*a*) to restrict or suspend the exercise of certain rights such as: ... liberty of movement; the inviolability of the home; the requisitioning of persons ...;".

108. In addition, the President may, by an Order-in-Council and in agreement with the Community, hand over the investigation of certain specified crimes and offences to the military justice authorities, in particular offences against the security of the State, even if these offences are committed by civilians (art. 3 (*b*) (2) of the law). There is no precise information concerning the measures for arrest and detention which might be taken in a state of emergency and the guarantees and remedies available to persons affected by such measures.

109. Article 6, paragraph 2, of the law specifies that a state of emergency is revoked by an Order-in-Council "so soon as calm is sufficiently restored".

Part V

EXILE AND LOCAL BANISHMENT WITHIN THE NATIONAL TERRITORY

A. *Exile*

110. Article 8 of the Penal Code provides for the criminal penalty of banishment, deportation outside the national territory. This penalty may only be imposed by decision of a court.

B. *Local banishment within the national territory*

1. Local banishment as a penalty

111. A supplementary penalty of local banishment within the national territory is provided by the law of 27 May 1885. Criminal penalties of hard labour for a specified term, detention, and rigorous imprisonment carry with them local banishment for twenty years except for a dispensation or a reduction. This penalty may only be imposed by decision of a court.

2. Local banishment as a preventive measure

112. Law No. 13-AL of 31 August 1959 mentioned in Part III provides, apart from internment measures, that certain persons may be prohibited from residing in various areas, a list of which must be fixed by decree.

113. The law does not require that the grounds for an order of local banishment should be stated, nor that the grounds should be notified to the person concerned. No maximum duration is fixed.

114. Any offence against a local banishment order is punishable by imprisonment for a period not exceeding five years (art. 2 of the law). The provisions relating to the categories of persons concerned, the competent authorities, the procedure to be followed, and the intervention of the examining Committee of Investigation are identical for internment and for local banishment. Full details will be found in Part III.

VENEZUELA

NOTE[1]

1. In 1963, the Copyright Act was promulgated and the official text was published in *Gaceta Oficial*, No. 823 extraordinary, of 3 January 1963.[2]

2. Because of their relation to the adoption of measures to extend the rights of the accused person in judicial and criminal proceedings, mention should be made of the establishment of new Fiscal Courts of the *Ministerio Público* and public counsel for the defence of prisoners enacted by Decree No. 976 of 29 January 1963, published in *Gaceta Oficial* No. 27.062 of the same date.

A Second Permanent Council of War was established by Decree No. 1016, of 18 April 1963, published in *Gaceta Oficial* No. 27.123 of the same date.

3. With regard to primary, secondary, vocational, professional and higher education services it should be noted that, in conformity with constitutional and legal provisions, the State of Venezuela provides free education at all levels. In 1963, many schools were established for primary, secondary and vocational (handicraft, industrial, etc.) education and provisions were also adopted to improve and supplement the instruction in those establishments.

4. Particularly worthy of note is the fact that, in conformity with the provisions of the National Constitution of 1961 and the electoral law of 1958, elections were held last year to elect a new President of the Republic,[3] as well as to elect Senators and Deputies to the National Congress and to the Legislative Assemblies, and members of the Municipal Councils.[4]

5. By joint resolution of the Ministries of Internal Relations, External Relations, and Education [5] it was resolved to commemorate the anniversary of the coming into force of the Universal Declaration of Human Rights, as "Human Rights Day" on 10 December each year.

6. Article 94 of the existing National Constitution, promulgated in 1961, the text of which was provided on a previous occasion,[6] established the progressive development of a system of social security designed to protect all inhabitants of the republic against industrial accidents, sickness, disability, old age, death, unemployment and any other risks that can be covered by social security, and also against the changes derived from family life. Persons who lack the economic means and who are not in a position to obtain them, have the right to social assistance if they are covered by the social security system.

To that end, and for the purpose of putting into practice the aforementioned principles concerning social security, a bill on compulsory social insurance has been brought before the National Congress for its consideration and study. The purpose of this bill is to take advantage of the experience gained and the successful experiments made in some countries with a view to obtaining the simplest possible administration and attaining more fully the objectives of social security, i.e., universality. With regard to application, the bill will be applied progressively throughout the national territory and to the same categories of workers as are at present insured, but with a provision obliging the National Executive to enact a regulation within a specified period of time to make the pension scheme applicable to public employees, without excluding the possibility that medical insurance might subsequently be made applicable to them. There is also a provision to extend compulsory insurance to domestic workers by promulgation of a special regulation, but with no time-limit. Provisions are being made so that only those persons who cannot continue to work because of their advanced age will benefit from old age insurance, the retirement age being fixed at sixty-five for men and sixty for women. The bill also covers the possibility of an insured person who, by reason of illness or an accident while he is in insured employment, becomes disabled and thus has a right to a disability pension. The bill also proposes that the death of an insured person should give the right to a survivor's pension if the person has fulfilled the conditions required for granting a disability or old-age pension, and

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[1] Note provided by the Government of Venezuela.

[2] For extracts from the Act, see p. 364.

[3] Act of Proclamation of the candidate elected to the Presidency of the Republic at the general elections held on 1 December 1963, published in *Gaceta Oficial*, No. 27.322, of 16 December 1963.

[4] For the results of the elections, see *Gaceta Oficial*, No. 27.325 of 19 December 1963.

[5] For the text of the resolution see *Gaceta Oficial*, No. 27.312 of 4 December 1963.

[6] For extracts from the Constitution of 1961, see *Yearbook on Human Rights for 1961*, pp. 390-398.

grants a pension to qualified families which benefit from a disability or old age pension. The inclusion of public employees within the general system of social insurance was considered essential because that sector of employees constitutes a very large group, and also because it is hoped to achieve social solidarity and the redistribution of the national income to the widest possible extent. The purpose of this bill is to base the structure of social insurance on the principles of social security so as to divest it of a succession of ideas and standards which are fortuitous and the result of group interests or particular circumstances. With regard to social security, these conclusions are summarized in Recommendations 67, 68 and 69 of the Twenty-sixth Session of the International Labour Organisation, held at Philadelphia in 1944, which develop the principles contained in articles 2, 22, 23, 24, 25 and 26 of the Universal Declaration of Human Rights. Consequently the bill is continuing the establishment of a system of social insurance which is rather closer to social security than the system at present in force and which will fulfil the conditions approved by the International Labour Organisation Convention No. 102 on Minimum Standards.

COPYRIGHT ACT

Title I

RIGHTS PROTECTED UNDER THE ACT

Chapter I. General Provisions

SECTION ONE

Intellectual Works

Art. 1. The provisions of this Act protect the rights of authors in all intellectual works of a creative nature, whether literary, scientific or artistic, regardless of their class, form of expression, merit or purpose. In the event of expropriation of any of those rights on grounds of public usefulness or general interest, the special rules governing this matter shall apply.

Art. 2. The intellectual works referred to in the preceding article shall be deemed to include, in particular, the following: books, pamphlets, and other literary, artistic and scientific writings; addresses, lectures, sermons and other works of like nature; dramatic or dramatic-musical works, choreographic creations and works of pantomime, the stage movements of which have been recorded in writing or in some other form, musical compositions with or without words; cinematographic works and those produced by a process analagous to cinematography; works of drawing, painting, architecture, engraving and lithography; works of applied art which are not merely industrial designs and models; geographic illustrations and maps; plans, plastic works and sketches relating to geography, topography, architecture or the sciences.

Art. 3. Translations, adaptations, transformations or arrangements of other works, as well as anthologies or compilations of various works which represent personal creations in view of the selection or arrangement of the subject matter shall be deemed to be intellectual works independent of the original creation.

Art. 4. The provisions of this Act shall not apply to the texts of laws, decrees, official regulations, public treaties, judicial decisions and other official acts.

An exception is specified in article 115 of this Act.

SECTION TWO

Authors

Art. 5. The author of an intellectual work, by the mere fact of having created it, shall have a right in the work which shall include the moral and economic rights specified in this Act.

Copyright in respect of translations and the other works enumerated in article 3 may exist even though the original works are not protected by this Act or in respect of the texts referred to in article 4. However, such right shall not imply any exclusive right in the aforementioned original works or texts.

The rights granted under this article are independent of the ownership of the material object incorporating the work.

Art. 6. The work shall be deemed to have been created, quite apart from its divulgation or publication, provided it is an expression of the author's thinking, and even though it may be unfinished. The work shall be deemed to have been divulged when it has been made accessible to the general public. A written work shall be deemed published when it has been reproduced in tangible form and made available to the general public in a sufficient number of copies to be read or otherwise visually perceived.

. . .

SECTION THREE

Cinematographic Works

Art. 12. The person or persons responsible for the intellectual creation of a cinematographic work shall be regarded as the author of such work.

Subject to evidence to the contrary, the following persons shall be deemed to be the co-authors of a cinematographic work produced in collaboration:

(1) The author of the screenplay;

(2) The author of the treatment;

(3) The author of the shooting script;

(4) The author of the music specially composed for the work;

(5) The producer or director.

Where the cinematographic work has been taken from a pre-existing work or screenplay which is still protected, the authors of the original

work shall enjoy the same protection as the authors of the new work.

. . .

SECTION FOUR

Works for Broadcasting

Art. 17. The person or persons responsible for the intellectual creation of a work for broadcasting by radio or television shall be regarded as the author of such work.

. . .

SECTION TWO

Term of Copyright

Art. 25. Copyright shall last for the life of the author and shall lapse fifty years thereafter, computed from the first of January of the year following his death. It shall extend to works which have not been divulged during his lifetime.

. . .

Title VIII

TRANSITIONAL AND FINAL PROVISIONS

. . .

Chapter II. Final provisions

Art. 115. For publication of collections of Venezuelan laws, of public treaties concluded by the Republic or of judicial decisions handed down by Venezuelan courts the authorization of the Ministry of the Interior, the Ministry for Foreign Affairs or the court concerned, as appropriate, shall continue to be required. Such authorization shall be granted after examination and comparison of the work with the original texts of such laws, treaties or decisions, to be carried out at the applicant's expense.

In the absence of such authorization, the authority competent to grant it shall declare that the work is not authorized and has no official validity

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WESTERN SAMOA

NOTE[1]

Relevant 1963 legislation is contained in the Crimes Amendment Act, the Constitution Amendment Act No. 2, the Divorce and Matrimonial Causes Amendment Act and the Samoa Status Act.

The import of this legislation is as follows:

1. *Crimes Amendment Act*

The Crimes Ordinance 1961 provides for the death sentence for treason and murder. It does not, however, lay down how the death sentence is to be carried out and the 1963 enactment remedies this omission by providing for execution of the death sentence by hanging. The new Act exempts from sentence of death persons under eighteen years of age and pregnant women.

2. *Constitutional Amendment Act No. 2*

This Act varies a provision of the Constitution relating to personal liberty. Paragraph 4 of Article 6 of the Constitution provides that every person who is arrested *or* detained shall be produced before a judge or other judicial officer within twenty-four hours, and that no person shall be detained beyond twenty-four hours without the authority of some judicial officer. The 1963 Constitution Amendment Act No. 2 varies this by substituting the word "and" for the word "or" in the first line of the paragraph which now reads: "Every person who is arrested *and* detained etc."

[1] Note furnished by the Government of New Zealand.

3. *The Divorce and Matrimonial Causes Amendment Act*

This Act, which has some relevance to human rights, makes two amendments to the previous law. In section 2 the right is given to either party in a divorce action to cross-examine the other party in open Court; while section 4 limits the right of appeal against decisions of the Court in divorce proceedings by providing that there shall be no right of appeal against any decree of presumption of death, or of dissolution of marriage, or of divorce, or of nullity, made by the Court. Formerly any decision of the Court could be appealed against.

4. *Samoan Status Amendment Act*

This Act defines "Samoan" and provides that the Court may at any time declare any person a Samoan. This Act also provides that only Samoans shall have certain rights, namely to hold a *matai* title, to hold *pule* over any land, to use any land as of right except where permitted by any Act, to participate in the rents or profits of any land except where permitted by any Act, and to acquire any estate or interest in any land except as permitted by any Act.

The Samoan Status Act also preserves any rights in land which had previously been lawfully acquired whether or not in accordance with Samoan custom and usage.

YUGOSLAVIA

DEVELOPMENTS IN THE FIELD OF HUMAN RIGHTS IN 1963 [1]

The year 1963 is of particular importance for the development of human rights in Yugoslavia. That year a new Constitution was enacted which is a real Charter of human rights and a very detailed as well as far-reaching document embodying not only the rights enunciated in the Universal Declaration of Human Rights but also new rights, established and developed in Yugoslav practice. That is why, in this survey, in addition to other regulations governing human rights, quotations are extensively made from the new Constitution.

I. CONSTITUTION OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA [2]

On 7 April 1963, after more than two years of work, the new Constitution of Yugoslavia was enacted, which changed the name of the country into the Socialist Federal Republic of Yugoslavia (SFRY).

The new Constitution regulates relations existing today in Yugoslavia. It reflects the reality and expresses the aspirations of the progressive socialist forces.

The new Constitution provides the individual with exceedingly wide rights making it possible for him to be master of his own destiny. It secures the co-ordination of human activities necessary for the integration of the interests of individuals.

The Constitution covers all principal groups of human rights and incorporates them into a whole. Besides political and civil rights, economic, social and cultural rights have been elaborated in detail. Their implementation constitutes a dynamic process which requires the constant participation of citizens in processes of decision making in public affairs at all levels (from local to Federal) and in all fields of social life, with the intent of having these rights gain fuller content so that they may expand constantly in accordance with the general social development and the improvement of the material basis. That is why human rights are being implemented through self-management, which has been established in all fields of social life and which represents the fundamental principle of the socio-economic and political system of the SFRY. The interests of individuals are guaranteed by the Constitution, primarily through the rights, obligations and requirements of the working man in relation to his work and through self-management. The Constitution endeavours to have specific interests of the workpeople at all levels more directly reflected through decision making bodies having social self-management and through State authority. The new set-up of assemblies, whether it is a communal assembly or the Federal Assembly, is a reflection of just that endeavour. The assembly is not only a legislative body but at the same time a place for thorough and extensive consultations of all interested factors in the field of contemporary social life.

The statutes of communes and of organizations in which workers are employed provide for the implementation of the rights of every citizen, as well as for the possibilities of pursuing these rights and are of particular importance to human rights.

However, besides the Federal Constitution, the new Constitutions of the Republics, enacted in 1963,[3] should be consulted also in order to get a better understanding of the social and political system and the physiognomy of the Yugoslav socialist community.

Below are quoted those provisions of the new Constitution which more directly relate to human rights. The provisions on the Constitutional Court, contained in the new Constitution, are dealt with in a separate article entitled "The Law on the Constitutional Court of Yugoslavia".

II. LAW ON HEALTH INSURANCE OF AGRICULTURISTS [4]

This insurance scheme was introduced by the Federal law in 1959, and further elaborated by

[1] Note prepared by Dr. Boško Jakovljević, research fellow of the Institute of International Politics and Economy, Belgrade, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Text published in *Official Gazette* of the SFRY, No. 14, of 1963.

[3] See *Official Gazette of the SR of Serbia*, No. 14/63; *Official Gazette of the SR of Croatia*, No. 15/63; *Official Gazette of the SR Bosnia-Herzegovina*, No. 14/63; *Official Gazette of the SR of Slovenia*, No. 10/63; *Official Gazette of the SR of Macedonia*, No. 15/63; and *Official Gazette of the SR of Montenegro*, No. 14/63.

[4] Text published in the *Official Gazette of the SFRY*, No. 13 of 1963.

republican laws in 1959 and 1960.[5] The experience gained during its implementation and the adoption of the Law on organizing and financing social insurance enacted in 1962,[6] the principles of which are applied to agriculturists, have resulted in the need for adopting a new law.

This law brings the insurance of agriculturists into conformity with a new system of social insurance which emphasizes and elaborates in detail the principles of self-financing and self-management of insurants with regard to funds and insurance service.

Health insurance is further elaborated by the laws of the respective republics. These laws establish the scope of health insurance, keeping this in line with the basic national health insurance scheme. The health insurance provided by the republics cannot be lower than those prescribed by the Law on Health Insurance of Agriculturists. The laws of the republics, furthermore, stipulate the conditions and forms of expanded health insurance, contributions, means of financing, etc.

In 1963, the following regulations were enacted stipulating in detail certain rights governing health insurance:

1. Rules on Exercising Health Insurance Rights Abroad, published in the *Official Gazette of the SFRY*, No. 24 of 1963; and

2. Rules of Sending Socially Insured Abroad for Medical Treatment, published in the *Official Gazette of the SFRY*, No. 14, of 1963.

Social insurance contracts

In 1963, contracts were concluded on the social insurance of film workers (*Official Gazette of the SFRY*, No. 27 of 1963), of priests of the Serbian and Macedonian Orthodox Churches (*Official Gazette of the SFRY*, No. 27 of 1963), and of newspaper vendors (*Official Gazette of the SFRY*, No. 31 of 1963).

The Social insurance of these categories of persons, covered by previous contracts, has been brought into conformity with the changes introduced in the social insurance scheme of 1962.

III. LAW ON WAR DISABLED[7]

Amendments to the Law on War Disabled, enacted in the form of a revised text as a new law, represents a further step towards the improvement of insurance of this category of war veterans. They further elaborate the principle whereby social insurance should more extensively cover the needs of the severe cases of war disabled, of dependents of veterans and of persons in whose respect no provisions exist.

The improvement of the position of the severe categories of disabled was attained in two ways: first, by the increase of disability allowance on the progressive basis (ranging from 16.7 per cent to 41.40 per cent as compared with the allowance of 1963); second, by the establishment of a new form of disability allowance for specific categories of disabled, namely, orthopaedics consisting mainly of disabled who have had an amputation and disabled with grave bodily injuries who must use orthopaedic aids. This allowance is given with the aim of covering personal expenditures which such disabled persons incur ranging from 4,000 to 8,000 dinars per month. The right of the disabled to free prosthesis and other aids continues to be in force. Through the increase of disability allowance, and allowance for orthopaedic aids which the disabled are getting on the basis of their disability, the receipts of certain categories of disabled have increased by 175 per cent (as compared with 1962).

The position of widows constantly acting as attendants of the most serious cases of war disabled has improved and the conditions for the realization of their family disablement allowance have been made easier.

The same law establishes other new entitlements of lesser importance, such as; (*a*) compensation for specific travel expenses; (*b*) compensation for fees which disabled and children of war dead pay for education; (*c*) compensation for the insurance of those constantly acting as attendants of severe cases of war disabled; (*d*) the right to two air trips at 50 per cent reduction; (*e*) exemption from certain administrative taxes; (*f*) increased compensation for burial expenses in the case of death of beneficiaries of family disablement allowance.

In addition to this Law, other regulations elaborating specific rights provided for by the Law on War Disabled were introduced, such as:

1. Rules on Treatment of War Disabled at Health Resorts, published in *Official Gazette of the SFRY*, No. 3, of 1963;

2. Rules on Treatment Abroad of Insurants under the Law on War Disabled, published in *Official Gazette of the SFRY*, No. 24, of 1963;

3. Rules of Functions of Medical Commissions with regard to the Procedure on the Right of Disabled under the Law on War Disabled, published in *Official Gazette of the SFRY*, No. 24, of 1963; and

4. Rules on Fitting War Disabled with Artificial Limbs, Orthopaedic and Other Aids and Surgical Appliances, published in *Official Gazette of the SFRY*, No. 24, of 1963.

These rights were previously covered by corresponding regulations. The new regulations have brought them into conformity with the changes that have occurred in the meantime, thereby expanding the rights of disabled persons.

IV. LAW ON THE CONSTITUTIONAL COURT OF YUGOSLAVIA[8]

The Constitutional Courts comprising the Federal Constitutional Court and the Courts of the Socialist Republics have been established as a new institution in the constitutional system of the SFRY. They have been introduced into the

[5] See *Yearbook on Human Rights for 1959*, p. 330 and *for 1960*, p. 385.

[6] See *Yearbook on Human Rights for 1962*, pp. 341-344.

