YEARBOOK ON HUMAN RIGHTS FOR 1964

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YEARBOOK ON HUMAN RIGHTS FOR 1964

INTRODUCTION

Part I of the *Yearbook on Human Rights for 1964* describes constitutional, legislative and judicial developments in the field of human rights in ninety-four States. Part II describes similar developments in certain Trust and Non-Self-Governing Territories. Part III contains the texts of, or extracts from, international agreements bearing on human rights.

The texts of new constitutions, adopted in 1963 in the Republic of the Congo and in Kenya and in 1964 in Afghanistan, the Central African Republic, Dahomey, the Democratic Republic of the Congo, Haiti, Malawi, Malta, the United Arab Republic, Yemen and Zambia, have been reproduced in this *Yearbook*. The text of a new constitution, adopted in Mauritius in 1964, is also presented. Each of these constitutions embodies certain of the principles proclaimed in the Universal Declaration of Human Rights. Specific reference to the Universal Declaration in their preambles may be found in the constitutions of Dahomey and of the Democratic Republic of the Congo.

Other constitutional developments in 1964 which are reflected in this *Yearbook* include the promulgation of the Provisional Constitution of Syria and the adoption of amendments to the constitutions of Brazil, Ghana, India, Kenya, Norway, Pakistan and the Sudan. In Israel, a Basic Law was promulgated relating to the President of the State which, in due course, together with the other Basic Laws already enacted, will form the Constitution of the State.

The constitutions and laws reproduced in this volume include provisions on the right to freedom of movement and residence, the right to a nationality, the right to marry and to found a family, the right to freedom of opinion and expression, the right to freedom of peaceful assembly and association, the right to take part in the government of one's country, the right to social security, and the right to education.

Legislation on the protection of human rights, adopted in 1964 in Brazil and the United States of America and quoted in this *Yearbook*, includes the Brazilian Act No. 4,319 of 16 March 1964, which establishes a Human Rights Protection Council having as its functions, among other things, " to institute inquiries, investigations and studies in order to ascertain the effectiveness of the rules laid down to safeguard human rights in the Federal Constitution, the American Declaration of the Rights and Duties of Man (1948) and the Universal Declaration of Human Rights (1948) "; and two Acts of the United States Congress — the Civil Rights Act of 1964 and the Economic Opportunity Act of 1964 — both designed to assist in strengthening equal protection of the law and in furthering the substantive realization of human rights in many fields through practical aid for persons who have been hampered by discrimination, geographic location, persistent unemployment, or other problems. The Civil Rights Act complements previous legislation against racial discrimination and provides, for the first time, federal guarantees with regard to equality in places of public accommodation. The Act also enhances the capacity of the Federal Government to enforce desegregation of public schools and other governmental facilities and sets up new standards and machinery to assure equal opportunity in employment. The Economic Opportunity Act likewise is designed to alleviate poverty and represents a new approach to problems of persistent unemployment.

Provisions concerning the right to freedom of movement and residence quoted herein include new legislation adopted by the Government of Algeria: the Interministerial Order of 10 November 1964 prescribing conditions governing the departure of nationals to foreign countries for the purpose of engaging in a gainful occupation; Brazil: Acts No. 4,322 of 7 April 1964 and No. 4,473 of 12 November 1964 governing the entry of aliens into Brazilian territory; Burundi: Royal Order No. 001/364 of 16 January 1964 concerning the registration of aliens; Greece: Laws Nos. 4377 and 4378 dealing with Greek citizens departing from Egypt and from Turkey respectively; Portugal: Government notice of 8 February 1964 announcing the signature by the Government of Portugal of an agreement with France relating to migration, recruitment and settlement of Portuguese labourers in France; and San Marino: Act No. 36 of 30 June 1964 on renewal of passport free of charge for San Marino nationals residing abroad and travelling for reasons connected with their work.

Nationality laws quoted in this *Yearbook* include those adopted in 1964 in Turkey: the Turkish Nationality Act (Act. No. 403); the United Kingdom: the British Nationality Act 1964 and the British Nationality (No. 2) Act 1964; and Yugoslavia: Act on Yugoslav Citizenship.

Other developments in this branch of legislation include Act No. 64-54 of 2 December 1964 amending the Nationality Code of 1961 of the Central African Republic and Act No. 3464 of 4 December 1964 by which Costa Rica ratified the Convention on Dual Nationality which it had concluded with Spain.

Laws affecting marriage and family represented in this *Yearbook* include those promulgated in 1964 in India: the Gujarat Act 11 of 1964, amending the Central Act relating to child marriages by making offences thereunder cognizable; Norway: Law of 5 November 1964 concerning changes in the law relating to marriage; Poland: the Family and Guardianship Code of 1964, *inter alia*, raising the marriageable age of men to 21 years, with the provision, however, that the guardianship court may issue permission to a man of 18 to enter into marriage; and Tunisia: Legislative Decree No. 64-1 of 20 February 1964, amending certain articles of the Code of Personal Status of 1956 by providing, *inter alia*, that the two prospective spouses must not be barred from marriage by any of the impediments established by law but that men under twenty years of age and women under seventeen years of age may not marry.

Legislation bearing on the right to freedom of opinion and expression is well represented in this volume, and includes extracts from press laws adopted in 1964 in Chile: Act No. 15,576 of 2 April 1964 concerning the Abuse of Publicity; Gabon: Act No. 15/54 of 29 October 1964 establishing the Gabonese Press Association placed under the authority of the Minister of Information; the Republic of Viet-Nam: Legislative Decree No. 2/64 of 19 February 1964 dealing with freedom of opinion and the penalties of press offences, Order No. 90 bis-BTT/ND of 19 February 1964 laying down arrangements for the publication of political party organs, and Legislative Decree No. 10/64 of 30 April 1964 laying down regulations for the publication of privately-owned newspapers and on the organization of the press; Saudi Arabia: Royal Decree No. 62 of 24-8-1383 Hijrah approving the National Press Agency Code; and Spain: Decree No. 1408 of 6 May 1964 approving the Statute of the Profession of Journalism. The Act on Recognition and Protection of Professional Journalists, promulgated by the Belgian Government on 30 December 1963, which was not available in time for inclusion in the *Yearbook for 1963*, appears in the present volume.

Other 1964 legislation relating to freedom of opinion and expression, quoted from in this volume, includes that adopted in Czechoslovakia: the Law of 31 January 1964 concerning Czechoslovak television, the Law of 31 January 1964 concerning Czechoslovak Radio, and the Law of 5 June 1964 on Telecommunication; France: Act of 27 June 1964 creating a Statute for the Office for French Radio-broadcasting and Television; New Zealand: the Copyright (International Conventions) Order 1964 and the Copyright (International Organizations) Order 1964; and Tunisia: Decree No. 64-409 of 16 December 1964 amending Decree No. 64-125 of 29 April 1964 governing the composition, role and functions of the Cinematographic Film Control Board.

Laws bearing on freedom of peaceful assembly and association promulgated in 1964 and quoted herein include those adopted in the Republic of the Congo: Act No. 25/64 of 20 July 1964, establishing a single party known as the " National Revolution Movement "; the Federal Republic of Germany: the Federal Associations Act of 5 August 1964; Ghana: Constitution (Amendment) Act 1964 (Act 224 of 21 February 1964), *inter alia*, designating the Convention People's Party as the National Party; Kuwait: Law No. 38/1964 making it possible for labour organizations to develop into craft guilds or unions; Spain: Act No. 191/1964 of 24 December 1964 on associations; Syria: Legislative Decree No. 31 of 29 February 1964 respecting the organization of trade unions; Thailand: the Bar Association Act, B.E. 2507 (1964); and Venezuela: Act of 1964 concerning political parties, public meetings and demonstrations.

Some of the constitutions and legislation quoted from in this volume include provisions on the right to take part in the government of one's country. Such provisions appear in the electoral laws adopted in Bulgaria: the Order of the Central Committee of the Bulgarian Communist Party and of the Council of Ministers of 22 May 1964 " concerning the further development of socialist democracy and the improvement of the work of the people's councils "; Canada: the Electoral Boundaries Readjustment Act 1964; Ceylon: the Ceylon (Parliamentary Elections) Amendment Act No. 10 of 1964, *inter alia*, defining the position and rights of a " recognized political party " for the purpose of elections; Czechoslovakia: the Elections to the National Assembly and National Committees Act of 1964; Finland: Act No. 49 of 7 February 1964 on Communal Elections regulating the way members of Communal Councils and their deputies are elected; and Mali: Act No. 63-73 A.N.-R.M. of 20 December 1963 establishing the Electoral Code. The Referendum Ordinance (No. 5 of 1964), providing for the ascertaining of the opinion of the electors on any question affecting the peace, order and good government of the Territory Norfolk Island, under the administration of Australia, by means of a referendum, is also quoted.

Laws quoted herein include provisions bearing on the proper treatment of offenders and detainees, promulgated in 1964 in Ghana: the Preventive Detention Act 1964 (Act 240 of 22 May 1964) and the Habeas Corpus Act (Act 244 of 26 May 1964); Sierra Leone: the Police Act of 3 June 1964; and Turkey: Act No. 466 concerning the payment of compensation to persons unlawfully arrested and detained.

The Swedish contribution to the *Yearbook for 1964* makes reference to a new Penal Code scheduled to come into force on 1 January 1965. This *Yearbook* also quotes from penal codes adopted in 1964 in Thailand: Amendment of the Military Code (No. 8), B.E. 2507 (1964); and in Tunisia: Legislative Decree No. 64-1 of 2 July 1964 amending the Penal Code.

Legislation on criminal procedure represented herein was adopted in 1964 in Colombia: Decree No. 1358 of 11 June 1964, establishing some provisions concerning criminal procedure; and the United Kingdom: the Criminal Procedure (Insanity Act) 1964, dealing with a number of issues relating to insanity in criminal proceedings.

New civil codes, promulgated during 1964 in the Byelorussian Soviet Socialist Republic and Czechoslovakia, are reproduced in this volume, as well as a new Code of Civil Procedure adopted by the Byelorussian Soviet Socialist Republic.

The right to social security was a matter of concern to many Governments in 1964, resulting in the adoption of legislation quoted herein in Chile, Cyprus, Czechoslovakia, Denmark, France, Guatemala, Guinea, Hungary, Iceland, Iraq, Ireland, Italy, Japan, Mexico, Morocco, the Netherlands, New Zealand, Nigeria, Norway, Poland, San Marino, Sweden, Switzerland, Turkey, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom, Uruguay, Venezuela and Yugoslavia.

During 1964, a considerable number of countries, namely Australia, Bolivia, Brazil, Cambodia, Chile, Ecuador, Ethiopia, Gabon, Hungary, India, Iran, Israel, Italy, Ivory Coast, Kuwait, Madagascar, the Netherlands, Romania, Syria, the United Arab Republic, the United Kingdom and Yugoslavia, adopted legislation, quoted in this volume, on various aspects of the right to work, such as conditions of work, the right to rest and leisure, the right to strike, free choice of employment and as regards employer-employee relationship.

As regards agrarian legislation, Iran adopted in July 1964 Regulations for the implementation of the Land Reform (Second Stage) Act, under which landowners were to sell their land, to lease their land, or to share the crops of their land; and Peru the Land Reform Act No. 15037 of 21 May 1964, laying down new principles for the agrarian reform of the country.

With regard to the right to education, laws promulgated in 1964 in Ecuador, Iraq, New Zealand, Portugal, Romania, Switzerland, Thailand, the Ukrainian Soviet Socialist Republic and the United Kingdom are represented in this *Yearbook*.

Legislation aimed at the protection of young persons, adopted during 1964 by the Governments of the Federal Republic of Germany, France, India, Japan, Sweden, Thailand, Turkey and the United Kingdom, is summarized herein, as are health measures taken, and health laws promulgated in 1964 in Iran, the Netherlands, Poland, Portugal, Thailand, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics and Yugoslavia.

As in previous volumes, the present *Yearbook* contains summaries of judicial decisions rendered by various courts in Belgium, Canada, Ceylon, the Federal Republic of Germany, India, Israel, Italy, Japan, Poland, Portugal, Romania, Thailand, Turkey and the United States of America; these decisions, *inter alia*, relate to the right to equal treatment before the law, the right to security of person, the right to freedom of opinion and expression, the right to freedom of association, the right to freedom of movement and the right to asylum.

Part II of this *Yearbook* includes information on human rights in 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 on Non-Self-Governing Territories under the administration of Australia (Territory of Papua and Territory of Norfolk Island) and the United Kingdom of Great Britain and Northern Ireland (Mauritius).

Part III consists of the texts of, or extracts from, the Convention Concerning Employment Policy, adopted on 9 July 1964 by the International Labour Conference at its 48th session; the European Code of Social Security and the Protocol to this Code, adopted by the Council of Europe on 16 April 1964; the Cairo Declaration on Programme for Peace and International Co-operation of 10 October 1964; the General Convention between the Federal Republic of Cameroon and the Republic of Mali for co-operation in the administration of justice of 6 May 1964; the Convention of Establishment and Movement of Persons between the Republic of Mali and the Federal Republic of Cameroon of 6 May 1964; and the Agreement on Cultural Co-operation between the Federal Republic of Cameroon and the Czechoslovak Socialist Republic of 20 April 1964. Part III also contains a statement on the status of certain international agreements in the field of human rights.

Information on a specific right may be found by consulting the index to the present volume which, as in the past years, is arranged according to the rights — civil, political, economic, social and cultural — enumerated in the Universal Declaration of Human Rights.

The designations employed and the presentation of the material in this publication 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

THE CONSTITUTION OF AFGHANISTAN

PROMULGATED ON 1 OCTOBER 1964[1]

In the name of God, the Almighty and the Just

To reorganize the national life of Afghanistan according to the requirements of the time and on the basis of the realities of national history and culture;

To achieve justice and equality;

To establish political, economic and social democracy;

To organize the functions of the State and its branches to ensure liberty and welfare of the individual and the maintenance of the general order;

To achieve a balanced development of all phases of life in Afghanistan; and

To form, ultimately, a prosperous and progressive society based on social co-operation and preservation of human dignity;

We, the People of Afghanistan, conscious of the historical changes which have occurred in our life as a nation and as a part of human society, while considering the above-mentioned values to be the right of all human societies, have, under the leadership of His Majesty Mohammed Zahir Shah, the King of Afghanistan and the leader of its national life, framed this Constitution for ourselves and the generations to come.

Title One

THE STATE

Art. 1. Afghanistan is a Constitutional Monarchy; an independent, unitary and indivisible state.

Sovereignty in Afghanistan belongs to the nation.

The Afghan nation is composed of all those individuals who possess the citizenship of the State of Afghanistan in accordance with the provisions of the law. The word Afghan shall apply to each such individual.

Art. 2. Islam is the sacred religion of Afghanistan. Religious rites performed by the State shall be according to the provisions of the Hanafi doctrine. Non-Muslim citizens shall be free to perform their rituals within the limits determined by laws for public decency and public peace.

Art. 3. From amongst the languages of Afghanistan, Pushtu and Dari shall be the official languages.

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

Title Two

THE KING

Art. 6. In Afghanistan the King personifies the sovereignty.

Art. 7. The King is the protector of the basic principles of the sacred religion of Islam, the guardian of Afghanistan's independence and territorial integrity, the custodian of its Constitution and the centre of its national unity.

Art. 8. The King shall be an Afghan national, a Muslim and a follower of the Hanafi doctrine.

...

Title Three

THE BASIC RIGHTS AND DUTIES OF THE PEOPLE

Art. 25. The people of Afghanistan, without any discrimination or preference, have equal rights and obligations before the law.

Art. 26. Liberty is the natural right of the human being. This right has no limitations except the liberty of others and public interest as defined by the law.

The liberty and dignity of the human being are inviolable and inalienable. The State has the duty to respect and protect the liberty and dignity of the individual.

No deed is considered a crime except by virtue of a law in force before its commission.

No one may be punished except by the order of a competent court rendered after an open trial held in the presence of the accused.

No one may be punished except under the provisions of a law that has come into effect before the commission of the offence with which the accused is charged.

No one may be pursued or arrested except in accordance with the provisions of the law.

No one may be detained except on order of a competent court, in accordance with the provisions of the law.

Innocence is the original state; the accused is considered to be innocent unless found guilty by a final judgment of a court of law.

Crime is a personal deed. Pursuit, arrest or detention of the accused and the execution of sentence against him does not affect any other person.

Torturing a human being is not permissible. No one can torture or issue orders to torture a person

even for the sake of discovering facts, even if the person involved is under pursuit, arrest or detention or is condemned to a sentence.

Imposing punishment incompatible with human dignity is not permissible.

A statement obtained from an accused or any other person by compulsion is not valid.

Confession of a crime means the admission made by an accused willingly and in full possession of his senses before a competent court with regard to the commission of a crime legally attributed to him. Every person has the right to appoint defence counsel for the removal of a charge legally attributed to him.

Indebtedness of one to another cannot cause deprivation or curtailment of the liberty of the debtor. The ways and means of recovering debt shall be specified in the law.

Every Afghan is entitled to travel within the territory of his State and settle anywhere except in areas prohibited by the law. Similarly, every Afghan has a right to travel outside of Afghanistan and return to Afghanistan according to the provisions of the law.

No Afghan shall be sentenced to banishment from Afghanistan or within its territory.

Art. 27. No Afghan accused of a crime can be extradited to a foreign State.

Art. 28. A person's residence is inviolable. No one, including the State, can enter or search a residence without the permission of the resident or the orders of a competent court and in accordance with the conditions and procedure specified by the law.

In cases of witnessed crimes the responsible officer can enter or search the residence of a person without the permission of the resident or the prior writ of the court on his personal responsibility. The officer is bound to get the order of the court within the time limit set by the law after his entry into the house or its search.

Art. 29. Property is inviolable.

No one's property can be confiscated except in accordance with the provision of the law and the decision of a competent court.

Expropriation is allowed only for securing public interest, against an advance equitable compensation, in accordance with the provisions of the law.

No one shall be prohibited from acquiring property and exercising the right of ownership of the same, within the limitations of the law. The ways of utilising property shall be regulated and guided by the law, for securing the public interest.

Investigations and declarations of a person's property can be made only in accordance with the provisions of the law.

Foreign States and nationals are not entitled to own immovable property in Afghanistan. Subject to the approval of the Government, immovable property may be sold to the diplomatic missions of foreign States on a reciprocal basis and also to those international organizations of which the State of Afghanistan is a member.

Art. 30. The freedom and secrecy of people's communications, whether by writing, telephone, telegraph or other medium, are inviolable.

The State has no right to search personal communications except by the order of a competent court and in accordance with the provisions of the law.

In urgent cases, defined by the law, the official responsible can search communications on his responsibility, without the prior permission of the court. The official concerned is bound to obtain, after the search, the decision of the court within the time limit set under the law.

Art. 31. Freedom of thought and expression is inviolable.

Every Afghan has the right to express his thoughts in speech, in writing, in pictures and by other means, in accordance with the provisions of the law.

Every Afghan has the right to print and publish ideas in accordance with the provisions of the law, without submission in advance to the authorities of the State.

The permission to establish and own public printing houses and to issue publications is granted only to the citizens and the State of Afghanistan, in accordance with the provisions of the law.

The establishment and operation of public radio transmission and telecasting is the exclusive right of the State.

Art. 32. Afghan citizens have the right to assemble unarmed, without prior permission of the State, for the achievement of legitimate and peaceful purposes, in accordance with the provisions of the law.

Afghan citizens have the right to establish, in accordance with the provisions of the law, associations for the realisation of material or spiritual purposes.

Afghan citizens have the right to form political parties, in accordance with the terms of the law, provided that :

1. The aims and activities of the party and the ideas on which the organization of the party is based are not opposed to the values embodied in this Constitution.
2. The organization and financial resources of the party are open.

A party formed in accordance with the provisions of the law cannot be dissolved without due process of the law and the order of the Supreme Court.

Art. 33. Anyone who, without due cause, suffers damage from the Administration is entitled to compensation and may file a suit in a court for its recovery.

The State cannot, except in cases specified by the law, resort to the recovery of its dues without the order of a competent court.

Art. 34. Education is the right of every Afghan and shall be provided free of charge by the State and the citizens of Afghanistan. The aim of the State in this sphere is to reach a stage where suitable facilities for education will be made available to all Afghans, in accordance with the provisions of

the law. The Government is obliged to prepare and implement a programme for balanced and universal education in Afghanistan.

It is the duty of the State to guide and supervise education.

Primary education is compulsory for all children in areas where facilities for this purpose are provided by the State.

The State alone has the right and duty to establish and administer the institutions of public and higher learning. Outside this sphere, Afghan nationals are entitled to establish technical and literacy schools. Conditions for the establishment of such schools, their curricula and the conditions of learning in such schools are to be determined by law.

The Government may grant permission, in accordance with the provisions of the law, to foreign persons to establish private schools for the exclusive use of foreigners.

Art. 35. It is the duty of the State to prepare and implement an effective programme for the development and strengthening of the national language, Pushtu.

Art. 36. It is the duty of the State to provide, within the limits of its means, balanced facilities for the prevention and treatment of diseases for all Afghans. The aim of the State in this respect is to reach a stage where suitable medical facilities will be made available to all Afghans.

Art. 37. Work is the right and precept of every Afghan who has the capability to do it.

The main purpose of laws designed to systematize labour is to reach a stage where the rights and interests of all categories of labourers are protected, suitable conditions of work are provided and the relations between the workers and employers are organized on a just and progressive basis.

The citizens of Afghanistan are admitted to the service of the State on the basis of their qualifications and in accordance with the provisions of the law.

Work and trade may be freely chosen, within the conditions determined by the law.

Forced labour even for the benefit of the State is not permissible. The prohibition on forced labour shall not be so construed as to affect the implementation of the laws governing the organization of collective work for the public interest.

Art. 38. Every Afghan is bound to pay tax and duty to the State. No duty or tax of any kind shall be levied without the provisions of the law. The rate of tax and duty as well as the method of payment shall be determined by law with consideration for social justice. The provisions of this Article are applicable to foreign persons as well.

Art. 39. It is the sacred duty of all citizens of Afghanistan to defend their country. All citizens of Afghanistan are bound to perform military service in accordance with the provisions of the law.

Art. 40. It is the duty of all the people of Afghanistan to follow the provisions of the Constitution; to bear loyalty to the King and respect him; to obey laws; to have due consideration for public order and peace; to protect the interests of the homeland and to participate in the national life.

Title Four

THE SHURA (PARLIAMENT)

Art. 41. The Shura (Parliament) in Afghanistan manifests the will of the people and represents the whole of the nation.

The people of Afghanistan participate through the Shura (Parliament) in the political life of the country. Although elected from a particular constituency each member of the Shura (Parliament) shall at the time of expressing his opinion, take the general interests of the whole of Afghanistan as the basis for his judgment.

Art. 42. The Shura (Parliament) consists of two houses :

Wolesi Jirgah (House of the People)
Meshrano Jirgah (House of the Elders)

Art. 43. Members of the Wolesi Jirgah (House of the People) shall be elected by the people of Afghanistan in a free, universal, secret and direct election, in accordance with the provisions of the law. For this purpose Afghanistan shall be divided into electoral constituencies, the number and limits of which are fixed by the law. Each constituency shall return one member. The candidate who obtains the largest number of votes cast in his constituency, in accordance with the provisions of the law, shall be recognized as the representative of that constituency.

Art. 44. Members of the Wolesi Jirgah (House of the People) shall be elected for a period of four years, which is one term of the legislature. Whenever the Shura (Parliament) is dissolved, in accordance with the provisions of this Constitution, a new Wolesi Jirgah (House of the People) shall be elected for another legislative term. However, the termination date of the outgoing House is so regulated that the ensuing session of the Wolesi Jirgah (House of the People) commences on the date stipulated in Article 59.

Art. 45. Members of the Meshrano Jirgah (House of the Elders) shall be nominated and elected as follows :

1. One-third of the members shall be appointed by the King for a period of five years from amongst well-informed and experienced persons.
2. The remaining two-thirds of the members shall be elected as follows :

   (*a*) Each Provincial Council shall elect one of its members to the Meshrano Jirgah (House of the Elders) for a period of three years.

   (*b*) The residents of each province shall elect one person for a period of four years by a free, universal, secret and direct election.

Art. 46. Qualifications for voters shall be specified in the electoral law.

Persons appointed or elected for membership in the Shura (Parliament) must meet the following requirements in addition to their qualifications as voters :

1. Must have acquired Afghan nationality at least ten years prior to the date of nomination or election.

2. Must not have been punished by a court with deprivation of political rights after the promulgation of this Constitution.
3. Must be able to read and write.
4. Members of the Wolesi Jirgah (House of the People) must have completed the age of 25 at the time of the election and those of the Meshrano Jirgah (House of the Elders) the age of 30 at the time of their nomination or election.

Art. 47. The Head and members of the Government, Judges, officers and members of the armed forces, officials and other personnel of the administration cannot be appointed or elected to the Shura (Parliament) while they are in service.

Art. 48. No person can be a member of both Houses simultaneously.

Art. 49. Elections shall be governed by the electoral law subject to the provisions of this Constitution.

No bill to amend the electoral law may be entertained on the agenda of either House of the Shura (Parliament) during the last two years of the legislative term of the Wolesi Jirgah (House of the People).

...

Title Five

THE LOYA JIRGAH (GREAT COUNCIL)

Art. 78. The Loya Jirgah (Great Council) consists of members of the Shura (Parliament) and the Chairmen of the Provincial Councils.

In the event of the dissolution of the Shura (Parliament) its members retain their position as members of the Loya Jirgah (Great Council) until a new Shura (Parliament) comes into being.

...

Art. 81. The deliberations of the Loya Jirgah (Great Council) are open unless the Government or at least twenty members of the Loya Jirgah (Great Council) request a secret session and the Loya Jirgah (Great Council) approves this request.

...

Title Seven

THE JUDICIARY

Art. 97. The Judiciary is an independent organ of the State and discharges its duties side by side with the Legislative and Executive Organs.

...

Art. 100. In the courts of Afghanistan trials are held openly and everyone may attend in accordance with the provisions of the law. The Court may in exceptional cases specified in the law hold closed trials. However, the judgment shall always be openly proclaimed.

The courts are bound to state in their judgments the reasons for their verdicts.

...

Title Nine

STATE OF EMERGENCY

Art. 113. Whenever the preservation of independence and the continuance of national life become impossible through the channels provided for in this Constitution due to war, danger of war, serious disturbances, or similar conditions which endanger the country, a state of emergency shall be declared by the King.

Should a state of emergency continue for more than three months, the concurrence of the Loya Jirgah (Great Council) is imperative for its extension.

Art. 114. In a state of emergency, the King may transfer all or part of the powers of the Shura (Parliament) to the Government.

Art. 115. In a state of emergency, the Government, after obtaining the concurrence of the Supreme Court, may, by ordinances, suspend or impose restrictions upon the following provisions of this Constitution :

1. Section one of Article 28.
2. Section three of Article 29.
3. Section two of Article 30.
4. Section one of Article 32.
5. Section one of Article 33.

...

Art. 118. The Constitution shall not be amended during a state of emergency.

Title Ten

AMENDMENT

Art. 120. Adherence to the basic principles of Islam, Constitutional Monarchy in accordance with the provisions of this Constitution, and the values embodied in Article 8 shall not be subject to amendment.

Amendments to other provisions of the Constitution may be initiated by the Council of Ministers or one-third of the members of the Wolesi Jirgah (House of the People) or the Meshrano Jirgah (House of the Elders), in accordance with the provisions of this Title.

Art. 121. The proposal for amendment is discussed by the Loya Jirgah (Great Council), and in case a majority of the members approves its necessity, a committee from amongst its members shall be appointed to formulate the amendment. The committee shall formulate the amendment with the advice of the Council of Ministers and the Supreme Court, for submission to the Loya Jirgah (Great Council). In case the Loya Jirgah (Great Council) approves the draft amendment with a majority vote of its members, it is submitted to the King. The King shall dissolve the Shura (Parliament), circulate the draft amendment to the public and proclaim the date of the new elections. The new elections shall take place within four months from the dissolution of the Shura (Parliament).

Art. 122. Following the opening of the Shura (Parliament) and the formation of the Government the King summons the Loya Jirgah (Great Council), which, after consideration, approves or rejects the text of the draft amendment. The decision of the Loya Jirgah (Great Council) in this respect shall be by a two-thirds majority vote of its members and shall be enforced after it has been signed by the King.

...

ALGERIA

DECREE No. 64-67, DATED 29 FEBRUARY 1964, ESTABLISHING A NATIONAL CULTURAL BOARD[1]

Art. 1. There is hereby established a National Cultural Board, attached to the Office of the President of the Republic.

Art. 2. With a view to the preservation, development and enrichment of the nation's cultural heritage and the methodical, general dissemination of culture at all levels of society, the National Cultural Board shall encourage, co-ordinate and supervise the activities of Government departments and other agencies and groups concerned with the development and dissemination of culture.

...

[1] *Journal officiel de la République algérienne*, No. 19, dated 3 March 1964.

DECREE No. 64-129 OF 15 APRIL 1964 CONCERNING THE ADMINISTRATIVE ORGANIZATION OF CIVIL DEFENCE[2]

Title I

PURPOSE AND INSTITUTION OF CIVIL PROTECTION

Chapter I

Purpose of Civil Protection

Art. 1. The general purpose of civil protection, based on the idea of human solidarity at the national and possibly international level, is to safeguard persons and property, by three means: prevention, planning ahead, and assistance. It requires the co-operation of all citizens in order to preserve the human lives and material resources which constitute the national wealth.

Aid and assistance to persons in danger is not merely a legal obligation but a social duty, the importance of which must be understood by everyone so as to enable the civil protection force to perform its duties of:

anticipating the nature of the danger;

limiting the consequences of events of human origin (road, air and rail accidents, arson, disasters due to acts of war) and of natural origin, whether they can be guarded against (fires, floods, landslides) or are unforeseeable (tidal waves, earthquakes, cyclones); assisting any victims.

Chapter II

Institution of the Civil Protection System

Art. 2. The Minister of the Interior shall be responsible for civil protection. He shall discharge this responsibility with the assistance of the other ministers, who shall study and propose appropriate measures whereby their ministerial departments can participate in the general task of civil protection.

...

Art. 4. The Minister of the Interior shall direct, co-ordinate and supervise the preparation and execution of civil protection measures throughout the national territory.

The Minister of the Interior shall have at his disposal the National Civil Protection Service, departmental and communal organs, and an advisory body — the National Civil Protection Council.

Title II

ORGANIZATION OF CIVIL PROTECTION

Chapter I

The National Civil Protection Service

Art. 5. The function of the National Civil Protection Service shall be to formulate, prepare, put into effect and supervise measures to ward off danger, to stop or limit the damage suffered in peace-time or war-time as a result of disasters, accidents, catastrophies or calamities, whether or not due to natural causes and affecting part or all of the population and public and private property.

...

Title IV

PREVENTION

Chapter I

General Principles

Art. 46. Prevention involves studying dangers from the technical point of view, establishing their possible consequences and investigating their causes, so that they may be eliminated, or finding means of limiting their effects.

[2] *Journal officiel de la République algérienne*, No. 39, of 12 May 1964.

Art. 47. Preventive measures are mandatory under the present regulations concerning:

1. The protection of workers in establishments covered by the labour code;
2. Classified establishments;
3. Establishments open to the public.

Specialized officials and safety boards ensure compliance with the safety regulations applying to all these establishments.

...

Title V

PLANNING AHEAD

Art. 54. The purpose of planning ahead is to organize all the measures that are to be put into effect — by preparing in advance a plan for co-ordinating and applying them — when danger may arise despite preventive measures and make it necessary for the authorities to intervene.

...

Title VI

INTERVENTION

Chapter I

General Principles

Art. 63. Subject to the penalties prescribed in article 63 of the Criminal Code, it shall be the duty of any person who sees a disaster or accident to alert the nearest members of the gendarmerie or police force who shall, in their turn, inform the competent authorities. The alert shall be given, if possible, from the nearest public or private telephone, priority being requested on grounds of emergency.

...

DECREE No. 64-238 DATED 13 AUGUST 1964 CONCERNING THE COMPULSORY EMPLOYMENT OF EX-SERVICEMEN (*MUJAHIDIN*) AND DISABLED VETERANS OF THE WAR OF NATIONAL LIBERATION[3]

Art. 1. The provisions of the present Decree shall apply to the following:

(1) Ex-servicemen (*mujahidin*), whether or not they receive a disability pension,

(2) The widows of ex-servicemen (*mujahidin*) who have not remarried,

(3) Other persons as provided for in the Act of 31 August 1963.[4]

...

Art. 3. All industrial, agricultural and commercial enterprises, whatever the activity in which they engage, must ensure that not less than 10 per cent of their total staff is composed of persons covered by this Decree. No persons at present employed shall be terminated in execution of this provision.

Art. 4. Businesses and enterprises which, within three months from the date of promulgation of this Decree, cannot give satisfactory proof that they have recruited the percentage established in article 3, shall be liable to the fines prescribed in article 8 below.

...

Art. 8. Any employer who, of his own accord, has not employed the number of persons specified in article 3, shall be liable to a fine equal to the daily wage which would have been paid to each person covered by this Decree, in his professional category, if that person had actually been employed, multiplied by the number of days the employer is in default, and, if necessary, by the number of such persons who are not employed.

...

[3] *Ibid.*, No. 69, of 25 August 1964.

[4] This Act deals with social welfare for veterans (*mujahidin*).

ACT No. 64-239 OF 13 AUGUST 1964 CONCERNING VOCATIONAL TRAINING OF VETERANS AND DISABLED VETERANS OF THE WAR OF NATIONAL LIBERATION[5]

...

Having regard to Act No. 63-321 of 31 August 1963 providing for the social welfare of veterans of the war of national liberation (*mujahidin*).

...

Art. 1. In public vocational training centres, up to 50 per cent of available places in vocational training sections and all places in vocational pre-training sections shall be reserved for:

(*a*) veterans and disabled veterans of the war of national liberation,

(*b*) veterans' widows who have not remarried,

(*c*) beneficiaries of the above-mentioned Act No. 63-231 of 31 August 1963.

Art. 2. Beneficiaries under this Act, if married, shall receive a monthly pre-salary of 300 dinars plus family allowances where appropriate.

Art. 3. Beneficiaries under this Act shall be subject to the rules in force in public adult vocational training centres. Their pre-salary and housing benefits shall be withdrawn in the event of any breach of discipline or of unsatisfactory progress in their vocational training.

...

[5] *Journal officiel de la République algérienne*, nº. 69, of 25 August 1964.

INTERMINISTERIAL ORDER OF 10 NOVEMBER 1964 PRESCRIBING CONDITIONS GOVERNING THE DEPARTURE OF NATIONALS FOR FOREIGN COUNTRIES FOR THE PURPOSE OF ENGAGING IN A GAINFUL OCCUPATION[6]

...

Considering Decree No. 63-191 of 29 May 1963, prescribing conditions governing the departure of nationals for foreign countries for the purpose of engaging in a gainful occupation;

Art. 1. Nationals proceeding to Europe for the purpose of engaging in a gainful occupation must obtain a departure permit containing the visa referred to in article 3 of the above-mentioned Decree No. 63-191 of 29 May 1963.

Art. 2. The above-mentioned visa, valid for three weeks, shall be issued by the departmental directors of labour and manpower of Algiers, Oran, Annaba and Constantine, who shall have exclusive authorization to issue such visas.

Art. 3. In order to obtain such a visa, the applicant must:

(*a*) Be at least 18 and not more than 55 years of age, and have the authorization of his parents or guardian if he is less than 19 years of age;

(*b*) Have been registered as an applicant for employment at an employment exchange for at least one month;

(*c*) Have a medical file prepared by one of the medical centres established for that purpose, certifying that he is free from all communicable diseases and fit to work.

Art. 4. The provisions of article 1 shall not apply to persons in the following categories:

(1) Civil servants with orders assigning them to missions, and their families;

(2) Trainees and students sent abroad by the Algerian Government;

(3) Nationals working abroad who produce statements of earnings going back not more than three months;

(4) Businessmen and artisans who produce proof that they are entered in the registers of their trade or business;

(5) Members of the liberal professions who are registered members of a professional association;

(6) Invalids covered by a social security fund in Algeria, and medical personnel accompanying them, if any.

Art. 5. Nationals leaving Algeria to travel abroad as tourists must produce the following:

(1) A return ticket;

(2) The equivalent in foreign exchange of the sum of 500 Algerian dinars;

(3) A work certificate showing that the bearer is still employed at the time of his departure, or, in the absence of such certificate, a document issued by the mayor of his habitual place of residence certifying that the bearer has regular and adequate income in Algeria.

Art. 6. Only families who are in possession of the documents specified in article 4 of the above-mentioned Decree No. 63-191 of 29 May 1963 shall be authorized to join Algerian workers abroad.

[6] *Ibid.*, No. 93, of 17 November 1964.

AUSTRALIA

HUMAN RIGHTS IN 1964[1]

Australian legislation of particular interest passed during 1964 in the field of human rights consists, firstly, of laws relating to the rights of aboriginal natives in the Northern Territory and, secondly, of laws designed to implement a scheme of legislation on the subject of the adoption of children which would be uniform in all States and in the mainland Territories. This legislation is referred to in the notes below.

I. Legislation

A. The Principle of Equal Treatment
(Universal Declaration, Articles 2 and 7)

A series of Ordinances was passed by the Legislative Council of the Northern Territory designed to remove restrictions on the full exercise of citizenship rights by aboriginal natives in the Territory. The Ordinances passed were: Native Administration Ordinance 1940 Repeal Ordinance 1964 (No. 16 of 1964), Social Welfare Ordinance 1964 (No. 31 of 1964), Criminal Law Amendment Ordinance 1964 (No. 37 of 1964), Dangerous Drugs Ordinance 1964 (No. 39 of 1964), Intestate Aboriginals (Distribution of Estates) Ordinance 1964 (No. 41 of 1964), Police and Police Offences Ordinance 1964 (No. 44 of 1964), Wards' Employment Ordinance 1964 (No. 46 of 1964), Workmen's Compensation Ordinance 1964 (No. 47 of 1964), Child Welfare Ordinance 1964 (No. 53 of 1964).

B. The Suffrage
(Universal Declaration, Article 21)

The New South Wales Parliament passed the Constitution and Police Regulation (Amendment) Act 1964 (No. 9 of 1964) which provides that members of the police force of the State are not to be disqualified from election to the State Legislative Assembly. The Act also entitles members of the police force who resign in order to contest a federal election, and who fail to be elected, to be re-appointed to the police force.

C. Conditions of Work
(Universal Declaration, Articles 23, 25)

Acts were passed by the Commonwealth Parliament which had the effect of extending or increasing benefits payable to persons injured in the course of their employment. These were: Seamen's War Pensions and Allowances Act 1964 (No. 64 of 1964), Seamen's War Pensions and Allowances Act (No. 2) 1964 (No. 113 of 1964), Commonwealth Employees' Compensation Act 1964 (No. 101 of 1964) and Seamen's Compensation Act 1964 (No. 102 of 1964). New South Wales passed the Workers' Compensation (Amendment) Act 1964 (No. 66 of 1964).

D. Social Services
(Universal Declaration, Article 25)

Acts were passed by the Commonwealth Parliament which had the effect of extending or increasing social services benefits. These were: Social Services Act 1964 (No. 3 of 1964), Social Services Act (No. 2) 1964 (No. 63 of 1964), States Grants (Mental Health Institutions) Act 1964 (No. 16 of 1964), National Health Act 1964 (No. 37 of 1964), Home Savings Grant Act 1964 (No. 51 of 1964), Repatriation Act 1964 (No. 62 of 1964), Repatriation Act (No. 2) 1964 (No. 105 of 1964).

To make further provision for persons suffering from sickness or disability the following laws were passed:

In the Northern Territory: Tuberculosis Ordinance 1964 (No. 25 of 1964). In South Australia: Alcohol and Drug Addicts (Treatment) Act Amendment Act 1964 (No. 1 of 1964) and Mental Health Act Amendment Act 1964 (No. 30 of 1964). In Western Australia: Mental Health Act Amendment Act 1964 (No. 92 of 1964). In New South Wales: Mental Health (Amendment) Act 1964 (No. 69 of 1964). In Victoria: Health (Child Minding) Act 1964 (No. 7122). In Queensland: Mental Health Act Amendment Act of 1964 (No. 50 of 1964).

During the year, a number of Acts and Ordinances were passed to improve existing legislative provisions relating to the adoption of children. These laws contained provisions to safeguard both the welfare of children who are the subject of adoption and the rights of persons who adopt them. In addition, they establish a legal foundation on which Australia-wide recognition of orders made in the various States and Territories can be based. These Acts and Ordinances are: Adoption of Children Ordinance 1964 (No. 67 of 1964) of the Northern Territory, Adoption of Children Act Amendment Act 1964 (No. 100 of 1964) of Western Australia, Adoption of Children Act 1964 (No. 7147) of Victoria, and Adoption of Children Act 1964 (No. 54 of 1964) of Queensland.

[1] Note furnished by Mr. J. O. Clark, Principal Legal Officer (Executive), Attorney-General's Department, Canberra, government-appointed correspondent of the *Yearbook on Human Rights*.

E. RIGHT TO EDUCATION
(Universal Declaration, Article 26)

The Commonwealth Parliament passed the States Grants (Science Laboratories and Technical Training) Act 1964 (No. 50 of 1964) authorizing an annual payment of £5,000,000 for the provision of science buildings and equipment in all secondary schools, without discrimination, and an annual payment of £5,000,000 for State technical education. Western Australia passed the Youth Service Act 1964 (No. 36 of 1964) setting up a youth council, the principal functions of which are to conduct research into methods of attracting young persons to participate in youth service and to prepare a comprehensive scheme for the development of a youth service in the State.

F. EQUALITY BEFORE THE LAW
(Universal Declaration, Article 7)

New South Wales passed the Legal Assistance (Amendment) Act 1964 (No. 42 of 1964) which expands the classes of persons to whom assistance may be granted.

II. Court Decisions

A. JUDICIAL DUE PROCESS
(Universal Declaration, Article 10)

DAIRY FARMERS CO-OPERATIVE MILK CO. LTD. v. ACQUILINA
109 Commonwealth Law Reports 458
High Court of Australia

Right to give evidence through an interpreter

In the trial of an action for damages, the trial Judge was asked to permit a witness to give evidence through an interpreter. The High Court held, on appeal, that a witness is not entitled as of right to give evidence in his native tongue through an interpreter : whether he is allowed to do so is a matter to be determined by the judge in the exercise of his discretion upon the material placed before him; and except for extremely cogent reasons an appellate court ought not to interfere with the exercise of that discretion.

Per McTiernan, Kitto, Menzies, Windeyer and Owen, JJ., at page 464 :

" His Honour (the trial Judge) was asked to permit a witness Sammitt to give evidence through an interpreter. What his Honour said as to this in the course of Sammitt's examination in chief was as follows : — ' I feel that his English so far has been good enough to give evidence. It may be the interpreter can come forward and if there is any particular word he does not understand, you can ask me and I will clear it up through the interpreter '. From time to time thereafter the interpreter was used for the purpose his Honour indicated. It was contended before us, however, that it was an error not to permit the witness to give evidence in his native tongue. The general proposition that a witness is entitled to give evidence in his native tongue is one that cannot be justified. It appears to us that in adopting the course which he did, his Honour was not only exercising his discretion but was exercising it wisely. We agree with the decision of the Full Court of the Supreme Court of New South Wales in *Filios v. Morland* ((1963) 80 W.N. (N.S.W.) 501) that there is no rule that a witness is entitled as of right to give evidence in his native tongue through an interpreter and that it is a matter in the exercise of the discretion of the trial judge to determine on the material which is put before him whether to allow the use of an interpreter and the exercise of this discretion should not be interfered with on appeal except for extremely cogent reasons. "

JAMES v. ROBINSON
109 Commonwealth Law Reports 593
High Court of Australia

Contempt of court — Newspaper publication

A newspaper published articles which were such as to tend to prejudice the fair trial of the respondent Robinson who was then at large and being sought by the police in connexion with two killings which had then recently occurred. The High Court held that the publication of matter likely to affect a criminal trial is not punishable as a contempt if at the time of publication there are no proceedings commenced in any court.

Per Kitto, Taylor, Menzies and Owen, JJ., at p. 607 :

" We do not think that the very general considerations based upon the notion of poisoning the stream of justice before it begins to flow provide any sound or adequate test for determining what is and what is not contempt of court. A publication antecedently to the commencement of proceedings may, as we have already said, constitute a libel or offence punishable under and in accordance with the general law, but it is not contempt of court. "

Per Windeyer, J., at p. 617 :

" That the harmful consequences of a publication made before proceedings are commenced may be no less than if it were made afterwards does, naturally, seem a ground for saying that it too should be unlawful. And it well may be. But it is not punishable by summary procedure as a contempt : that is all that I mean to decide. "

B. DUE PROCESS IN CRIMINAL PROCEEDINGS
(Universal Declaration, Article 11)

DI CAMILLO v. WILCOX
1964 Western Australian Reports 44
Supreme Court of Western Australia

Plea of guilty — Effect — Complaint alleging offence known to law — No further inquiry into facts — Appeal against conviction and sentence

D. was charged under s. 43 of the *Police Act* 1892-1962 that he was loitering and failed to give a satisfactory account of himself to a police officer (the prosecutor) and pleaded guilty. D. was convicted and sentenced to one month's imprisonment with hard labour. On appeal against conviction on the grounds : (i) that the magistrate was wrong in law in convicting D. because the facts presented to him did not disclose the offence with which the appellant had been charged; and (ii) that the magistrate was wrong in law in accepting the plea of guilty

in that he did not direct himself to the question whether the offence had been committed because he did not consider whether or not D. had given a satisfactory account of himself to the detective.

Held : (1) That once it is found that the complaint alleges an offence known to the law and within the jurisdiction of petty sessions, a clear and unambiguous plea of guilty is an admission of all the facts essential to the offence : the statement of facts then made to the court does not have to cover every essential element of the offence and there had not been anything in the statements made to the magistrate to raise a doubt as to the correctness of the plea. (2) That the magistrate would have had to determine whether the account given to the police officer had been satisfactory if this matter had been in issue, but after a plea of guilty the magistrate was not required to inquire into the facts and form his opinion thereon. After the trial and before the return of the order *nisi* to review, the appellant had filed an affidavit alleging that he had pleaded guilty on the advice of the prosecutor who had misrepresented to him both the nature of the offence and (by implication) the maximum penalty that could be imposed. The prosecutor also filed an affidavit which differed widely in its account of many material incidents.

Held, that even if all the facts as stated in the appellant's affidavit were accepted, they did not allege error or mistake in law or fact on the part of the magistrate, or lack or excess of jurisdiction, and these were the only grounds on which the appeal against conviction could be sustained under s. 197 of the Justices Act 1902-1962 which provided the only right of appeal available to D. D. who was a student aged nineteen had no previous convictions. In passing sentence the magistrate had said : " I don't have any sympathy for people like this. One moment they are loiterers and the next they are likely to be murderers, burglars, thieves or even rapists. "

Held, that the remark indicated that the magistrate had allowed himself to be influenced by the facts of other cases of a more serious nature and to view the appellant's minor offence in a much graver light than was warranted and the sentence should be set aside and the appellant discharged on entering into a bond to keep the peace for six months from the date of conviction.