[7] Text published in *Official Gazette of the SFRY*, No. 13, of 1963.

[8] Text published in *Official Gazette of the SFRY*, No. 52, of 1963.

Yugoslav system, as stipulated by the new Constitution, in order to provide a more effective protection and to secure a more rapid progress in the field of social relations as well as to have the problems and developments in the field of Constitutional system explained.

The Basic regulations on the constitutional courts are embodied in articles 145-159 of the Constitution of the SFRY of 1963 containing regulations on constitutionality and legality. Provisions on constitutional courts are further contained in the Regulations on the Constitutional Court of Yugoslavia (Articles 241-251). The law on the Constitutional Court of Yugoslavia more precisely defines the jurisdiction and the proceedings of the Court.

The Court is an independent organ of the Federation. The Court through its decisions, which are compulsory, secures the protection of constitutionality and legality. It follows the developments having a direct bearing on constitutionality and legality and submits to the Federal Assembly its opinions and proposals on the enactment of laws, on amendments to laws and on the undertaking of other measures.

The Court comprises a president and ten judges elected by the Federal Assembly for a term of eight years. The judges enjoy the immunity of Federal deputies.

The Court decides on the conformity of laws with the Constitution, the conformity of the laws of Republics with the Federal laws, and the conformity of other regulations and other general decisions of organs and organizations with the Constitution and the Federal laws. The Court also decides on disputes on rights and duties between the Federation and a Republic, between Republics, and between Republics and other sociopolitical communities (autonomous provinces, districts, municipalities) falling within the territory of two or more republics, unless falling under the jurisdiction of another court, as well as on controversies over jurisdiction between courts and Federal organs. Besides, the Court decides on the protection of the rights of self-management and other basic freedoms and rights established by the Constitution if those freedoms and rights have been violated by an individual decision or action of Federal organs or by executive bodies of an organization and in other instances determined by Federal law, for which other court protection is not provided.

Anyone may demand the institution of proceedings by the Court. The Court is obliged to institute proceedings at the request of the assemblies of the Federation and the Republics, the executive councils of the Federation and the Republics, the supreme courts of the Federation and the Republics, the Federal Public Prosecutor, the constitutional courts of the Republics, the assemblies of autonomous provinces, districts and municipalities, the organs of communities, organizations in which workers are employed and other self-managing organizations and, in specific cases, the secretaries of the Federal Republic and the Republics. The proceedings may also be instituted by the Court.

Whenever the Court establishes that a certain law is not in conformity with the Constitution or a Federal law, it informs the Assembly concerned on this. If the Assembly fails to bring the law into conformity with the Constitution or the Federal law within 6 months, the Court shall declare it invalid. The Court further shall annul or abolish any other regulations relating to that law. Anyone whose right has been violated because some organ has brought action against him on the basis of regulations or general provisions which have ceased to be valid or have been annuled, may demand from the organ concerned to drop its action.

Court proceedings as a rule are public. The decisions of the Court are made public.

Courts and other state organs are obliged to carry out the decisions of the Court. The Federal Executive Council, if necessary, shall secure the execution of the decisions.

The Court will commence its work on 15 February 1964.

THE CONSTITUTION OF THE FEDERAL REPUBLIC OF YUGOSLAVIA OF 7 APRIL 1963 [9]

EXTRACTS

INTRODUCTORY PART

BASIC PROVISIONS

. . .

II

The socialist system in Yugoslavia is based on the relationships between people as free and equal producers and creators, whose work is exclusively intended to meet their individual and collective needs.

A inviolable basis for the status and role of the individual is accordingly constituted by:

The collective ownership of the means of production, which precludes the restoration of any system of exploitation of man by man and by abolishing the divorce of the human being from the means of production and other conditions of work, provides the necessary setting for a system of worker's self-management in matters of production and the distribution of the product of their labour, and for the collective guidance of economic development;

[9] Extracts from this Constitution in English and in French have been published by the International Labour Office in *Legislative Series* 1963—Yug. 3.

The emancipation of labour, which marks the progression beyond historically conditioned social and economic inequality and dependence of working people; it is guaranteed by the abolition of hired labour, the system of workers' self-management, the comprehensive development of the productive forces, the reduction of the socially necessary number of working hours, the expansion of science, culture, and technology, and by the constant extention of education;

The right of every human being, as an individual and as a member of a community of workers, to enjoy the fruits of his labour and of the material progress of society, in accordance with the principle "From each according to his abilities; to each according to his work", coupled with an obligation to ensure the development of the material basis of his own work and that of the community and to contribute to meeting the other needs of society;

A system of self-management by the workpeople in organizations in which workers are employed; the free association of workpeople and other organizations and socio-political communities, with the object of meeting common needs and interests; a system of self-management at the communal level; and in the other socio-political communities with the object of enabling citizens to participate as immediately as possible in the guidance of social development, in the exercise of power and in the solution of other social problems;

Democratic political relationships enabling every person to pursue his own interests, give effect to his right of self-management and other rights, establish relationships with other people, and develop his personality by taking a direct part in social life, and particularly in the self-management bodies and in the socio-political organizations and associations, which he himself establishes and through which he influences the development of the social conscience and the spread of conditions conducive to his own activity, to the pursuit of his interests and to the exercise of his own rights;

The equality of rights, duties and responsibilities in accordance with a uniform system of constitutional law and legality;

The solidarity and co-operation of the workers and the organizations in which they are employed, their commitment to freedom of initiative in the development of production and other collective and personal activities for the benefit of the individual and his social community; and

Economic and social security.

The social, economic and political system derives from this status of the individual and is at the service of the individual and his role in society.

Any procedure for the management of production or any other social activity and any form of distribution which, whether manifesting itself as arbitrary bureaucracy or monopolistic privilege or as particularism or selfishness based on private property, distorts the social relationships based on this status of the individual, is contrary to his personal and general interests and to the social, economic and political system established by this Constitution.

. . .

IV

Every form of government, including political power, is created by the working class and by all workpeople for themselves in order to organize society as a free community of producers; this is assured;

By the creation of social self-management as the basis of the socio-political system;

By the decision of citizens on all social matters, either directly or through delegate whom they elect to the representative bodies of the socio-political communities and to other bodies of social self-government;

By the establishment and development of equal and democratic relations among citizens, and by the attainment of human and civil freedoms and rights in accord with the strengthening of solidarity, the citizens' performance of their social duties, and the material and social development of the socialist community;

By the personal responsibility of all holders of public office, particularly those with functions of power, and by the responsibility of political, executive and administrative organs to the representative body of the socio-political community and to the public;

By judicial supervision of matters of constitutionality and legality; and by social supervision of the work of State organs, organs of social self-management, and organizations dealing with matters of public concern; and

By the social and political activity of socialist forces organized in socio-political bodies.

The functions of power determined by the Constitution are vested in the representative bodies of socio-political communities as the territorial organs of social self-management. In communes these representative bodies are constituted and elected by all citizens, and in communities of workers by workpeople.

With the exception of functions of power and general affairs of social self-management, which they discharge through representative bodies and bodies accountable to them, citizens decide on social affairs in the organizations in which they are employed and in other autonomous organizations by way of direct determination. They attain also other collective interests in the socio-political organizations and associations which they themselves establish.

Workpeople voluntarily unite in trade unions in order to co-operate as directly as possible in the development of socialist social relations and social self-management with the purpose of co-ordinating their individual and collective interests with general interests, of implementing the principles of distribution according to work, and of adapting themselves to work and management, of taking initiative and measures for the protection of their rights and interests, of improving their living and working conditions, of developing solidarity, of

co-ordinating opinions and mutual relations, and of solving other questions of collective interest.

Citizens are the source of initiative for direct social activities or activities channelled through their socio-political organizations and associations; they exercise supervision over work of organs of government and other holders of public office; they determine norms for mutual relations; and they lend their support to state organs, organs of social self-management, and organizations dealing with affairs of public concern.

In order to bring self-management and the other rights of citizens to effect, the public working of state organs, organs of social self-management, organizations, and government offices shall be guaranteed, and the necessary conditions shall be created so that citizens may be fully informed of the discharge of public affairs.

The principle that re-election and re-nomination to particular offices be limited guarantees the removability of holders of government and other public offices; this makes possible the widest possible participation of citizens in the discharge of public functions, and consolidates as well as develops democratic relations in society.

Part I. SOCIAL AND POLITICAL ORGANIZATION

Chapter II

Social and Economic Organization

Article 6

The basis of the social and economic organization of Yugoslavia is formed by the free pooling of labour with the means of production owned by the community and by a system of workers' self-management in matters of production and the distribution of the social product within each organization in which workers are employed and within the social community.

. . .

Article 9

The system of self-management in an organization in which workers are employed shall include in particular the right and duty of the workpeople:

1. To manage the organization directly or through organs of management elected by themselves;

2. To organize production or other activities, to arrange for the development of the organization, and to determine plans and programmes for its work and development;

3. To decide on exchanges of products and services and on other matters connected with the running of the organization;

4. To decide on the use and allocation of collective assets, and to employ them in an economic and expedient manner so as to achieve the maximum for the organization and the social community;

5. To allocate the income of the organization, to provide for an expansion of the material basis of their work, to distribute such income to the workpeople, and to meet the organization's obligations to the social community;

6. To decide on the admission of workpeople to the organization, on the termination of their employment, and on other matters of labour relations; to determine working hours in the organization in accordance with general working conditions; to regulate other matters of common concern; to secure internal supervision and to publicize their work;

7. To regulate and improve their working conditions, to organize labour safety and recreation, to arrange for their education, and for raising their own and the general standard of living;

8. To decide on the detachment of part of the organization and on its establishment as a separate organization, and on the merger and association of the organization with other organizations in which workers are employed.

By giving effect to self-management, the workpeople in socio-political communities shall decide on the course of the economic and social development, on the distribution of the social product, and on other matters of common concern.

In matters of special importance to the social community citizens and representatives of organizations concerned and of the social community may participate in the management of an organization in which workers are employed.

To ensure that all workpeople have the same social and economic status, provision shall be made in laws and statutes determining the rights of self-management of the workpeople employed in state administration, socio-political organizations or associations, in accord with the nature of work of these organs and organizations.

Workpeople shall exercise self-management within the framework of a single socio-economic system in accordance with the Constitution, laws and statutes, and shall be held accountable for their work.

Any act violating the right to self-management of the workpeople shall be unconstitutional.

Article 10

Workpeople in an organization in which workers are employed shall, as members of the community of workers, establish working relations with each other and shall enjoy equal rights within the system of self-management.

The arrangement of work, and the system of administration in an organization in which workers are employed shall enable the workpeople at every level and in all phases of the production process, which constitutes a whole, to decide as directly as possible on matters of work, of mutual relations, of distribution of income, and on other matters affecting their economic position, at the same time ensuring the most favourable conditions for work and operation of the organization as a whole.

. . .

Article 12

Every person working in an organization in which workers are employed shall be entitled, in accordance with the principle that shares must be commensurate with work done, to a personal income proportionate to the results of his work, the work of his department and the work of the organization as a whole.

. . .

Article 14

Workpeople who are personally engaged in an independent capacity in cultural, professional or other similar activities shall in principle have the same social and economic status and the same fundamental rights and obligations as those employed in an organization.

Workpeople who are engaged in such activities may associate and form temporary or permanent working communities, which shall have the same fundamental status as organizations, and in which the workpeople shall have the same fundamental rights and obligations as those employed in organizations.

The conditions under which these workpeople and their communities are to exercise their rights and fulfil their obligations, and may be permitted to use and administer collective assets in the pursuit of their activities shall be prescribed by law.

. . .

Article 23

Citizens shall be guaranteed the right of property with regard to objects for personal consumption and use or for the satisfaction of cultural and other personal needs.

Citizens may have the right of property with regard to dwelling houses and dwellings for the satisfaction of their personal and family needs; and for the performance of work in which they are personally engaged as guarant by the Constitution and subject to conditions determined by law.

The limits of the right of property with regard to dwelling houses and dwellings shall be determined by Federal law.

Chapter III

HUMAN AND CIVIC FREEDOMS
RIGHTS AND DUTIES

Article 32

Human and civic freedoms and rights are an inalienable part and an expression of socialist and democratic relations which are protected by the Constitution. Through these the individual develops the idea that there may not be any form of exploitation and arbitrariness and creates by his personal and socially organized work, the conditions for a comprehensive development, conducive to the unrestricted expression and protection of his personality and the attainment of his human dignity.

People shall achieve these freedoms and rights in solidarity and by the fulfilment of their duties towards each other.

Article 33

All citizens are equal in rights and duties, regardless of differences in nationality, race, religion, sex, language, education or social status.

All men are equal before the law.

Article 34

The right of citizens to social self-management shall be inviolable.

In order to achieve social self-management, citizens shall have:

1. The right to decide directly on social matters at meetings of electors at meetings of workpeople in communities of workers, by means of referendums and by other forms of direct decision;

2. The right to decide on social matters as a member of an organ of social self-management, as a lay judge, or in any other public function;

3. The right to elect and to stand for election to organs of management of organizations in which workers are employed, to representative bodies of socio-political communities and to other organs of self-management, to nominate candidates for election to these bodies and organs, to initiate a recall and to decide on the recall of elected delegates;

4. The right to initiate the convocation of meetings of the electorate and meetings of the workpeople in communities of workers, the right to initiate the calling of a referendum, and the right to initiate actions of social supervision;

5. The right to be informed about the work of representative bodies and their organs, of organs of social self-management, and of organizations engaged in activities of public concern, and in particular, in the organizations in which they are employed and in any other organizations in which their interests are pursued, the right to be informed about the material and financial situation, the implementation of plans, and the operation of business, subject to the condition that they must not reveal trade and other secrets;

6. The right to examine and to comment on the work of State organs, of organs of social self-management and of organizations discharging affairs of public concern;

7. The right to submit petitions and suggestions to representative bodies and other organs, to receive a reply to such petitions and suggestions and to put forward political and other proposals of general interest.

Article 35

All citizens who are eighteen years of age shall have the right to vote. In bringing this right to effect, citizens shall nominate candidates and elect delegates to the representative bodies and organs of social self-management and may stand for election to these bodies and organs.

Members of a community of workers shall be eligible to elect organs of management of the

organization in which they are employed and to stand for election to them.

Article 36

The right to work and the freedom of labour are guaranteed.

The community shall create increasingly favourable conditions for the exercise of the right to work, particularly by developing productive forces and the material basis for other socially organized activities, and by showing concern for occupational interests of the working man.

Every person shall be free to choose his occupation and employment.

Forced labour shall be prohibited.

Every citizen shall have access, under conditions of equality, to every job and every function in society.

An employment relationships may not cease against the worker's will unless under conditions and in a manner determined by federal law.

The right to material security during temporary unemployment shall be guaranteed under conditions determined by law.

Rights acquired on the basis of work shall be inalienable.

The social community shall create conditions for the training of citizens who are not fully capable of working, as well as for their adequate employment.

The social community shall provide assistance for citizens who are incapable of work and do not have the necessary means of subsistence.

Any person who refuses to work, though fit to do so, shall not enjoy the rights and the social protection accorded on the basis of work.

Article 37

A worker shall be entitled to a limited working time.

A maximum of forty-two hours' work a week shall be guaranteed. The conditions under which the working time may be shortened may be determined by law. In exceptional cases provision may be made determining that in certain occupations or in other cases determined by law the working time may for a limited period be longer than forty-two hours a week if the special nature of the work so requires.

A worker shall be entitled to a daily and weekly rest, and, under conditions determined by law, to an annual vacation with pay of not less than fourteen working days.

A worker shall be guaranteed the right to personal safety and to health and other protection while at work.

Young persons, women and disabled persons shall enjoy special protection while at work.

A worker shall be guaranteed a minimum personal income, to be determined by Federal law.

Article 38

In accordance with the principles of mutualism and solidarity, workers shall be insured under a uniform system of social insurance established by Federal law.

Under the system of obligatory social insurance workers shall be entitled to health care and other entitlements in case of sickness, diminution or loss of working capacity and old age.

In the event of death of the insured person, members of his family, subject to the conditions determined by law, shall be entitled to health care and other entitlements arising from the system of social insurance.

Insurance coverage for health care and other rights under the system of social insurance shall also be instituted by law in respect of other citizens.

The services of the social insurance system shall be directly administered either by the insured persons themselves or through bodies elected and removed from office by them.

Article 39

Freedom of thought and determination shall be guaranteed.

Article 40

Freedom of the press and other media of information, freedom of association, freedom of speech and public expression, freedom of assembly and other public gatherings shall be guaranteed.

All citizens shall have the right to express and to publish their opinions through the media of information, to inform themselves through the media of information, to publish newspapers and other publications and to disseminate information by other media of communication.

These freedoms and rights shall not be used by anyone to destroy the foundations of the socialist and democratic order as determined by the Constitution, to endanger the peace, the international co-operation on terms of equality, or the independence of the country, to disseminate national, racial, or religious hatred or intolerance, or to incite to crime, or in any manner that offends public decency.

The cases and conditions in which the utilization of these freedoms and rights in a manner contrary to the Constitution shall entail restriction or prohibition shall be determined by Federal law.

The Press, radio and television shall truthfully and objectively inform the public and publish and broadcast the opinions and information of organs, organizations, and citizens which are of interest to public information.

The right of correction with regard to information that has violated the rights or interests of the individual or of an organization shall be guaranteed.

In order to assure the public of the widest possible information, the social community shall promote conditions conducive to the development of appropriate activities.

Article 41

All citizens shall be guaranteed the freedom to express his nationality and culture, as well as the freedom to speak his language.

No one shall have to declare himself as to his nationality or to determine himself for one of the nationalities.

The dissemination or pursuance of national inequality, as well as all incitement to national, racial and religious hatred or intolerance, is unconstitutional and shall be punishable.

Article 42

The languages of the peoples of Yugoslavia and their scripts shall be equal.

Members of the peoples of Yugoslavia living outside the territories of the republics of their own shall have the right to school instruction in their own languages, in conformity with republican law.

As an exception, commands, military drill and administration in the Yugoslav People's Army shall be in the Serbo-Croatian language.

Article 43

With a view to bringing to effect the freedom of every citizen to express his nationality and culture, every nationality and national minority, shall have the right to use its language freely, to develop its culture, to found organizations to this end, and to enjoy the other rights as determined by the Constitution.

In the schools for members of the nationalities, instruction shall be in the languages of those nationalities.

The other rights of the nationalities living outside their own territories shall be determined by the constitutions and laws of the republics.

Article 44

All citizens shall be entitled, under equal conditions determined by law, to acquire knowledge and training in any type of school and in any other educational institution.

Eight years of elementary education shall be obligatory. Longer obligatory education may be determined by law.

The social community shall provide the material and other conditions necessary to found and maintain schools and other educational institutions and to advance their work.

Article 45

Scientific and artistic creativity shall be unrestricted.

Authors of scientific and artistic works, as well as of scientific discoveries and technical inventions, shall have the moral and material rights to their products. The scope, duration and protection of these rights shall be determined by Federal law.

The social community shall provide conditions for the development of scientific, artistic and other cultural activities.

Article 46

Religious confession shall not be restricted and shall be the private affair of the individual.

Religious communities shall be detached from the State and shall be free to perform religious activities and religious rites.

Religious communities may found religious schools for training their clergy.

Abuse of religion and of religious work for political purpose is inconstitutional.

The social community may give material assistance to religious communities.

Religious communities may have the right of property to real estate within the limits determined by Federal law.

Article 47

Life and freedom of the individual shall be inviolable.

Exceptionally, capital punishment may be provided for by Federal law with regard to the gravest criminal offences, and may be pronounced only for the most serious forms of these offences.

Arrest shall be based on law. Any unlawful arrest shall be punishable.

The inviolability of life and other privacy rights of the individual shall be guaranteed.

Article 48

During criminal proceedings, the accused may be arrested and held under arrest only if this is provided by law and indispensable to the criminal proceedings of for reasons of public safety.

Custody shall be reduced to the shortest necessary time.

Custody shall be determined by a court of law; only in exceptional cases prescribed by law may custody be determined by another authority empowered by law, and in that case it may not last for more than three days.