C. Right to Marry
(Universal Declaration, Article 16)

Re K. (An Infant)
(1963) 81 Weekly Notes (Pt. 1) N.S.W.

Supreme Court of New South Wales

Female under 16 and over 14 years — Application to court for authority to marry — Exceptional and unusual circumstances.

Pursuant to s. 12(2.) of the Marriage Act 1961 (Commonwealth) authority may be given to a female who has attained the age of 14 years but not the age of 16 years to marry a particular person provided a judge is satisfied that the circumstances of the case are so exceptional and unusual as to justify the making of the order.

Held, that pregnancy alone does not justify the making of an order.

(Note : In this particular case, the judge held that a combination of circumstances (including the pregnancy) justified the making of the order and he accordingly made it.)

D. Right to Standard of Living Adequate for Health and Well-being
(Universal Declaration, Article 25)

Kelberg v. City of Sale
(1964) Victorian Reports 383

Supreme Court of Victoria

Water supply — Fluoridation — Power of council — Validity of by-law.

S. 690(1) of the *Local Government Act* 1958 (Victoria) provides that " The council of every municipality shall cause all existing public reservoirs tanks cisterns weirs dams pumps wells conduits and other waterworks used for the gratuitous supply of water to the inhabitants within the municipal district to be continued maintained and supplied with water, or shall substitute other such works equally convenient, and shall cause them to be maintained and supplied with water or may enlarge or improve any such waterworks and cause them to be maintained and supplied with water for the supply of water to the inhabitants on payment or otherwise. "

Held : that this section does not authorize the council of a municipality to treat water in a water supply which it is required to maintain by a process of fluoridation which involves the introduction into the water of minute portions of fluorine by means of soluble fluorides.

The council of a municipality, purporting to act under s. 197(1)(ix) of the *Local Government Act* 1958, which authorized it to make by-laws, " providing for the health of the residents in the municipal district and against the spreading of contagious or infectious diseases ", passed a by-law authorizing and requiring it to add fluorine to a water supply under its control, fluorine being defined as " any compound of fluorine ".

Held : that as some compounds of fluorine were harmful if consumed by human beings, the by-law which imposed on the council a duty to add to the water supply substances which may be harmful to health was not authorized by s. 197(1)(ix), and was invalid.

E. Rights of the Child
(Universal Declaration, Article 25(2))

Re Bird, Deceased
(1964) Queensland Weekly Notes 13

Supreme Court of Queensland

Intestate — Infant illegitimate child — Provision for maintenance and support.

Held : that, although upon an application by an illegitimate child under section 31B of the Succession Acts, 1867 to 1943, it must be kept in mind that had the child been legitimate it could have hoped to receive in an intestacy no more than the amount provided by the statutes of distributions, nevertheless it is not correct to say that the discretion of the court is limited so that the court is unable to award more than that amount.

AUSTRIA

NOTE[1]

The development in the field of protection of fundamental rights, as far as legislation and jurisdiction are concerned, has not brought any significant changes in Austria during the year 1964.

The jurisdiction of the Supreme Courts, in particular that of the Constitutional Court, concerning the protection of constitutionally guaranteed human rights did not deviate from the basic principles developed in the supreme judicial bodies until now. These basic principles are contained in the preceding volume of the *Yearbook on Human Rights*.

In the field of legislation, reference has to be made to Article II lit. 3 and lit. 7 of the "Bundesverfassungsgesetz No. 59/1964", published in the *Bundesgesetzblatt*, No. 23, of 6 April 1964. Article II lit. 3 of this constitutional law makes it clear that certain regulations on the protection of minorities, contained in the State Treaty concerning the restoration of an independent and democratic Austria in 1955, are part of the Austrian Constitution. Article II lit. 7 contains the same clarification with regard to the European Convention on Human Rights.

[1] Note furnished by the Government of Austria.

The activities in the field of human rights in Austria are at present concentrated on the revision of the Austria Code of Fundamental Rights. The fundamental and freedom rights, which represent part of the Austrian Constitution, are largely based on laws which date from the middle of last century. These laws provide, particularly with regard to the very progressive jurisdiction of the Constitutional Court, a sufficient and efficient protection of human rights in Austria. The archaic language of the older laws, the great number of laws adopted subsequently and the trend towards internationalization of human rights make it seem desirable to codify anew the whole field of fundamental and freedom rights.

In compliance with this desire, the Federal Chancellery, with the agreement of the Federal Government, established in December 1964 a Committee to study problems of fundamental and freedom rights. Members of this Committee are distinguished lawyers and representatives of the parties represented in Parliament. The task of the Committee is to investigate and inquire about questions concerning fundamental rights and freedoms and thus create a proper basis for the new codification.

BELGIUM

NOTE[1]

1. The 2nd Chamber of the Supreme Court of Appeal, on 16 March 1964, dismissed an appeal against the decision of the Court of Appeals of Ghent of 19 February 1964, involving the right of a detainee to be tried within a reasonable time or to be released pending trial. The Supreme Court of Appeal ruled that article 5(1)(c) and (3) of the Convention for the Protection of Human Rights and Fundamental Freedoms approved by Belgium by the Act of 13 May 1955 and also article 97 of the Constitution had not been violated. The Court held that public interest, namely the urgent necessity of making investigations, demanded that appellant be kept in preventive detention.

2. At its session of 23 March 1964, the 2nd Chamber of the Supreme Court of Appeal dismissed an appeal against the decision of the Court of Appeals of Brussels of 10 December 1963.

Appellant, after an attempted incendiarism in Switzerland of a Convair 440 owned by the Airline " Iberia " was extradited and thereafter arrested by Belgian authorities. In challenging his arrest, appellant claimed that articles 5(2) and 6(3)(a) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950; articles 96, 97 and 609 of the Code of Criminal Procedure; articles 1, 3(2) (3) of the Extradition Act of 15 March 1874; and articles 7 and 97 of the Constitution had been violated.

The Supreme Court of Appeal, in connexion with articles 5 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, *inter alia*, ruled :

" That article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, approved by the Act of 13 May 1955, is concerned, not with arrest or custody pending trial, but with the rights of the defence in the court of trial;

" That article 5 of the said Convention deals expressly with deprivation of liberty in accordance with procedures prescribed by law, whether this involves the arrest or the lawful detention of a person against whom action is being taken with a view to extradition;

" That it does no more than prescribe that in such cases the person arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him, and that proceedings shall be instituted by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful;

" That the material evidence in the case shows that extradition proceedings have been instituted against the plaintiff, that he was informed on the very day of his arrest (30 October 1963) of the reasons for his arrest and of the acts of which he is accused, and that he lodged an appeal with the *Chambre des mises en accusation* which was decided by the judgement whose validity is challenged;

" While the Council Chamber's order for the enforcement of a foreign warrant of arrest with a view to extradition was a judgement it was not a judgement on the merits;

" That the general principle of the right of defence does not preclude the legislator from laying down special regulations concerning the exercise of this right in specific matters, such as extradition. "

3. The Court of Appeals of Ghent, at its session of 15 February 1964, dismissed an appeal against the decision of a lower court at Kortrijk and ruled that in the public interest M., accused of having violated article 66 of the Criminal Code with the purpose of appropriating money at the cost of a bank at Brussels, be kept in preventive detention. This, the Court of Appeals held, was necessitated by the urgency of making investigations and was not to be interpreted as a deprivation of appellant's right to trial within a reasonable time or to release pending trial, dealt with in article 5(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms.

4. The Justice of the Peace of the Court of the Peace of Wetteren, on 8 October 1964, in giving judgement in a case of appeal against the decision by default of 1 October 1964 passed by the Deputy Justice of the Peace, quashed that decision.

In the original case, the Deputy Justice of the Peace supported Mrs. B. and the " N.V. Brouwerij Aigle Belgica ", brewers of beer, in their suit for cancellation of the lease of an inn in respect of J. v. d. S. and his wife, both inn-keepers, on the grounds that these people were holding electoral propaganda in the inn in favour of the B.P.S. (Belgian Socialist Party); that this was something Mrs. B. could not tolerate since it was against her political and religious convictions; and that Mrs. B. had not let the inn to be used as a place for electoral propaganda.

The Justice of the Peace, in quashing the ruling by the Deputy Justice, *inter alia*, held that defendants (in the original case : plaintiffs) knew that their

[1] Note based upon court decisions furnished by the Government of Belgium.

lessees were socialists who, as was to be expected, had a socialist view of life; that the lobby of an inn was a public place where everyone was free to disseminate his thoughts, make known his ideology and come out with his opinions, as long as these deeds were not in contravention of public morals; that electoral propaganda in the lobby of an inn was nothing more than an act of defending a certain opinion, that it would be at variance with freedom of opinion and human rights if any legal basis be given to the claims of defendants; that the brewery in reserving its right, as stated in the lease, to campaign in favour of its products inside as well as outside the inn aimed only at commercial propaganda and this had not been obstructed at all by the electoral propaganda which was of a temporary nature; that the holding of electoral propaganda in the inn could not be regarded as altering the purpose of the leased building; and that consequently there was no question of a violation of the lease.

ACT OF 30 DECEMBER 1963 ON RECOGNITION AND PROTECTION OF THE APPELLATION OF PROFESSIONAL JOURNALIST[2]

Art. 1. It shall not be lawful for any person to call himself a professional journalist unless he fulfils the following conditions:

1. Is at least twenty-one years of age;

2. Has not forfeited, in Belgium, wholly or partly, the rights enumerated in articles 31 and 123 (6) of the Criminal Code and, subject to the provisions of article 2, has not incurred abroad a sentence which, if it had been imposed in Belgium, would have entailed the forfeiture of all or part of those rights;

3. Participates, as his main occupation and for remuneration, in the journalistic activities of daily newspapers or periodicals, radio or television news broadcasts, newsreels or press agencies dealing in general information;

4. Has made this activity his regular profession for at least two years and has not abandoned it more than two years previously;

5. Does not engage in business of any kind and in particular any activity concerned with advertising except as director of a newspaper, news broadcast, newsreel or press agency.

For the purposes of this article:

(*a*) Newspapers, radio and television news broadcasts, newsreels and general information press agencies shall mean those which report the news concerning all topical matters and which are intended for readers, listeners or viewers in general;

(*b*) Journalistic activities shall mean the activities exercised, *inter alia*, in the capacity of director, editor, illustrator, press photographer, newsreel cameraman, or Belgian correspondent.

Commercial, technical, administrative, proofreading, teleprinting, advertising and workroom activities shall be regarded as alien to journalistic activities, except when they form part of the personal duties of the director of the newspaper, news broadcasts, newsreels or press agency.

Art. 2. There shall be an Approvals Board of first instance and an Appeals Board to decide on the existence or disappearance, as the case may be, in respect of those concerned, of the conditions required in article 1 for the granting of the appellation of professional journalist.

If the person concerned has been convicted abroad, those Boards shall decide whether, in the given circumstances, the sentence pronounced abroad shall be taken into consideration.

The King shall order the organization and operation of those Boards and determine the rules governing their proceedings. He shall appoint the full members and alternates from double lists submitted by such associations and groupings as he may designate. The Appeals Board shall, however, be presided over by a serving or honorary judicial officer.

Art. 3. Any person publicly calling himself a professional journalist without being entitled to do so shall be liable to a fine of 200 to 1,000 francs. Article 85, paragraph 1 of the Criminal Code shall apply to this offence.

...

[2] Text published in the *Moniteur belge*, No. 10, of 14 January 1964. Extracts from the Act appear in the Secretary-General's *Annual Report on Freedom of Information, 1963-1964.*

BOLIVIA

SUPREME DECREE No. 0662 OF 14 JANUARY 1964[1]

Art. 1. It is hereby decreed that a Workers' Rest and Holiday Centre shall be constructed at Copacabana.

Art. 2. The Ministry of Labour and Social Security, with the participation and co-operation of the National Chambers of Employers, the Public Welfare Associations, the Social Insurance Funds and the Technical Housing Service, shall draw up the plans and undertake the work required for the construction of the aforesaid Rest and Holiday Centre.

It shall also conduct appropriate negotiations with the Municipality of Copacabana for the acquisition of the necessary land.

...

[1] *Gaceta Oficial de Bolivia*, No. 175, of 22 January 1964.

SUPREME DECREE No. 06691 OF 26 FEBRUARY 1964[2]

Art. 1. The Ministry of Labour and Social Security is hereby authorized to grant the requests of the Confederation of Bolivian Drivers' Unions and install medical centres and polyclinics in all departmental capitals where there are Federations, using the funds derived from the 2 per cent charge on the sale of petrol.

Art. 2. The medical centres and polyclinics for which provision is made in article 1 shall provide health and maternity care for all union drivers; the administration thereof shall be governed by special regulations.

...

[2] *Ibid.*, No. 181, of 4 March 1964.

BRAZIL

NOTE[1]

ACT No. 4,319 OF 16 MARCH 1964 ESTABLISHING THE HUMAN RIGHTS PROTECTION COUNCIL[2]

...

Art. 4. The functions of the Human Rights Protection Council shall be:

(1) To institute inquiries, investigations and studies in order to ascertain the effectiveness of the rules laid down to safeguard human rights in the Federal Constitution, the American Declaration of the Rights and Duties of Man (1948) and the Universal Declaration of Human Rights (1948);

(2) To make the nature and significance of every human right better known through lectures and discussions in universities, schools and clubs, in business, professional and employers' associations, in trade unions and through the Press, radio, television, the theatre, books and pamphlets;

(3) In areas where there is good reason to suspect that human rights are being violated:

(*a*) To institute inquiries for the purpose of determining the causes of such violation and suggesting measures to ensure full enjoyment of human rights;

(*b*) To launch a campaign to enlighten and inform the public;

(4) To institute inquiries and investigations in areas where major electoral fraud has been committed, with a view to suggesting ways and means of eliminating abuses in future elections;

(5) To promote the provision of direct or, where appropriate, correspondence courses of instruction for the police in respect for human rights;

(6) To seek, with the Governments of States and Territories whose administrative authorities or police prove to be wholly or partly incapable of ensuring that human rights are protected, arrangements to co-operate with the said Governments in reorganizing their services and improving the professional and civic training of their personnel;

(7) To seek, with State and municipal Governments and the management of independent bodies and autonomous services which are coercing or persecuting their staff for political motives by any means whatsoever including transfers and dismissals, arrangements to ensure that such abuses of authority are discontinued or, if they have already taken effect, reversed;

(8) To recommend to the Federal Government and to the Governments of the States and Territories the removal from their civil and military staff of any official found guilty of repeated violation of human rights;

(9) To recommend improvements in the technical services of the police in the States and Territories, so that offenders may be identified from circumstancial evidence;

(10) To recommend to the Federal Government the provision of financial assistance to States which lack the means to reorganize the professional and civic training of their civil and military police forces, so as to strike a proper balance between the exigencies of the service and respect for human rights;

(11) To work out and propose to the Executive Power the organization of a Ministerial Division, with supporting regional organs, for the efficient protection of human rights;

(12) To examine how the administrative, criminal, civil, procedural and labour law may be improved so that violations of human rights by individuals or public servants may be effectively prevented or punished;

(13) To receive reports of violations of human rights, to ascertain the facts and to take effective action to deter the individuals or authorities responsible for such violations.

Art. 5. The Human Rights Protection Council shall co-operate with the United Nations in initiating and applying measures designed to ensure effective respect for human rights and fundamental freedoms.

Art. 6. In the exercise of the powers conferred upon them by this Act, the Human Rights Protection Council and the commissions of inquiry established by it may order such proceedings as they deem necessary, take depositions from any Federal, State or municipal authorities whatsoever, interrogate witnesses, requisition information and documents from public offices, and proceed to such places as they may need to visit.

...

Art. 8. It shall be a serious offence:

I. To obstruct or attempt to obstruct, by violence, threats or a breach of the peace, the proper function-

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

[2] *Diário Oficial*, No. 55, of 20 March 1964.

ing of the Human Rights Protection Council or of any commission of inquiry established by it or the free exercise of the powers of any member of such bodies.

The penalty shall be that prescribed in article 329 of the Criminal Code.

II. To make any false statement or to deny or conceal the truth, as a witness, expert, translator or interpreter before the Human Rights Protection Council or any commission of inquiry established by it.

The penalty shall be that prescribed in article 342 of the Criminal Code.

...

MINISTRY OF JUSTICE NEWS BULLETIN

ESTABLISHMENT OF HUMAN RIGHTS PROTECTION COUNCIL

New body will investigate electoral fraud and arbitrary acts of administrative authorities

Brasilia, 13 July 1964 (National Agency) — The Human Rights Protection Council which was established by Act No. 4,319 of 16 March 1964, and which originated in a bill submitted to the Chamber by Deputy Bilac Pinto a few years ago, will be inaugurated in the Ministry of Justice at Rio on 20 July 1964.

COMPOSITION

The Minister for Justice will be *ex officio* Chairman of the Council. Its members will be the President of the Federal Bar Council of Brazil; the holder of the Chair of Constitutional Law at one of the Federal Universities, to be chosen by the other members of the Council; the President of the Brazilian Press Association; the President of the Brazilian Educational Association; and the majority and minority leaders of both houses of the National Congress.

FUNCTIONS

The functions of the Human Rights Protection Council will be:

(1) To institute inquiries, investigations and studies in order to ascertain the effectiveness of the rules laid down to safeguard human rights in the Federal Constitution, the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights;

(2) To make the nature and significance of every human right better known through lectures and discussions in universities, schools, clubs, business, professional and employers' associations and trade unions and through the Press, radio, television, the theatre, books and pamphlets;

(3) In areas where there is good reason to suspect that human rights are being violated, (*a*) to institute inquiries for the purpose of determining the causes of such violation and suggesting measures to ensure full enjoyment of human rights; (*b*) to launch a campaign to enlighten and inform the public;

(4) To institute inquiries in areas where major electoral fraud has been committed, with a view to suggesting ways and means of eliminating abuses in future elections;

(5) To seek with the Governments of States and Territories whose administrative authorities or police prove to be wholly or partly incapable of ensuring that human rights are protected, arrangements to co-operate with the said Governments in reorganizing their services and improving the professional and civic training of their personnel;

(6) To seek, with State and municipal Governments and the management of independent bodies and autonomous services which are coercing or persecuting their staff for political motives by any means whatsoever including transfers and dismissals, arrangements to ensure that such abuses of authority are discontinued or, if they have already taken effect, reversed;

(7) To recommend to the Federal Government and to the Governments of the States and Territories the removal from their civil and military staff of any official found guilty of repeated violation of human rights;

(8) To recommend improvements in the technical services of the police in the States and Territories, so that offenders may be identified from circumstancial evidence;

(9) To recommend to the Federal Government the provision of financial assistance to States which lack the means to reorganize the professional and civic training of their civil and military police forces so as to strike a proper balance between the exigencies of the service and respect for human rights;

(10) To work out and propose to the Federal Government the organization of a Ministerial Division, with supporting regional organs, for the efficient protection of human rights;

(11) To examine how the administrative, criminal, civil, procedural and labour law may be improved so that violations of human rights by individuals and by public services may be effectively prevented or punished;

(12) To receive reports of violations of human rights, to ascertain the facts and to take effective action to deter the individuals or authorities responsible.

CO-OPERATION WITH THE UNITED NATIONS

In the performance of its functions, the Council will co-operate with the United Nations in ensuring effective respect for human rights and fundamental freedoms. The Council and commissions of inquiry established by the Council will be empowered to order proceedings as necessary, to take depositions from any Federal, State or municipal authorities whatsoever, to interrogate witnesses, to requisition information and documents from public offices, and to proceed to such places as they may need to visit.

Witnesses will be summoned in accordance with the rules laid down in the Code of Criminal Procedure.

OFFENCES AGAINST THE COUNCIL

The Act further provides that it shall be a serious offence:

(1) To obstruct or attempt to obstruct the Council, or a commission of inquiry established by the Council, in the performance of its functions (penalty prescribed in article 329 of the Criminal Code);

(2) To make any false statement, or to deny or conceal the truth, as a witness, expert, translator or interpreter before the Council (Penalty prescribed in article 342 of the Criminal Code).

Lastly, the sum of 10 million cruzeiros will be appropriated to cover all expenses, of any nature whatsoever, incurred by the Council.

ACT No. 4,322 OF 7 APRIL 1964,[3] CONCERNING POWERS CONFERRED UPON THE POLICE TO CONTROL AND PERMIT THE ADMITTANCE OF ALIENS TO THE NATIONAL TERRITORY

Art. 1. The police are hereby empowered to control and permit the admittance to the national territory of aliens who hold a consular visa or documentary evidence of legal entitlement to stay in the country. The police are also empowered to deny admittance on political grounds and on grounds put forward by the Public Health Service.

Art. 2. In cases where grounds exist for denying admittance, the police shall make a note to that effect on the consular certificate of qualifications, passport or equivalent document, which shall be impounded.

Sole paragraph. A decision to deny admittance at the instance of the Public Health Service shall not be set aside without the Service's permission in writing.

Art. 3. An alien travelling as a tourist shall be required to produce only documentary evidence of legal entitlement to stay in the country, as described in article 1 of this Act, and may be granted permission to stay in the national territory for a period of six (6) months; such permission may be renewed for a further six months.

Art. 4. The police shall take steps to identify, at the time of inspection, any alien classified as a permanent immigrant who:

I. Is not in possession of a consular certificate of qualifications; or

II. Has been granted conditional permission to land.

Art. 5. The police are hereby empowered to deal with violations of the legislation in force concerning the entry and residence of aliens in Brazil.

Art. 6. The master or authorized agent of any vessel, or the commander or authorized agent of any aircraft, entering or leaving the national territory shall supply the inspecting authorities with a copy of the list of passengers and crew in the form prescribed by the regulations.

(1) A copy of the list of passengers disembarking shall be supplied to the public health, police and customs authorities; in the case of aircraft, a copy shall also be supplied to the aeronautical authorities.

(2) In the case of aliens subject to controlled immigration, the police shall provide an additional copy of the list of the passengers concerned, which shall be delivered to the official of the competent authority who is responsible for their reception and travel arrangements.

Art. 7. The police are hereby empowered to issue to aliens, subject to the requirements of the legislation in force, a visa for departure from the national territory.

Art. 8. Airlines and shipping companies operating international passenger services, or their subsidiaries or agents, must register with the Maritime, Air and Frontier Police Division, as required by law, without prejudice to their obligations to the competent authority with regard to the transport of immigrants.

...

[3] *Diário Oficial*, No. 67, of 9 April 1964.

INSTITUTIONAL ACT OF 9 APRIL 1964[4]

...

Art. 7. The constitutional and legal guarantees of life tenure and security of tenure are hereby suspended for six (6) months.

1. Within the time-limit specified in this article, persons enjoying the above guarantees may, following a summary investigation, be dismissed, terminated, placed on a list of available personnel, pensioned off, transferred to the reserve or retired, with pay and with such benefits as may be due them by virtue of their length of service, by decree of the President of the Republic, or, if they are State employees, by decree of the Governor of the State, if they have violated or attempted to violate national security, the democratic régime and the integrity of the public administration, without prejudice to any other penalties to which they may be liable.

2. Municipal employees shall be liable to the same penalties. In their case the provisions of paragraph 1 shall be applied by decree of the Governor of the State, on the proposal of the Municipal Prefect.

3. If the act in question has been committed by a State or municipal employee with life tenure, an appeal shall lie to the President of the Republic.

[4] *Ibid.*

4. Judicial review of such acts shall be limited to the examination of extrinsic formalities; consideration of the facts on which they are based and of their desirability or appropriateness shall be forbidden.

...

Art. 10. In the interests of peace and national honour, and without the limitations provided for in the Constitution, the Commanders-in-Chief promulgating this Act may suspend political rights for a period of ten (10) years and revoke Federal, State or municipal legislative orders; such action shall not be subject to judicial review.

Sole paragraph. After assuming power, the President of the Republic may, on the suggestion of the National Security Council, take the action referred to in this article within sixty (60) days.

ACT No. 4,330 OF 1 JUNE 1964 TO REGULATE THE RIGHT TO STRIKE, AS PROVIDED IN SECTION 158 OF THE FEDERAL CONSTITUTION[5]

Part I. Right to Strike

Chapter I

PRINCIPLES AND SCOPE

...

Art. 2. Every collective and temporary suspension of the services rendered to an employer by decision of the general meeting of the industrial association representing the occupational category concerned for the purpose of improving or maintaining the conditions of work existing in the undertaking or undertakings involved shall be considered to be the legitimate exercise of the right to strike; such suspension may be total or partial and shall be preceded by written notice of the claims or grievances put forward by the employees, in the manner and subject to the conditions prescribed in this Act.

Art. 3. Only persons rendering services (other than services of an occasional nature) to the employer, under the latter's orders and for remuneration, shall be entitled to participate in a strike.

Art. 4. A strike shall not be declared by officials or employees of the Union, the states, territories, municipal authorities and public autonomous bodies, except in the case of industrial services employing staff whose remuneration is not fixed by law, or whose rights are guaranteed by labour legislation.

Art. 5. The exercise of the right to strike shall be based on a decision adopted by secret ballot by a majority vote of the general meeting of the industrial association representing the occupational category concerned, two-thirds of the members of the industrial association being present (in the case of a first convocation of the meeting) or one-third of the members (where the general meeting is convoked for the second time).

1. The general meeting shall be convoked and its proceedings transacted at the headquarters of the industrial association or on premises provided for that purpose by the federation or confederation concerned: Provided that meetings may be held simultaneously on the premises of branch offices and sections of industrial associations (Consolidation of Labour Laws, section 517 (2)) if its range of action is intermunicipal or covers one state or the entire national territory (interstate).

2. At least two days shall elapse between the first and the second convocation.

3. Where the industrial association represents more than 5,000 employees in the category concerned, the quorum for the second meeting shall be reduced to one-eighth of the total number of members.

...

Chapter IV

EXERCISE OF THE RIGHT TO STRIKE

Art. 17. On the expiry of the time limits provided for in this Act and if it is impossible to conciliate the parties in the manner prescribed in section 11 the workers may stop work peacefully and leave the workplace.

The authorities shall guarantee free access to the workplace to persons who wish to continue their work.

Art. 18. It is unlawful for a striker to commit any act of violence against any person or property (attacks, wilful damage, sabotage, unlawful entry or remaining on the premises, abuse, posting up or display of offensive statements concerning the authorities or the employer, or any similar act); any person found guilty of any such offence shall be liable to dismissal for serious misconduct, without prejudice to subsequent prosecution under the law in force.

Chapter V

GUARANTEES AFFECTING STRIKERS

Art. 19. Strikers shall be covered by the following guarantees:

I. the right to peaceful incitement to strike;

II. the right to collect funds and display posters, banners, etc., containing statements or slogans representing the strikers' point of view, on condition that such statements or slogans are not offensive and are limited to the employees' claims or grievances;

III. prohibition of the dismissal of any employee who has participated peacefully in strike action;

IV. prohibition of the recruitment by the employer of personnel to replace the strikers.

[5] The rectifications of this Act, published in the *Diário Oficial*, Nos. 113 and 117, of 15 and 19 June respectively, have been incorporated in the extracts appearing under this heading. For the text of article 158 of the Constitution of the United States of Brazil, see *Yearbook on Human Rights for 1946*, p. 48. Translations of the Act into English and French have been published by the International Labour Office as *Legislative Series* 1964 — Bra. 1.

During periods of preparation for and declaration of a strike and while a strike is in progress, only employees participating therein shall be immune from constraint or coercion.

Art. 20. A lawful strike shall not be deemed to terminate a contract of employment and shall not extinguish any of the rights and obligations arising out of such contract.

The strike shall suspend the execution of the contract of employment: Provided that if the employees' claims or grievances are satisfied even partly either by the employer or by decision of a labour court, the strikers shall be entitled to receive full pay in respect of the period covered by the strike, such period being treated as time actually worked.

Art. 21. The members of the managing committee of the industrial association representing the strikers shall not be arrested or kept in custody except where they are apprehended *flagrante delicto* or by execution of a court order.

Chapter VI

Unlawful Strikes

Art. 22. A strike shall be deemed to be unlawful in the following cases:

I. if the time limits and other conditions prescribed by law are not observed;

II. if the strike is for the purpose of furthering claims or redressing grievances which are held to be non-receivable by a final decision of the labour court handed down at any time during the previous year;

III. if the strike is declared for political, party, religious or social reasons or is in the nature of a sympathetic or solidarity strike and the claims or grievances put forward do not directly and legitimately concern the occupational category involved;

IV. if the strike is for the purpose of altering the fixed conditions of any agreement made with an industrial association, or a collective agreement or a decision handed down by a labour court, unless the circumstances on which such conditions are based have substantially changed.

...

Part III. Breaches of Discipline and Breaches of the Law

Chapter I

Disciplinary Sanctions

Art. 27. Where the strike has been the occasion of excesses amounting to a breach of labour discipline, the strikers may be liable to the following sanctions:

(*a*) warning;

(*b*) suspension for a period not exceeding 30 days;

(*c*) termination of the contract of employment.

If an employee participating in a strike is charged with an offence, the employer shall be entitled to dismiss him while awaiting his sentence or acquittal by the criminal courts. If he is acquitted he shall be entitled to opt for reinstatement in his employment with back pay and whatever other remuneration he will be entitled to, or for payment of twice the remuneration he would have received if he had not been dismissed, without prejudice to such other compensation as may be prescribed by law.

Art. 28. Any sanctions imposed on strikers under section 27 may be examined by and be the subject of a decision of a labour court.

Chapter II

Offences and Penalties

Art. 29. The following shall be offences against the organization of labour, in addition to those defined in the Penal Code (Special Part, Title IV):

I. incitement to, participation in or encouragement of any strike or lockout in violation of the provisions of this Act;

II. incitement to non-observance of a judgment given by a labour court ordering the cessation of a strike, or hindering the observance of such judgment;

III. wilful non-observance by the employer of a judgment handed down by a labour court, or hindering the execution of such judgment in any way;

IV. declaration of a strike or lockout which is not connected with the occupation or economic activity concerned, or incitement to declare or participate in the same;

V. entering fictitious items in the debit account or in any other way maliciously falsifying the accounts in order to obtain tariff or price increases;

VI. adding to the profits or investing sums resulting from tariff revision or price increases intended specifically for an increase in workers' wages;

VII. coercion to terminate or declare a strike.

Persons found guilty of any of the above offences shall be liable to a term of imprisonment of not less than six months and not more than one year and to a fine of 5,000 to 100,000 cruzeiros. The penalty shall be doubled in the case of a second or subsequent offence.

Aliens found guilty of violating the provisions of this Act shall be liable to expulsion from the national territory by decision of the Government.

...

ACT No. 4,348 OF 26 JUNE 1964,[6] ESTABLISHING RULES OF PROCEDURE CONCERNING THE WRIT OF SECURITY *(MANDADO DE SEGURANCA)*

Art. 1. In proceedings involving the writ of security the following rules shall be observed:

(*a*) The time-limit for the submission of information by the authority alleged to have acted in an arbitrary manner shall be ten days. (VETOED)

(*b*) The preliminary decision shall be valid for ninety days only from the date of issuance but this period may be extended for thirty days when the list of cases pending is demonstrably of such length as to justify such an extension.

Art. 2. The extinction or lapse of the preliminary decision shall be decreed *ex officio* or at the request of the *Ministério Público* when the applicant, once the decision has been issued, hinders the normal course of the proceedings, delays more than three days in observing the necessary formalities, or abandons the case for more than twenty days.

Art. 3. Within forty-eight hours of the notification of the preliminary decision, the administrative authorities shall deliver to the Ministry or to the body to which they are directly responsible and to the *Procurador-Geral da República* or to the Legal Counsel for the Union, state, municipality or other authority alleged to have acted in an arbitrary manner certified copies of the notification order together with all other necessary information so that steps may be taken, if necessary, to obtain a suspension of the decision and to justify the alleged illegal act or abuse of power.

Art. 4. When, at the request of a public corporation concerned and to avoid grave prejudice to public order, health, security and the country's economic well-being, the President of the Court within whose jurisdiction the relevant recourse belongs (VETOED), suspends, with a statement of reasons, the execution of the preliminary decision and of the final order, an appeal against such a ruling may be lodged within ten days from its publication but without having the effect of suspension.

Art. 5. The preliminary decision involving writs of security shall not be granted to applicants seeking reclassification or parity of public service posts or additional or extended privileges.

Sole paragraph. The writs of security to which this article refers shall be executed once the relevant legal decision has become final.

...

[6] *Diário Oficial*, No. 127, of 3 July 1964.

CONSTITUTIONAL AMENDMENT No. 9 OF 22 JULY 1964[7]

Art. 1. Articles 38 (*caput*), 39 (*caput*), 81, 82 and 83 of the Federal Constitution shall be amended to read:

" *Art. 38.* Elections for deputies, senators, President and Vice-President of the Republic shall be held simultaneously throughout the country.

" *Art. 39.* The National Congress shall meet in the capital of the Republic from 1 March until 1 December of each year. "

...

" *Art. 81.* The President of the Republic shall be elected by an absolute majority of votes, excluding blank and invalid votes, in elections held throughout the country one hundred and twenty days before the expiry of the presidential term of office.

" (1) If no candidate obtains an absolute majority the National Congress, within fifteen days after receiving notification to that effect from the Chairman of the Supreme Electoral Tribunal, shall hold a public meeting to decide on the candidate with the highest number of votes and that candidate shall be deemed elected if, in a secret ballot, he obtains half of the members' votes plus one.

" (2) If the absolute majority referred to in the preceding paragraph is not obtained, fresh balloting shall be held throughout the country within thirty days, the two candidates with the highest number of votes being automatically re-registered for this purpose.

" (3) In the event of a candidate's withdrawal or death, a substitute registered by the same political party or grouping shall stand for election in the ballot provided for in the preceding paragraph.

" (4) The Vice-President shall be deemed elected by virtue of the election of the President with whom his candidacy is associated, since every candidate for President must, for this purpose, register in association with a candidate for Vice-President.

" *Art. 82.* The President and the Vice-President of the Republic shall hold office for four years. "

...

Art. 3. The sole paragraph of article 132 and articles 138 and 203 of the Constitution shall be amended to read:

" *Art. 132.* ...

" *Sole paragraph.* Members of the armed forces, including officers, officer-cadets, midshipmen, junior officers, sub-lieutenants, sergeants, and students of military schools of higher learning for the training of officers, shall be entitled to register as voters.

...

" *Art. 138.* Persons who are not entitled to register as voters shall be ineligible.

" *Sole paragraph.* Members of the armed forces who are entitled to register as voters shall be eligible on the following conditions:

" (*a*) Any member of the armed forces with less than five years' service who becomes a candidate

[7] *Ibid.*, No. 142, of 24 July 1964.

for an elective office shall be removed from the active service list.

" (*b*) Any member of the armed forces with five years or more of active service who becomes a candidate for an elective office shall be temporarily removed from the active service list and granted leave of absence on personal grounds.

" (*c*) Any member of the armed forces who is not debarred and is elected to office shall be transferred to the reserve or retired by a promulgation to that effect, in accordance with the law and without prejudice to the position of others currently holding elective office, and until the term of office expires."

...

" *Art. 203.* Authors' royalties and the remuneration of teachers and journalists shall be exempt from direct taxation but not from general taxation (art. 15, IV)."

...

CONSTITUTIONAL AMENDMENT No. 10 OF 9 NOVEMBER 1964

Art. 4. Article 141, paragraph 16, of the Federal Constitution shall be amended to read:

" 16. The right of property is guaranteed, except in case of expropriation for public necessity or utility, or social interest, with prior and fair compensation in money, save as provided in art. 147, paragraph 1. In case of imminent danger, such as war or internal disorder, the competent authorities may use private property, if the public good so requires, the right to subsequent compensation being, nevertheless, assured."

Art. 5. The following paragraphs shall be added to art. 147 of the Federal Constitution:

1. For the purposes specified in this article, the Union may order the expropriation of rural land holdings, subject to payment of prior and fair compensation in special public debt bonds, the exact monetary equivalent of which shall be fixed according to indices established by the National Economic Council and which shall be redeemable within a maximum period of twenty years in successive annual instalments and may be accepted at any time in payment of up to 50 per cent of the Rural Land Tax and in payment of the price of public lands.

2. The law shall determine, on the basis of the annual or periodic volume of bond issues and the nature of the bonds, the rate of interest or the maturity date and the conditions of redemption.

3. The expropriation referred to in paragraph 1 shall be within the exclusive competence of the Union and shall be limited to areas within the priority zones fixed by decree of the Executive Branch and shall affect only rural holdings the manner of utilization of which contravenes the provisions of this article, as defined by law.

4. Compensation in bonds shall be paid solely in the case of latifundia, as defined by law, with the exception of necessary and useful improved lands, which shall always be paid for in money.

5. Plans which involve expropriation for the purposes of land reform shall be approved by decree of the Executive Branch and their execution shall be the responsibility of specialized organs composed of Brazilian nationals known to have the required knowledge and qualifications who shall be appointed by the President of the Republic, after their nomination has been approved by the Federal Senate.

6. In the case of expropriation in the manner laid down in paragraph 1 of this article, the owners shall remain exempt from any federal, state and municipal taxes levied on the transfer of the expropriated holding.

...

ACT No. 4,473 OF 12 NOVEMBER 1964, POWERS OF THE AUTHORITIES TO CONTROL THE ENTRY OF ALIENS INTO BRAZILIAN TERRITORY, AND OTHER PROVISIONS [8]

Art. 1. The police authorities shall control the entry of aliens into Brazilian territory and shall bar the entry of those who do not meet the statutory requirements or who, for reasons of public order and as prescribed by law, may not be admitted to Brazil.

1. Objections raised by the Health Service shall not be overruled except by written authorization.

2. In the case of aliens entering under the directed immigration régime the police authority shall submit a report on such aliens to the federal agency in charge of immigration services, with which the said authority shall reach agreement concerning the provisions to be applied with regard to the immigrants in question.

Art. 2. Maritime, river and air transport enterprises shall bear the responsibility for embarking and transporting to Brazil aliens who do not have the documentation and visas required by Brazilian legislation.

Sole paragraph. If there is any legal impediment to the entry of passengers of a vessel or aircraft, the carrier shall be obliged, at its own expense, to return them to non-Brazilian territory, for which purpose it may put them on another vessel or aircraft provided that police requirements concerning trans-shipment are fulfilled.

Art. 3. The police authorities shall be responsible for issuing to aliens exit visas permitting them to depart from Brazilian territory in conformity with the legislation in force.

[8] *Diário Oficial*, No. 221, of 12 November 1964.

Sole paragraph. The Ministry of Foreign Affairs shall be responsible for issuing "re-entry visas" to aliens who are permanently resident in Brazil and hold a valid Form No. 19, when they are absent for a period exceeding one year, subject to renewal by the consular authorities for a similar period, and when their passports contain the requisite exit visa.

Art. 4. The designation "tourist" shall apply to any alien who, as a temporary visitor, enters or disembarks in Brazilian territory, without having resided therein, and who intends to remain for a period not exceeding three (3) months for purposes other than immigration, such as tourism, recreation, sport, health, family reasons, study, religious pilgrimage or business, and without engaging either in any activity for which he receives remuneration or in political activities during his sojourn in Brazilian territory.

1. The waiver of the consular visa requirement in the case of tourists who are citizens of American countries, as provided for in Act No. 2,526, article 1, of 1955, is hereby extended to citizens of all countries with which Brazil maintains diplomatic relations and which extend the same courtesy to Brazilians.

2. Aliens travelling as tourists shall be required to carry only documentary proof of the legality of their presence in Brazil and they may be granted permission to remain for six (6) months, subject to renewal for a similar period.

BULGARIA

NOTE[1]

NATIONAL LEGISLATION

1. *Participation of citizens in the administration*

(*a*) The Order of the Central Committee of the Bulgarian Communist Party and of the Council of Ministers of 22 May 1964 (*Official Gazette*, No. 40, of 2 June 1964) " concerning the further development of socialist democracy and the improvement of the work of the people's councils " provides that the social principle should be extended in the activities of the people's councils, that the services of unpaid assistants may be sought, that the permanent commissions should be given more rights, and that the principal questions of local importance should be discussed at meetings of electors prior to the adoption of the relevant decisions by public organs.

(*b*) The Act amending the Act on people's councils and the Act on the election of people's councils (*Official Gazette*, No. 47, of 16 June 1964) assigns new functions, including executive functions, to the permanent commissions attached to the people's councils. The activities of the people's councils are brought into even closer association with the social and economic organizations. They organize sessions jointly with the general assemblies. These amendments to the electoral law also provide additional safeguards for the full and unobstructed exercise of the right to vote.

2. *Social and professional rights*

(*a*) The Amendment to the Regulations to give effect to the Decree concerning the raising of the birth rate and the encouragement of large families (*Official Gazette*, No. 7, of 24 January 1964) broadens the category of persons exempt from payment of the " tax on celibacy " by including therein married couples who are bringing up and caring for children of an earlier union without having adopted or recognized them.

(*b*) Order No. 43, of the Council of Ministers of 5 September 1964 (promulgated under article 50, paragraph II, of the Pensions Act) — *Official Gazette*, No. 72, of 11 September 1964 — permits retired persons who qualify for a full pension by reason of age and length of service to work in certain sectors of the national economy, such work being equated with probationary employment; retired persons who are technicians and engineers are permitted to work in the manufacturing sector, receiving 50 per cent of their pension in addition to their remuneration; the same conditions apply in the case of certain teachers who can take up a new post in their speciality, and for the higher medical grades who can accept employment in rural public health establishments.

3. *Amnesty and exemption from obligations*

To mark the twentieth anniversary of the Socialist Revolution in Bulgaria (9 September 1944), the National Assembly adopted, on 7 September 1964, the Amnesty Act (*Official Gazette*, No. 71, of 8 September 1964) and the Act concerning exemption from obligations towards the State (*Official Gazette*, No. 73, of 15 September 1964). These two Acts are extremely broad in scope.

[1] Note communicated by Professor Anguel Angueloff of the University of Sofia, Legal Adviser to the Ministry of Foreign Affairs, correspondent of the *Yearbook on Human Rights* appointed by the Government of the People's Republic of Bulgaria.

BURUNDI

ROYAL ORDER No. 001/364 OF 16 JANUARY 1964 TO GOVERN THE REGISTRATION OF ALIENS[1]

Art. 1. For the purposes of this Royal Order, all persons who are nationals of a country other than Burundi or stateless are considered aliens.

I. *Registration of aliens*

Art. 2. Every alien shall be required to register at the alien's office nearest to the place where he crosses the frontier and to register any members of his family and aliens under his orders who accompany him.

For this purpose, the person in question shall fill out, or have filled out by the persons concerned, the registration forms which will be issued to him at his request or automatically.

Art. 3. Persons who have previously complied with the alien registration formalities shall be exempt if they fulfil the following conditions:

1. If they have registered as aliens after the date of the entry into force of this Royal Order;

2. If they have not undergone any change in civil status since the last registration;

3. If they are in possession of their alien's identity card which contains a valid exit visa;

4. If they have submitted to the official in charge of the aliens office a declaration of departure in conformity with the model annexed to this Royal Order.

Art. 4. The following shall not be obliged to register as aliens:

1. Persons who, arriving at a frontier post, are not to go beyond it or to stay therein for more than fifteen days. When this period expires, they must have left Burundi;

2. Passengers on regular air transport lines who are in direct transit through Burundi.

The captains of the aircraft of these lines shall indicate, on the manifest they are required to provide, those of their passengers who are continuing their journey beyond the frontiers of Burundi.

Art. 5. Persons other than those referred to in article 4, paragraph 2, who are merely passing through Burundi shall not be registered as aliens if their stay in the territory of Burundi is not to exceed one month.

They shall nevertheless be required to fill out, or to have filled out by persons under their orders, the forms which will be issued to them on their request or automatically by the official in charge of the aliens office.

They shall indicate on these forms their full identity, their destination, their planned itinerary and the probable duration of their stay in Burundi.

The duplicate of these forms shall be given to them, after the visa is inserted, by the competent official. It must be produced at the request of any representative of the authorities and handed, upon the person's departure from Burundi, to the frontier post authority or to the official in charge of the aliens office.

...

Art. 9. Children born in the territory of Burundi shall be required to comply with the formality of registration as aliens when either (or both) of their parents is (are) required to do so.

For this purpose, the person reporting the birth shall fill out the forms which will be issued to him at his request or automatically by the registrar who registers the birth.

These forms shall be transmitted by the registrar to the competent aliens office.

...

V. *Aliens' residence*

Art. 14. Aliens who have no fixed residence in Burundi shall indicate the reasons in their registration forms together with the approximate itinerary of their journey and the places in which they propose to stay. If they subsequently acquire a fixed residence, they shall inform the competent aliens office, which shall enter the details in their identity cards.

Any alien who changes his residence shall be required to inform the chief of the competent aliens office of his new address and to have the latter insert the appropriate visa in his identity card.

This formality shall be complied with within ten days of the change of residence.

...

[1] *Bulletin Officiel du Burundi*, No. 10 *bis*, of 15 October 1964.

ORDER OF THE MINISTER FOR THE INTERIOR No. 090/6 OF 20 OCTOBER 1962 GIVING EFFECT TO THE CIVIL SERVICE REGULATIONS IN DISCIPLINARY MATTERS[2]

Art. 1. The provisions of this Order shall give effect to the Civil Service Regulations in disciplinary matters.

Section I

Disciplinary penalties and their effects

Art. 2. Depending on the seriousness of the offence, the disciplinary penalties shall be the following :

1. Reprimand;
2. Censure;
3. Deduction of half the salary for a maximum of fifteen days;
4. Transfer;
5. Suspension from duty for a maximum of one month; this penalty shall entail prohibition of the performance of any duty and deduction of half the salary;
6. Disciplinary detachment for an indefinite period; this penalty shall entail the loss of all salary and allowances;
7. Dismissal.

...

Section II

Jurisdiction in disciplinary matters

Art. 4. Except in the case of dismissal, disciplinary authority shall be exercised by the Minister to whom the official is responsible. Any official holding a grade in the directorial and supervision and co-ordination categories or acting in such capacity and who effectively exercises the functions of head of department may reprimand or censure his subordinates. He shall act on behalf of the Minister to whom the offending official is responsible.

Transfer, suspension from duty for a maximum of one month, and disciplinary detachment for an indefinite period shall be imposed solely by the Minister to whom the official is responsible.

Officials in the directorial and supervision and co-ordination categories may be dismissed by Royal order on the proposal of the Minister to whom they are responsible. Officials in other categories may be dismissed by the Minister to whom they are responsible.

...

[2] *Ibid.*

Section III

Procedure

A. *General principles*

Art. 6. Any official belonging to the directorial and supervision and co-ordination categories of Control and Collaboration shall be empowered to initiate disciplinary proceedings against a member of the staff under his charge.

He may act *ex officio* or at the request of his superiors.

Art. 7. Disciplinary proceedings shall be conducted in writing.

No document may be used against an official unless he has received a copy or had an opportunity to acquaint himself with it in advance. No penalty may be awarded, or even proposed, unless the official is informed of the charges brought against him and had been given an opportunity to defend himself.

However, an official who quits the service may be placed under disciplinary detachment for an indefinite period or be dismissed on the strength of a simple record confirming the fact.

An official who, having tendered his resignation or asked to be detached for personal reasons, leaves his duties before receiving a favourable reply, shall likewise be dismissed.