Custody by decision of a court of the first instance may not last for more than three months, but in exceptional cases prescribed by law, the superior court may by decision extend the custody for another six months. If upon the expiration of these periods no indictment has been made, the prisoner shall be released.

A fully documented written warrant shall be brought in matters of custody, which shall be served on the person concerned at the moment of arrest or not later than twenty-four hours after arrest.

The court shall adopt a decision immediately or not later than forty-eight hours on a complaint against a warrant of arrest.

Article 49

No one shall be punished for any act that before its commission was not defined by law or by prescript based on law as a punishable offence, or for which no penalty has been provided.

Criminal offences and punitive sanctions may be determined only by law.

Offences of an economic nature and punitive sanctions for such offences may be determined by law or by decree adopted on the basis of law.

Sanctions may be pronounced for criminal offences or offences of an economic nature only by the decision of a competent court reached in accordance with the procedure determined by law.

Organs of the administration may pronounce punitive sanctions only for misdemeanours and only within the limits and according to the procedure provided by law.

Article 50

No one shall be deemed to have committed a criminal offence until this has been ascertained by valid conviction.

Respect of person and dignity are guaranteed in criminal and in all other proceedings as well as during the enforcement of a penalty.

No one within the reach of the court of other body of authority competent to conduct proceedings shall be sentenced if he has not been heard in accordance with the law or if he has not been given the opportunity to defend himself.

The right to defence is guaranteed.

During criminal proceedings, the accused shall be entitled to have defence counsel, who shall be enabled, in accordance with the law, to defend and protect the rights of the accused. Provision shall be made by law determining when the accused in criminal proceedings must have defence counsel.

Any person who has been unjustifiably sentenced for a criminal offence or who has been arrested without grounds shall be entitled to compensation from social sources for the damage that has been done to him.

Article 51

All citizens shall enjoy freedom of movement and abode.

The limitation of freedom of movement or abode may be prescribed by law, but only in order to assure the execution of criminal proceedings, to prevent the spread of infectious diseases, or to preserve the public order, or when the interests of the country's defence so require.

Article 52

The dwelling shall be inviolable.

No one shall enter any dwelling or other premises or search them against the will of the owner without a warrant issued in accordance with the law.

A person whose dwelling or other premises are being searched, or the members of his family or his representative shall be entitled to be present during the search.

A search may be carried out only in the presence of two witnesses.

Subject to the conditions determined by law, a person in an official capacity may enter a dwelling or premise without a warrant from the competent authority and carry out a search in the absence of witnesses if this is indispensable for the direct apprehension of a criminal offender, or for the safety of life and property, or if it is beyond doubt that evidence in criminal proceedings cannot be secured otherwise.

Illegal entry and search of a dwelling or premises are prohibited and shall be punishable.

Article 53

The privacy of letters and of other means of communication shall be inviolable.

Provision may be made only by Federal law to depart, in accordance with the decision of a competent authority, from the principle of inviolability of privacy of letters and of other means of communication, if this is indispensable for the execution of criminal proceedings, or for the security of the country.

Article 54

Every citizen of Yugoslavia shall have the protection of the Socialist Federal Republic of Yugoslavia abroad.

No citizen of Yugoslavia shall be deprived of his citizenship, exiled or extradited.

A citizen who is absent from the country may, in accordance with the law, be deprived of his Yugoslav citizenship only exceptionally, if by his work he causes harm to the international or other general interests of Yugoslavia, or if he declines to perform his basic civil duties and holds citizenship of another country.

Article 55

The right of inheritance is guaranteed.

No one shall have real estate and means of work on grounds of inheritance in excess of the limit determined by the Constitution or law.

Article 56

Every citizen shall be entitled to protection of his health.

The cases in which uninsured citizens shall be entitled to protection of their health from social means shall be determined by law.

The social community shall provide conditions for the founding of health institutions and for the improvement of the health protection of citizens.

The social community, particularly the commune and the organization in which workers are employed, shall provide conditions for the development of physical culture, and for the rest and recreation of citizens, and shall support the initiative of citizens and their associations in these provinces.

Article 57

The social community shall provide special protection for mothers and children.

Minors without parental care and other persons unable to provide for themselves and to safeguard their own rights and interests shall enjoy the special protection of the social community.

Disabled war veterans shall be provided with vocational rehabilitation, disability rights and other forms of protection.

Article 58

The family shall have the protection of the social community. Marriage and legal relations in marriage and in the family shall be regulated by law.

Marriage shall be validly contracted by persons entering into marriage in accordance with their free will before a competent authority.

It shall be the right and the duty of parents to raise and to educate their children.

Children born out of wedlock shall have the same rights and duties towards their parents as children born in wedlock.

Article 59

Relations among people shall be based on mutual co-operation, on respect for the individual and for his freedoms and rights.

It shall be the duty of every person to come to the assistance and help of any person in danger, and to participate in the elimination of general danger.

Article 60

The defence of the country is the right and the supreme duty and honour of every citizen.

Article 61

Every citizen shall conscientiously discharge any public or other social office vested in him, and shall be personally accountable for discharging it.

Article 62

Every citizen shall contribute, under equal conditions determined by law, to the satisfaction of the material requirements of the social community.

Article 63

Everyone shall abide by the Constitution and law.

Provision shall be made in law determining the conditions under which failure to discharge duties determined by the Constitution shall be punishable.

Article 64

Aliens in Yugoslavia shall enjoy basic freedoms and human rights, and shall have other rights and duties determined by law and by international agreements.

Article 65

Citizens of other countries and persons without citizenship who are persecuted for their defence of democratic ideas and political movements, of social emancipation and national liberation, of the freedoms and the rights of the human personality or of the freedom of scientific or artistic creativity, shall be guaranteed the right of asylum.

Article 66

Every arbitrary act, committed by whomsoever, which violates or restricts the rights of the individual is unconstitutional and punishable.

No one shall employ coercion or restrict the rights of any person, except in cases and proceedings provided by law and in accord with the Constitution.

Article 67

Every person shall be entitled to equal protection of his rights in proceedings before a court, administrative and other state organs and organizations which decide on his rights and obligations.

The social community shall provide the conditions for legal assistance through the legal profession as an autonomous socially organized service, and through other forms of legal assistance.

Article 68

Everyone shall be guaranteed the right of appeal or other legal expedient against court decisions and decisions of other State organs and organizations which deliberate on his rights or his lawful interests.

Article 69

Everyone shall be entitled to damages for the unlawful or faulty execution of an office or action by a person or officer of a state organ or organization carrying on affairs of public interest.

Damages shall be paid by the socio-political community or organization in which the service or action has been performed. The claimant shall also be entitled under conditions determined by law, to receive damages directly from the person responsible for them.

Article 70

The freedoms and rights guaranteed by the Constitution are inalienable and shall not be restricted by any act.

These freedoms and rights shall be attained on the basis of the Constitution itself. The manner of attaining particular freedoms and rights may be prescribed only by law, and only when this is envisaged by the Constitution or when it is indispensable for their attainment.

The freedoms and rights guaranteed by the Constitution shall be provided judicial protection.

Chapter IV

THE SOCIO-POLITICAL SYSTEM

Article 71

The workpeople shall be the sole repository of power and authority in social matters.

Citizens shall give effect to the system of self-management directly at meetings of electors, by means of referendums or through other forms permitting direct decisions to be taken in organizations in which workers are employed, in com-

munes and in other socio-political communities, and indirectly through the delegates, whom they elect to the management bodies of such organizations and other organizations with a system of self-management and to representative bodies of socio-political communities.

Article 72

No one may hold public office unless he has been entrusted with it, in accordance with the Constitution, by the citizens or by the bodies that the citizens elect.

Article 73

Self-management by citizens in the commune is the political foundation of the uniform socio-political system.

The forms of social self-management from which organs discharging functions of power derive shall be founded and brought to effect in the commune.

The uniformity of the socio-political system shall be secured by the implementation of the rights and duties of all socio-political communities, and by their mutual relations as determined by the Constitution and law.

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Article 75

The assembly shall be the representative body of the socio-political community; it shall consist of delegates of citizens and of workpeople in communities of workers.

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Article 77

Direct elections for members of the representative bodies of the socio-political communities shall be held on the basis of general and equal suffrage.

Members of all representative bodies shall be elected and removed by secret ballot.

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Article 88

At a meeting of the electorate citizens shall examine matters of significance the life and work of the locality and commune and other matters of social interest, initiate and submit proposals for the solution of these matters, directly decide on affairs determined by law and by the communal statute, and nominate candidates for election to the representative bodies.

At meetings in the communities, of workers, workpeople shall nominate candidates for election to the representative bodies and carry out other affairs of management determined by the law and by the statute.

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Chapter V

SOCIO-POLITICAL COMMUNITIES

Article 118

Citizens of Yugoslavia shall have common Yugoslav citizenship.

A citizen of a republic shall also be a citizen of Yugoslavia.

A citizen of one republic shall enjoy in the territory of another republic the same rights and duties as a citizen of that republic.

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Chapter VII

CONSTITUTIONALITY AND LEGALITY

Article 145

The principles of constitutionality and legality shall be safeguarded in order to secure the constitutionally and legally established socio-economic and political relations and the unity of the legal order, as well as to protect the freedoms and rights of the individual and the citizen, the rights to self-management, and the other rights of the organizations and socio-political communities.

Article 146

The principles of constitutionality and legality shall be the concern of courts and other state organs, of organs of self-management and of everyone who discharges public or other social functions.

The constitutional courts, as safeguards of constitutionality, shall secure legality in accordance with the Constitution.

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Article 158

An appeal may be filed with the competent authority against decisions and other acts passed by judicial, administrative and other state organs in the first instance, and against such decisions passed by organizations exercising public powers.

If the protection of rights and legality has been provided for in some other manner, appeal may be ruled out in certain cases in accordance with the law.

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ZANZIBAR[1]

THE CONSTITUTION OF THE STATE OF ZANZIBAR

Passed in the Constituent Assembly on 27 November 1963
and entered into force on 10 December 1963[2]

CHAPTER I

CITIZENSHIP

1. Every person born (whether before or after the commencement of this Constitution) within the Dominions of the Sultan shall be a Zanzibar subject by birth:

Provided that a person shall not become a Zanzibar subject by virtue of this section if at the time of his birth—

(*a*) neither of his parents is a Zanzibar subject and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign Sovereign power accredited to Zanzibar; or

(*b*) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

2. A person born (whether before or after the commencement of this Constitution) in a place outside the Dominions of the Sultan shall be a Zanzibar subject by descent if his father is a Zanzibar subject at the time of the birth:

Provided that if the father of such person is a Zanzibar subject by descent only, that person shall not be a Zanzibar subject by virtue of this section unless the birth is registered under the provisions of the Births and Deaths Registration Decree or in such other manner as may be provided by law within twelve months of its occurrence or of the date of commencement of this Constitution, whichever date shall be the later.

3. The Minister may, if application is made to him in the prescribed manner by any alien of full age and capacity who satisfies him that he is qualified therefore under the provisions of Part I of the First Schedule to this Constitution, grant to him a certificate of naturalisation and the person to whom the certificate is granted shall, on making an affirmation of allegiance in the form specified in Part II of the said First Schedule, be a Zanzibar subject by naturalisation as from the date on which that certificate is granted.

4. (1) The Minister may cause the minor child of any Zanzibar subject to be registered as a Zanzibar subject 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 person not of full age to be registered as a Zanzibar subject.

(3) A person registered under this section shall be a Zanzibar subject as from the date on which he is registered.

5. (1) Subject to the provisions of subsection (2) of this section, a woman who is married to a Zanzibar subject shall be entitled on making application therefore to the Minister in the prescribed manner and on making an affirmation of allegiance in the form specified in Part II of the First Schedule, to be registered as a Zanzibar subject whether or not she is of full age and capacity.

(2) A woman who has renounced, or has been deprived of, her status as a Zanzibar subject in accordance with the provisions of any law for the time being in force in the State shall not be entitled to be registered as a Zanzibar subject under subsection (1) of this section but may be registered as such with the approval of the Minister.

(3) A woman registered under this section shall be a Zanzibar subject as from the date on which she is registered.

6. A woman who, having before the date of commencement of the Nationality Decree married any person, ceased on that marriage or during the continuance thereof to be a Zanzibar subject shall be deemed to be, from the date of commencement of the said Decree, a Zanzibar subject.

7. (1) A Zanzibar subject who is such by registration or naturalisation shall cease to be a Zanzibar subject if he is deprived of his status as such by an order of the Minister.

(2) Subject to the provisions of this section, the Minister may by order deprive any Zanzibar subject who is such by registration or naturalisation of his status as a Zanzibar subject if such registration or naturalisation as the case may be, was obtained by means of fraud, false representation or concealment of a material fact on the part of the subject and the subject has been convicted of an offence

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[1] Zanzibar became an independent State on 10 December 1963 and signed on 23 April 1964 an agreement with Tanganyika to unite under the name of the United Republic of Tanganyika and Zanzibar, which as of 2 November 1964 became the United Republic of Tanzania.

[2] Text published is Legal Supplement (Part I) to the *Official Gazette of the Zanzibar Government*, Vol. LXXII, No. 4320, of 5 December 1963.

involving such fraud, false representation or concealment of a material fact as the case may be.

(3) Subject to the provisions of this section, the Minister may by order deprive any Zanzibar subject who is such by naturalisation of his status as a Zanzibar subject if that subject—

(*a*) has been convicted of an offence involving disloyalty or disaffection towards the State; or

(*b*) has within five years after becoming naturalised been sentenced in any country to imprisonment for a term of not less than twelve months.

(4) The Minister shall not deprive a person of his status as Zanzibar subject under this section unless he is satisfied that it is not conducive to the public good that that person should continue to be a Zanzibar subject.

(5) 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, if it is proposed that the order be made on any of the grounds specified in subsections (2) and (3) of this section, of his right to any inquiry under this section.

(6) If it is proposed that an order be made on any of the grounds specified in subsections (2) and (3) of this section and the person affected applies to the Minister in the prescribed manner for an inquiry, the Minister shall, and in any other case may refer the case to a committee of inquiry consisting of a chairman, being a person possessing judicial experience, appointed by the Sultan, acting in accordance with the advice of the Prime Minister, and such other members appointed by the Sultan, acting in accordance with the advice of the Prime Minister, as the Sultan shall deem fit.

. . .

Chapter II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

14. Whereas every person in the State is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, tribe, place of origin, political opinions, colour, creed, or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

(*a*) life, liberty, security of the person, the enjoyment of property and the protection of the law;

(*b*) freedom of conscience, of expression, and of assembly and association; and

(*c*) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

15. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case—

(*a*) for the defence of any person from violence or for the defence of property;

(*b*) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*c*) for the purpose of suppressing a riot, insurrection or mutiny; or

(*d*) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

16. (1) No person shall be deprived of his personal liberty save as may be authorised 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 the State or some other country, in respect of a criminal offence of which he has been convicted;

(*b*) in execution of the order of the High Court or of the Court of Appeal punishing him for contempt of any such court or of another court or tribunal;

(*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 the State;

(*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 the State, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from the State or for the purpose of restricting that person while he is being conveyed through the State 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 the State 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 the State 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,

and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within twenty-four hours of his arrest or from the commencement of his detention, the burden of proving that the person arrested or detained has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in paragraph (*b*) of subsection (3) of this section 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.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person.

17. (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 the State, the right to reside in any part of the State, the right to enter the State, the right to leave the State and immunity from expulsion from the State.

(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*) for the imposition of restrictions on the movement or residence within the State of any person or on any person's right to leave the State that are reasonably required in the interests of defence, public safety or public order;

(*b*) for the imposition of restrictions on the movement or residence within the State or on the right to leave the State of persons generally or any class of persons that are reasonably required in the interests of defence, public safety, public order, public morality or public health 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 by order of a court, on the movement or residence within the State of any person or on any person's right to leave the State either in consequence of his having been found guilty of a criminal offence under the law of the State or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from the State;

(*d*) for the imposition of restrictions on the freedom of movement of any person who is not a Zanzibar subject;

(*e*) for the imposition of restrictions on the acquisition or use by any person of land or other property in the State;

(*f*) for the imposition by the Government of restrictions upon the movement or residence within the State or on the right to leave the State of any person who holds or is acting in any office in the public service of the Government;

(*g*) for the removal of a person from the State to be tried or punished in some other country for a criminal offence under the law of that other country 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 the State of which he has been convicted; or

(*h*) for the imposition of restrictions on the right of any person to leave the State that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law 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.

(4) If any person whose freedom of movement has been restricted 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 three months after the order was made or three months after he last made such request, as the case may be, his case shall be reviewed by an independent tribunal presided over by a person apointed by the Chief Justice from among persons qualified to be appointed as a judge of the High Court.

(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 and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

18. (1) No person shall be held in slavery or servitude or required to perform forced labour.

(2) For the purposes of this section the expression "forced labour" does not include—

(*a*) any labour required in consequence of the sentence or order of a court;

(*b*) labour required of any person while he is lawfully detained which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(*c*) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as such a member, any labour which that person is required by law to perform in place of such service;

(*d*) any labour required during a period of public emergency or in the event of any other emergency or calamity which threatens the life or well-being of the community; or

(*e*) any labour which forms part of normal communal or other civic obligations.

19. (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 in the State of any description of punishment which was lawful in the State immediately before the commencement of this Constitution.

20. (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 therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having any interest in or right over the property; and

(*c*) provision is made by a law applicable to that taking of possession or acquisition for the payment of adequate compensation.

(2) Every person having an interest or right in or over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for—

(*a*) 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

(*b*) the purpose of obtaining payment of that compensation:

Provided that if it is so provided by law in relation to any matter referred to in paragraph (*a*) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the right or interest in the property) from a tribunal or authority other than the High Court, having jurisdiction under any law to determine that matter.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) or subsection (2) of this section—

(*a*) to the extent that the law in question makes provision for the taking of possession or acquisition of any property—

(i) in satisfaction of any tax, duty, rate, cess or other impost;

(ii) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law in force in the State;

(iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;

(vi) in consequence of any law with respect to the limitation of actions; or

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused, or failed, to carry out),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(*b*) to the extent that the law in question makes provision for the taking of possession or acquisition of—

(i) enemy property;

(ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and subject thereto, for the benefit of other persons entitled to the beneficial interest in the property;

or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees, under the instrument creating the trust or by a court, or by order of a court, for the purpose of giving effect to the trust.

(4) 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 for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over property where that property, interest or right is vested in a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided by Parliament.

21. (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 or of the East African Common Services Organisation, or of a local government authority or of a body corporate established by law for public purposes 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, Organisation, authority or body corporate, as the case may be; or

(*d*) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the entry upon any premises by order of a court,

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.

22. (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 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 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) No person shall be convicted of a criminal offence unless that offence is defined, and the penalty therefore is prescribed, in a written law: Provided that nothing in this subsection shall prevent a court from punishing any person for contempt notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefore is not so prescribed.

(9) 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.

(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence of 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 by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(*b*) may by law be empowered or required to do in the interests of defence, public safety or public order.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(*a*) subsection (2) (*a*) 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*) subsection (2) (*e*) of this section 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 authorises 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 the case of any person who is held in lawful detention, the provisions of subsection (1), paragraphs (*d*) and (*e*) of subsection (2) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(14) Nothing contained in subsection (2) (*d*) of this section shall be construed as entitling a person to legal representation at public expense.

(15) In this section "criminal offence" means a criminal offence under the law of the State.

(16) Subsection (8) of this section shall come into effect at the expiration of a period of three years from the coming into operation of this Constitution.

23. (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.

24. (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.

25. (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 without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) 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 the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; 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.

26. (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision—

(*a*) with respect to any person who is not a Zanzibar subject; or

(*b*) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; or

(*c*) 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 or conditions of 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 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 17, 21, 23, 24 and 25 of this Constitution, being such a restriction as is authorised by paragraph (*a*) of subsection (3) of section 17, subsection (2) of section 21, subsection (5) of section 23, subsection (2) of section 24 or subsection (2) of section 25 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.

27. Nothing contained in or done under the authority of any Act of Parliament to the extent that such law authorises the taking during any period when the State is at war or when a declaration of emergency under section 30 of this Constitution is in force of measures that are reasonably justifiable for dealing with the situation that exists in the State during that period shall be held to be inconsistent with or in contravention of section 16 or section 26 of this Constitution.