B. *Influence of judicial action on disciplinary action*

Art. 8. If criminal proceedings are instituted against an official, the completion of the disciplinary action shall be postponed until the competent court has pronounced final judgement. Whatever the result of the judicial action, the administrative authority shall continue to be responsible for the application of disciplinary penalties. Pending pronouncement of the verdict, the official proceeded against may be suspended from duty by order.

An official who is liable to a serious judicial sentence may be held in disciplinary detachment or even dismissed on the strength of the judgement if it is final or if the person concerned has admitted and pleaded guilty to the serious offences with which he is charged.

...

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 1964 (*EXTRACTS*)

In 1964 the population of the Republic received out of social consumption funds grants and benefits amounting to more than 1,000 million roubles, or 8 per cent more than in 1963, in pensions, allowances, students' grants, paid vacations, free education and free medical care.

Some 184,000 students of higher, specialized secondary and vocational-technical educational establishments, and school children, received grants and dormitory accommodation. Over 245,000 children were cared for in kindergartens, crêches and nurseries.

The average number of manual and non-manual workers employed in the national economy of the Byelorussian SSR in 1964 was over 2,280,000, an increase of 4.5 per cent over the previous year.

In the fourth quarter of 1964, about 335,000 workers in education and public health in the Republic received salary increases.

Individual deposits in savings banks increased by 65 million roubles, or 19 per cent, over the previous year and by the end of the year totalled about 410 million roubles; the number of depositors increased by 94,000, or 7 per cent, and by 1 January 1965 reached 1,420,000.

The volume of State and co-operative retail trade in 1964 amounted to 2,792 million roubles, an increase of 6 per cent over 1963 in comparable prices. The retail turnover in public catering establishments rose by 9 per cent in the same period.

The plan for 1964 retail trade turnover was filled by 99.8 per cent, while the plan for public catering was over supplied.

The annual plan for retail trade turnover was filled by the Ministry of Trade of the Byelorussian SSR by 100.2 per cent, and by the Byelorussian Union of Co-operatives by 98 per cent.

Further progress was achieved in public education, science and culture.

More than 2.3 million persons, or about 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 1,729,600 students, or 38 per cent more than at the beginning of the academic year 1958/1959 and 81,000 more than the previous year. In the past year, 161,200 persons completed eight years of schooling and 55,800 completed ten or eleven years of schooling. At the beginning of the current academic year, enrolment in boarding schools and extended-day schools and classes totalled almost 103,000 students, or 14,600 more than in the previous academic year.

There are about 205,000 persons receiving education in higher and specialized secondary educational establishments in the Republic, 96,300 of these in higher educational establishments. In the past year, 61,900 persons were admitted to higher and specialized secondary educational establishments, 23,800 of them in higher educational establishments and 38,100 in technical colleges.

About 237,000 persons are studying without interruption of employment, 135,800 of these in schools for young workers and rural youth and in correspondence schools and 101,000 in higher and specialized secondary educational establishments. The number of persons studying without interruption of employment has more than doubled in comparison with the academic year 1958/1959.

In 1964, a total of 10,300 specialists, including 2,800 engineers, graduated from higher educational establishments, while 18,500 specialists graduated from technical colleges and other specialized secondary educational establishments.

In the past year, 25,900 young workers were trained in trade schools and vocational-technical schools, and were recruited by undertakings and organizations.

Scientific workers numbered about 13,000 at the end of 1964.

There was large-scale construction of housing and public amenities. During the past year, a total of 2,160,000 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 1,477,000 square metres of housing brought into occupancy by State and co-operative undertakings and organizations, of which 161,000 square metres were built by the housing co-operatives. In addition, more than 18,000 dwellings were built in rural areas by collective farmers and the rural intelligentsia. During the past year, more than 300,000 persons in towns and rural areas moved into new apartments or houses or improved their old dwellings.

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

Large-scale capital investment has been made in the construction of educational, cultural and health institutions.

Considerable work has been done to provide dwellings with gas. The number of apartments with gas rose during the year by 59,700, or 34 per cent. The consumption of gas by the population and by enterprises and institutions for non-industrial purposes rose by 26 per cent compared with 1963.

During the past year, the volume of work carried out by industrial consumer services (repair of shoes, clothing, furniture, television sets, refrigerators and other domestic machines and appliances) increased by 15 per cent and the volume of work carried out by non-industrial consumer services (laundries, public baths, hairdressing establishments, hire offices and photographers' studios) increased by 22 per cent.

Medical services to the population improved. The number of doctors in all categories increased during the year by more than 800.

The network of hospitals was expanded and the number of hospital beds increased.

The mortality rate continued to decrease.

The population of the Byelorussian SSR on 1 January 1965 was more than 8.5 million.

ACT CONCERNING THE STATE BUDGET OF THE BYELORUSSIAN SSR FOR 1964/1965, ADOPTED AT THE SECOND SESSION OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR, SIXTH CONVOCATION (*EXTRACTS*)

ADOPTED BY THE SUPREME SOVIET ON 27 DECEMBER 1963

Art. 1. To approve the State budget of the Byelorussian SSR for 1964 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 1,531,618,000 roubles.

Art. 2. To establish the revenue from State and co-operative undertakings and organizations — turnover tax, tax on profits, income tax and other revenues from the Socialist economy — under the State budget of the Byelorussian SSR for 1964 at the sum of 1,433,367,000 roubles.

Art. 3. To appropriate a total of 714,008,000 roubles under the State budget of the Byelorussian SSR for 1964 for the financing of the national economy — continued development of the chemical industry, the oil-refining industry, the mechanical engineering industry and other branches 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 732,262,000 roubles under the State budget of the Byelorussian SSR for 1964, including 130,265,000 roubles under the State social insurance budget, for social and cultural development — general education schools, technical colleges, higher educational establishments, scientific and research institutions, vocational-technical educational establishments, libraries, clubs, theatres, the Press, broadcasting, and other educational and cultural activities; pensions and allowances.

Art. 9. To approve the State budget of the Byelorussian SSR for 1965, providing for total revenue and expenditure of 1,620,785,000 roubles.

DECISION CONCERNING INCREASE IN PRODUCTION, EXPANSION OF THE RANGE AND IMPROVEMENT OF THE QUALITY OF THE CONSUMER GOODS PRODUCED BY UNDERTAKINGS IN THE REPUBLIC, ADOPTED AT THE THIRD SESSION OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR, SIXTH CONVOCATION (*EXTRACTS*)

ADOPTED BY THE SUPREME SOVIET ON 11 JUNE 1964

The Supreme Soviet of the Byelorussian SSR notes that, in carrying out the historic decisions of the Twenty-Second Congress of the Communist Party of the Soviet Union, the working people of the Republic have made marked progress in developing all branches of the national economy. In 1963 the gross industrial output of the Republic was 1.7 times greater than in 1958. As in previous years, heavy industry grew at a rapid pace. On the basis of that growth, the industries producing consumer goods were further expanded. In the past five years, the total production of consumer goods has increased by 55 per cent; this includes an increase of 69 per cent in the output of light industry, 44 per cent in the output of the foodstuffs industry, and 95 per cent in the output of domestic and cultural articles and household utensils.

The greatest development during these years has been in the woollen textiles, knitted goods, footwear, sugar and vegetable canning industries. The production of woollen textiles has increased 4.3 times, knitted outerwear 1.9 times, leather footwear 1.5 times, sugar 4 times, meat and butter 1.5 times, furniture 2.2 times, radios and radio-gramophones 2.6 times, television sets 16 times, clocks and watches 2.7 times, and motorcycles 2.9 times.

During this period, industry in the Republic has produced, over and above the targets of the Seven-Year Plan, 66 million metres of cloth, 30 million knitted articles, 12.9 million pairs of footwear, 66,000 tons of meat, 462,000 television sets, 72,000 motorcycles, 389,000 bicycles, and furniture to the value of 70 million roubles.

During the period 1959-1963, the State has invested 136.7 million roubles in the construction of new and the modernization and expansion of existing plants of the light and foodstuffs industries. A considerable amount of work has been done to introduce new techniques and advanced technology and a number of undertakings producing consumer goods have been specialized. In many undertakings, steps have been taken to improve the quality and range of goods. Chemical supplies and raw materials are being more widely used in the production of consumer goods; the production of woollen textiles containing synthetic fibres has increased 3.6 times. The finish and appearance of articles has been somewhat improved and the output of wrapped and packaged consumer goods has risen.

At the same time, the Supreme Soviet of the Byelorussian SSR notes that there are serious shortcomings in the work of the Council of National Economy of the Byelorussian SSR, the Central Administration of Consumer Services and Local Industry of the Council of Ministers of the Byelorussian SSR, and the ministries and departments concerned with consumer goods.

The Supreme Soviet of the Byelorussian SSR hereby resolves :

1. To recognize, in order to meet to the fullest possible extent the ever-growing needs of the population, that a further increase in production, expansion of the range and improvement of the quality of consumer goods is one of the most important tasks of all Soviet organs and economic organizations.

2. To charge the Council of National Economy of the Byelorussian SSR, the Central Administration of Consumer Services and Local Industry of the Council of Ministers of the Byelorussian SSR, the other ministries and departments concerned with the production of consumer goods, and the executive committees of the regional and the Minsk City Soviets of Working People's Deputies to ensure the complete fulfilment of the targets set for the production of consumer goods in 1964/1965 and to work out and implement measures to provide for the following :

An increase in the production of consumer goods through the fullest possible utilization of local sources of raw materials and the more efficient use of raw materials and supplies;

More efficient use of available production capacity and the organization of new specialized divisions for the production of consumer goods in undertakings of the mechanical engineering, chemical, electrical engineering, wood-working and other industries. Steps should be taken to ensure that continuous technical progress is made in those branches of industry which produce consumer goods, that advanced technology is mastered, that production processes are mechanized and automated, that old, unproductive equipment is replaced by new, and that all existing equipment is modernized and to apply inventions and proposals to rationalize work processes and thereby achieve a further increase in labour productivity and a lowering of production costs; mass production of new consumer goods of improved manufacture, style and design. Steps should be taken to expand considerably the use of chemical materials, fibres and ferments, and plastics and plastic film in the production of consumer goods;

An increase in the production and greater variety and improvement of the quality of food products, with special attention to the production of well-presented pre-packaged food products;

An increase in production and improvement of the quality of manufactured consumer goods. Steps should be taken to ensure that the orders of trading organizations for goods to satisfy popular demand should be met to the fullest possible extent, and to review and prescribe the range of such goods in the light of the demands and needs of the population.

3. To ensure a further improvement of working conditions and industrial health and safety measures in undertakings producing consumer goods.

4. To continue work on improving production management, on forming and consolidating industrial groupings and constantly improving their organizational structure, and on increasing the specialization of industrial undertakings.

5. To charge the Council of National Economy of the Byelorussian SSR, the Central Administration of Consumer Services and Local Industry of the Council of Ministers of the Byelorussian SSR, the Ministry of Trade of the Byelorussian SSR, the Byelorussian Co-operatives Union, the organs of State and departmental arbitration, and the executive committees of regional, city and district Soviets of Working People's Deputies to work out and implement measures for greater control of the quality of goods and to prevent the sale of goods of low quality and old-fashioned style and design which are badly finished and poorly presented.

6. To recognize that it is one of the most important duties of the Ministry of Trade of the Byelorussian SSR, the Byelorussian Co-operatives Union and the other trading organizations to make a systematic study of the popular demand for goods and to see to it that industry produces goods which are in demand, and also to exert greater control over the delivery of goods in the required range and of suitable quality.

7. To instruct the Ministry of Trade of the Byelorussian SSR, the Byelorussian Co-operatives Union and the executive committees of regional and of the Minsk City Soviets of Working People's Deputies to improve trade in consumer goods and to take the necessary measures to extend further the sale on credit of goods of which sufficient quantities are available, and to develop a special trade network for the sale of consumer goods and the organization of outlets in the large towns for the sale of goods manufactured by the industrial undertakings of the Council of National Economy of the Byelorussian SSR.

8. To charge the State Committee on the Press of the Council of Ministers of the Byelorussian SSR, the State Committee on Radio and Television of

the Council of Ministers of the Byelorussian SSR and the State Committee on Cinematography of the Council of Ministers of the Byelorussian SSR to disseminate more widely through the Press, radio, television and the cinema knowledge of the work of leading undertakings in increasing production, extending the range, improving quality and introducing new methods of manufacture and design of consumer goods, and also to advertise new types of goods more widely.

9. To instruct the Council of National Economy of the Byelorussian SSR, the Central Administration of Consumer Services and Local Industry of the Council of Ministers of the Byelorussian SSR, the ministries and departments of the Byelorussian SSR, and the executive committees of regional, city and district Soviets of Working People's Deputies to stimulate competition among undertakings for the title of collectives of communist labour, for an increase in the output, expansion of the range and improvement of the quality of consumer goods, for the economic use of raw materials and supplies and for the fullest possible location and utilization of production resources; and also to take steps to ensure the study, dissemination and application of the techniques evolved by innovators and leaders of production in all production collectives and thereby to achieve an improvement in all the technical and economic indicators of the operation of undertakings producing consumer goods.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR AMENDING ARTICLE 7 OF THE ACT CONCERNING THE ESTABLISHMENT OF A CLOSER CORRESPONDENCE BETWEEN EDUCATION AND LIFE AND THE FURTHER DEVELOPMENT OF THE EDUCATIONAL SYSTEM IN THE BYELORUSSIAN SSR

ADOPTED BY THE SUPREME SOVIET ON 14 SEPTEMBER 1964

In accordance with the Decree of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics of 10 August 1964 amending article 4 of the Act concerning the establishment of a closer correspondence between education and life and the further development of the educational system in the USSR, the Presidium of the Supreme Soviet of the Byelorussian SSR hereby resolves:

1. To amend article 7 of the Act of the Byelorussian SSR of 8 April 1959 concerning the establishment of a closer correspondence between education and life and the further development of the educational system in the Byelorussian SSR to provide for a two-year instead of a three-year period of study in secondary general and polytechnic workers' schools providing industrial training after completion of eight-year schooling.

2. To submit this Decree to the Supreme Soviet of the Byelorussian SSR for approval.

ACT APPROVING THE DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR AMENDING ARTICLE 7 OF THE ACT CONCERNING THE ESTABLISHMENT OF A CLOSER CORRESPONDENCE BETWEEN EDUCATION AND LIFE AND THE FURTHER DEVELOPMENT OF THE EDUCATIONAL SYSTEM IN THE BYELORUSSIAN SSR, ADOPTED AT THE FOURTH SESSION OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR, SIXTH CONVOCATION

ADOPTED BY THE SUPREME SOVIET ON 23 DECEMBER 1964

To approve the Decree of the Presidium of the Supreme Soviet of the Byelorussian SSR of 14 September 1964 amending article 7 of the Act concerning the establishment of a closer correspondence between education and life and the further development of the educational system in the Byelorussian SSR.

In accordance with the afore-mentioned Decree, to replace the word " three " by the word " two " in sub-paragraph (*b*) of article 7 of the Act concerning the establishment of a closer correspondence between education and life and the further development of the educational system in the Byelorussian SSR.

ACT CONCERNING THE ADOPTION OF THE CIVIL CODE OF THE BYELORUSSIAN SSR, ADOPTED AT THE THIRD SESSION OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR, SIXTH CONVOCATION

ADOPTED BY THE SUPREME SOVIET ON 11 JUNE 1964

Art. 1. To adopt the Civil Code of the Byelorussian SSR, which shall enter into force as of 1 January 1965.

Art. 2. To request the Presidium of the Supreme Soviet of the Byelorussian SSR to make provision for the entry into force of the Civil Code of the Byelorussian SSR and to compile a list of legislative acts of the Byelorussian SSR rendered inoperative by the entry into force of the Civil Code of the Byelorussian SSR.

CIVIL CODE OF THE BYELORUSSIAN SSR (*EXTRACTS*)

Art. 1. Purposes of the civil law of the Byelorussian SSR

The civil law of the Byelorussian SSR governs relationships based on property and personal relationships not based on but connected with property, in order to lay the material and technical foundation of communism and to satisfy progressively the material and spiritual needs of citizens. Where a statute so provides, the civil law also governs other personal relationships not based on property.

Property relationships in Soviet society are based on the socialist system of economy and socialist ownership of the tools and means of production. The economic life of the Byelorussian SSR is determined and guided by the State Economic Plan.

Art. 2. Relationships governed by the civil law of the Byelorussian SSR

The Civil Code of the Byelorussian SSR and other acts of the civil law of the Byelorussian SSR govern the relationships mentioned in article 1 of this Code:

between State, co-operative and public organizations;

between citizens and State, co-operative and public organizations; and among citizens.

Other organizations may also be parties to the relationships governed by the civil law of the Byelorussian SSR in cases specified by legislation of the USSR.

The civil law of the Byelorussian SSR does not apply to property relationships based upon the administrative subordination of one party to another, or to tax or budget relationships.

Family, labour and land relationships, as well as relationships within collective farms arising from their charters, are governed respectively by family, labour, land and collective-farm legislation.

Art. 3. The Civil law of the USSR and the Byelorussian SSR

In accordance with the Principles of the civil law of the USSR and the Union Republics, this Code and other acts of the civil law of the Byelorussian SSR shall govern the property and personal non-property relationships provided for in the Principles, as well as relationships not provided for therein.

In conformity with the Principles of the civil law of the USSR and the Union Republics, the civil law of the USSR shall govern relationships between socialist organizations in delivery of products and in capital construction; relationships involving State purchases of agricultural produce from collective and State farms; relationships between organizations in railway, sea, river, air and pipe-line transport, and communications and credit establishments, and their clients, and between themselves; relationships in state insurance; relationships arising from discoveries, inventions, and technical improvements; and also other relationships whose regulation is referred by the Constitution of the USSR and the Principles to the jurisdiction of the USSR. Within the sphere of these relationships the law of the Byelorussian SSR may decide matters referred to its jurisdiction by the law of the USSR.

Foreign trade relationships shall be determined by special legislation of the USSR governing foreign trade, and by the general civil legislation of the USSR governing foreign trade, and by the general civil legislation of the USSR and the Byelorussian SSR.

Art. 4. Grounds on which civil rights and duties arise

Civil rights and duties arise on the grounds specified by the legislation of the USSR and the Byelorussian SSR, and also from the acts of citizens and organizations which, while not specified by law, engender civil rights and duties in virtue of the general principles and meaning of the civil law.

Accordingly, civil rights and duties arise:

From transactions specified by law, and also from transactions which, while not specified by law, are not in contradiction with it;

From administrative acts, including — in the case of State, co-operative and public organizations — planning directives;

As a result of discoveries, inventions, technical improvements, and the production of works of science, literature and art;

As a result of causing injury to another person, and also from acquiring or accumulating property at the expense of another person without sufficient grounds;

As a result of other acts of citizens and organizations;

As a result of events to which the law attaches civil consequences.

Art. 5. Exercise of civil rights and fulfilment of duties

Civil rights shall be protected by law unless their exercise conflicts with their purpose in a socialist society during the formation period of communism.

In exercising their rights and fulfilling their duties, citizens and organizations are bound to observe the law and respect the rules of communal life in a socialist society and the moral principles of a society building communism.

Art. 6. Protection of civil rights

Civil rights shall be protected in accordance with the established procedure by courts of law and tribunals of arbitration by the following means: declaration of the right; restoration of the original position existing before the infraction of the right; injunction against the acts infringing the right; an order for specific performance of an obligation; termination or variation of a legal relationship; an order for damages against a person infringing the right; in cases prescribed by law or by contract; exaction of a penalty or fine; and other means provided by law.

In the cases and by the procedure established by the law of the USSR and the Byelorussian SSR, comrades' courts, trade unions and other communal organizations also shall protect civil rights.

Where the law expressly so provides, civil rights shall be protected by administrative proceedings.

Art. 7. Protection of honour and reputation

A citizen or organization may move the court to compel withdrawal of a statement damaging to honour or reputation, unless the person who has published the statement proves it true.

A defamatory statement that has been published in print shall, if untrue, also be denied in print. Otherwise the method of denial shall be determined by the court.

A person who fails to comply with an order of a court may be compelled by the court to pay a fine to the State. Such a fine shall be exacted in the manner and in the amount prescribed by the Code of Civil Procedure of the Byelorussian SSR. Payment of the fine shall not exempt the defaulter from performance of the act ordered by the court.

...

Art. 9. Legal capacity of citizens

All citizens of the Byelorussian SSR and of the other Union Republics shall enjoy equal capacity to possess civil rights and obligations (civil capacity).

The civil capacity of a citizen shall begin at birth and end at death.

Art. 10. Incidents of civil capacity

Subject to the law, citizens may own personal property, use dwelling houses and other property, inherit and bequeath property, choose their occupation and place of residence, enjoy author's rights with respect to works of science, literature or art, hold patent rights over discoveries, inventions and efficiency schemes, and enjoy other rights based on property and personal rights not based on property.

Art. 11. Contractual capacity of citizens

A citizen shall gain full capacity to acquire civil rights and contract civil obligations by his own act (civil competence) when he comes of age; that is to say when he reaches the age of eighteen.

Art. 12. Prohibition of limitation of the civil capacity and civil competence of citizens

No person's civil capacity or competence may be limited otherwise than in the cases and according to the procedure provided by law. An agreement purporting to limit civil capacity or competence shall be null and void.

...

Art. 24. Definition of legal persons

Legal persons are organizations which possess separate property, may in their own name acquire property and personal non-property rights and assume obligations, and may act as plaintiffs and defendants before a court or an arbitration tribunal.

Art. 25. Types of legal persons

The following are legal persons:

State enterprises and other State organizations which operate on the basis of economic accountability and have both fixed and working capital and independent balances; institutions and other State organizations which operate under the State budget and keep independent accounts, the managers of which have the right to dispose of funds (with such exceptions as may be provided by law); State organizations which are financed from other sources and have independent budgets and balances;

Collective farms and inter-collective farm and other co-operative and public organizations, and associations thereof, and also, in those cases specified by the legislation of the USSR and the Byelorussian SSR, the enterprises and institutions of such organizations and associations thereof which have separate property and independent balances;

State collective-farm and other State co-operative organizations:

In those cases specified by the legislation of the USSR or of the Byelorussian SSR, the institutions and other State organizations operating under the State budget, mentioned in this article, shall act respectively in the name of the USSR or the Byelorussian SSR.

...

Art. 43. Definition and types of transactions

Transactions are acts of citizens and organizations intended to establish, modify or terminate civil rights or obligations.

Transactions may be unilateral, bilateral or multilateral (contracts).

Art. 44. Form of transactions

Transactions may be made orally or in writing (with or without notarization).

Transactions for which no form has been prescribed by law are also deemed to have been performed

if the conduct of a person clearly indicates his intention to perform them.

In those cases specified by the legislation of the USSR or the Byelorussian SSR, silence is deemed to be the expression of an intention to make a transaction.

...

Art. 56. Invalidity of a transaction made by a citizen who is incapable of understanding the significance of his actions

A transaction made by a citizen who, although possessing civil competence, was at the time of making the transaction in a condition in which he was incapable of understanding the significance of his actions or of controlling them shall be declared invalid by the court on the application of the citizen.

Where such a transaction is declared invalid, each of the parties shall restore to the other everything received under the transaction, and where it is impossible to restore what has been received in kind, its value shall be compensated in cash.

A party who at the moment of performing a transaction was incapable of understanding the significance of his acts or control them shall, in addition, be reimbursed by the other party for all expenditures, losses or injury to his property, if the other party knew or should have known of the condition of the citizen who made the transaction with him.

...

Art. 60. Invalidity of transactions performed as a result of fraud, duress, threats, fraudulent agreement with the agent of another party or personal difficulties

A transaction performed as a result of fraud, duress, threats or fraudulent agreement with the agent of another party, and also a transaction which a citizen has been compelled to make on extremely unfavourable terms because of personal difficulties shall be declared invalid by the court on the application of the injured party or of a State, co-operative or public organization.

Where a transaction is declared invalid on one of the above-mentioned grounds, the other party shall restore to the injured party everything received under the transaction, and where it is impossible to restore what has been received in kind, its value shall be compensated in cash. Property which has been received by the injured party from the other party under the transaction, and anything owing the injured party as compensation for what has been transferred to the other party, shall be recovered for the State. Where it is impossible to transfer such property to the State in kind, its value shall be recovered in cash.

In addition, the other party shall reimburse the injured party for expenditures, losses or injury to his property.

...

Art. 73. General periods of limitation for the bringing of actions

The general period within which a person whose rights have been infringed may bring an action to defend those rights (period of limitation) shall be three years; and for actions brought by State organizations, collective farms and other co-operative and public organizations against each other, the period shall be one year.

Art. 80. Consequences of the expiration of a period of limitation

Expiration of the period of limitation prior to the bringing of an action shall be a ground for rejection of the action.

Where the court or the arbitration tribunal finds that the delay in bringing an action before the expiration of the period of limitation was due to a sound reason, the infringed right shall be subject to protection.

...

Art. 86. Rights of an owner

An owner may possess, use and dispose of his property within the limits set by law.

Art. 87. Socialist and personal property

Socialist property is: State property (property of the people as a whole); the property of collective farms, and other co-operative organizations and associations thereof; and the property of public organizations.

Personal property shall serve as one of the means of satisfying the needs of citizens.

...

Art. 88. Definition of the right of State ownership

The State is the sole owner of all State property.

State property which is allocated to State organizations shall be under the operative management of such organizations, which shall exercise the right to possess, use and dispose of such property within the limits set by law and in accordance with the purposes of their activity, plan targets and the function of the property.

Art. 89. Scope of the right of State ownership

Land, subsoil resources, waters, forests, industrial plants, factories, mines, quarries and electric power stations; railway, water, air and motor transport; banks and the means of communication; agricultural, trading, public-service and other enterprises organized by the State; and the basic housing inventory in the towns and urban-type communities shall be under State ownership. Any other property may also be owned by the State.

Land, subsoil resources, waters and forests, being the exclusive property of the State, may be allocated only for use.

...

Art. 138. The time at which the right of ownership arises for a person acquiring property under an agreement

The right of ownership, for a person acquiring property under an agreement (or, for State organizations, the right of operative management of property), arises at the time of transfer of the object unless otherwise provided by law or by the agreement.

If the agreement concerning the object's alienation must be registered, the right of ownership arises at the time of registration.

...

Art. 156. Concept of an obligation and the basis on which it arises

By virtue of an obligation a person (the debtor) is obliged to perform a specified act for the benefit of another person (creditor); for example, to deliver up property, to do work, or to pay money; or to refrain from a specified act; and the creditor is entitled to claim from the debtor fulfilment of his obligation.

Obligations arise out of agreements or the other grounds mentioned in article 4 of this Code.

...

Art. 166. General provisions

Fulfilment of obligations may be secured in accordance with law or with an agreement by penalty or fine, pledge or surety. In addition, fulfilment of obligations between citizens or of obligations to which citizens are parties may be secured by deposits, and of obligations between socialist organizations by guarantees.

Art. 193 General provisions

Obligations must be carried out in the proper manner and within the prescribed period of time, as provided by law, planning act or contract, or, in the absence of such provisions, in accordance with the customary requirements.

Each party must carry out his own obligations in the manner most economical for the socialist economy and must offer the other party all possible co-operation in carrying out his obligations.

Art. 194. Unilateral refusal to carry out an obligation not permitted

Unilateral refusal to carry out obligations and unilateral changes in the terms of a contract shall not be permitted, except in the cases specified by law.

Art. 201. Interest

Interest on monetary and other obligations shall not be permitted, except in the operations of credit institutions, in foreign trade obligations and in other cases specified by law.

...

Art. 380. Types of insurance

State insurance shall take the form of compulsory or voluntary insurance.

Art. 381. Compulsory insurance

Property subject to compulsory insurance and the terms of such insurance shall be specified by law.

Under compulsory insurance, upon the occurrence of the event provided for by law (the insured event), the insurance organization shall compensate the insured party or other person to whom the insured property belongs for the damage which he has sustained, if the property is a total loss, in the full amount of the insurance protection, and if the damage is partial, in the amount of the corresponding portion of the insurance protection. The insured party shall be required to make the established insurance payments.

The forms of compulsory personal insurance shall be established by legislation of the USSR.

Art. 382. Contract for voluntary insurance

By a contract for voluntary insurance the insurance organization undertakes, upon the occurrence of an event specified in the contract (the insured event) :

In the case of property insurance, to reimburse the insured party, or a third party for whose benefit the contract has been concluded, for the damage sustained (payment of insurance compensation), within the limits of the amount specified by the contract (the insurance amount), or, if the property has not been insured to its full value, to the extent of a corresponding share of the damage, unless otherwise provided by insurance rules;

In the case of personal insurance, to pay the insured party, or a third party for whose benefit the contract has been concluded, the insurance amount fixed by the contract, regardless of any amount due to such party under State social insurance or social security, or amounts due as tort damages.

The insured party undertakes to make the insurance payments established by the contract.

...

Art. 394. Contract of agency

Under a contract of agency, one party (the agent) undertakes to perform certain legal acts in the name of and for the account of another party (the principal).

The principal shall be required to compensate the agent if compensation is provided for by law or by the contract.

...

Art. 437. Announcement of a competition

A State, co-operative or public organization which makes a public promise of special compensation (prize) for the best performance of a specified piece of work (announcement of a competition) shall be obligated to pay the promised compensation to the person whose work is found to be worthy thereof in accordance with the terms of the competition.

The announcement of a competition must specify the nature of the task, the time-limit for its performance, the amount of compensation, the place of presentation, and the procedure and time-limit for the comparative evaluation of the work and may also include other terms of the competition.

A competition may be announced by organizations which are authorized to do so by their charters (by-laws), by legislation of the USSR or by the Council of Ministers of the Byelorussian SSR.

...

Art. 442. General rules governing liability for injury

Full compensation for damage caused to the person or property of a citizen, and also damage caused to an organization, shall be paid in full 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.

Art. 443. Liability of organizations for damage caused by acts of their employees

An organization shall be obliged to pay compensation for injury caused by the fault of its employees in the fulfilment of their obligations of work or service.

Art. 444. Liability of State institutions for damage caused by acts of their employees

The liability of State institutions for damage caused to citizens through wrongful official acts committed by their employees in the course of their administrative duties shall be governed by the ordinary rules (articles 442 and 443 of this Code), unless a special statute provides otherwise. State institutions shall be liable in the manner prescribed by law for damage caused to organization by such acts of their employees.

Where injury is caused by improper acts committed in the course of their duties by employees of authorities conducting inquiry or preliminary investigation or of the office of the procurator or of the court, the employing State authority shall be liable in property in the cases and within the limits especially prescribed by law.

Art. 445. Injury caused in self-defence

Injury caused in self-defence shall not be subject to compensation if the action taken did not exceed the proper limits of self-defence.

...

Art. 451. Liability for injury caused by a source of exceptional danger

Organizations and citizens whose work entails exceptional danger for others (e.g. transport organizations, industrial undertakings, constructors, car owners, and the like) shall be liable to pay compensation for injury caused by the source of exceptional danger unless they prove that the injury resulted from a force outside their control or from a wilful act of the injured person.

...

Art. 454. Extent, nature and amount of compensation for injury

In awarding compensation for injury, a court or arbitration tribunal shall, in accordance with the circumstances of the case, require the person liable for the injury to make compensation in kind (to furnish an article of the same kind and quality, to repair a damaged article, etc.) or to pay compensation in full for the loss sustained (article 211 of this Code).

...

Art. 456. Compensation for damage in the event of injury to health

Where a person is crippled or his health is otherwise injured, the organization or citizen responsible for the injury shall compensate the injured person for the earnings he has lost through the loss or diminution of his ability to work and for the expenses incurred because of the injury to his health (fortified diet, prosthetic appliances, outside care and the like).

...

Art. 469. Compensation for damage suffered in the rescue of socialist property

Damage suffered by a citizen in the rescue of socialist property from a danger threatening it shall be compensated by the organization whose property the injured person was rescuing.

...

Art. 470. Obligation to return property acquired or retained without justification

A person who, without statutory or contractual justification, acquires property for the account of another shall be required to return such property to the latter.

The same obligation shall arise if the justification on the basis of which the property was acquired subsequently ceases to exist.

Where it is impossible to return in kind the property acquired without justification, compensation shall be paid for its estimated value at the time when it was acquired.

Property acquired for the account of another person not through a transaction but by other acts known to be contrary to the interests of the socialist State and society shall, if it is not subject to confiscation, be recovered for the State.

A person who has received such property without justification shall also be required to return or pay compensation for all income which he has derived or should have derived from the said property since the time when he learned or should have learned that he had received the property without justification.

These rules shall also apply in the case of property which has been accumulated for the account of another person without statutory or contractual justification.

...

Art. 472. Works to which copyright applies

Copyright shall apply to any scientific, literary or artistic work, regardless of its form, purpose or value or of the manner of its reproduction.

Copyright shall apply to works, whether published or unpublished, which are expressed in any objective form making it possible to reproduce the product of the author's creative activity (manuscript, sketch, picture, public recital or performance, film, mechanical or magnetic recording and the like).

Art. 473. Items subject to copyright

The following items may be copyrighted :

Oral works (speeches, lectures, reports and the like);

Written works (literary, scientific and other);

Dramatic and musical-dramatic works and musical works with or without a text;

Translations;

Scenarios and scripts;

Cinema and television films and radio and television broadcasts;

Choreographic and pantomime works for the presentation of which instructions are set out in writing or in some other manner;

Works of painting, sculpture, architecture, graphic and decorative arts, illustrations, drawings and sketches;

Plans, drawings and models relating to science, technology or the staging of dramatic or musical-dramatic works;

Geographical, geological and other maps;

Works produced by photography or by methods analogous to photography;

Gramophone records and other types of technical recordings of works;

Other works.

Copyright in works produced by photography or methods analogous to photography shall be granted if each specimen of the work bears the name of the author and the place and year of publication.

...

Art. 475. Copyright in works published in the USSR and abroad

Copyright in a work first published in the USSR, or not published but situated in the USSR in any objective form, shall be vested in the author and his heirs irrespective of their nationality.

Art. 476. Rights of an author

An author shall be entitled :

To the publication reproduction and circulation of his work by all lawful means under his own name, under an adopted name (pseudonym) or with no indication of the author's name (anonymously);

To the integrity of his work;

To remuneration for use of his work by other persons, except in the cases prescribed by law.

The rates for the remuneration of authors shall be fixed by the Council of Ministers of the Byelorussian SSR, except in the cases in which they are fixed by the law of the USSR.

In the absence of fixed rates of remuneration for authors, the amount of remuneration to be paid to an author for use of his work shall be determined by agreement between the parties.

Art. 477. Protection of the integrity of the work and name of the author during his lifetime

In the publication, public performance or other utilization of a work, no change whatever may be made without the author's consent either in the work itself or in its title, or in the indication of the author's name.

Similarly, when a work is published, it may not, without the author's consent, be accompanied by illustrations, forewords, postscripts, commentaries or explanations of any kind.

Art. 478. Protection of the integrity of works after the author's death

An author shall have the right to designate, in the same manner as the executor of a will is designated (article 539 of this Code), a person to whom he entrusts the protection of the integrity of his works after his death. This person shall exercise his powers for life.

In the absence of any such designation, the integrity of works after the author's death shall be protected by his heirs and by organizations for the protection of copyrights. Such organizations shall protect the integrity of the works even where there are no heirs or where the copyright has expired (article 493 of this Code).

...

Art. 486. Translation of a work into another language

Every published work may be translated into another language without the consent of the author, provided that he is notified and that the unity and sense of the work are preserved (article 477 of this Code).

Notification shall be sent to the author by the appropriate organization immediately after it has approved the translation for use. A copy of the translation shall be made available to the author for examination if he so requests.

If the translation contains any violation of the unity of the work or any distortion of its sense, the author, or after his death the persons mentioned in article 478 of this Code, may avail themselves of the protective measures established for cases in which the integrity of the work is violated (article 495, first paragraph, of this Code).

Art. 487. Translator's copyright

The copyright in a translation shall belong to the translator. This right of the translator shall not prevent any other person from independently translating the same work.

...

Art. 495. Protection of copyright

Where a person uses the work of another without an agreement with the author or his heirs, or fails to comply with the conditions for the use of a work without the author's consent, or violates the integrity of the work (article 477 of this Code) or any other personal non-property rights of the author, the latter, and after his death his heirs and the other persons mentioned in article 478 of this Code, shall be entitled to demand the restoration of the violated right (the making of appropriate corrections or an announcement in the Press or by other means that a violation has been committed) or the prohibition of publication of the work or the cessation of its distribution.

If the author has suffered any loss through the violation of his rights (article 211 of this Code), he may, independently of the claims mentioned in this article, demand compensation for the loss.

...

Art. 512. Rights of the maker of a discovery

The maker of a discovery may claim a certificate of credit for the discovery and for his priority, to be issued in the cases and according to the procedure prescribed by the Statute on Discoveries, Inventions and Efficiency Schemes, confirmed by the Council of Ministers of the USSR.

The maker of a discovery shall be entitled to a fee to be paid to him upon issue of the certificate, and to the privileges prescribed by the Statute on Discoveries, Inventions and Efficiency Schemes.

Art. 513. Inheritance of the rights of the maker of a discovery

The right to obtain the certificate of a deceased person who has made a discovery and to receive the fee for the discovery shall pass by inheritance in accordance with statutory procedure.

...

Art. 515. Certificates of invention and patent

The author of an invention may choose to apply only for recognition of his authorship, or for such recognition together with exclusive rights to his invention. In the former case a certificate of invention shall be issued, in the latter case a patent. Certificates of invention and patents shall be issued upon the conditions and according to the procedure laid down in the Statute on Discoveries, Inventions and Efficiency Schemes.

Patenting abroad of inventions made within the USSR and of inventions made abroad by Soviet citizens and any transfer of Soviet inventions abroad shall be permitted only according to the procedure laid down by the Council of Ministers of the USSR.

Art. 516. Use of an invention for which a certificate has been issued

Where a certificate of invention has been issued, the right to use the invention shall belong to the State, which shall undertake to exploit the invention, with due regard to the desirability of its industrial production.

Co-operative and public organizations may utilize inventions relating to their spheres of activity on an equal footing with State organizations.

If an invention is accepted for industrial production, the inventor to whom a certificate of invention has been issued shall be entitled to a fee depending on the economy or other benefit resulting from production of the invention and to privileges in accordance with the Statute on Discoveries, Inventions and Efficiency Schemes.

Art. 517. Rights of patentees

A patent shall be issued for a period of fifteen years, reckoned from the date of the application. The rights of the applicant shall be protected from the same date. No person may use the invention without the consent of the person to whom the patent belongs (the patentee). The patentee may give permission (licence) for the use of his invention or may cede the patent outright.

An organization which before the filing of the application for the invention had applied the said invention independently of the inventor in the territory of the USSR, or had made all the necessary preparations for doing so, shall have the right to the continued use of the said invention free of charge. Disputes on this question shall be decided through a judicial proceeding.

Art. 518. Rights of the author of an efficiency scheme

The author of an efficiency scheme accepted for practical application shall be issued a certificate of authorship. He shall be entitled to a fee depending on the economy or other benefit resulting from the application of his scheme and to privileges in accordance with the Statute on Discoveries, Inventions and Efficiency Schemes.

...

Art. 520. Inheritance of the rights of the author of an invention or of an efficiency scheme

The right to a certificate of invention or a patent for an invention, a certificate for an efficiency scheme or a fee for an invention or efficiency scheme, and the exclusive right to an invention on the basis of a patent shall pass by inheritance in accordance with statutory procedure.

...

Art. 522. Rules governing inheritance

Property may be inherited under the law or under a will. Inheritance at law shall be the rule, except in the cases and to the extent that a will provides otherwise.

If there are no heirs at law or testamentary heirs, or if no heir has accepted the inheritance, or if all heirs have been disinherited by the testator, the property of the deceased shall pass to the State by right of inheritance.

...

Art. 525. Citizens who may inherit

The following may inherit:

In the case of inheritance at law, citizens living at the time of the deceased person's death and his children born after his death;

In the case of testamentary inheritance, citizens living at the time of the deceased person's death and citizens conceived during his lifetime and born after his death.

Art. 527. Inheritance at law

The heirs at law of a deceased person shall be, taking first in equal shares, his children (including adopted children), spouse, and parents (or adoptive parents). A child of the deceased born after his death shall also be an heir of the first class.

Grandchildren and great-grandchildren of the deceased shall be heirs at law if their parent who would have been an heir is not alive when the estate devolves; they shall take in equal parts the share which their deceased parent would have taken as an heir at law.

The deceased person's brothers and sisters, paternal grandfather and grandmother and maternal grandfather and grandmother shall be heirs of the second class with equal shares in the event of inheritance at law. Heirs of the second class shall inherit at law only if there are no heirs of the first class, or if the heirs of the first class have renounced the inheritance, or if all heirs of the first class have been disinherited by the deceased.

Persons incapable of work who have been dependent on the deceased for not less than one year at the time of his death shall be heirs at law of the second class and shall, if there are other heirs, take equally with heirs of the class called to the succession.

An adopted person and his descendants shall not inherit on the death of his parents, of his other blood relatives in the ascending line, or of his blood brothers or sisters.

An adopted person's parents, his other blood relatives in the ascending line, and his blood brothers and sisters shall not inherit upon his death or the death of his descendants.

...

Art. 529. Testamentary inheritance

Any citizen may leave all or part of his property not excluding ordinary household articles and furniture by will to one or more persons, who need not be heirs at law, or to the State, or to specific State, co-operative or community organizations.

In a will the testator may disinherit one, several or all of his heirs at law.

Art. 530. Right to a mandatory share in an estate

A deceased person's minor or disabled children (including adopted children) and his spouse, parents (or adoptive parents) and dependants, if they are disabled, shall, irrespective of the contents of the will, inherit not less than two-thirds of the share they would have received by inheritance at law (mandatory share). The value of that portion of the estate which consists of ordinary household articles and furniture shall be taken into account in computing the amount of the mandatory share.

...

Art. 538. Revocation and modification of a will

A testator may at any time modify or revoke a will which he has made by drawing up a new will.

A later will shall nullify an earlier will either completely or to the extent that the earlier will contradicts the later will.

A testator may also revoke a will by submitting a declaration to a notarial office.

...

Art. 557. Civil capacity of foreign nationals

Foreign nationals shall enjoy in the Byelorussian 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.

Art. 558. Civil capacity of stateless persons

Stateless persons resident in the USSR shall enjoy in the Byelorussian SSR equal civil capacity with Soviet citizens. Specific exceptions may be established by the law of the USSR.

Art. 559. External trade transactions of foreign organizations

Transactions for external trade and related payment, insurance and other operations with Soviet foreign-trade associations and other Soviet organizations authorized to conclude such transactions may be concluded in the Byelorussian SSR by foreign enterprises and organizations without special permission.

Art. 560. Law applicable to the form of a transaction

The form of a transaction concluded abroad shall be governed by the law of the place where it is concluded. A transaction may not, however, be regarded as invalid on the ground of improper form if the requirements of the law of the USSR and the Byelorussian SSR have been complied with.

The form of foreign trade transactions concluded by Soviet organizations and the procedure governing their signature shall, irrespective of the place where the transactions are concluded, be determined by the law of the USSR.

The form of transactions relating to structures situated in the Byelorussian SSR shall be governed by the law of the USSR and the Byelorussian SSR.

Art. 561. Law applicable to obligations arising out of foreign trade transactions

The rights and obligations of the parties to a foreign trade transaction shall be determined by the law of the place where the transaction is concluded, unless otherwise agreed between the parties.

The place of conclusion of a transaction shall be determined on the basis of Soviet law.

Art. 562. Law applicable to succession

Matters of succession shall be governed by the law of the country in which the deceased had his last permanent residence.

The capacity of a person to draw up or revoke a will and the form of the will or of a document revoking it shall be determined in accordance with the law of the country in which the testator had his permanent residence at the time of drawing up the document. A will or its revocation may not, however, be regarded as invalid on the ground of improper form if the form used satisfies the requirements of the law of the place where the document was drawn up or the requirements of Soviet law.

Succession to structures situated in the USSR shall in all cases be governed by Soviet law. The same law shall determine the capacity of a person to draw up or revoke a will and also the form of the will if the structure bequeathed is situated in the USSR.

Art. 563. Limitation of the applicability of foreign law

Foreign law shall not apply if its application would run counter to the basic principles of the Soviet system.

Art. 564. 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 principle shall apply in the Byelorussian SSR if the rules laid down by an international treaty or agreement to which the Byelorussian SSR is party are different from those provided for by the civil law of the Byelorussian SSR.

...

ACT CONCERNING THE CONFIRMATION OF THE CODE OF CIVIL PROCEDURE OF THE BYELORUSSIAN SSR, ADOPTED AT THE THIRD SESSION OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR, SIXTH CONVOCATION

ADOPTED BY THE SUPREME SOVIET ON 14 JUNE 1964

Art. 1. To confirm the Code of Civil Procedure of the Byelorussian SSR and to put it into effect as from 1 January 1965.

Art. 2. To invite the Presidium of the Supreme Soviet of the Byelorussian SSR to establish the procedure for putting into effect the Code of Civil Procedure of the Byelorussian SSR and to confirm the list of legislative acts of the Byelorussian SSR which are abrogated by the coming into effect of the Code of Civil Procedure of the Byelorussian SSR.

CODE OF CIVIL PROCEDURE OF THE BYELORUSSIAN SSR (*EXTRACTS*)

Art. 1. Legislation on civil procedure

Procedure in civil cases in the courts of the Byelorussian SSR shall be governed by the Principles of Civil Procedure in the USSR and the Union Republics, by other laws of the USSR adopted on the basis thereof and by the Code of Civil Procedure of the Byelorussian SSR.

Legislation on civil procedure shall establish the procedure for hearing cases involving disputes arising out of civil, family, labour and collective-farm legal relations, cases arising out of administrative legal relations and cases subject to special procedure. Cases arising out of administrative legal relations and cases subject to special procedure shall be heard in accordance with the general rules of procedure, with certain specific exceptions established by the law of the USSR and the Byelorussian SSR.

Art. 2. Purposes of civil procedure

The purpose of Soviet civil procedure is to ensure that civil cases are heard and decided correctly and promptly in order to protect the social and State structure of the USSR, the socialist system of economy and socialist ownership, and to protect the political, work, housing and other personal and property rights and the legally safeguarded interests of citizens, as well as the rights and the legally safeguarded interests of State authorities and enterprises, collective-farms and other co-operative and community 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.

Art. 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 legally safeguarded interest which has been violated or disputed.

Any renunciation of the right to apply to the courts shall be null and void.

Art. 5. Institution of civil proceedings

A court shall take up the consideration of a civil case on the basis of:

(1) A declaration by a person applying for protection of his right or legally safeguarded interest;

(2) A declaration by the procurator;

(3) A declaration by State administrative authorities, trade unions, State institutions or enterprises, collective farms and other co-operative and community organizations or by individual citizens where they are permitted by law to apply to the court for protection of the rights and interests of other persons.

Art. 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 be ore the law and before the courts of all citizens, irrespective of their social, property or occupational status, nationality, racial origin or religion.

Art. 7. The participation of people's assessors and the hearing of all cases by a full court

In all courts, civil cases shall be heard by judges and people's assessors, elected in accordance with the statutory procedure.

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

In judicial proceedings, the people's assessors shall enjoy the same rights as the presiding judge in deciding all matters which arise in the hearing of the case and delivery of judgement.

Appeals shall be heard by courts consisting of three members, and reviews at the demand of the supervisory authorities shall be made by courts consisting of not less than three members.