28. (1) Where a person is detained by virtue of such a law as is referred to in section 27 of this Constitution the following provisions shall apply, that is to say—

(*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 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 consisting of not less than three persons appointed by the Chief Justice from a panel of persons qualified to be appointed as judge of the High Court which panel shall be agreed from time

to time between the President of the Court of Appeal and the Chief Justice;.

(*c*) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and

(*d*) 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 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 and that authority shall, unless the State is then at war or a declaration of emergency is then in force by virtue of a resolution of the National Assembly passed by a majority of not less than two-thirds of all the members of the Assembly, be obliged to act in accordance with such recommendations.

29. (1) If any person alleges that any of the provisions of sections 15 to 28 (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 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) hereof;

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 15 to 28 (inclusive) to the protection of which the person concerned is entitled:

Provided that the High Court shall not exercise its powers under this subsection if it is satisfied that adequate means or redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court other than the High Court or the Court of Appeal any question arises as to the contravention of any of the provisions of the said sections 15 to 28 (inclusive), 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) No appeal shall lie from any determination under this section that any application or the raising of any question is merely frivolous or vexatious.

30. (1) The Sultan, may by order published in the *Gazette*, declare that a state of emergency exists for the purposes of this Chapter.

(2) A declaration of a state of emergency under this section, if not sooner revoked, shall cease to have effect 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 not 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 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 in the resolution:

Provided that the National Assembly may, by resolution of not less than one-half 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 emergency approved by the Assembly under this section.

31. (1) In this Chapter, unless the context otherwise requires—

"contravention", in relation to any requirement, includes a failure to comply with that requirement and cognate expressions shall be construed accordingly;

"court" means any court of law having jurisdiction in the State other than a court established by a disciplinary law, and in sections 15 and 18 of this Constitution, includes a court established by a disciplinary law;

"disciplinary law" means a law regulating the discipline of any disciplined force;

. . .

CHAPTER IV

PARLIAMENT

Part 1.—Composition of Parliament

39. There shall be a Parliament which shall consist of the Sultan and a National Assembly.

40. The National Assembly shall consist of—

(*a*) a Speaker; and

(*b*) members elected in accordance with section 41 of this Constitution.

41. (1) Until Parliament otherwise provides, there shall be thirty-one members of the National Assembly.

(2) Subject to the provisions of this Constitution the members of the National Assembly shall be elected in such manner as may be prescribed by or under any law.

42. Subject to the provisions of section 43 of this Constitution any person shall be qualified to be elected as a member of the National Assembly

if, and shall not be so qualified unless, at the date of nomination for election, he—

(*a*) is a Zanzibar subject of the age of twenty-five years or upwards; and

(*b*) has resided in the State for a period of twelve months immediately preceding that date; and

(*c*) is able to read and write in English or Arabic or Kiswahili.

43. No person shall be qualified to be elected as a member of the National Assembly who, at the date of his nomination for election—

(*a*) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign Power or State; or

(*b*) is a person declared to be of unsound mind under any law in force in the State; or

(*c*) has been sentenced by a court in the State or in any part of the Commonwealth to death or to imprisonment (by whatever named called) for a term exceeding six months and has not either suffered the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted therefore or received a free pardon; or

(*d*) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in the State or in any part of the Commonwealth; or

(*e*) is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government for or on account of the public service and has not disclosed to the Speaker the nature of that contract and his interest, or the interest of the firm or company, therein:

Provided that a person shall not be considered to be a party to a contract with the Government for the purposes of this paragraph by reason of his holding, or acting in, any public office;

(*f*) subject to such exceptions and limitations as may be prescribed by Parliament, is the holder of a permanent appointment as a public officer.

. . .

Part 3.—Legislation and Procedure in National Assembly

. . .

58. (1) Subject to the provisions of this section, Parliament may alter any of the provisions of this Constitution.

(2) In so far as it alters—

(*a*) this section; or

(*b*) any provision of this Constitution which is set out in the Fourth Schedule to this Constitution; or

(*c*) section 136 of this Constitution in its application to any of the provisions specified in the Fourth Schedule,

a bill for an Act of Parliament under this section—

(i) shall not be passed by the National Assembly in any session unless at the final vote thereon in that session it is supported by the votes of not less than two-thirds of all the members of the Assembly; and

(ii) shall not be submitted to the Sultan for assent unless the bill has been passed by the National Assembly in two successive sessions, there having been a dissolution of Parliament between the first and second of those sessions.

. . .

FIRST SCHEDULE

(Section 3)

Part I

Qualifications for Naturalisation

Subject to the provisions of the next following paragraph, the qualifications for naturalisation of an alien who applies therefore are—

(*a*) that he has resided in the Dominions of the Sultan 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 the Dominions of the Sultan for periods amounting in the aggregate to not less than four years; and

(*c*) that he is of good character;

(*d*) that he has sufficient knowledge of at least one of the following languages:

(i) English;

(ii) Arabic;

(iii) Kiswahili; and

(*e*) that in the event of a grant to him of a certificate he intends to reside in the Dominions of the Sultan.

2. The Minister may, if in the special circumstances of any particular case he thinks fit, allow a continuous period of twelve months ending not more than six months before the date of the application to be reckoned, for the purposes of sub-paragraph (*a*) of the last preceding paragraph, as if it had immediately preceded that date.

. . .

PART II

TRUST AND NON-SELF-GOVERNING TERRITORIES

AUSTRALIA

NOTE[1]

I. TRUST TERRITORY OF NAURU

Nauru Local Government Council Ordinance 1963

This Ordinance amends the *Nauru Local Government Council Ordinance 1951-1959* in certain respects.

The 1963 Ordinance has assigned to the Nauru Local Government Council (in lieu of the Administrator) the powers to fix the date for holding elections of councillors, to appoint a Registrar to keep the rolls of names of all Nauruans entitled to vote at the elections, to authorize proceedings against a person for not voting, to determine the place at which a poll shall be taken and to determine whether in certain circumstances it is necessary to fill a vacancy on the Council. The ordinance also amends the advisory functions of the Council by providing that it may advise the Administrator in relation to any matter affecting, "the peace, order and good government of the Island of Nauru".

The Council may now exercise the following powers without it being necessary to obtain the approval of the Administrator:

(*a*) to organize, finance or engage in any business or enterprise likely to benefit the Nauruan community; and

(*b*) to provide any public or social services for the Nauruan community.

The Council is also empowered to raise revenue by imposing taxes and levying rates, and to impose fees or charges for services rendered by the Council.

Mentally-Disordered Persons Ordinance 1963

The main provisions of this Ordinance are as follows:

6. (1) If the Administrator has reason to believe that a person who—

(*a*) has been found wandering at large or in circumstances that, in the opinion of the Administrator, denote a purpose of committing an offence against the law;

(*b*) is, in the opinion of the Administrator, without sufficient means of support;

(*c*) is not, in the opinion of the Administrator, under proper care and control; or

(*d*) is, in the opinion of the Administrator, cruelly treated or neglected by the person having or assuming the care or charge of him,

is a mentally-disordered person, the Administrator may require a member of the police force to apprehend and take the person before a magistrate.

(2) If a member of the police force has reason to believe that a person who—

(*a*) has been found wandering at large or in circumstances that, in the opinion of the member of the police force, denote a purpose of committing an offence against the law; or

(*b*) is not, in the opinion of the member of the police force, under proper care and control,

is a mentally-disordered person, the member of the police force may apprehend and take the person before a magistrate.

(3) If the Administrator has reason to believe that a person who is imprisoned or detained in a prison, gaol or other place of confinement is a mentally-disordered person, the Administrator may require the person in charge of the prison, gaol or other place of confinement to take that first-mentioned person before a magistrate.

7. (1) The magistrate before whom a person is brought under the last preceding section shall, with the assistance of two medical practitioners, one of whom shall be the Government Medical Officer, examine the person and make such inquiry regarding him as the magistrate deems necessary.

. . .

(4) If each of the two medical practitioners assisting a magistrate in an inquiry under this section gives a certificate in accordance with Form 1 in the Schedule to this Ordinance with respect to the person the subject of the inquiry and the magistrate is satisfied, upon examination of the person and of the medical practitioners or upon other proof, that—

(*a*) the person is mentally-disordered person;

(*b*) the person—

(i) has been found wandering at large or in circumstances that denote a purpose of committing an offence against the law;

(ii) is without sufficient means of support;

(iii) is not under proper care and control;

(iv) is cruelly treated or neglected by the person having or assuming the care or charge of him; or

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

(v) is undergoing imprisonment or detention in a prison, gaol or other place of confinement; and

(*c*) it is proper for the person to be taken charge of and detained under care or treatment, the magistrate shall issue a certificate in accordance with Form 2 in the Schedule to this Ordinance and (except in the case of a person undergoing imprisonment or detention) commit the person to the custody of the Administrator.

(5) Where a person, after having been tried for an offence, is found not guilty of the offence on account of unsoundness of mind and is ordered by the court by which he was tried to be kept in custody until Her Majesty's pleasure is known. the Administrator may issue a certificate to the effect that that person is a mentally-disordered person and such a certificate has effect for the purposes of this Ordinance as if it were a certificate issued by a magistrate under the last preceding sub-section.

8. (1) Where a certificate has been issued in respect of a person under the last preceding section, the Administrator shall make suitable arrangements for the care, control and maintenance of the person and may—

(*a*) arrange for the removal of the person to, and the care, treatment and maintenance of the person in, a State with the Government of which an arrangement has been made under section five of this Ordinance; or

(*b*) where the person—

(i) was brought to Nauru under a contract of employment with an employer; or

(ii) is not ordinarily resident in Nauru,

arrange for the return of the person, and such of his dependants (if any) that wish to accompany him, to the place from which the person was brought to Nauru or to the place where he ordinarily resides.

(2) The employer of a person who is returned to a place outside Nauru by virtue of paragraph (*b*) of the last preceding sub-section is liable to pay to the Administration the amount of any expense incurred by the Administrator—

(*a*) in maintaining the person while he is awaiting return to that place; and

(*b*) in providing the person and any of his dependants with a passage to that place,

and the Administrator may recover that amount as a debt due to the Administration by action in a court of competent jurisdiction.

9. Where a person has been committed to, and is in the custody of, the Administrator under this Ordinance, the Administrator may, if he is satisfied that it is unnecessary or undesirable for the person to continue to be held in custody, discharge that person from custody.

II. TRUST TERRITORY OF NEW GUINEA [1]

The Papua and New Guinea Act 1963 (Commonwealth) provides for a House of Assembly for the "Territory of Papua and New Guinea" as follows:

35. There shall be a House of Assembly for the Territory.

36. (1) The House of Assembly shall consist sixty-four members, as follows:

(*a*) ten persons, to be known as official members, appointed by the Governor-General on the nomination of the Administrator;

(*b*) forty-four persons elected by electors of the Territory; and

(*c*) ten persons, not being indigenous inhabitants of the Territory, elected by electors of the Territory.

(2) The elected members of the House of Assembly shall be elected as provided by or under Ordinance, and a candidate for election shall possess such qualifications and be subject to such disqualifications as are provided by this Act or by Ordinance.

(3) An Ordinance shall not disqualify a person on the ground of race—

(*a*) from being enrolled as an elector of the Territory;

(*b*) from participating as such an elector in an election of a member of the House of Assembly; or

(*c*) from being elected as an elected member of the House of Assembly referred to in paragraph (*b*) of sub-section (1) of this section.

(4) Subject to this Act, an elected member holds office for a period commencing—

(*a*) in the case of a member elected at a general election: on the polling day fixed for the purposes of that general election; or

(*b*) in any other case: on the day of election, and ending on the day before the polling day fixed for the purposes of the next general election.

(5) Subject to this Act, an official member holds office during the pleasure of the Governor-General.

(6) A member of the House of Assembly shall, before taking his seat, make and subscribe before the Administrator or a person authorized for the purpose by the Administrator an oath or affirmation in the form in the Sixth Schedule to this Act.

. . .

40. (1) The Administrator may, at any time, by notice in the *Government Gazette*, direct the holding of a general election.

(2) A general election shall be held, at the time and in the manner provided by or under Ordinance, whenever the holding of such an election is directed by the Administrator.

[1] The Trust Territory of New Guinea and the Territory of Papua are administered together in an administrative union under the name of the Territory of Papua and New Guinea.

(3) The Administrator shall ensure that general elections are held at intervals not exceeding four years.

41. (1) The Administrator may, by notice in the *Government Gazette*, appoint such times for holding sessions of the House of Assembly as he thinks fit, and may also, from time to time, in a similar manner, prorogue the House of Assembly.

(2) After a general election, the House of Assembly shall be summoned to meet not later than six months after the polling day fixed for the purposes of the election.

(3) There shall be a session of the House of Assembly once at least in every year, so that twelve months shall not intervene between the last sitting of the House in one session and its first sitting in the next session.

. . .

52. Subject to this Act, the House of Assembly may make Ordinances for the peace, order and good government of the Territory.

53. An Ordinance passed by the House of Assembly shall not have any force or effect until it has been assented to as provided in this Division.

[Section 54 provides for the presentation of Ordinances to the Administrator for his assent. Section 55 requires the Administrator to reserve certain Ordinances for the Governor-General's consideration.]

The *Electoral Ordinance 1963*, the *Electoral (Open Electorates) Ordinance 1963* and the *Electoral (Special Electorates) Ordinance 1963* provide for elections to the House of Assembly on the basis of universal adult franchise, with all electors registered on a common Roll.

Discriminatory Practices Ordinance 1963 (Papua and New Guinea)

This Ordinance prohibits certain discriminatory practices. The main provisions are contained in sections 3 to 7, which read as follows:

3. In this Ordinance, unless the contrary intention appears—

"Court", in relation to the Territory of Papua, means a Court of Petty Sessions and, in relation to the Territory of New Guinea, means a District Court;

"discriminatory practice" means discrimination either of an adverse or of a preferential kind practised by a person or group of persons against or in favour of another person or group of persons for reasons only of race or colour, and in particular includes—

(*a*) the setting aside of portion of any premises, vessel, aircraft or vehicle the subject of a licence for the exclusive use of persons or a class of persons of a certain race or colour;

(*b*) the failure to attend to persons in the order that those persons enter or approach any premises, vessel, aircraft or vehicle the subject of a licence;

(*c*) the selling or buying of goods at different prices or on different terms to different persons or classes of persons; and

(*d*) a course of conduct which distinguishes between persons or classes of persons of differing races or colours and which may reasonably be expected to result in mental distress or suffering by a person or a member of that class of persons;

"licence" means—

(*a*) a licence under the *Liquor (Licensing) Ordinance 1963*;

(*b*) a licence under the *Restaurants (Licensing) Ordinance 1951-1962*;

(*c*) a trader's licence or pedlar's licence under the *Licences Ordinance 1923-1952* of the Territory of New Guinea;

(*d*) a licence under the Agents for Native Regulations of the Territory of New Guinea;

(*e*) a licence to keep a place of entertainment under the Places of Entertainment Regulations of the Territory of New Guinea;

(*f*) a licence for a place of public entertainment under the *Places of Public Entertainment Ordinance 1915-1955* of the Territory of Papua;

(*g*) a licence under the *Trading with Natives Ordinance 1946-1953* of the Territory of Papua and New Guinea;

(*h*) a licence under the *Sale of Meat Ordinance 1951-1962*;

(*i*) a permit or special permit under the *Copra Ordinance 1952*;

(*j*) a registration under Section 12 or 13A of the *Cocoa Industry Ordinance 1958-1961*;

(*k*) an exemption under Section 6 of the *Transactions with Natives Ordinance 1958*; or

(*l*) any other prescribed licence, permit or authority to buy, sell or deal in goods.

4. (1) The holder of a licence shall not (without reasonable excuse, the burden of proof of which lies upon him) carry out a discriminatory practice or cause or permit a discriminatory practice to be carried out in or in connexion with, or incidental to, the business the subject of the licence.

Penalty: one hundred pounds.

(2) An offence against the last preceding subsection shall not be deemed to have been committed where the conduct in question was required for the purpose of complying with a law in force in Territory or a part of the Territory.

5. A person shall not, in or on premises the subject of a licence—

(*a*) act in an insulting, provocative or offensive manner towards a person of a different race or colour as such;

(*b*) incite or endeavour to incite another person so to act.

Penalty: imprisonment for two months.

6. A prosecution for an offence against either of the last two preceding sections shall not be commenced without the consent of the Secretary for Law.

7. (1) Where a person is convicted of an offence against Section 4 or 5 of this Ordinance, the Court which convicts him may—

(*a*) suspend for such time as it thinks proper or cancel all or any licences held by that person; and

(*b*) disqualify that person from holding all or any licences during any such period as it thinks proper.

(2) A conviction for an offence against Section 4 or 5 of this Ordinance is good ground for the making of an order under Section 21 of the *Native Employment Ordinance 1958-1962.*

(3) The preceding provisions of this section apply irrespective of anything in any other law in force in the Territory or a part of the Territory made before the commencement of this Ordinance.

Liquor (Licensing) Ordinance 1963 (Papua and New Guinea)

This Ordinance completes the steps that have been taken to remove the special restrictions applicable to the supply of liquor to the indigenous population. The position now is that the one law applies to all classes of the community.

Native Customs (Recognition) Ordinance 1963 (Papua and New Guinea)

This Ordinance relates to the determination and recognition of the customs of the indigenous inhabitants of the Territory. Sections 6, 7 and 8 read as follows:

6. (1) Subject to this Ordinance, native custom shall be recognized and enforced by, and may be pleaded in, all courts, except in so far, as in a particular case or in a particular context—

(*a*) it is repugnant to the general principles of humanity;

(*b*) it is inconsistent with an Act, Ordinance or subordinate enactment in force in the Territory or a part of the Territory;

(*c*) its recognition or enforcement would result, in the opinion of the court, in injustice or would not be in the public interest; or

(*d*) in a case affecting the welfare of a child under the age of sixteen years, its recognition or enforcement would not, in the opinion of the court, be in the best interests of the child.

(2) Nothing in the last preceding subsection contained shall be deemed of itself to empower a Native Local Government Council to make a subordinate enactment affecting native custom, but this subsection shall not be deemed to limit in any way the powers of a Native Local Government Council conferred by any other law in force in the Territory or a part of the Territory.

7. Subject to this Ordinance, native custom shall not be taken into account in a criminal case, except for the purpose of—

(*a*) ascertaining the existence or otherwise of a state of mind of a person;

(*b*) deciding the reasonableness or otherwise of an act, default or omission by a person;

(*c*) deciding the reasonableness or otherwise of an excuse;

(*d*) deciding, in accordance with any other law in force in the Territory or a part of the Territory, whether to proceed to the conviction of a guilty party; or

(*e*) determining the penalty (if any) to be imposed on a guilty party,

or where the court considers that by not taking the custom into account injustice will or may be done to a person.

8. Subject to this Ordinance, native custom shall not be taken into account in a case other than a criminal case, except in relation to—

(*a*) the ownership by native custom of or of rights in, over or in connexion with native land or any thing therein or thereon or the produce thereof, including rights of hunting or gathering;

(*b*) the ownership by native custom of or of rights in, over or in connexion with the sea or a reef, or in or on the bed of the sea or of a river or lake, including rights of fishing;

(*c*) the ownership by native custom of or of rights in, over or to water;

(*d*) the devolution of native land or of rights in, over or in connexion with native land, whether on the death or on the birth of a person, or on the happening of a certain event;

(*e*) trespass by animals;

(*f*) marriage, divorce or the right to the custody or guardianship of infants, in a case arising out of or in connexion with a marriage entered into in accordance with native custom;

(*g*) a transaction which the parties intended should be, or which justice requires should be, regulated wholly or partly by native custom and not by law;

(*h*) the reasonableness or otherwise of an act, default or omission by a person; or

(*i*) the existence of a state of mind of a person, or where the court considers that by not taking the custom into account injustice will or may be done to a person.