Art. 8. 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.

Art. 9. Language in which judicial proceedings are conducted

Judicial proceedings in the Byelorussian SSR shall be conducted in the Byelorussian language or the Russian language.

Persons not knowing the language in which judicial proceedings are conducted shall be guaranteed the right to make statements, give explanations and evidence, address the court and make submissions in their native language, and also to make use of the services of an interpreter according to the statutory procedure.

Persons taking part in the case shall, in accordance with the statutory procedure, be provided with copies of the documents submitted in the proceedings, translated into their native language or into another language which they understand.

Art. 10. Hearing of cases in public

In all courts, cases shall be heard in public, except where a public hearing might prejudice the security of State secrets.

A court may also decide to sit *in camera*, if its reason for so doing, which shall be stated, is to avoid public discussion of intimate details of the lives of persons concerned.

Where a case is heard *in camera*, those persons shall be the persons concerned in the case, representatives of community organizations and workers' collectives if they have been authorized to participate in judicial proceeding, and, where necessary, other parties to the proceedings.

In all cases, the judgement of the court shall be pronounced in public.

...

Art. 12. Supervision of judicial activity by higher courts

Pursuant to article 13 of the Principles of Civil Procedure in the USSR and the Union Republics, the judicial activities of the judicial organs of the Byelorussian SSR shall be supervised, within statutory limits, by the Supreme Court of the USSR.

The Supreme Court of the Byelorussian SSR shall supervise the judicial activities of all judicial organs of the Byelorussian SSR.

The regional courts of the Byelorussian SSR shall supervise the judicial activities of district (city) people's courts situated in the territory of the region or city concerned.

Art. 13. Procuratorial supervision in civil procedure

Pursuant to article 14 of the Principles of Civil Procedure in the USSR and the Union Republics, supervision to ensure that the law of the USSR and of the Byelorussian SSR is scrupulously observed in civil procedure shall be exercised by the Procurator General of the USSR, both directly and through the Procurator of the Byelorussian SSR and other procurators subject to his authority.

At all stages of civil procedure, the procurator shall in good time take statutory measures to eliminate all violations of the law, irrespective of who has committed the violation.

The procurator shall exercise his functions in civil procedure independently of any organs or officials, being subject only to the law and guided by the instructions of the Procurator General of the USSR.

...

Art. 15. Determination by the court of the facts of the case and of the rights and obligations of the parties

The court shall, without confining itself to the materials and explanations submitted to it, take all measures provided for under law for a full, comprehensive and objective determination of the facts of the case and the rights and obligations of the parties.

The court shall explain to the participants in the case what are their rights and obligations, warn them of the consequences of their performance or non-performance of procedural acts and assist them in exercising their rights.

Art. 16. Composition of the court

District (city) people's courts hearing civil cases shall consist of a presiding judge, who shall be a senior people's judge or a people's judge, and two people's assessors. All other courts hearing civil cases shall consist of a presiding judge, who shall be the chairman or the deputy chairman of the court or a member of that court, and two people's assessors.

The judicial boards of regional courts and of the Supreme Court of the Byelorussian SSR dealing with civil cases shall, when hearing appeals or protests against judgements, rulings or court orders, consist of three members.

When the presidium of a regional court sits as a court of appeal, the majority of the members of the presidium shall be present.

When the Plenum of the Supreme Court of the Byelorussian SSR sits as a court of appeal, not less than two-thirds of the membership of the Supreme Court of the Byelorussian SSR shall be present.

Art. 17. Procedure of the court in deciding questions

All questions arising in the hearing of a case shall be decided by the judges by majority vote. When such a decision is taken, no judge may abstain from voting. The presiding judge shall vote last. A judge who disagrees with the decision of the majority may state his dissenting opinion in writing. The dissenting opinion shall be entered in the file of the case, but shall not be read publicly in the courtroom.

A judge acting alone may decide specific questions only in the cases expressly provided for by this Code. In such cases he shall act on behalf of the court.

Questions which may be decided by a judge acting alone may also be decided by the full court.

Art. 18. Disqualification of a judge, a procurator or other person taking part in the proceedings

A judge, a people's assessor, a procurator, a secretary at a court hearing, an expert or an interpreter shall be disqualified from participating in the hearing of a case if he has a direct or indirect personal interest in the outcome of the case or if there are other circumstances which cast doubt on his impartiality.

...

Art. 54. Legal costs

Legal costs shall consist of the State tax and expenditures incurred in the proceedings.

...

Art. 60. Exemption from payment of legal costs

The following shall be exempted from payment of legal costs to the State:

(1) Plaintiffs who are manual or non-manual workers and who sue for recovery of wages or salaries or advance other claims in connexion with labour matters as regulated by law, or who are members of collective-farms and who sue such farms for remuneration for work done by them;

(2) Plaintiffs in suits relating to copyright and also to rights to a discovery, invention, or efficiency scheme;

(3) Plaintiffs in suits for recovery of alimony;

(4) Plaintiffs in suits for damages caused by maiming or other injury to health, and also by the death of the bread-winner;

(5) Social security and social insurance organs in suits for recovery from a person who has caused the damage of the sums paid to the person who suffered the damage, and also in suits for recovery of benefits and pensions paid in error;

(6) Plaintiffs in suits which, after the court has rendered a judgement against the defendant, have been referred to another court for determination of the amount of damages under civil procedure, and also in suits which the court has failed to consider in handing down a judgement against the defendant;

(7) The procurator, and also the organs of State administration, trade unions, Government agencies, enterprises, collective-farms and other co-operative and community organizations and individual citizens who have brought an action with a view to defending the rights and legally protected interests of other persons;

(8) Citizens and administrative organs, in proceedings relating to administrative matters.

The legislation of the USSR and the Byelorussian SSR may provide for other instances in which parties shall be exempted from payment of legal costs to the State.

The court or judge may, in the light of the financial position of a citizen, exempt him from payment of legal costs to the State.

...

Art. 86. Rights and duties of parties to the proceedings

The parties to a case may study all documents relevant to the case, copy extracts from them and make copies of them, make challenges, submit evidence, put questions to other parties to the case and to witnesses and experts, make submissions, give oral and written explanations to the court, put forward their arguments and views, object to submissions, arguments and views put forward by the other parties to the proceedings, appeal against judgements and rulings of the court, and perform the other procedural acts provided for in this Code.

Parties to the proceedings shall exercise their procedural rights in good faith. The court shall put a stop to any attempts to draw out the proceedings or to digress from the substance of the case.

...

Art. 90. The procedural rights of the parties

The parties shall enjoy equal procedural rights.

The parties shall be entitled, within the limits of the law and with the active participation of the court, freely to exercise their procedural and substantive rights.

The parties shall have the right to perform the procedural acts mentioned in article 86 of this Code, and also to perform the other procedural acts provided for in this Code.

The plaintiff may change the ground or the objective of his claim, increase or reduce the amount of the claim, or relinquish the claim. The defendant shall be entitled to admit the claim. The parties may end the proceedings by arriving at a peaceful settlement.

The court shall not accept the plaintiff's relinquishment of his claim or the defendant's admission of the claim and shall not confirm a peaceful settlement between the parties where such acts are contrary to the law or infringe the rights and lawful interests of other persons.

...

Art. 268. Right of appeal for cassation and of protest against judgements

Appeals for cassation of the judgements rendered by any of the courts of the Byelorussian SSR, with the exception of the judgements of the Supreme Court of the Byelorussian SSR, may be filed by the parties and other participants in the case, and protests against them may be lodged by the procurator, within ten days from the date of the handing down of the judgement.

The procurator shall lodge a protest against an illegal or unfounded judgement of the court, whether or not he has participated in the proceedings.

Art. 269. Procedure for filing appeals for cassation and lodging protests

Appeals for cassation and procurator's protests against the judgements of district (city) people's courts shall be filed with the civil cases section of the corresponding regional court, and against the judgements of the civil cases section of the regional court with the Civil Cases Section of the Supreme Court of the Byelorussian SSR.

Appeals for cassation and protests shall be addressed to the court of appeal, but shall be delivered to the court which has rendered the judgement, with a copy of the appeal or protest for every participant in the case. The submission of the appeal or protest directly to the court of appeal shall not, however, be an impediment to its consideration.

...

Art. 294. Ex officio *review of court judgements, rulings and orders*

The judgements, rulings and orders of any court of the Byelorussian SSR which have become final may be reviewed *ex officio* if protests against them are lodged by any of the officials enumerated in article 295 of this Code.

Art. 295. Persons authorized to lodge protests

The following shall have the right to lodge protests :

(1) The Procurator General of the USSR, against the judgements, rulings and orders of any court of the Byelorussian SSR;

(2) The Chairman of the Supreme Court of the USSR, against orders of the Plenum, and also against judgements and rulings of the Civil Cases Section of the Supreme Court of the Byelorussian SSR sitting as a court of first instance;

(3) Deputy Procurators General of the USSR, against the judgements, rulings and orders of any court of the Byelorussian SSR, with the exception of the orders of the Plenum of the Supreme Court of the Byelorussian SSR;

(4) Deputy Chairmen of the Supreme Court of the USSR, against the judgements and rulings of the Civil Cases Section of the Supreme Court of the Byelorussian SSR sitting as a court of first instance;

(5) The Procurator of the Byelorussian SSR, the Chairman of the Supreme Court of the Byelorussian SSR, and their deputies, against the judgements, rulings and orders of any court of the Byelorussian SSR, with the exception of the orders of the Plenum of the Supreme Court of the Byelorussian SSR;

(6) The chairman of the regional court and the regional procurator, against the judgements and rulings of district (city) people's courts and the rulings of the civil cases section of the regional court sitting as a court of appeal.

...

Art. 393. Procedural rights of aliens and of foreign enterprises and organizations as regards civil cases

Aliens shall have the right to bring action in the courts of the Byelorussian SSR and shall enjoy equal procedural rights with Soviet citizens in civil cases.

Foreign enterprises and organizations shall have the right to bring action in the courts of the Byelorussian SSR and shall enjoy procedural rights in civil cases for the purpose of defending 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 the nationals, enterprises and organizations of States in which there are special restrictions on the civil procedural rights of Soviet citizens, enterprises or organizations.

Art. 394. Procedural rights of stateless persons as regards civil cases

Stateless persons living in the USSR shall have the right to bring action in the courts and shall enjoy equal procedural rights with Soviet citizens in civil cases.

...

CAMBODIA[1]

KRAM No. 162-CE OF 3 JANUARY 1964, PROMULGATING SOCIALIST LABOUR LAWS

Art. 1. The right to work and the free choice of work shall be guaranteed.

Art. 2. Every person of Khmer nationality must have an occupation or employment.

Art. 3. There shall be freedom to choose an occupation or employment.

However, an occupation or employment shall be provided by the authorities for any person who fails to find one of his choice.

Art. 4. A census of all persons capable of working who are without an occupation or employment shall be taken by the Ministry of Labour and Social Affairs, which shall assign employment in accordance with vocational aptitudes or with the country's economic and social requirements.

Art. 5. Any person between eighteen and sixty years of age who, being able-bodied and of sound mind and known to be without employment, refuses employment offered by the competent authorities shall be liable to second-degree correctional penalties.

Art. 6. Regulations for giving effect to this enactment shall be made by a joint *prakas* of the Ministry of Labour and Social Affairs and the Ministry of Justice.

...

[1] Text furnished by the Government of the Kingdom of Cambodia.

JOINT PRAKAS OF THE SECRETARY OF STATE FOR JUSTICE AND THE SECRETARY OF STATE FOR SOCIAL AFFAIRS AND LABOUR

No. 1081 OF 31 MARCH 1964

Art. 1. Every person of male sex, of Khmer nationality, aged not less than eighteen years and not more than sixty years, must be able to give proof of having a habitual occupation or employment.

Proof shall be established by the presentation of a work certificate issued by the competent authority.

Art. 2. Any person covered by the preceding article who is without employment shall submit an application for employment to the Ministry of Social Affairs and Labour, which shall make itself responsible for finding him work in accordance with his vocational aptitudes or the country's economic or social requirements, in particular as regards assignment to work of national interest.

In the event of refusal without a valid reason and after notification in due form by the competent authorities, unemployed persons who are unable to show proof of any means of support shall be liable to the penalties laid down in article 5 of Kram No. 162-CE of 3 January 1964.

Art. 3. The Directors of the Offices of the Departments of Justice and of Social Affairs and Labour shall be severally responsible for the enforcement of this Prakas.

CAMEROON

NOTE

1. DECREE NO. 64-DF-206 OF 16 JUNE 1964

This Decree ratifies the General Convention between the Federal Republic of Cameroon and the Republic of Mali for co-operation in the administration of Justice, signed at Bamako on 6 May 1964. [1]

2. DECREE NO. 64-DF-207 OF 16 JUNE 1964

This Decree ratifies the Convention of Establishment and the Movement of Persons between the Republic of Mali and the Federal Republic of Cameroon, signed at Bamako on 6 May 1964. [2]

3. DECREE NO. 64-DF-209 OF 16 JUNE 1964

This Decree ratifies the Agreement on Cultural Co-operation between the Federal Republic of Cameroon and the Czechoslovak Socialist Republic, signed at Paris on 20 April 1964. [3]

[1] *Journal officiel de la République du Cameroun*, No. 13, of 1 July 1964. For extracts from the General Convention, see pp. 338-339.

[2] *Ibid.* For extracts from the Convention, see pp. 339-341.

[3] *Ibid.* For extracts from the Agreement, see p. 341.

CANADA

NOTE [1]

I. FEDERAL LEGISLATION

Anti-Discrimination Measures

Both Houses of Parliament adopted resolutions approving the International Labour Convention Concerning Discrimination in respect of Employment and Occupation (Convention 111). [2]

Redistribution of Electoral Districts

To provide for an impartial redistribution of electoral districts, which under the terms of the Canadian Constitution must be carried on every 10 years, Parliament passed the Electoral Boundaries Readjustment Act. [3] Instead of having the boundaries of Canada's federal constituencies redrawn by a parliamentary committee as has been the custom, the new Act provided for the establishment of 10 independent commissions, one for each province, to redraw riding boundaries in accordance with rules set out in the Act. Each commission is composed of a High Court Judge chosen by the Chief Justice of the province who acts as chairman and two other residents of the province selected by the Speaker of the House of Commons. The federal Representation Commissioner acts as the fourth member of each commission.

Each commission is required to strike an average constituency population for the province — reached by dividing the population of the province by the number of seats allotted to it — and must redraw electoral boundaries in accordance with that electaral quota. In forming constituencies, a commission may take into account special geographic considerations or any special community or diversity of interests of the inhabitants of various regions of the province it considers necessary or desirable, provided the population of any electoral district is not more than 25 per cent above or below the electoral quota for that province.

The Act provides an opportunity for interested parties to raise objections. Before completing its report, each commission must hold at least one public hearing at which interested persons may make representations. Prior to the hearing, it must publish advertisements, which must include a map and a schedule of proposed electoral districts.

Members of Parliament are also afforded an opportunity to raise objections. After the report of a representation commission is laid before the House of Commons or published in the *Canada Gazette* if Parliament is not in session, any 10 members of the House of Commons will have 30 days in which to file with the Speaker of the House of Commons a motion setting out the provisions of the report objected to. After the motion has been debated, the commission may consider the objections and may make any alterations in its report it considers necessary.

Criminal Code

Further to safeguard civil liberties and rights of individuals, Parliament amended the Criminal Code of Canada [4] to provide for an appeal in *habeas corpus* arising out of criminal matters. As a result, a person who has been held in custody and has been refused a discharge under *habeas corpus* proceedings may now appeal to the court of appeal.

Youth Allowances

Federal legislation providing for a programme of federal youth allowances was assented to on July 16, 1964 and became effective September 1964. [5] The programme, to encourage children to remain in school beyond the compulsory school attendance ages, provides for allowances of $10 a month for 16 and 17 year old youths who are attending school or university and also for those precluded from educational training by reason of disability. The federal Government does not, however, provide youth allowances in the Province of Quebec, but compensates the Government of that Province for the amount which would otherwise be paid in federal allowances.

Manpower Development

In addition to the Youth Allowances Act described above, Parliament adopted other measure designed to increase opportunities for education and training, so that Canadians, particularly young persons, may be better equipped for employment in the modern world. The Canada Student Loans Act [6] was passed, establishing the Canada Student Loans Plan, under which needy, full-time students in approved institutions above the secondary school level may obtain loans guaranteed by the Government without payment of interest during the years

[1] Note furnished by the Government of Canada.

[2] Canada, Parliament, Senate, *Debates*, 26th Parliament, 2nd Session, June 16, 1964, p. 743.
Canada, Parliament, House of Commons, *Debates*, 26th Parliament, 2nd Session, October 13, 1964, p. 8997.

[3] *Statutes of Canada*, 1964 - 65, c. 31.

[4] *Ibid.*, 1964-65, c. 53.

[5] *Ibid.*, 1964-65, c. 23.

[6] *Ibid.*, 1964-65, c. 24.

of study. By 1 April 1965, over 41,000 students had been issued certificates of eligibility under this plan for a total amount of some $26 million. [7] Further to encourage Canadians to improve their qualifications for employment, the Income Tax Act [8] was amended to permit part-time students to deduct for tuition fees and to allow taxpayers to claim an exemption for the support of dependent brothers and sisters over 21 years who are in full-time attendance at a school or university.

II. PROVINCIAL LEGISLATION

Anti-Discrimination Measures

New anti-discrimination measures were adopted in two provinces and in the Yukon Territory. In Quebec, a new law entitled "An Act respecting discrimination in employment" prohibits an employer or any person acting on behalf of an employer or an employers' association from resorting to discrimination in hiring, promoting, laying-off or dismissing an employee, or in the conditions of his employment. By "discrimination" is meant "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation". The Act applies to all employers in Quebec with five or more employees, including the provincial Government.

All employees are covered except managers, superintendents, foremen or persons who represent the employer in his relations with his employees, directors or officers of a company, employees of non-profit institutions and domestic servants.

As well as forbidding discriminatory hiring practices, the Act makes it illegal to publish discriminatory job advertisements or to display signs or notices in connection with employment and also prohibits trade unions and employers' associations from engaging in discriminatory membership practices. [9]

In the Yukon Territory, the Fair Practices Ordinance, [10] enacted in November 1963, prohibits discrimination in employment and in trade union membership on the grounds of race, religion, religious creed, colour, ancestry or ethnic or national origin. No one can be denied the accommodation, services or facilities of places that are customarily open to the public on any one of these grounds, nor can any person be refused occupancy of an apartment in any building containing more than six self-contained dwelling units or be discriminated against with respect to any condition of occupancy.

In British Columbia, the Fair Employment Practices Act [11] was extended to include discrimination against older workers, making it illegal for employers or trade unions to discriminate against persons in the 45 to 65 age group solely on the basis of age.

Rights of Women

The Quebec Civil Code, which embodies the main laws establishing the civil rights of citizens of Quebec, was amended [12] to give married women full legal rights, subject only to such limitations as are inherent in a regime of community of property.

Under the Quebec Code, which, unlike the civil law in other provinces, is based on the Napoleonic Code of France rather than the Common Law of England, the regime of community of property prevails in the absence of an ante-nuptial contract between the consorts. Prior to the amendments, married women — even those with a marriage contract — were subject to restrictions not imposed in other provinces where separation as to property is the rule.

The amendments have removed all restrictions previously imposed on married women separate as to property, and have modified the restrictions on women in community of property.

Among other changes, the rule requiring obedience to a husband has been replaced by one stating that a wife participates with her husband in the moral and material care of the family, and may now make decisions for the family when her husband is absent or incapacitated. She may represent her husband in connection with household matters and may now authorize medical and surgical care for the children in his absence. A wife is no longer obliged to follow her husband regardless of the circumstances, but may now apply for a court order to live apart from her husband, if his residence places the family in physical or moral danger.

The administration of community property continues to be the prerogative of the husband, but he can no longer sell, alienate or hypothecate any household furniture or real estate belonging to the community without his wife's consent.

A wife separate as to property is granted full control over her own possessions and may now institute legal proceedings, go into business, execute wills, give or accept gifts, accept an inheritance or become a tutrix without her husband's consent.

Franchise

In Newfoundland, an amendment to the Election Act [13] lowered the minimum age for voting in provincial elections from 21 years to 19.

Administration of Justice

In Ontario, the Ontario Law Reform Commission Act, 1964, [14] established a Commission to study and review the existing Law and make recommendations for reform to the Attorney-General. The Commission is empowered not only to investigate statute law but also to consider any matter relating to common law and judicial decisions, the administration of justice and judicial and quasi-judicial procedures under any Act.

Ontario also established a Royal Commission on Civil Liberties and Human Rights comprised of the

[7] Canada, Parliament House of Commons, *Debates*, 26th Parliament, 3rd Session, June 11, 1965, p. 2301.

[8] *Statutes of Canada*, 1964-65, c. 13.

[9] *Statutes of Quebec*, 1964, c. 46.

[10] *Ordinances of the Yukon Territory*, 1963 (Second Session), c. 3.

[11] *Statutes of British Columbia*, 1964, c. 19.

[12] *Statutes of Quebec*, 1964, c. 66.

[13] *Statutes of Newfoundland*, 1964, c. 29.

[14] *Statutes of Ontario*, 1964, c. 78.

Chief Justice of the Province to conduct an exhaustive inquiry into civil liberties and known rights in Ontario and to determine how these rights can be strengthened and guaranteed. Its terms of reference are:

1. To examine, study and inquire into the laws of Ontario including the statutes and regulations passed thereunder affecting the personal freedoms, rights and liberties of Canadian citizens and others resident in Ontario for the purpose of determining how far there may be unjustified encroachment on those freedoms, rights and liberties by the Legislature, the Government, its officers and servants, divisions of Provincial Public Service, boards, commissions, committees, other emanations of government or bodies exercising authority under or administering the laws in Ontario.

2. After due study and consideration to recommend such changes in the laws, procedures and processes as in the opinion of the commission are necessary and desirable to safeguard the fundamental and basic rights, liberties and freedoms of the individual from infringement by the State or any other body. [15]

Mothers' Allowances

Benefits were extended in three provinces under the provincial programmes of aid to needy mothers. In Nova Scotia the Social Assistance Act (Part I) was amended to permit allowances paid on behalf of any child to be extended to the age of eighteen or to the end of the school year in which he becomes eighteen if he is attending school beyond the level of Grade VIII. [16] Such extensions of allowances were previously paid on behalf of the children of widows or mothers with disabled husbands or to foster children whose parents were dead or permanently disabled. The regulations were amended to permit maximum allowances for all categories of mothers (deserted mothers, mothers whose husbands are imprisoned, etc.) to be determined on the same basis as allowances for widows and mothers with disabled husbands. [17]

In Ontario, the Mothers' Allowances Act was amended to permit the extension of allowances to the end of the school year on behalf of a child who becomes eighteen years of age while attending an educational institution other than a secondary school. [18] (There is no upper age limit for a child attending secondary school.) A corresponding amendment was made in the regulations governing aid to dependent fathers. [19]

In Newfoundland, payments were authorized for the months of July, August and September on behalf of a child who attains his sixteenth birthday prior to the first day of September of that year and who had been in regular attendance at school during the school year which ends in June of that year. [20]

General Assistance

Newfoundland raised the allowable maximum annual outside income for a family consisting of adults only, receiving social assistance from $600 to $720, and for a family consisting of adults and children, from $800 to $900. [21]

Several provinces increased their rates of assistance. Alberta [22] and Manitoba [23] revised slightly the food and clothing rates or provincial social allowances, and Manitoba made provision for additional amounts to be granted for utilities and winter fuel. Newfoundland increased the clothing allowance for the first adult in the family, and increased fuel and rental allowances. [24]

In Quebec, maximum monthly allowances for recipients of needy widows and spinsters allowances were increased from $65 to $75 to correspond with increases in allowances under the programmes of old age assistance, blind persons allowances and disabled persons allowances. The allowable monthly income for needy widows and spinsters was raised from $90 to $100. The monthly rate for the head of a family with one dependent child was increased from $75 to $85 and the allowable income, including the allowance, was increased from $100 to $110. [25]

In Saskatchewan, a number of changes were made in the regulations governing social aid. [26] Additions have been made to the list of items which may be exluded from the calculation of income of applicants for recipients of social aid. These include premiums paid by or deducted from wages of the applicant to cover the cost of a medical and hospital card, and " reasonable " costs of transportation to and from work. Safeguards are provided relating to the conversion of liquid assets into cash and in the realization of funds on real property. A reasonable period, not to exceed sixty days, is to be allowed to convert certain assets into cash, but conversion shall not be at a discount rate greater than thirty-five per cent of their value. A liquid asset or real property need not be considered a resource if the Director of Public Assistance considers that there are sound social or economic reasons for not converting a liquid asset into cash, or for delaying or refraining from using real property as a security for borrowing or outright sale.