UNITED STATES OF AMERICA

TRUST TERRITORY OF THE PACIFIC ISLANDS

RECOMMENDATION 3-1963 OF THE COUNCIL OF MICRONESIA [1]

The Council of Micronesia recommends to the High Commissioner that the planned territorial legislature be established on the following basis:

1. *Name: Congress of Micronesia*

(*a*) This area is well known as Micronesia. The term Micronesia was originally used as an anthropological term, but now it has become a term used in a political sense.

(*b*) Micronesia is a lasting term, that is, some day in the future the terms *Trust Territory* or *Territory* may cease to be used because of a change in the political status of the area. Regardless of change, this area will always remain Micronesia.

(*c*) *Congress rather than Legislature.* It is expected that eventually, the District Congresses will be referred to as District Legislatures, thus the territorial body will be properly referred to as Congress; something like the existing terminologies in a federation such as the United States where there exists a United States Congress and state legislatures.

(*d*) The term Congress is appropriate also because there will be two houses.

2. *Type: Bicameral*

(*a*) District interests will be better protected by having two houses; it will slow down the legislative process and thereby make for more carefully considered laws.

(*b*) Good features of the several Micronesian cultures will be better protected.

(*c*) A bicameral type of body is believed to be the kind that can create, at this early stage of development, a favourable atmosphere for continuous growth and development and make for a smoother transition to the type of political body considered superior by modern political scientists.

3. The Congress of Micronesia will consist of two houses, the House of Delegates, which will be composed of two representatives from each district, and the Assembly, with representatives apportioned on a population basis.

. . .

5. *Term of Office*

(*a*) *House of Delegates.* Term will be four years. (1) A term of four years will provide an opportunity for legislators to learn the responsibilities of their mission. (2) It will give the legislators a feeling of security and thus help them do a better job.

(*b*) *Assembly.* Term will be two years. (1) Give wider participation. Term of two years will also have the effect of keeping the legislators responsible, especially when realizing that their re-elections depend considerably on their performance and good record.

(*c*) By having a term of two years and the tenure of the office somewhat short and dependent on the people, it will have a screening effect and only sincere, devoted people of genuine interest in the well-being of the people will run for the office.

(*d*) *Selection of Candidates.* A system of elections will be established which will be flexible to suit each district.

6. *Reapportionment*

Reapportionment of the Assembly shall take place in 1970 and every ten (10) years thereafter. Regardless of population change, no district shall have fewer than two legislators.

7. *Qualifications of Legislators*

(*a*) Delegates: 30 years of age; at least seven years a citizen of the Trust Territory of the Pacific Islands and at least one year *bona fide* resident of his district at time of his election.

(*b*) Assemblymen: 25 years of age; at least five years citizen of the Trust Territory of the Pacific Islands and a *bona fide* resident of his district at time of his election.

8. *Holding Other Offices*

Individuals in staff positions with the Administering Authority on Territorial and District levels as well as the Judiciary may not hold office in the Congress.

9. *Vacancies*

Replacement of vacancies will be by District Administrator's appointment.

[1] Text published as annex III to the *Report of the United Nations Visiting Mission to the Trust Territory of the Pacific Islands, 1964* (T/1620).

10. *Impeachment*

This will be a power of the Congress.

. . .

21. *Immunity of Legislators*

Immunity is necessary. It is to enable legislators to debate issues without the threat of legal suit for statements made during sessions, and also to be free from arrest while going to and from sessions.

22. *Taxing Power*

The Congress shall have the power to provide by law for the levy of taxes.

23. *Appropriation Power*

The Congress shall have the power to appropriate funds.

24. *Amendments*

If this body is established by charter it can be amended by the Secretary of Interior on his own initiative or by a two-thirds vote of each house of Congress and High Commissioner's approval.

25. *Power to Investigate, Hold Hearings, and Subpoena Witnesses*

These are customary incidents of legislative authority and are essential to proper functioning.

26. *Sessions*

These will be public.

27. *Qualifications of Members*

Congress shall be the judge of the qualifications of its members.

. . .

30. *Item Veto*

To avoid vetoing an entire bill because of one or more unacceptable items. The High Commissioner shall have item veto power on appropriation measures.

. . .

33. *Official Language*

English will be the preferred language.

34. *Laws*

Laws enacted by the Congress shall become part of the Trust Territory Code. The Congress shall have the power to amend or repeal provisions of the Trust Territory Code.

35. At the end of its first year of existence and if necessary at each regular session thereafter the nature of this body that is, whether it be bicameral or unicameral—shall be studied by the Assembly, and at its recommendation and the concurrence of the High Commissioner, the body shall be then converted into a unicameral one.

CHARTER OF THE TRUK DISTRICT LEGISLATURE

of 25 September 1963 [1]

PREAMBLE

Whereas the Truk District Congress was established under the provision of a Charter granted 9 August 1957 by the High Commissioner of the Trust Territory of the Pacific Islands, in order to provide a representative legislative body for the people of Truk District, and

Whereas the elected representative of the people of Truk District, meeting as the Truk District Congress pursuant to the term of that Charter, on 7 August 1963 by two-third majority vote requested that the existing Charter be replaced by a revised one, provision of which they recommended;

Now, therefore, I, M. W. Goding, High Commissioner of the Trust Territory of the Pacific Islands, hereby rescind the Charter of 9 August 1957, and grant to the people of Truk District this present Charter, giving them the right, in accordance with its provision, to participate, through the Truk District Legislature in the government of Truk District. The Truk District Legislature is the successor in all respects and in every way, and in accordance with this Charter, to the Truk District Congress.

ARTICLE I

Section 1. The legislative powers of Truk District herein granted by the High Commissioner of the Trust Territory of the Pacific Islands shall be vested in a single house to be known as the Truk District Legislature.

Section 2. The Truk District Legislature, hereinafter referred to as the Legislature, shall be composed of twenty-seven legislators elected every two years by the electors of Truk District.

ARTICLE II

. . .

Section 2. Reapportionment on a population basis shall take place every ten years, beginning in 1970. Regardless of population change, each precinct shall be entitled to have at least one legislator.

Section 3. To be eligible for election or appointment, a person must be a citizen of the Trust Territory of the Pacific Islands; have resided in Truk District for a three-year period immediately preceding his election; be a resident of his electoral precinct for a period of not less than one year immediately preceding his election; be twenty-three years of age or over; and never have been convicted of a felony.

[1] Text published as annex IV to the *Report of the United Nations Visiting Mission to the Trust Territory of the Pacific Islands, 1964* (T/1620).

Section 4. Where a legislator is unable to perform the duties of the office due to physical or mental disability or who dies or resigns or is removed by action of the Legislature, another shall be appointed to fill the remainder of the term by the District Administrator. In the event a legislator elect is unable to assume office, there shall be a special election in his electoral precinct to elect another in his place.

ARTICLE III

Section 1. No person may sit in the Legislature who holds an elected public office in the executive branch in a municipality, who holds a judicial office, or who holds a staff position in the district administration.

Section 2. The Legislature alone shall determine the qualifications of its members. The Legislature may by an affirmative three-fourths vote of its members expel a member for cause.

Section 3. Qualifications of electors shall be as follows: each shall be eighteen years of age or over; be a citizen of the Trust Territory of the Pacific Islands; have been a resident of Truk District for a period of at least one year immediately preceding the election; be a registered elector in his precinct at the time of the election; not be serving a criminal sentence at the time of the election.

ARTICLE IV

. . .

Section 3. Members of the Legislature during their attendance at the Legislature, and in going to and returning from the same, shall not be subject to civil process and shall, in all cases except felony or breach of the peace, be privileged from arrest. No legislator shall be held to answer before any tribunal other than the Legislature itself for any speech or debate in the Legislature.

Section 4. As incidents of its legislative authority, the Legislature may conduct investigations, hold public hearings and administer oaths.

. . .

ARTICLE VII

Section 1. The Legislature shall have the power to levy and collect taxes and appropriate money.

ARTICLE VIII

Section 1. Amendments to this Charter may be made upon an affirmative vote of three-fourths of the Legislature and approval by the District Administrator and the High Commissioner, or by the High Commissioner on his own initiative.

Section 2. The Truk District Congress shall be automatically dissolved upon the convening of the first session of the Legislature. An election to select members of the Legislature shall be conducted no later than 31 December 1963.

B. Non-Self-Governing Territories

AUSTRALIA

TERRITORY OF PAPUA[1]

Papua and New Guinea Act 1963 (Commonwealth)
Discriminatory Practices Ordinance 1963 (Papua and New Guinea)
Liquor (Licensing) Ordinance 1963 (Papua and New Guinea)
Native Customs (Recognition) Ordinance 1963 (Papua and New Guinea)
These enactments are described in the note on the Trust Territory of New Guinea

[1] This Territory and the Trust Territory of New Guinea are governed under an administrative union by the name of the Territory of Papua and New Guinea.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

BAHAMAS

THE CONSTITUTION OF THE BAHAMA ISLANDS [1]

PART I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

1. Whereas every person in the Bahama Islands 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 assembly and association; and

(*c*) respect for his private and family life,

the subsequent provisions of this Part 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.

2. (1) No person shall be deprived intentionally of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to 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 a result of a lawful act of war.

3. (1) No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

(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 that was lawful in the Bahama Islands immediately before the coming into operation of this Constitution.

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, "forced labour" does not include—

(*a*) any labour required in consequence of the sentence or order of a court;

(*b*) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service in a naval, military or air force, any labour which that person is required by law to perform in place of such service;

(*c*) labour required of any person while he is lawfully detained which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he is detained; 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 of well-being of the community.

5. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases—

(*a*) in execution of the sentence or order of a court in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;

[1] Text appears in the Schedule to the Bahama Islands (Constitution) Order in Council 1963, published as *Statutory Instruments*, 1963, No. 2084, by Her Majesty's Stationery Office, London.

(*b*) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;

(*c*) for the purpose of bringing him before a court in execution of the order of a court;

(*d*) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;

(*e*) in the case of a person who has not attained the age of twenty-one years, for the purpose of his education or welfare;

(*f*) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(*g*) for the purpose of preventing the unlawful entry of that person into the Bahama Islands or for the purpose of effecting the expulsion, extradition or other lawful removal from the Bahama Islands of that person or the taking of proceedings relating thereto.

(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained in such a case as is mentioned in subsection (1) (*c*) or (*d*) of this section and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said paragraph (*d*) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

6. (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 or by a legal representative at the public expense where so provided by or under a law in force in the Bahama Islands;

(*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;

(*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

(*g*) shall, when charged on Information in the Supreme Court, have the right to trial by jury;

and except with his own consent the trial shall not take place in his absence, unless he so conducts himself in the court 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 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 severe 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) All proceedings instituted in any court for the determination of the existence or extent of any civil right or obligation, including the announcement of the decision of the court, shall be held in public.

(10) Nothing in subsection (9) of this section shall prevent the court from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court—

(*a*) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings;

(*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; or

(*c*) may be empowered to do so under the Rules of Court and Practice existing immediately before the coming into operation of this Constitution.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(*a*) subsection (2) (*a*) 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*) subsection (2) (*e*) of this section to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(*c*) subsection (5) of this section to the extent that the law in question authorises 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, "legal representative" means a person entitled to practise in the Bahama Islands as counsel and attorney of the Supreme Court.

7. (1) Every person shall be entitled to respect for his private and family life and his home.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this 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, public health or the economic well-being of the community; or

(ii) for the purpose of protecting the rights and freedoms of other persons; or

(*b*) which authorises an officer or agent of the Government of the Bahama Islands, 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 of 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, authority or body corporate, as the case may be,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

8. (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of 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 or in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his consent (or, if he is a person who has not attained the age of twenty-one years, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) No religious body or denomination shall be prevented from or hindered in 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.

(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 interference of members of any other religion,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

9. (1) Except with his 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 freedom to hold opinions, to belong to political parties, to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) which is reasonably required—

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the rights, reputations and freedoms of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or

(*b*) which imposes restrictions upon persons holding office under the Crown or upon members of a disciplined force,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

10. (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) which is reasonably required—

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the rights and freedoms of other persons; or

(*b*) which imposes restrictions upon persons holding office under the Crown or upon members of a disciplined force,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

11. (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout the Bahama Islands, the right to reside in any part thereof, the right to enter the Bahama Islands and immunity from expulsion therefrom.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this 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, public health or town and country planning; or

(ii) for the purpose of protecting the rights and freedoms of other persons,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(*b*) for the removal of a person from the Bahama Islands to be tried outside the said Islands for a criminal offence or to undergo imprisonment in some other country in respect of a criminal offence of which he has been convicted;

(*c*) for the imposition of restrictions upon the movement or residence within the Bahama Islands of public officers or members of a disciplined force;

(*d*) for the imposition of restrictions on the movement or residence within the Bahama Islands of any person who does not belong to the said Islands or the exclusion or expulsion therefrom of any such person.

(3) Any restriction on a person's freedom of movement which is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(4) For the purposes of this section, a person shall be deemed to belong to the Bahama Islands if—

(*a*) he is a British subject and was born in the Bahama Islands; or

(*b*) he is a British subject and was born outside the Bahama Islands of a father or mother who was born in the Bahama Islands; or

(*c*) he is a person who is deemed to belong to the Bahama Islands under the provisions of any law for the time being in force in the Bahama Islands; or

(*d*) he has obtained the status of a British subject by reason of the grant by the Governor of a certificate of naturalisation under the British Nationality and Status of Aliens Act 1914 (*a*) or the British Nationality Act 1948 (*b*); or

(*e*) she is the wife of a person to whom any of the foregoing paragraphs of this subsection applies not living apart from such person under a decree of a court or a deed of separation; or

(*f*) such person is the child, stepchild or lawfully adopted child under the age of eighteen years of a person to whom any of the foregoing paragraphs of this subsection applies.

12. (1) Subject to the provisions of subsections (4), (5) and (8) 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), (8) and (9) 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 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*) for the appropriation of revenues or other funds of the Bahama Islands or for the imposition of taxation (including the levying of fees for the grant of licences); or

(*b*) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, the Bahama Islands of persons who do not belong to the Bahama Islands for the purposes of section 11 of this Constitution; or

(*c*) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; or

(*d*) 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;

(*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 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; or

(*f*) for authorising the granting of licences or certificates permitting the conduct of a lottery, the keeping of a gaming house or the carrying on of gambling in any of its forms subject to conditions which impose upon persons who belong to the Bahama Islands disabilities or restrictions to which other persons are not made subject.

(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 authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Subject to the provisions of subsection (4) (*f*) and of subsection (8) of this section, no person shall be treated in a discriminatory manner in respect of access to any of the following places to which the general public have access, namely, shops, hotels, restaurants, eating-houses, licensed, premises, places of entertainment or places of resort.

(8) 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 7, 8, 9, 10 and 11 of this Constitution, being such a restriction as is authorised by section 7 (2) (*a*), 8 (5), 9 (2), 10 (2) or 11 (2) (*a*), as the case may be.

(9) 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.

13. (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 or the economic well-being of the community; 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 Supreme Court, 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; and

(*d*) giving to any party to proceedings in the Supreme Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(2) Nothing in this 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 the Bahama Islands;

(*c*) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(*d*) upon the attempted removal of the property in question out of or into the Bahama Islands in contravention of any law;

(*e*) by way of the taking of a sample for the purposes of any law;

(*f*) where the property consists of an animal upon its being found trespassing or straying;

(*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, bodies corporate or unincorporate in the course of being wound up, or defunct companies that have been struck off the Register of Companies;

(*h*) in the execution of judgments or orders of courts;

(*i*) by reason of its being in a dilapidated or dangerous state or injurious to the health of human beings, animals or plants;

(*j*) in consequence of any law making provision for the validation of titles to land or (without prejudice to the generality of the foregoing words) the confirmation of such titles, or for the extinguishment of adverse claims, or with respect to prescription or the limitation of actions; or

(*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 reclamation, drainage, 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 the Legislature.

14. (1) If any person alleges that any of the provisions of sections 2 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 which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

(*a*) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and

(*b*) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) 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 2 to 13 (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 are or have been available to the person concerned under any other law.

(3) If, in any proceedings in any court established for the Bahama Islands other than the Supreme Court or the Court of Appeal, any question arises as to the contravention of any of the provisions of the said sections 2 to 13 (inclusive), the court in which the question has arisen shall refer the question to the Supreme Court.

(4) No law of the Legislature shall make provision with respect to rights of appeal from any determination of the Supreme Court in pursuance of this section that is less favourable to any party thereto than the rights of appeal from determinations of the Supreme Court that are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(5) A law of the Legislature may confer upon the Supreme Court such additional or desirable for enabling the Court more effectively to exercise the jurisdiction conferred upon it by subsection (2) of this section and may make provision with respect to the practice and procedure of the Court while exercising that jurisdiction.

15. (1) This section applies to any period when—

(*a*) Her Majesty is at war; or

(*b*) there is in force a proclamation (in this section referred to as a "proclamation of emergency") made by the Governor and published in the Gazette declaring that a state of public emergency exists for the purposes of this section.

(2) Nothing contained in or done under the authority of any law shall be held to inconsistent with or in contravention of section 4 (2), section 5, any provision of section 6 other than subsection (4) thereof, or any provision of sections 7 to 12 (inclusive) of this Constitution to the extent that the law in question makes in relation to any period to which this section applies provision, or authorises the doing during any such period of anything, which is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

(3) Where any proclamation of emergency has been made, copies thereof shall as soon as is practicable be laid before both chambers of the Legislature, and if for any cause those chambers are not due to meet within five days the Governor shall, by proclamation published in the Gazette, summon them to meet within five days and they shall accordingly meet and sit upon the day appointed by the proclamation and shall continue to sit and act as if they had stood adjourned or prorogued to that day:

Provided that if the proclamation of emergency is made during the period between a dissolution of the House of Assembly and the next ensuing general election of members of that House, the chambers to be summoned as aforesaid shall be that Senate and that House of Assembly which are referred to in section 58 of this Constitution.

(4) A proclamation of emergency shall, unless it is sooner revoked by the Governor, cease to be in force at the expiration of a period of fourteen days beginning on the date on which it was made or such longer period as may be provided under subsection (5) of this section, but without prejudice to the making of another proclamation of emergency at or before the end of that period.

(5) If at any time while a proclamation of emergency is in force (including any time while it is in force by virtue of the provisions of this subsection) a resolution is passed by each chamber of the Legislature approving its continuance in force for a further period, not exceeding three months, beginning on the date on which it would otherwise expire, the proclamation shall, if not sooner revoked, continue in force for that further period.

(6) Where any person who is lawfully detained in pursuance only of such a law as is referred to in subsection (2) 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.

(7) 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 such recommendations.

(8) The powers of the Governor under this section shall be exercised by him after consultation with the Premier:

Provided that if in the judgment of the Governor it is impracticable for him to consult with the Premier, those powers shall be exercised by the Governor acting in his discretion.

16. (1) In this Part of this Constitution, unless it is otherwise expressly provided or required by the context—

"contravention" in relation to any requirement includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means any court of law in the Bahama Islands other than a court constituted by or under disciplinary law:

Provided that—

(*a*) in sections 2, 4, 5, subsections (2), (3), (5), (9) and (10) of section 6, section 12 and section 14 (3), "court" includes, on relation to an offence against disciplinary law, a court constituted by or under disciplinary law; and

(*b*) in sections 5 and 6, "court", in relation to an offence against disciplinary law, includes an officer of a disciplined force:

"disciplinary law" means a law regulating the discipline of any disciplined force:

"disciplined force" means—

(i) a naval, military or air force;

(ii) the Police Force of the Bahama Islands;

(iii) the Prison Service of the Bahama Islands;

"member" in relation to a disciplined force includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

"period of emergency" means any period during which—

(i) Her Majesty is at war; or

(ii) there is in force such a proclamation of the Governor as is referred to in section 15.

(2) Any reference in sections 2, 5, 11 and 13 of this Constitution to a criminal offence shall be construed as including an offence against disciplinary law, and any such reference in subsections (2) to (7) (inclusive) of section 6 of this Constitution shall, in relation to proceedings before a court constituted by or under disciplinary law, be construed in the same manner.

(3) In relation to any person who is a member of a disciplined force raised under a law of any country other than the Bahama Islands and lawfully present in the Bahama Islands, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Part.

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PART III

THE LEGISLATURE

General

28. There shall be a Legislature in and for the Bahama Islands which shall consist of the Governor, a Senate and a House of Assembly.

The Senate

29. (1) The Senate shall consist of fifteen members (in this Constitution referred to a "Senators") who shall be appointed by the Governor by instrument under the Public Seal in accordance with the provisions of this section.

(2) Of the fifteen Senators—

(*a*) eight shall be appointed by the Governor acting after consultation with the Premier and such other persons as the Governor, acting in his discretion, may decide to consult;

(*b*) five shall be appointed by the Governor acting in accordance with the advice of the Premier; and

(*c*) two shall be appointed by the Governor acting in accordance with the advice of the leader of the opposition.

30. Subject to the provisions of section 31 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—

(*a*) is a British subject of the age of thirty years or upwards; and

(*b*) has been ordinarily resident in the Bahama Islands for a period of not less than five years immediately prior to his appointment.

31. (1) No person shall be qualified to be appointed as a Senator who—

(*a*) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or stade;

(*b*) is disqualified for membership of the Senate by any law of the Legislature enacted in pursuance of subsection (2) of this section;

(*c*) is a member of the House of Assembly;

(*d*) has been adjudged or otherwise declared bankrupt under any law in force in the Bahama Islands and has not been discharged;

(*e*) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Bahama Islands;

(*f*) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended; or

(*g*) is disqualified for membership of the House of Assembly by virtue of any law of the Legislature by reason of his having been convicted of any offence relating to elections.

(2) The Legislature may by law provide that, subject to such exceptions and limitations (if any) as may be prescribed therein, a person shall be disqualified for membership of the Senate by virtue of—

(*a*) his holding or acting in any office or appointment specified (either individually or by reference to a class of office or appointment) by such law;

(*b*) his belonging to any of the armed forces of the Crown specified by such law or to any class of person so specified that is comprised in any such force; or

(*c*) his belonging to any police force specified by such law or to any class of person so specified that is comprised in any such force.

(3) For the purposes of subsection (1) (*f*) 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.

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SWAZILAND

THE SWAZILAND ORDER IN COUNCIL 1963 [2]

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PART II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

4. Whereas every person in Swaziland is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

(*a*) life, liberty, security of the person and the protection of the law;

(*b*) freedom of conscience, of expression and of assembly and association; and

(*c*) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Part of this Order shall have effect for the purpose of affording protection to 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.

5. (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 Swaziland 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 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.

6. (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 Swaziland 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 another court or tribunal;

[2] Published as *Statutory Instruments*, 1963, No. 2094, by Her Majesty's Stationery Office, London.

(*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 Swaziland;

(*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 Swaziland, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Swaziland or for the purpose of restricting that person while he is being conveyed through Swaziland 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 Swaziland 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 Swaziland 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,

and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within twenty-four hours of his arrest or from the commencement of his detention the burden of proving that the person arrested or detained has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in paragraph (*b*) of subsection (3) of this section 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.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

(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 authorizes the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Swaziland during that period.

7. (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 which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(*c*) any labour required of a member of a 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 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: or

(*e*) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

8. (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 Swaziland immediately before the appointed day.

9. (1) No property shall be compulsorily taken possession of, and no interest in or right over

property 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;

(*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 for the prompt payment of full compensation.

(2) Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for—

(*a*) 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

(*b*) the purpose of obtaining prompt payment of that compensation:

Provided that if any law for the time being in force in Swaziland so provides in relation to any matter referred to in paragraph (*a*) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

(3) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Swaziland.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the last foregoing subsection to the extent that the law in question authorizes—

(*a*) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or

(*b*) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) or subsection (2) of this section—

(*a*) to the extent that the law in question makes provision for the taking of possession or acquisition of any property—

(i) in satisfaction of any tax, duty, rate, cess or other impost;

(ii) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of Swaziland;

(iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) in circumstances where it is reasonably necessary to do so because the property is in a dangerous state or injurious to the health of human beings, animals or plants;

(vi) in consequence of any law with respect to the limitation of actions; or

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources of work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out).

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(*b*) to the extent that the law in question makes provision for the taking of possession or acquisition of—

(i) enemy property;

(ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of twenty-one years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person adjudged insolvent or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the insolvent or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(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 provi-

sion for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over property where that property, interest or right is vested in a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided by any legislature in Swaziland.

10. (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 Swaziland, or of local government authority, or of a body corporate established by law for public purposes, 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, authority, or body corporate, as the case may be; or

(*d*) that authorizes, for the purpose of enforcing the judgment or order of a court in any civil proceedings, to entry upon any premises by order of a court,

and except so far 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) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be given 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 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 by law be empowered to do and may consider necessary or expedient in circumstances

where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(*b*) may by law be empowered or required to do in the interests of defence, public safety or public order.

(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 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) to this section to the extent that the law in question prohibits legal representation before a Swazi court or before any court or authority hearing appeals from such a court;

(*c*) paragraph (*e*) of subsection (2) of this section 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

(*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.

(12) In the case of any person who is held in lawful detention, the provisions of subsection (1), paragraphs (*d*) and (*e*) of subsection (2) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(13) Nothing contained in paragraph (*d*) of subsection (2) of this section shall be construed as entitling a person to legal representation at public expense.

(14) In this section—

"criminal offence" means a criminal offence under the law of Swaziland;

"legal representative" means an advocate or attorney entitled to practise as such in Swaziland.

12. (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 freedom of conscience 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) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides.

(3) 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.

(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 that 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.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

13. (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 without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) 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 his 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 the technical administration or the technical operation of telephony, telegraphy posts, wireless broadcasting or television; 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.

14. (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 restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

15. (1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Swaziland, the right to reside in any part of Swaziland, the right to enter Swaziland, and immunity from expulsion from Swaziland.

(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 imposing restrictions on the movement or residence within Swaziland of any person that are reasonably required in the interests of defence, public safety or public order;

(*b*) for imposing restrictions on the movement or residence within Swaziland of persons generally or any class of persons that are reasonably required in the interests of defence, public safety, public order, public morality, or public health, 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;

(*e*) for imposing restrictions by order of a court, on the movement or residence within Swaziland of any person either in consequence of his having been found guilty of a criminal offence under the law of Swaziland or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Swaziland;

(*d*) for imposing restrictions on the freedom of movement of any person who does not belong to Swaziland;

(*e*) for imposing restrictions on the acquisition or use by any person of any property in Swaziland;

(*f*) for imposing restrictions on the movement or residence within Swaziland of any person who holds or is acting in any public office; or

(*g*) for the removal of a person from Swaziland to be tried or punished in some other country for a criminal offence under the law of that other country 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 Swaziland of which he has been convicted.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in paragraph (*a*) of the last foregoing subsection so requests at any time during the period of that restriction not earlier than three months after the order imposing that restriction was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons entitled to practise in Swaziland as advocates or attorneys.

(5) On any review by a tribunal in pursuance of the last foregoing subsection 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 and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

16. (1) Subject to the provisions of subsections (4), (5) and (8) 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), (8) and (9) of this section, no persons 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 the revenues or other funds of Swaziland or for the imposition of taxation;

(*b*) with respect to persons who do not belong to Swaziland;

(*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 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*) whereby persons of any such description as is mentioned in the last foregoing subsection 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; or

(*f*) for authorizing the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Swaziland during that period.

(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 standards or qualifications (not being standards or qualifications specifically relating to race, tribe, place of origin, political opinions, colour or creed) to be required of any person who is appointed to any public office, any office in a disciplined force, any office in the service of a local government authority or any office in 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 authorized to be done by any such provision of law as is referred to in subsection (4) of this section.

(7) Subject to the provisions of the next following subsection, no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating-houses, beer halls or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

(8) 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 10, 12, 13, 14 and 15 of this Order, being such a restriction as is authorized by section 10 (2), section 12 (5), section 13 (2), section 14 (2), or paragraph (*a*) or (*b*) of section 15 (3), as the case may be.

(9) 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 any law for the time being in force in Swaziland.

17. (1) Where a person is detained by virtue of a law that authorizes the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Swaziland during that period, the following provisions shall apply, that is to say—

(*a*) he shall, as soon as reasonably practicable and in any case not more than five days after 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 authorized;

(*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 from among persons entitled to practise in Swaziland as advocates or attorneys;

(*d*) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal; and

(*e*) at the hearing of his case by the tribunal he shall be permitted to appear in person or 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) Nothing contained in paragraph (*d*) or (*e*) of subsection (1) of this section shall be construed as entitling a person to legal representation at public expense.

18. (1) If any person alleges that any of the provisions of this Part of this Order has been, is being, or is likely to be, contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The Hight Court shall have original jurisdiction—

(*a*) to hear and determine any application made in pursuance of the last foregoing subsection;

(*b*) to determine any question which is referred to it in pursuance of the next following subsection,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the

enforcement of any of the provisions of this Part of this Order.

(3) 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 this Part of this Order, 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 judgment, which shall be final, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the High Court in pursuance of the last foregoing subsection, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal for Basutoland, the Bechuanaland Protectorate and Swaziland or (whether mediately or direct) to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

. . .

PART V
LEGISLATIVE COUNCIL

39. There shall be a Legislative Council for Swaziland which, subject to the provisions of this Order, shall consist of a Speaker, four official members, twenty-four elected members and such number of nominated members as the Commissioner may appoint under section 44 of this Order.

. . .

42. The official members of the Legislative Council shall be—

(*a*) the Chief Secretary, the Attorney-General, and the Secretary for Finance and Development; and

(*b*) the appointed member of the Executive Council who is a public officer.

43. (1) The elected members of the Legislative Council 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 this Order and by any other law for the time being in force in Swaziland.

(2) Subject to the provisions of this Order, of the elected members of the Legislative Council—

(*a*) eight shall be persons who are Swazis or Eurafricans, and who are certified by the Ngwenyama in Council as having been elected in accordance with Swazi traditional methods of election;

(*b*) eight shall be persons who are Europeans or Eurafricans, of whom four shall be elected by voters registered on the roll referred to in this Order as "the European roll", and four shall be elected by voters registered on the roll referred to in this Order as "the national roll"; and

(*c*) eight shall be persons of any race, who shall be elected by voters registered on the national roll.

44. (1) Subject to the provisions of section 46 of this Order, the nominated members of the Legislative Council shall be British subjects or British protected persons who have attained the age of twenty-one years, and shall be appointed by the Commissioner, in his discretion, by instrument under the public seal; but nominated members of the Council shall only be appointed if, and shall not be appointed unless, in the Commissioner's judgment, such appointment is necessary—

(*a*) to secure representation in the Council of interests or of communities which, in his judgment, should be, but are not, or are not adequately, represented in the Council (for which purpose he may appoint not more than three nominated members); or

(*b*) to ensure the continued administration of the government of Swaziland.

(2) The Commissioner shall not make any appointment under this section without obtaining the prior approval of a Secretary of State.

45. Subject to the provisions of the next following section, a person shall be qualified to be elected an elected member of the Legislative Council if, and shall not be qualified to be so elected unless,—

(*a*) as respects a person to be elected in accordance with Swazi traditional methods of election,—

(i) he is a British subject or a British protected person;

(ii) he has attained the age of twenty-one years;

(iii) he has been ordinarily resident in Swaziland for a period of, or periods amounting in the aggregate to, not less than three years during the five years immediately before the date of his election; and

(iv) in the case of a Eurafrican, he is not registered as a voter on the European roll;

(*b*) as respects a person to be elected by voters registered on the European roll, he has the qualifications mentioned in section 52 (1) of this Order, and is registered as a voter on that roll; and

(*c*) as respects a person to be elected by voters registered on the national roll, he has the qualifications mentioned in section 52 (2) of this Order, and is registered as a voter on that roll and, if he is a candidate for a seat reserved for a European or a Eurafrican candidate under section 51 (2) of this Order, his nomination as a candidate is supported by not less than twenty-five persons who are Europeans or Eurafricans and are registered as voters on that roll.

46. (1) No person shall be qualified to be elected an elected member or appointed a nominated 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*) 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 two hundred rand, 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 two hundred rand) with the Government of Swaziland 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 Swaziland, 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 Commissioner the nature of the contract and his interest, or the interest of the firm or company, therein;

(*d*) is an unrehabilitated insolvent or an undischarged bankrupt, having been adjudged or otherwise declared an insolvent or a 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 Swaziland;

(*f*) is, for an offence which is a criminal offence under the law of Swaziland, under sentence of death imposed on him by a court in any part of the Commonwealth, or is, for such an offence, 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 Council under any law for the time being in force in Swaziland 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.

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PART III

INTERNATIONAL AGREEMENTS

UNITED NATIONS

UNITED NATIONS DECLARATION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

Adopted by General Assembly Resolution 1904 (XVIII) of 20 November 1963

The General Assembly,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality of all human beings and seeks, among other basic objectives, to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out in the Declaration, without distinction of any kind, in particular as to race, colour or national origin,

Considering that the Universal Declaration of Human Rights proclaims further that all are equal before the law and are entitled without any discrimination to equal protection of the law and that all are entitled to equal protection against any discrimination and against any incitement of such discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, and that the Declaration on the granting of independence to colonial countries and peoples proclaims in particular the necessity of bringing colonialism to a speedy and unconditional end,

Considering that any doctrine of racial differentiation or superiority is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination either in theory or in practice,

Taking into account the other resolutions adopted by the General Assembly and the international instruments adopted by the specialized agencies, in particular the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organization, in the field of discrimination,

Taking into account the fact that, although international action and efforts in a number of countries have made it possible to achieve progress in that field, discrimination based on race, colour or ethnic origin in certain areas of the world continues none the less to give cause for serious concern,

Alarmed by the manifestations of racial discrimination still in evidence in some areas of the world, some of which are imposed by certain Governments by means of legislative, administrative or other measures, in the form, *inter alia,* of *apartheid,* segregation and separation, as well as by the promotion and dissemination of doctrines of racial superiority and expansionism in certain areas,

Convinced that all forms of racial discrimination and, still more so, governmental policies based on the prejudice of racial superiority or on racial hatred, besides constituting a violation of fundamental human rights, tend to jeopardize friendly relations among peoples, co-operation between nations and international peace and security,

Convinced also that racial discrimination harms not only those who are its objects but also those who practise it,

Convinced further that the building of a world society free from all forms of racial segregation and discrimination, factors which create hatred and division among men, is one of the fundamental objectives of the United Nations,

1. *Solemnly affirms* the necessity of speedily eliminating racial discrimination throughout the world, in all its forms and manifestations, and of securing understanding of and respect for the dignity of the human person;

2. *Solemnly affirms* the necessity of adopting national and international measures to that end, including teaching, education and information, in order to secure the universal and effective recognition and observance of the principles set forth below;

3. *Proclaims* this Declaration:

Article 1

Discrimination between human beings on the ground of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, as an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing peace and security among peoples.

Article 2

1. No State, institution, group or individual shall make any discrimination whatsoever in matters of human rights and fundamental freedoms in the treatment of persons, groups of persons or institutions on the ground of race, colour or ethnic origin.

2. No State shall encourage, advocate or lend its support, through police action or otherwise, to any discrimination based on race, colour or ethnic origin by any group, institution or individual.

3. Special concrete measures shall be taken in appropriate circumstances in order to secure adequate development or protection of individuals belonging to certain racial groups with the object of ensuring the full enjoyment by such individuals of human rights and fundamental freedoms. These measures shall in no circumstances have as a consequence the maintenance of unequal or separate rights for different racial groups.

Article 3

1. Particular efforts shall be made to prevent discrimination based on race, colour or ethnic origin, especially in the fields of civil rights, access to citizenship, education, religion, employment, occupation and housing.

2. Everyone shall have equal access to any place or facility intended for use by the general public, without distinction as to race, colour or ethnic origin.

Article 4

All States shall take effective measures to revise governmental and other public policies and to rescind laws and regulations which have the effect of creating and perpetuating racial discrimination wherever it still exists. They should pass legislation for prohibiting such discrimination and should take all appropriate measures to combat those prejudices which lead to racial discrimination.

Article 5

An end shall be put without delay to governmental and other public policies of racial segregation and especially policies of *apartheid,* as well as all forms of racial discrimination and separation resulting from such policies.

Article 6

No discrimination by reason of race, colour or ethnic origin shall be admitted in the enjoyment by any person of political and citizenship rights in his country, in particular the right to participate in elections through universal and equal suffrage and to take part in the government. Everyone has the right of equal access to public service in his country.

Article 7

1. Everyone has the right to equality before the law and to equal justice under the law. Everyone, without distinction as to race, colour or ethnic origin, has the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution.

2. Everyone shall have the right to an effective remedy and protection against any discrimination he may suffer on the ground of race, colour or ethnic origin with respect to his fundamental rights and freedoms through independent national tribunals competent to deal with such matters.

Article 8

All effective steps shall be taken immediately in the fields of teaching, education and information, with a view to eliminating racial discrimination and prejudice and promoting understanding, tolerance and friendship among nations and racial groups, as well as to propagating the purposes and principles of the Charter of the United Nations, of the Universal Declaration of Human Rights, and of the Declaration on the granting of independence to colonial countries and peoples.

Article 9

1. All propaganda and organizations based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin with a view to justifying or promoting racial discrimination in any form shall be severely condemned.

2. All incitement to or acts of violence, whether by individuals or organizations, against any race or group of persons of another colour or ethnic origin shall be considered an offence against society and punishable under law.

3. In order to put into effect the purposes and principles of the present Declaration, all States shall take immediate and positive measures, including legislative and other measures, to prosecute and/or outlaw organizations which promote or incite to racial discrimination, or incite to or use violence for purposes of discrimination based on race, colour or ethnic origin.

Article 10

The United Nations, the specialized agencies, States and non-governmental organizations shall do all in their power to promote energetic action which, by combining legal and other practical measures, will make possible the abolition of all forms of racial discrimination. They shall, in particular, study the causes of such discrimination with a view to recommending appropriate and effective measures to combat and eliminate it.

Article 11

Every State shall promote respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and shall fully and faithfully observe the provisions of the present Declaration, the Universal Declaration of Human Rights and the Declaration on the granting of independence to colonial countries and peoples.

INTERNATIONAL LABOUR ORGANISATION

CONVENTION CONCERNING THE GUARDING OF MACHINERY, 1963

Convention No. 119, adopted on 25 June 1963 by the International Labour Conference at its Forty-seventh 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-seventh Session on 5 June 1963, and

Having decided upon the adoption of certain proposals with regard to the prohibition of the sale, hire and use of inadequately guarded machinery, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-fifth day of June of the year one thousand nine hundred and sixty-three the following Convention, which may be cited as the Guarding of Machinery Convention, 1963:

PART I. GENERAL PROVISIONS

Article 1

1. All power-driven machinery, new or second-hand, shall be considered as machinery for the purpose of the application of this Convention.

2. The competent authority in each country shall determine whether and how far machinery, new or second-hand, operated by manual power presents a risk of injury to the worker and shall be considered as machinery for the purpose of the application of this Convention. Such decisions shall be taken after consultation with the most representative organisations of employers and workers concerned. The initiative for such consultation can be taken by any such organisation.

3. The provisions of this Convention—

(*a*) apply to road and rail vehicles during locomotion only in relation to the safety of the operator or operators;

(*b*) apply to mobile agricultural machinery only in relation to the safety of workers employed in connection with such machinery.

PART II. SALE, HIRE, TRANSFER IN ANY OTHER MANNER AND EXHIBITION

Article 2

1. The sale and hire of machinery of which the dangerous parts specified in paragraphs 3 and 4 of this Article are without appropriate guards shall be prohibited by national laws or regulations or prevented by other equally effective measures.

2. The transfer in any other manner and exhibition of machinery of which the dangerous parts specified in paragraphs 3 and 4 of this Article are without appropriate guards shall, to such extent as the competent authority may determine, be prohibited by national laws or regulations or prevented by other equally effective measures: Provided that during the exhibition of machinery the temporary removal of the guards in order to demonstrate the machinery shall not be deemed to be an infringement of this provision as long as appropriate precautions to prevent danger to persons are taken.

3. All set-screws, bolts and keys, and, to the extent prescribed by the competent authority, other projecting parts of any moving part of machinery also liable to present danger to any person coming into contact with them when they are in motion, shall be so designed, sunk or protected as to prevent such danger.

4. All flywheels, gearing, cone and cylinder friction drives, cams, pulleys, belts, chains, pinions, worm gears, crank arms and slide blocks, and, to the extent prescribed by the competent authority, shafting (including the journal ends) and other transmission machinery also liable to present danger to any person coming into contact with them when they are in motion, shall be so designed or protected as to prevent such danger. Controls also shall be so designed or protected as to prevent danger.

Article 3

1. The provisions of Article 2 do not apply to machinery or dangerous parts thereof specified in that Article which—

(*a*) are, by virtue of their construction, as safe as if they were guarded by appropriate safety devices; or

[1] Published in International Labour Office: *Official Bulletin*, Vol XLVI, No. 3, Supplement 1, of July 1963.

(*b*) are intended to be so installed or placed that, by virtue of their installation or position, they are as safe as if they were guarded by appropriate safety devices.

2. The prohibition of the sale, hire, transfer in any other manner or exhibition of machinery provided for in paragraphs 1 and 2 of Article 2 does not apply to machinery by reason only of the machinery being so designed that the requirements of paragraphs 3 and 4 of that Article are not fully complied with during maintenance, lubrication, setting-up and adjustment, if such operations can be carried out in conformity with accepted standards of safety.

3. The provisions of Article 2 do not prohibit the sale or transfer in any other manner of machinery for storage, scrapping or reconditioning, but such machinery shall not be sold, hired, transferred in any other manner or exhibited after storage or reconditioning unless protected in conformity with the said provisions.

Article 4

The obligation to ensure compliance with the provisions of Article 2 shall rest on the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor and, where appropriate under national laws or regulations, on their respective agents. This obligation shall rest on the manufacturer when he sells machinery, lets it out on hire, transfers it in any other manner or exhibits it.

Article 5

1. Any Member may provide for a temporary exemption from the provisions of Article 2.

2. The duration of such temporary exemption, which shall in no case exceed three years from the coming into force of the Convention for the Member concerned, and any other conditions relating thereto, shall be prescribed by national laws or regulations or determined by other equally effective measures.

3. In the application of this Article the competent authority shall consult the most representative organisations of employers and workers concerned and, as appropriate, manufacturers' organisations.

PART III. USE

Article 6

1. The use of machinery any dangerous part of which, including the point of operation, is without appropriate guards shall be prohibited by national laws or regulations or prevented by other equally effective measures: Provided that where this prohibition cannot fully apply without preventing the use of the machinery it shall apply to the extent that the use of the machinery permits.

2. Machinery shall be so guarded as to ensure that national regulations and standards of occupational safety and hygiene are not infringed.

Article 7

The obligation to ensure compliance with the provisions of Article 6 shall rest on the employer.

Article 8

1. The provisions of Article 6 do not apply to machinery or parts thereof which, by virtue of their construction, installation or position, are as safe as if they were guarded by appropriate safety devices.

2. The provisions of Article 6 and Article 11 do not prevent the maintenance, lubrication, setting-up or adjustment of machinery or parts thereof carried out in conformity with accepted standards of safety.

Article 9

1. Any Member may provide for a temporary exemption from the provisions of Article 6.

2. The duration of such temporary exemption, which shall in no case exceed three years from the coming into force of the Convention for the Member concerned, and any other conditions relating thereto, shall be prescribed by national laws or regulations or determined by other equally effective measures.

3. In the application of this Article the competent authority shall consult the most representative organisations of employers and workers concerned.

Article 10

1. The employer shall take steps to bring national laws or regulations relating to the guarding of machinery to the notice of workers and shall instruct them, as and where appropriate, regarding the dangers arising and the precautions to be observed in the use of machinery.

2. The employer shall establish and maintain such environmental conditions as not to endanger workers employed on machinery covered by this Convention.

Article 11

1. No worker shall use any machinery without the guards provided being in position, nor shall any worker be required to use any machinery without the guards provided being in position.

2. No worker using machinery shall inoperative the guards provided, nor shall such guards be made inoperative on any machinery to be used by any worker.

Article 12

The ratification of this Convention shall not affect the rights of workers under national social security or social insurance legislation.

Article 13

The provisions of this Part of this Convention relating to the obligations of employers and workers shall, if and in so far as the competent

authority so determines, apply to self-employed workers.

Article 14

The term "employer" for the purpose of this Part of this Convention includes, where appropriate under national laws or regulations, a prescribed agent of the employer.

PART IV. MEASURES OF APPLICATION

Article 15

1. All necessary measures, including the provision of appropriate penalties, shall be taken to ensure the effective enforcement of the provisions of this Convention.

2. Each Member which ratifies this Convention undertakes to provide appropriate inspection services for the purpose of supervising the application of the provisions of the Convention, or to satisfy itself that appropriate inspection is carried out.

Article 16

Any national laws or regulations giving effect to the provisions of this Convention shall be made by the competent authority after consultation with the most representative organisations of employers and workers concerned and, as appropriate, manufacturers' organisations.

PART V. SCOPE

Article 17

1. The provisions of this Convention apply to all branches of economic activity unless the Member ratifying the Convention specifies a more limited application by a declaration appended to its ratification.

2. In case where a declaration specifying a more limited application is made—

(*a*) the provisions of the Convention shall be applicable as a minimum to undertakings or branches of economic activity in respect of which the competent authority, after consultation with the labour inspection services and with the most representative organisations of employers and workers concerned, determines that machinery is extensively used; the initiative for such consultation can be taken by any such organisation;

(*b*) the Member shall indicate in its reports under article 22 of the Constitution of the International Labour Organisation any progress which may have been made with a view towards wider application of the provisions of this Convention.

3. Any Member which has made a declaration in pursuance of paragraph 1 of this Article may at any time cancel that declaration in whole or in part by a subsequent declaration.

PART VI. FINAL PROVISIONS

Article 18

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 19

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 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 examine 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.

. . .

ORGANIZATION OF AFRICAN UNITY

CHARTER OF THE ORGANIZATION OF AFRICAN UNITY

Done at Addis Ababa on 25 May 1963

We, the Heads of African States and Governments [1] assembled in the City of Addis Ababa, Ethiopia;

Convinced that it is the inalienable right of all people to control their own destiny;

Conscious of the fact that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples;

Conscious of our responsibility to harness the natural and human resources of our continent for the total advancement of our peoples in spheres of human endeavour;

Inspired by a common determination to promote understanding among our peoples and co-operation among our States in response to the aspirations of our peoples for brotherhood and solidarity, in a larger unity transcending ethnic and national differences;

Convinced that, in order to translate this determination into a dynamic force in the cause of human progress, conditions for peace and security must be established and maintained;

Determined to safeguard and consolidate the hard-won independence as well as the sovereignty and territorial integrity of our States, and to fight against neo-colonialism in all its forms;

Dedicated to the general progress of Africa;

Persuaded that the Charter of the United Nations and the Universal Declaration of Human Rights, to the principles of which we reaffirm our adherence, provide a solid foundation for peaceful and positive co-operation among States;

Desirous that all African States should henceforth unite so that the welfare and well-being of their people can be assured;

Resolved to reinforce the links between our states establishing and strengthening common institutions;

Have agreed to the present Charter.

ESTABLISHMENT

Article I

1. The High Contracting Parties do by the present Charter establish an Organization to be known as the ORGANIZATION OF AFRICAN UNITY.

2. The Organization shall include the Continental African States, Madagascar and other Islands surrounding Africa.

PURPOSES

Article II

1. The Organization shall have the following purposes:

(*a*) to promote the unity and solidarity of the African States;

(*b*) to co-ordinate and intensify their co-operation and efforts to achieve a better life for the peoples of Africa;

(*c*) to defend their sovereignty, their territorial integrity and independence;

(*d*) to eradicate all forms of colonialism from Africa; and

(*e*) to promote international co-operation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.

2. To these ends, the Member States shall co-ordinate and harmonise their general policies, especially in the following fields:

(*a*) political and diplomatic co-operation;

(*b*) economic co-operation, including transport and communications;

(*c*) educational and cultural co-operation;

(*d*) health, sanitation, and nutritional co-operation;

(*e*) scientific and technical co-operation; and

(*f*) co-operation for defence and security.

[1] The Heads of African States and Governments include those of the Democratic and Popular Republic of Algeria, the Kingdom of Burundi, the Federal Republic of Cameroon, the Central African Republic, the Republic of Chad, the Congo (Brazzaville), the Congo (Leopoldville), the Republic of Dahomey, the Empire of Ethiopia, the Gabonese Republic, the Republic of Ghana, the Republic of Guinea, the Republic of the Ivory Coast, the Republic of Liberia, the Kingdom of Lybia, the Malagasy Republic, the Republic of Mali, the Islamic Republic of Mauritania, the Kingdom of Morocco, the Republic of the Niger, the Federation of Nigeria, the Rwandese Republic, the Republic of Senegal, Sierra Leone, the Somali Republic, the Republic of the Sudan, the Republic of Tanganyika, the Togolese Republic, the Republic of Tunisia, Uganda, the United Arab Republic and the Republic of the Upper Volta.

PRINCIPLES

Article III

The Member States, in pursuit of the purposes stated in Article II, solemnly affirm and declare their adherence to the following principles:

(1) The sovereign equality of all Member States;

(2) Non-interference in the internal affairs of States;

(3) Respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence;

(4) Peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration;

(5) Unreserved condemnation, in all its forms, of political assassination as well as of subversive activities on the part of neighbouring States or any other State;

(6) Absolute dedication to the total emancipation of the African territories which are still dependent;

(7) Affirmation of a policy of non-alignment with regard to all blocs.

MEMBERSHIP

Article IV

Each independent sovereign African State be entitled to become a Member of the Organization.

RIGHTS AND DUTIES OF MEMBER STATES

Article V

All Member States shall enjoy equal rights and have equal duties.

Article VI

The Member States pledge themselves to observe scrupulously the principles enumarated in Article III of the present Charter.

INSTITUTIONS

Article VII

The Organization shall accomplish its purposes through the following principal institutions:

(1) the Assembly of Heads of State and Government;

(2) the Council of Ministers;

(3) the General Secretariat;

(4) the Commission of Mediation, Conciliation and Arbitration.

THE ASSEMBLY OF HEADS OF STATE AND GOVERNMENT

Article VIII

The Assembly of Heads of State and Government shall be the supreme organ of the Organization. It shall, subject to the provisions of this Charter, discuss matters of common concern to Africa with a view to co-ordinating and harmonising the general policy of the Organization. It may in addition review the structure, functions and acts of all the organs and any specialized agencies which may be created in accordance with the present Charter.

. . .

THE COUNCIL OF MINISTERS

Article XII

1. The Council of Ministers shall consist of Foreign Ministers or such other Ministers as are designated by the Governments of Member States.

. . .

Article XIII

1. The Council of Ministers shall be responsible to the Assembly of Heads of State and Government. It shall be entrusted with the responsibility of preparing conferences of the Assembly.

2. It shall take cognisance of any matter referred to it by the Assembly. It shall be entrusted with the implementation of the decision of the Assembly of Heads of State, and Government. It shall co-ordinate inter-African co-operation in accordance with the instructions of the Assembly and in conformity with Article II (2) of the present Charter.

. . .

GENERAL SECRETARIAT

Article XVI

There shall be an Administrative Secretary-General of the Organization, who shall be appointed by the Assembly of Heads of State and Government. The Administrative Secretary-General shall direct the affairs of the Secretariat.

. . .

COMMISSION OF MEDIATION CONCILIATION AND ARBITRATION

Article XIX

Member States pledge to settle all disputes among themselves by peaceful means and, to this end decide to establish a Commission of Mediation, Conciliation and Arbitration, the composition of which and conditions of service shall be defined by a separate Protocol to be approved by the Assembly of Heads of State and Government. Said Protocol shall be regarded as forming an integral part of the present Charter.

SPECIALIZED COMMISSIONS

Article XX

The Assembly shall establish such Specialized Commissions as it may deem necessary, including the following:

(1) Economic and Social Commission;

(2) Educational and Cultural Commission;

(3) Health, Sanitation and Nutrition Commission;

(4) Defence Commission;

(5) Scientific, Technical and Research Commission.

. . .

SIGNATURE AND RATIFICATION OF THE CHARTER

Article XXIV

1. This Charter shall be open for signature to all independent sovereign African States and shall be ratified by the signatory States in accordance with their respective constitutional processes.

2. The original instrument, done, if possible in African languages, in English and French, all texts being equally authentic, shall be deposited with the Government of Ethiopia, which shall transmit certified copies thereof to all independent sovereign African States.

3. Instruments of ratification shall be deposited with the Government of Ethiopia, which shall notify all signatories of each such deposit.

ENTRY INTO FORCE

Article XXV

This Charter shall enter into force immediately upon receipt by the Government of Ethiopia of the instruments of ratification from two-thirds of the signatory States.

REGISTRATION OF THE CHARTER

Article XXVI

This Charter shall, after due ratification, be registered with the Secretariat of the United Nations through the Government of Ethiopia in conformity with Article 102 of the Chapter of the United Nations.

INTERPRETATION OF THE CHARTER

Article XXVII

Any question which may arise concerning the interpretation of this Charter shall be decided by a vote of two-thirds of the Assembly of Heads of State and Government of the Organization.

ADHESION AND ACCESSION

Article XXVIII

1. Any independent sovereign African State may at any time notify the Administrative Secretary-General of its intention to adhere or accede to this Charter.

2. The Administrative Secretary-General shall, on receipt of such notification, communicate a copy of it to all the Member States. Admission shall be decided by a simple majority of the Member States. The decision of each Member State shall be transmitted to the Administrative Secretary-General, who shall, upon receipt of the required number of votes, communicate the decision to the State concerned.

. . .

CESSATION OF MEMBERSHIP

Article XXXII

Any State which desires to renounce its membership shall forward a written notification to the Administrative Secretary-General. At the end of one year from the date of such notification, if not withdrawn, the Charter shall cease to apply with respect to the renouncing State, which shall thereby cease to belong to the Organization.

AMENDMENT OF THE CHARTER

Article XXXIII

This Charter may be amended or revised if any Member State makes a written request to the Administrative Secretary-General to that effect; provided, however, that the proposed amendment is not submitted to the Assembly for consideration until all the Member States have been duly notified of it and a period of one year has elapsed. Such an amendment shall not be effective unless approved by at least two-thirds of all the Member States.

. . .

COUNCIL OF EUROPE

PROTOCOL No. 2 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS CONFERRING UPON THE EUROPEAN COURT OF HUMAN RIGHTS COMPETENCE TO GIVE ADVISORY OPINIONS

Done at Strasbourg on 6 May 1963 [1]

The member States of the Council of Europe signatory hereto:

Having regard to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention") and, in particular, Article 19 instituting, among other bodies, a European Court of Human Rights (hereinafter referred to as "the Court");

Considering that it is expedient to confer upon the Court competence to give advisory opinions subject to certain conditions;

Have agreed as follows:

Article 1

1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto.

2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section 1 of the Convention and in the Protocols thereto, or with any other question which the Commission, the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.

3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a two-thirds majority vote of the representatives entitled to sit on the Committee.

Article 2

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its consultative competence as defined in Article 1 of this Protocol.

Article 3

1. For the consideration of requests for an advisory opinion, the Court shall sit in plenary session.

2. Reasons shall be given for advisory opinions of the Court.

3. If the advisory opinion does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

4. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Article 4

The powers of the Court under Article 55 of the Convention extend to the drawing up of such rules and the determination of such procedure as the Court may think necessary for the purposes of this Protocol.

Article 5

1. This Protocol shall be open to signature by member States of the Council of Europe, signatories to the Convention, who may become Parties to it by:

(*a*) signature without reservation in respect of ratification or acceptance;

(*b*) signature with reservation in respect of ratification or acceptance, followed by ratification or acceptance.

Instruments of ratification or acceptance shall be deposited with the Secretary-General of the Council of Europe.

2. This Protocol shall enter into force as soon as all States Parties to the Convention shall have become Parties to the Protocol, in accordance with the provisions of paragraph 1 of this Article.

3. From the date of the entry into force of this Protocol, Articles 1 to 4 shall be considered an integral part of the Convention.

4. The Secretary-General of the Council of Europe shall notify the member States of the Council of:

(*a*) any signature without reservation in respect of ratification or acceptance;

(*b*) any signature with reservation in respect of ratification or acceptance;

(*c*) the deposit of any instrument of ratification or acceptance;

(*d*) the date of entry into force of this Protocol in accordance with paragraph 2 of this Article.

[1] Published by the Council of Europe as *European Treaty Series*, No. 44.

PROTOCOL No. 3 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS AMENDING ARTICLES 29, 30 AND 34 OF THE CONVENTION

Done at Strasbourg on 6 May 1963 [2]

The member States of the Council of Europe, signatories to this Protocol,

Considering that it is advisable to amend certain provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention") concerning the procedure of the European Commission of Human Rights,

Have agreed as follows:

Article 1

1. Article 29 of the Convention is deleted.

2. The following provision shall be inserted in the Convention:

"*Article 29*

"After it has accepted a petition submitted under Article 25, the Commission may nevertheless decide unanimously to reject the petition if, in the course of its examination, it finds that the existence of one of the grounds for non-acceptance provided for in Article 27 has been established.

"In such a case, the decision shall be communicated to the parties."

Article 2

In Article 30 of the Convention, the word "Sub-Commission" shall be replaced by the word "Commission".

Article 3

1. At the beginning of Article 34 of the Convention, the following shall be inserted:

"Subject to the provisions of Article 29 . . ."

2. At the end of the same Article, the sentence "the Sub-Commission shall take its decisions by a majority of its members" shall be deleted.

Article 4

1. This Protocol shall be open to signature by the member States of the Council of Europe, who may become Parties to it either by:

(*a*) signature without reservation in respect of ratification or acceptance, or

(*b*) signature with reservation in respect of acceptance, followed by ratification or acceptance.

Instruments of ratification or acceptance shall be deposited with the Secretary-General of the Council of Europe.

2. This Protocol shall enter into force as soon as all States Parties to the Convention shall have become Parties to the Protocol, in accordance with the provisions of paragraph 1 of this Article.

3. The Secretary-General of the Council of Europe shall notify the member States of the Council of:

(*a*) any signature without reservation in respect of ratification or acceptance;

(*b*) any signature with reservation in respect of ratification or acceptance;

(*c*) the deposit of any instrument of ratification or acceptance;

(*d*) the date of entry into force of this Protocol in accordance with paragraph 2 of this Article.

[2] Published by the Council of Europe as *European Treaty Series*, No. 45.

PROTOCOL No. 4 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS SECURING CERTAIN RIGHTS AND FREEDOMS OTHER THAN THOSE ALREADY INCLUDED IN THE CONVENTION AND IN THE FIRST PROTOCOL THERETO

Done at Strasbourg on 16 September 1963 [3]

The Governments signatory hereto, being Members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention") and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20 March 1952,

Have agreed as follows:

Article 1

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

Article 2

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

[3] Published by the Council of Europe as *European Treaty Series*, No. 46.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public,* for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Article 3

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

Article 4

Collective expulsion of aliens is prohibited.

Article 5

1. Any High Contracting Party may, at the time of signature or ratification of this Protocol, or at any time thereafter, communicate to the Secretary-General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of this Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

2. Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may, from time to time, communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

3. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 63 of the Convention.

4. The territory of any State to which this Protocol applies by virtue of ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.

Article 6

1. As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

2. Nevertheless, the right of individual recourse recognised by a declaration made under Article 25 of the Convention, or the acceptance of the compulsory jurisdiction of the Court by a declaration made under Article 46 of the Convention, shall not be effective in relation to this Protocol unless the High Contracting Party concerned has made a statement recognising such right, or accepting such jurisdiction, in respect of all or any of Articles 1 to 4 of the Protocol.

Article 7

1. This Protocol shall be open for signature by the Members of the Council of Europe who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of five instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

2. The instruments of ratification shall be deposited with the Secretary-General of the Council of Europe, who will notify all Members of the names of those who have ratified.

OTHER INTERNATIONAL AGREEMENTS

AGREEMENT CONCERNING THE ESTABLISHMENT OF AN AFRICAN AND MALAGASY INDUSTRIAL PROPERTY OFFICE

Done at Libreville, on 13 September 1962

The Government of the Federal 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 (Brazzaville),

The Government of the Republic of Dahomey,

The Government of the Gabonese 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,

The Government of the Republic of the Upper Volta,

Being moved by the desire to protect industrial property rights in as effective and uniform a manner as possible in their territories,

Undertaking, to that end, to accede to the Convention for the Protection of Industrial Property, signed at Paris on 20 March 1883 and revised most recently at Lisbon on 31 October 1958,

Considering that article 15 of the Convention states that "the countries of the Union reserve the right to make separately between themselves special arrangements for the protection of industrial property, in so far as these arrangements do not contravene the provisions of the present Convention",

Considering that article 4 A (2) of the Convention states that "every filing that is equivalent to a regular national filing under domestic law of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to a right of priority",

Considering the desirability of establishing a single system to govern the filing of applications for patents or for the registration of trade-marks or industrial designs in order to secure the rights provided for under the uniform legislations of their countries and of setting up a body to apply the common administrative procedures prescribed by that legislation;

Have decided to conclude an agreement concerning the establishment of an African and Malagasy Industrial Property Office and have appointed plenipotentiaries for the purpose, who have agreed as follows:

Article 1

An African and Malagasy Industrial Property Office is hereby established to apply, in accordance with the provisions set forth below, the common administrative procedures provided for under the national legislation of member States with respect to patents, trade marks and industrial designs.

The Office shall take the place of the national industrial property service referred to in article 12 of the above-mentioned Convention for each member State.

The rights attaching to patents, trade-marks and industrial designs covered by the common procedures are independent national rights subject to the legislation of each member State in which they have effect.

. . .

Article 3

1. Applications for patents or for the registration of trade marks or industrial designs shall be filed, when the applicants are domiciled in the territory of a member State, either with the national administration or with the Office, in accordance with the legal provisions in force in that State.

2. Applicants domiciled outside the territory of member States shall file such applications direct with the Office. They shall appoint an authorized agent in one of the member States.

3. Applications may be filed with the Office by mail.

4. All communications addressed to the Office shall be written in French.

Article 4

Any filing of an application with the administration of a member State in accordance with the legislation of that State or with the Office shall have the same force as a national filing in each member State.

Article 5

1. The Office shall register and carry out administrative examination of applications for patents in accordance with the common procedure provided for under the legislation of member States.

It shall issue patents and arrange for their publication.

2. Any patent so issued shall have effect in each member State in accordance with the national law of that State.

Article 6

1. The Office shall carry out administrative examination of trade marks, register them and publish them in accordance with the common procedure provided for under the legislation of member States.

2. Trade marks so registered and published shall have effect in each member State in accordance with the national law of that State.

3. The Office shall be responsible for the procedure relating to the international registration of trade-marks under the Agreement of Madrid of 14 April 1891.

Article 7

The Office shall be responsible for registering, keeping and publicizing filings of industrial designs in accordance with the common procedure provided for under the legislation of member States.

Filings of industrial designs shall have effect in each member State in accordance with the national law of that State.

Article 8

Any publication issued by the Office shall be addressed to the administration of each member State.

Article 9

The Office shall keep, for the member States as a whole, a special register of patents, a special register of trade-marks and a special register of industrial designs, in which the entries required under national legislation shall be made.

. . .

Article 16

The Office shall be a legal entity. In each member State it shall enjoy the fullest legal capacity enjoyed by bodies corporate under the national legislation.

. . .

Article 21

The Office shall have its headquarters at Yaoundé (Federal Republic of Cameroon). The Office shall be under the protection of the Government of the Federal Republic of Cameroon.

. . .

Article 23

This Agreement will be ratified and the instruments of ratification will be deposited with the Goverment of the Federal Republic of Cameroon.

Article 24

This Agreement will enter into force two months after the deposit of instruments of ratification by at least two-thirds of the signatory States.

The date of the entry into force of the annexes to this Agreement will be fixed by the Office.

Article 25

1. Any non-signatory African State which is a party to the Convention for the Protection of Industrial Property signed at Paris on 20 March 1883 and revised most recently at Lisbon on 31 October 1958 may seek permission to accede to this Agreement. Such requests shall be addressed to the Governing Council, which shall decide the matter by a majority vote. A tied vote shall be equivalent to rejection.

2. Instruments of accession will be deposited with the Government of the Federal Republic of Cameroon.

3. Accession shall have effect two months after such deposit, unless a later date is indicated in the instrument of accession.

Article 26

Any State Party to this Agreement may denounce it by notifying the Government of the Federal Republic of Cameroon in writing.

The denunciation will take effect on 31 December of the second year following that in which the Government of the Federal Republic of Cameroon receives the notification.

Article 27

This Agreement may be periodically revised, for the purpose, *inter alia*, of making changes which will improve the services provided by the Office.

. . .

STATUS OF CERTAIN INTERNATIONAL AGREEMENTS[1]

I. UNITED NATIONS

1. *Convention on the Prevention and Punishment of the Crime of Genocide (Paris, 1948);* entered into force on 12 January 1951 (see *Yearbook on Human Rights for 1948,* pp. 484-486).

During 1963, Algeria became a party to the Convention, by instrument of accession deposited on 31 October.

2. *Convention Relating to the Status of Refugees (Geneva, 1951);* entered into force on 22 April 1954, (see *Yearbook on Human Rights for 1951,* pp. 581-588).

During 1963, the following States became parties to the Convention, by instruments of accession deposited on the dates indicated: Algeria (21 February),[2] Burundi (19 July), Cyprus (16 May),[2] and Senegal (2 May).[2]

By a communication received on 18 February 1963, the Government of Switzerland gave notice of the withdrawal of the reservation made, at the time of ratification, to article 24, paragraph 1 (*a*) and (*b*) and paragraph 3 of the Convention, in so far as that reservation concerns old-age and survivors' insurance.

3. *Convention on the Political Rights of Women (New York, 1952);* entered into force on 7 July 1954 (see *Yearbook on Human Rights for 1952,* pp. 375-376).

During 1963, Brazil and Senegal[3] became parties to the Convention, by instruments of ratification or accession deposited on 13 August and 2 May respectively.

4. *Convention on the International Right of Correction (New York, 1952);* entered into force on 24 August 1962 (see *Yearbook on Human Rights for 1952,* pp. 373-375).

During 1963, no States became parties to the Convention.

5. *Slavery Convention of 1926* as amended by the Protocol of 7 December 1953 (signed in New York; as amended entered into force on 7 July 1955) (see *Yearbook on Human Rights for 1953,* pp. 345-356).

During 1963, Algeria, Kuwait and Nepal became parties to the Convention, by instruments of accession deposited on 20 November, 28 May and 7 January respectively.

6. *Convention on the Status of Stateless Persons (New York, 1954);* entered into force on 6 June 1960 (see *Yearbook on Human Rights for 1954,* pp. 369-375).

During 1963, no States became parties to the Convention.

7. *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Geneva, 1956);* entered into force on 30 April 1957 (see *Yearbook on Human Rights for 1956,* pp. 289-291).

During 1963, the following States became parties to the Convention, by instruments of ratification or accession deposited on the dates indicated; Algeria (31 October), Austria (7 October), Canada (10 January), Cuba (21 August), Iraq (30 September), Kuwait (18 January), Nepal (7 January), Niger (22 July) and Poland (10 January).

[1] Concerning the status of these agreements at the end of 1962, see *Yearbook on Human Rights for 1962,* pp. 404-407. 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, 1963,* 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.

[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.

[3] 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);* entered into force on 11 August 1958 (see *Yearbook on Human Rights for 1957,* pp. 301-302).

During 1963, Argentina became a party to the Convention by instrument of accession deposited on 10 October.

9. *Convention on the Reduction of Statelessness (New York, 1961);* not yet in force (see *Yearbook on Human Rights for 1961,* pp. 427-430).

During 1963, no States became parties to the Convention.

10. *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (New York, 1962);* not yet in force (see *Yearbook on Human Rights for 1962,* pp. 389-390).

During 1963, no States became parties to the Convention.

II. INTERNATIONAL LABOUR ORGANISATION

1. *Social Policy (Non-Metropolitan Territories) Convention, 1947;* entered into force on 19 June 1955 (see *Yearbook on Human Rights for 1948,* pp. 420-425).

During 1963, no States became parties to the Convention.

2. *Right of Association (Non-Metropolitan Territories) Convention, 1947;* entered into force on 1 July 1953 (see *Yearbook on Human Rights for 1948,* pp. 425-427).

During 1963, no States became parties to the Convention.

3. *Freedom of Association and Protection of the Right to Organise Convention, 1948;* entered into force on 4 July 1950 (see *Yearbook on Human Rights, for 1948,* pp. 427-430).

During 1963, the ratifications of Ethiopia and Trinidad and Tobago [4] were registered on 4 June and 24 May respectively.

The United Kingdom, on the dates indicated, registered declarations of application to non-metropolitan territories, applicable without modification, in respect of Antigua (15 January), St. Christopher-Nevis-Anguilla (4 February), Bechuanaland and British Honduras (20 November) and applicable, with modifications, in respect of Bahamas (3 April) and Hong Kong (15 October).

4. *Right to Organise and Collective Bargaining Convention, 1949;* entered into force on 18 July 1951 (see *Yearbook on Human Rights for 1949,* pp. 291-292).

During 1963, the ratifications of Cameroon (with extension of the ratification to Eastern Cameroon), Ethiopia, Uganda [5] and Trinidad and Tobago [5] were registered on 29 January, 4 June, 4 June and 24 May, respectively.

The United Kingdom, on the dates indicated, registered declarations of application to non-metropolitan territories, applicable without modification, in respect of Antigua, Bermuda (15 January), St. Christopher-Nevis-Anguilla (4 February), Falkland Island (18 February) and Swaziland (20 November).

5. *Equal Remuneration Convention, 1951;* entered into force on 23 May 1953 (see *Yearbook on Human Rights for 1951,* pp. 469-470).

During 1963, the ratifications of the following States were registered on the dates indicated: Colombia (7 June), Finland (14 January) and Iraq (28 August).

6. *Social Security (Minimum Standards) Convention, 1952;* entered into force on 27 April 1955 (see *Yearbook on Human Rights for 1952,* pp. 377-389).

During 1963, no States became parties to the Convention.

7. *Maternity Protection (Revised) Convention, 1952;* entered into force on 7 September 1955 (see *Yearbook on Human Rights for 1952,* pp. 389-392).

During 1963, no States became parties to the Convention.

8. *Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955;* entered into force on 7 June 1958 (see *Yearbook on Human Rights for 1955,* pp. 435-437).

During 1963, the ratification of Morocco was registered on 27 March.

9. *Abolition of Forced Labour Convention, 1957;* entered into force on 17 January 1959 (see *Yearbook on Human Rights for 1957,* pp. 303-304).

During 1963, the ratifications of the following States were registered on the dates indicated: Afghanistan (16 May), Burundi (11 March),[6] Colombia (7 June), Uganda (4 June)[6] and Trinidad and Tobago.[6]

10. *Discrimination (Employment and Occupation) Convention, 1958;* entered into force on 15 June 1960 (see *Yearbook on Human Rights for 1958,* pp. 307-308).

During 1963, the ratifications of the following States were registered on the dates indicated: Iceland (29 July), Italy (12 August), Jordan (4 July), Morocco (27 March) and Mauritania (8 November).

11. *Social Policy (Basic Aims and Standards) Convention 1962* (see *Yearbook on Human Rights for 1962,* pp. 391-394).

[4] 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.

[5] 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.

[6] 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 1963, the ratifications of Jordan and Kuwait were registered on 7 March and 23 April respectively. This Convention had not entered into force yet by the end of 1963.

12. *Equality of Treatment (Social Security) Convention, 1962* (see *Yearbook on Human Rights for 1962*, pp. 394-397).

During 1963, the ratifications of the following States were registered on the dates and in respect of the branches indicated: Guatemala [4 November, branch (*c*)], Jordan [7 March, branches (*c*), (*d*), (*f*) and (*g*)], Norway [28 August, branches (*f*) and (*i*)], Sweden [25 April, branches (*a*), (*b*), (*c*), (*g*) and (*h*)], and the Syrian Arab Republic [18 November, branches (*d*), (*e*), (*f*) and (*g*)]. This Convention had not entered into force yet by the end of 1963.

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);* entered into force on 12 August 1954 (see *Yearbook on Human Rights for 1948*, pp. 431-433).

During 1963, no States became parties to the Agreement.

2. *Agreement on the Importation of Educational, Scientific and Cultural Materials (Lake Success, 1950);* entered into force on 21 May 1952 (see *Yearbook on Human Rights for 1950*, pp. 411-415).

During 1963, no States became parties to the Agreement.

3. *Universal Copyright Convention and Protocols thereto (Geneva 1952);* entered into force on 16 September 1955 (see *Yearbook on Human Rights for 1952*, pp. 398-403).

During 1963, Finland became a party to the Convention and Protocols 2 and 3 by instrument of ratification and to Protocol 1 by instrument of acceptance deposited on 16 January; Greece became a party to the Convention and Protocols 1, 2 and 3 by instrument of acceptance deposited on 24 May; and Peru became a party to the Convention by instrument of ratification deposited on 16 July.

4. *Convention for the Protection of Cultural Property in the Event of Armed Conflict and Protocol thereto (The Hague, 1954);* entered into force 7 August 1956 (see *Yearbook on Human Rights for 1954*, pp. 308-309).

During 1963, no States became parties to the Convention.

5. *Convention concerning the International Exchange of Publications (Paris, 1958);* entered into force on 23 November 1961 (see *Yearbook on Human Rights for 1960*, p. 434, and United Nations, *Treaty Series*, Vol. 416, p. 51).

During 1963, the following States became parties to the Convention by instruments of ratification deposited on the dates indicated: Spain (1 February), New Zealand (5 February), Bulgaria (4 March), Cuba (1 August) and Ghana (6 December), while Czechoslovakia became a party by instrument of acceptance deposited on 29 November.

6. *Convention concerning the Exchange of Official Publications and Government Documents between States (Paris, 1958);* entered into force on 30 May 1961 (see *Yearbook on Human Rights for 1960*, p. 434, and United Nations, *Treaty Series*, Vol. 398, p. 9).

During 1963, the following States became parties to the Convention by instruments of ratification deposited on the dates indicated: Spain (1 February), New Zealand (5 February), Bulgaria (4 March), Cuba (1 August) and Ghana (6 December), while Czechoslovakia became a party by instrument of acceptance deposited on 29 November.

7. *Convention against Discrimination in Education (Paris 1960);* entered into force on 22 May 1962 (see *Yearbook on Human Rights for 1961*, pp. 437-439).

During 1963, the following States became parties to the Convention by instruments of ratification deposited on the dates indicated: Norway (8 January), New Zealand (12 February), Czechoslovakia (14 March), Costa Rica (10 September), Denmark (4 October), Argentina (30 October) and Albania (21 November), while Kuwait and Dahomey became parties by instruments of acceptance deposited on 15 January and 9 July respectively.

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);* not yet in force (see *Yearbook on Human Rights for 1962*, pp. 398-401).

During 1963, Denmark became a party to the Protocol by instrument of ratification deposited on 4 October.

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);* entered into force on 14 April 1947 (see *Pan American Union: Law and Treaty Series*, No. 19).

During 1963, no States became parties to the Convention.

2. *Inter-American Convention on the Granting of Political Rights to Women (Bogotá, 1948);* entered into force on 22 April 1949 (see *Yearbook on Human Rights for 1948*, pp. 438-439).

Paraguay became a party to the Convention by instrument of ratification deposited on 5 August 1963.

3. *Inter-American Convention on the Granting of Civil Rights to Women (Bogotá, 1948);* entered into force on 22 April 1949 (see *Yearbook on Human Rights for 1948*, pp. 439-440).

During 1963, no States became parties to the Convention.

4. *Convention on Diplomatic Asylum (Caracas, 1945);* entered into force on 29 December 1954 (see *Yearbook on Human Rights for 1955*, pp. 330-332).

During 1963, no States became parties to the Convention.

5. *Convention on Territorial Asylum (Caracas, 1954);* entered into force on 29 December 1954 (see *Yearbook on Human Rights for 1955*, pp. 329-330).

During 1963, no States became parties to the Convention.

V. COUNCIL OF EUROPE

1. *Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 1950);* entered into force on 3 September 1953 (see *Yearbook on Human Rights for 1950*, pp. 418-426).

During 1963, no States became parties to the Convention.

2. *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (Paris, 1952);* entered into force on 18 May 1954 (see *Yearbook on Human Rights for 1952*, pp. 411-412).

During 1963, no States became parties to the Protocol.

3. *Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Conferring upon the European Court of Human Rights Competence to Give Advisory Opinions (Strasbourg, 1963)* (see above, p. 424).

The Protocol was signed by Austria, Belgium, the Federal Republic of Germany, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and Turkey on 6 May 1963 and ratified by Ireland on 12 September 1963. This Protocol had not entered into force yet by the end of 1963.

4. *Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Amending Articles 29, 30 and 34 of the Convention (Strasbourg, 1963)* (see above, p. 425).

The Protocol was signed without reservation as to ratification by Denmark and the United Kingdom; signed subject to ratification by Austria, Belgium, the Federal Republic of Germany, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and Turkey on 6 May 1963; and ratified by Ireland on 12 September 1963. This Protocol had not entered into force yet by the end of 1963.

5. *Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Securing Certain Rights and Freedoms other than those already Included in the Convention and in the First Protocol (Strasbourg, 1963)* (see above, pp. 425-426).

The Protocol was signed subject to ratification by Austria, Belgium, Denmark, the Federal Republic of Germany, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom on 16 September 1963. No States ratified or acceded to the Protocol during the period from 16 September to 31 December 1963. This Protocol had not therefore entered into force by the end of 1963.

6. *European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors and Protocol thereto (Paris, 1953);* Agreement entered into force on 1 July 1954 and Protocol on 1 October 1954 (see *Yearbook on Human Rights for 1953*, pp. 355-357).

During 1963, no States became parties to the Agreement.

7. *European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors and Protocol thereto (Paris, 1953);* Agreement entered into force on 1 July 1954 and Protocol on 1 October 1954 (see *Yearbook on Human Rights for 1953*, pp. 357-358).

During 1963, no States became parties to the Agreement and the Protocol.

8. *European Convention on Social and Medical Assistance and Protocol thereto (Paris, 1953);* Agreement and Protocol entered into force on 1 July 1954 (see *Yearbook on Human Rights for 1953*, pp. 359-361).

During 1963, no States became parties to the Convention and the Protocol.

9. *European Convention on Establishment (Paris, 1955)* (see *Yearbook on Human Rights for 1956*, pp. 292-297).

During 1963, Italy became a party to the Convention by instrument of ratification deposited on 31 October. This Convention had not entered into force yet by the end of 1963.

10. *European Social Charter (Turin, 1961)* (see *Yearbook on Human Rights for 1961*, pp. 442-450).

During 1963, Austria signed the Charter on 22 July but no States became parties to it. The Charter had not entered into force yet by the end of 1963.

VI. OTHER INSTRUMENTS

1. *Geneva Conventions of 12 August 1949;* entered into force on 21 October 1950 (see *Yearbook on Human Rights for 1949*, pp. 299-309).

During 1963, the following became parties to the Conventions: Senegal (by declaration of continuity on 23 April), Trinidad and Tobago (by instrument of accession on 17 May), Saudi Arabia (by instrument of accession on 18 May), Somalia (by instrument of accession on 12 July), Madagascar (by declaration of continuity on 19 July) and Cameroon (by declaration of continuity on 21 September).

2. *International Convention for the Protection of Performers Producers of Phonograms and Broadcasting Organizations (Rome, 1961)* (see *Yearbook on Human Rights for 1961*, pp. 452-454).

During 1963, Ecuador became a party to the Convention by instrument of ratification deposited on 19 December. This Convention had not entered into force yet by the end of 1963.

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