Child Welfare

Among the significant changes in legislation relating to child welfare which occurred during 1964

[15] Proclamation published in the *Ontario Gazette* on 25 July 1964, p. 2107.

[16] *Statutes of Nova Scotia*, 1964, c. 60.

[17] Regulations tabled 7 February 1964 in *Statutes of Nova Scotia*, 1964.

[18] *Statutes of Ontario*, 1964, c. 65.

[19] O. Reg. 154/64 under the General Welfare Assistance Act, gazetted 4 July 1964.

[20] The Social Assistance (Consolidation) Regulations, 1964, gazetted 28 January 1964.

[21] The Social Assistance (Consolidated) (Amendment No. 2) Regulations, 1964, gazetted 25 February 1964.

[22] Regulations under Part III of the Public Welfare Act, gazetted 14 March 1964.

[23] Manitoba Regulation 14/64 gazetted 29 February, 1964.

[24] The Social Assistance (Consolidated) (Amendment No. 3) Regulations, 1964, gazetted 12 May 1964.

[25] O.C. No. 637, 30 March 1964.

[26] Saskatchewan Regulation 432/64, gazetted 24 July 1964.

are the following: In Ontario, an amendment to the Vital Statistics Act affecting the registration of adoptions required a notation of the original registration of birth to be made on the new registration and on any copy.[27] An amendment to the Day Nurseries Act permits the services of a day nursery to be extended to children seven, eight or nine years of age where the mother is employed outside the home, and extends the definition of " mother " to apply also to the " male person in whose charge the child is ".[28] Quebec amended the Adoption Act to permit the adoption of legitimate minor children, of either sex, who are fatherless or motherless, by the husband or wife of the surviving consort, and eliminated the requirement that there be a difference of twenty years in age between the adopter and the child to be adopted if the child is the legitimate child of either of the consorts.[29] In Quebec, also, legislation was enacted establishing a Family Superior Council for the purpose of advising the Minister of Family and Social Welfare on all matters which affect the interests and destinies of the family in the Province of Quebec.[30]

Youth Allowances

Quebec, which since 1961 has had a programme of schooling allowances for youths of 16 and 17 years attending school, amended its legislation to correspond to the federal youth allowances legislation by extending benefits for twelve months of the year[31] and amending regulations to include disabled youths.

Education and Training

All provinces continued their manpower development programmes and several introduced new measures to increase opportunities for education and training, particularly for young persons and the unemployed.

So that more persons might be able to take advantage of existing training opportunities, Manitoba introduced a basic skill development programme, which provides for class instruction to help participants raise their level of knowledge of arithmetic, language and science and for the payment of allowances during the period of training.[32]

In Ontario, a new Apprenticeship and Tradesmen's Qualification Act[33] provided for an expansion of the apprenticeship training system and for an extension of the certification programme for qualified tradesmen.

Ontario also put into operation a new system of provincial grants for education, known as the Ontario Tax Foundation Plan. The purpose of this new plan is to provide equality of educational opportunity for young persons in all parts of the province and to ensure that costs of elementary and secondary education should not bear too heavily on municipal taxpayers. The programme of free text books, previously in effect for primary schools, was also extended to cover the first two grades of secondary schools.[34]

A Select Committee of the Ontario Legislature was appointed " to conduct a comprehensive survey into and report upon the special needs of youth, with particular reference to educational, cultural, recreational, and employment opportunities, as well as the health, welfare and sports facilities now available to youth, and the steps to be taken which in the opinion of the Committee would ensure a wider participation by youth in the life of the community ".[35]

Saskatchewan raised the compulsory school attendance age from 15 to 16 years.[36]

Labour Relations

A new Labour Code[37] adopted in Quebec, which incorporated provisions of seven earlier laws dealing with labour-management relations, added new safeguards to protect the right to associate and engage in collective action. Coverage was extended to farm workers and professional employees, subject to certain qualifications, and a new union security clause, the voluntary revocable check-off of union dues, was introduced. New provisions designed to protect the right of association in outlying mining and lumbering operations where employees live on premises controlled by the employer require employers to grant union organizers access to their property. Another new provision makes it illegal for an employer to discharge an employee for engaging in a legal strike. Most categories of public service employees, whether employed by public corporations or private firms, were granted the right to strike with provision for government intervention in times of emergency. Previously, public service employees were forbidden to strike and were obliged to refer all disputes to arbitration.

Amendments to the Alberta Labour Act[38] placed some restrictions on a union's right to discipline its members. A union is now forbidden to impose a pecuniary or other penalty on any person for engaging in employment in accordance with the terms of a collective agreement. Except during a legal strike, a union may not penalize a person for working in a non-union shop, if the union is unable to find him employment with an employer who has an agreement with the union.

In Nova Scotia, a new union security clause was added to the Trade Union Act,[39] permitting a preferential hiring clause to be included in a collective agreement. Another amendment clarified an employer's right to express his views, provided he does not use " coercion, intimidation, threats, or undue influence ".

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[27] *Statutes of Ontario*, 1964, c. 123.

[28] *Ibid.*, c. 18.

[29] *Statutes of Quebec*, 1964, c. 65.

[30] *Ibid.*, c. 21.

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

[32] Manitoba, Legislative Assembly, *Debates*, 27th Legislature, 2nd Session, 25 March 1964, pp. 1490-91.

[33] *Statutes of Ontario*, 1964, c. 3.

[34] Ontario, Legislature, *Debates*, 27th Legislature, 2nd Session, 8 May 1964, p. 3066.

[35] *Ibid.*, p. 3037.

[36] *Statutes of Saskatchewan*, 1964, c. 21.

[37] *Statutes of Quebec*, 1964, c. 45.

[38] *Statutes of Alberta*, 1964 c. 41.

[39] *Statutes of Nova Scotia*, 1964, c. 48.

Employment Standards

Several provinces made improvements in their labour standards legislation, raising existing standards or extending their application, and, in some cases, imposing new statutory requirements.

A new minimum wage law in Nova Scotia [40] extended coverage to men and made it obligatory to give notice of termination of employment.

In Ontario, where minimum wage protection was not extended to men until 1963 [41] and then only to those in the Toronto area, new minimum wage orders [42] were issued, providing for the gradual introduction of a uniform minimum wage of $1 an hour for almost all employees in the province.

In New Brunswick, the vacation pay legislation, [43] which previously applied in only three industries, was extended to all occupations except farming and domestic service. A new statute, the Minimum Employment Standards Act, [44] strengthened the restrictions on hours of work of women and young persons and extended their application. It also provided for maternity leave.

Occupational Health and Safety

Several provinces adopted new safety measures, some of which raised existing standards and others provided for the enforcement of safety and health rules in workplaces not previously regulated.

In Ontario, a new general safety law [45] raised the minimum age for employment in factories from 14 to 15 years, and new regulations [46] were issued, which included the first specific provisions in Canada designed to prevent occupational deafness caused by industrial noise.

New Brunswick modernized and extended its general safety law [47], and, in Manitoba, new regulations [48] were issued setting out a more comprehensive set of minimum safety standards for construction workers.

Workmen's Compensation

Amendments to workmen's compensation laws [49] were adopted in six provinces, some of which not only provided for increases in disability awards and death benefits but also for improvements in rehabilitation services. Newfoundland raised the maximum annual earnings on which compensation is based; Manitoba and Ontario set higher minimum payments for total disability, and Manitoba and Quebec increased past disability awards. In Ontario, the age limit for the payment of children's allowances was removed, enabling payments to be made as long as a child is attending school, and provision was made for the payment of benefits to a common law wife. Manitoba and Ontario authorized increased expenditures for rehabilitation services to help injured workmen return to gainful employment.

III. JUDICIAL DECISIONS

In *Guay v. Lafleur* [50] the Supreme Court of Canada reversed the rulings of the courts below [51] and held by a majority decision that where an inquiry is authorized under s. 126(4) of the Income Tax Act, R.S.C.1952, c. 148, a person whose affairs are under investigation has no right to be present either alone or with counsel, since the proceeding is purely administrative. Further, the court held that there was no infringement of s. 2(*e*) of the Canadian Bill of Rights, 1960 (Can) c. 44, [52] since the proceeding did not involve the determination of any rights or obligations. The position taken by the Supreme Court of Canada was that a person whose affairs are involved in an investigation (income tax inquiry) carried on by an officer, authorized under an empowering statute to conduct an inquiry to obtain facts relating to the administration or enforcement of the enactment, is not entitled to be present personally or by counsel during the examination of others who have been summoned and compelled to attend at the inquiry, unless such a right is given by statute. An inquiry of this kind, which can neither decide nor adjudicate upon anything (even though it may result in recommendation to the responsible Minister), is a purely administrative matter, and the character of the proceeding is not changed merely because the officer has the right to subpœna witnesses, and take and compel the giving of evidence under oath.

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[40] *Statutes of Nova Scotia*, 1964, c. 7.

[41] O. Reg. 133/63 to 135/63, gazetted on 15 June 1963.

[42] *Ibid.*, 97/64 to 102/64, gazetted on 16 May 1964.

[43] *Statutes of New Brunswick*, 1964 c. 59.

[44] *Ibid.*, c. 8.

[45] *Statutes of Ontario*, 1964, c. 45.

[46] O. Reg. 196/64, gazetted on 15 August 1964.

[47] *Statutes of New Brunswick*, 1964, c. 5.

[48] Man. Reg. 90/64, gazetted on 21 November 1964.

[49] *Statutes of Manitoba*, 1964, c. 60.
Statutes of Newfoundland, 1964, c. 57.
Statutes of Nova Scotia, 1964, c. 52.
Statutes of Ontario, 1964, c. 124.
Statutes of Prince Edward Island, 1964, c. 37.
Statutes of Quebec, 1964, c. 44.

[50] (1965) 47 D.L.R. (2d), p. 226.

[51] (1962) 31 D.L.R. (2d), p. 575, reported in *Yearbook on Human Rights for 1961*, p. 48; (1963) R.J.B.R. No. 7, p. 623, reported in *Yearbook on Human Rights for 1963*, pp. 41-42.

[52] Section 2 of the Canadian Bill of Rights reads: "... no law of Canada shall be construed or applied so as to (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations".

CENTRAL AFRICAN REPUBLIC

ACT No. 64/37 OF 26 NOVEMBER 1964 AMENDING THE CONSTITUTION[1]

Art. 1. The Constitution of 16 February 1959 of the Central African Republic,[2] as amended by the Constitutional Acts No. 60/163 of 12 December 1960, No. 61/220 of 4 May 1961, No. 62/365 of 28 December 1962 and No. 63/426 of 19 November 1963, is abrogated and replaced by the provisions annexed to this Act.

...

[1] Text published in the *Journal officiel de la République centrafricaine*, No. 1, of 1 January 1965.

[2] For extracts from the Constitution of 16 February 1959, see the *Yearbook on Human Rights for 1959*, pp. 44-45.

CONSTITUTION OF THE CENTRAL AFRICAN REPUBLIC

PREAMBLE

The people of the Central African Republic solemnly proclaim their devotion to human rights and to the principles of democracy. They affirm their desire to co-operate in peace and friendship with all peoples.

The Central African Republic shall devote all its efforts to the cause of African unity with a view to achieving the union of all African peoples.

Title I

THE FUNDAMENTAL PRINCIPLES OF SOCIETY

Art. 1. The human person is sacred. It is the bounden duty of all those responsible for enforcing the law to respect and protect it.

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

Art. 2. The Republic proclaims respect for, and the inviolable guarantee of, the right to the free development of the personality, to life and to bodily integrity.

Art. 3. All human beings shall be equal before the law, without distinction as to origin, race, sex or religion.

Art. 4. The Republic guarantees to everyone, subject to the applicable laws, the following :

Freedom of the person : no one may be convicted of an offence except by virtue of a law which went into force before the offence was committed; the right to defence shall be an absolute right at all stages and at all levels of prosecution proceedings;

Freedom for everyone to express and disseminate his views by word, pen and picture, due regard being shown for the rights of others; the secrecy of correspondence and of communication by post, telegraph and telephone shall be inviolable;

Freedom to form associations, groups and societies;

Freedom of conscience and the free exercise of religion;

Freedom of movement or change of residence throughout the territory of the Republic;

The inviolability of the home: this freedom may be curtailed only in order to meet a common danger, to protect persons in peril of their lives or to protect the public interest (*ordre public*) from an impending danger.

Art. 5. The right of property may not be interfered with except in case of public necessity, lawfully determined, and subject to the payment of fair compensation. The use of property must at the same time contribute to the welfare of the community.

Art. 6. Marriage and the family are the natural and moral basis of human society, and shall be under the special protection of the State.

Art. 7. It is the natural right and the primary duty of parents to bring up and educate their children.

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

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

Art. 8. In the Central African Republic, work is a right, a duty and an honour.

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

Trade union rights and the right to strike shall be exercised within the framework of the legislation governing them.

Society shall afford assistance and protection to workers.

Title II

THE STATE AND SOVEREIGNTY

Art. 9. The Central African Republic — indivisible, secular, democratic and social — is a free, independent and sovereign State.

The national language of the Republic is Sango and the official language French.

...

Art. 10. The principle of the Republic is government of the people, by the people and for the people.

Sovereignty is vested in the people, who shall exercise it freely and democratically through their representatives, by way of referendum or within the Social Evolution Movement of Black Africa.

No section of the people and no individual person may assume the exercise of sovereignty.

Art. 11. The suffrage may be direct or indirect, under conditions determined by special legislation.

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

All nationals of the Central African Republic of both sexes who are of full legal age and in full possession of their civil and political rights shall be entitled to vote under the conditions determined by law.

Title III

THE NATIONAL MOVEMENT

Art. 12. The "Social Evolution Movement of Black Africa" (MESAN) is the highest authority in the Republic. It is the sole national political movement.

It brings together all the people of the Central African Republic on the basis of democratic rules defined by law.

Art. 13. MESAN shall function through a Governing Committee the members of which shall be elected for a term of two years by a National Congress. The members of the Governing Committee shall enjoy the same advantages, privileges and immunities as are accorded to the members of the National Assembly.

The emblem of MESAN shall be a blue triangle containing within it a hand the forefinger of which points to a five-pointed yellow star.

The ballot papers of MESAN shall be pink, and the emblem they bear shall be a forefinger pointing to a five-pointed black star.

The functioning of MESAN shall be governed by rules of procedure.

Title IV

THE PRESIDENT OF THE REPUBLIC

Art. 14. The President of the Republic shall be elected by universal suffrage for a term of seven years.

An organic law shall prescribe the conditions of eligibility and the grounds for ineligibility and incompatibility of offices.

The President of the Republic shall not be answerable for acts performed in the exercise of his functions except in the case of high treason.

...

Title V

THE NATIONAL ASSEMBLY

Art. 19. The National Assembly shall be elected for a term of five years by universal, direct suffrage and secret ballot.

Art. 20. An organic law shall prescribe the number of deputies, their emoluments, the conditions of eligibility and the grounds for ineligibility and incompatibility of offices.

Art. 21. No deputy may be prosecuted, sought by the police, arrested, detained or tried because of opinions expressed or votes cast by him in the exercise of his functions.

No deputy may be prosecuted or arrested during his term of office for a criminal or correctional offence except with the authorization of the National Assembly or in cases of *flagrente delicto*.

The detention or prosecution of a deputy shall be suspended if the Assembly so requests.

However, the National Assembly may, at the request of the Governing Committee of MESAN, remove from office any deputy who is gravely derelict in his duties as a representative of the people.

Art. 22. The President of the Assembly shall be elected for the duration of the legislative term.

The other offices of the Assembly shall be elected at the beginning of the first session of each calendar year.

...

Title VII

THE CONSTITUTIONAL COUNCIL

Art. 39. There shall be established a Constitutional Council which shall ensure the proper conduct of the election of the President of the Republic, consider any complaints and announce the results of the election.

In the event of challenges, the Constitutional Council shall pass on whether deputies have been properly elected. It shall ensure the proper conduct of referenda and announce their results.

...

Title VIII

THE JUDICIARY

Art. 40. The judiciary is an authority independent of the legislative and executive authorities.

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

...

Art. 42. The High Council of the Judiciary shall guarantee the independence of judges. A law shall be enacted prescribing the composition, functioning and powers of the Council.

Title IX

THE ECONOMIC AND SOCIAL COUNCIL

Art. 43. The Economic and Social Counci shall give its opinion on draft or proposed laws

orders and decrees relating to measures necessary for the economic and social development of the Republic which are submitted to it by the Government.

The Government may instruct the Council to carry out economic or social studies of any kind.

The Economic and Social Council may make recommendations within its sphere of competence.

Art. 44. The composition of the Economic and Social Council and the rules governing its functioning shall be prescribed by law.

...

Title XII

AMENDMENT OF THE CONSTITUTION

Art. 49. The power to initiate action to amend this Constitution shall be vested jointly in the President of the Republic and the National Assembly, subject to prior consultation with the Governing Committee of MESAN.

Draft amendments submitted by the President of the Republic must be approved by the Council of Ministers.

Proposals submitted by deputies must be signed by at least one third of the members of the Assembly.

Amendments shall be adopted by a two-thirds majority of the members of the Assembly.

Where a draft amendment or proposal is not adopted by the majority specified above but receives the votes of a majority of the members of the Assembly, the President of the Republic may submit it to a referendum.

The conditions governing referenda shall be determined by law.

A constitutional act adopted by way of a referendum must be promulgated within five days of its adoption.

...

ACT No. 64-54 OF 2 DECEMBER 1964 AMENDING ARTICLES 6, 7 AND 10 OF ACT No. 61-212 OF 20 APRIL 1961 ESTABLISHING THE NATIONALITY CODE OF THE CENTRAL AFRICAN REPUBLIC [3]

Art. 1. Article 6 of Act No. 61-212 of 20 April 1961 shall be deleted and replaced by the followings :

" *Art. 6* (new). Any person one of whose parents is a national of the Central African Republic shall be a national of that Republic, irrespective of his place of birth. "

Art. 2. Article 7 of Act No. 61-212 shall read as follows :

" *Art. 7* (new). A person born in the Central African Republic both of whose parents are aliens shall not be a national of that Republic : Provided that such person may, during the period of his minority, acquire the nationality of the Central African Republic by declaration in accordance with the procedure prescribed in articles 18 to 24 of Act No. 61-212 of 20 April 1961. "

Art. 3. Article 10 shall read as follows :

" *Art. 10* (new). Birth or parentage shall affect the attribution of the nationality of the Central African Republic only if established by a certificate of the civil registry or by a judgement :

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

" If it appears that the child was born of alien parents of unknown nationality, the child shall be declared to be a national of the Central African Republic. "

...

[3] Text published in the *Journal officiel de la République centrafricaine*, No. 2, 15 January 1965. For extracts from Act No. 61-212, see the *Yearbook on Human Rights for 1961*, pp. 53-57.

CEYLON

NOTE[1]

I. LEGISLATION

(A) Constitutional Provisions

1. *Ceylon Constitution and Parliamentary Elections (Amendment) Act No. 8 of 1964.*

This Act changes the legal status of the Commissioner of Parliamentary Elections who formerly held office at pleasure like other public officers. Under this Act he is appointed by the Governor-General and holds office during good behaviour. His salary, as determined by Parliament, is charged on the Consolidated Fund and cannot be diminished during his term of office. He may be removed from office by the Governor-General on account of ill health or physicial or mental infirmity or upon an address from the Senate and the House of Representatives praying for his removal. This Act also authorizes the Governor-General when Parliament has been dissolved to authorize the issue of such sums from the Consolidated Fund as are necessary for expenditure on the ensuing general election where Parliament has not already made provision in that behalf.

2. *Ceylon (Parliamentary Elections) Amendment Act No. 10 of 1964.*

This Act amends the law in regard to the preparation and revision of the register of electors and defines the position and rights of a "recognised political party" for the purpose of elections. It also provides for placing a mark with indelible ink upon the forefinger of a person voting at an election in order to minimize the possibility of impersonation.

The Act also provides for the special case of the offence of undue influence being committed by members or officials of a religious order or organization. It also makes the publication of false reports in newspapers concerning candidates or a political party an offence. The Act also makes it mandatory for employers to grant leave to enable employees to vote.

(B) Judicial Procedure

Court of Requests (Special Provisions) Act No. 5 of 1964.

This Act increases the monetary limits of the jurisdiction of the Court of Requests from three hundred rupees to seven hundred and fifty rupees.

(C) Economic Rights

1. *Control of Prices (Amendment) Act No. 9 of 1964*

This Act provides for requisitioning of articles other than articles of food and drink in order to secure its sufficiency or its equitable distribution or its availability at a fair price.

2. *Employment of Women, Young Persons and Children (Amendment) Act No. 43 of 1964*

This amends the law in certain particulars in regard to the employment of women and young persons at night in industrial undertakings.

3. *Bureau of Ceylon Standards Act No. 38 of 1964*

This Act provides for the establishment of the Bureau of Ceylon Standards and matters incidental to it.

4. *Trade Marks Act No. 30 of 1964*

This amends and consolidates the law relating to trade-marks.

5. *Paddy Lands (Amendment) Act No. 11 of 1964*

This Act amends the law in various matters affecting the rights of tenant cultivators, procedure of restoration to possession of evicted cultivators, transfer or cession of the rights of cultivators, functions of cultivation committees and the payment of rent.

II. JUDICIAL DECISIONS

(A) Constitutional

Bribery Commissioner v. Ranasinghe — 66 N.L.R. 73

The words "Judicial officers" in section 55 of the Constitution are not applicable exclusively to judges of the ordinary Courts referred to in Section 3 of the Courts Ordinance.

The method prescribed by section 41 of the Bribery Act for the appointment of members of the panel of the Bribery Tribunal otherwise than by the Judicial Service Commission is in conflict with section 55 (1) of the Constitution.

Inasmuch as the Bribery Act of 1958, which introduced the mode of appointment of a Bribery Tribunal did not comply with the procedural requirement imposed by the proviso to subsection (4) of section 29 of the Constitution regarding such an amendment of the Constitution, section 41 of the Bribery Act is invalid. Accordingly orders made by a Bribery Tribunal convicting and sentencing a person are null and inoperative on the ground

[1] Note furnished by the Government of Ceylon.

that the persons composing the Bribery Tribunal were not lawfully appointed to the Tribunal. The legislative power of Parliament is derived from section 18 and section 29 of the Constitution. While section 29(3) expressly makes void any Act passed in respect of the unalterable provisions entrenched in section 29(2) which shall not be the subject of legislation, any Bill which amends or repeals any other provision of the Constitution in terms of Section 29(4) but does not have endorsed on it a certificate under the hand of the Speaker is also, even though it received the Royal Assent, invalid and *ultra vires.*

(B) Personal Rights

1. *Attorney-General v. Reid* — 67 N.L.R. 25

In a country such as Ceylon where there are many races and creeds and a number of Marriage Ordinances and Acts, the inhabitants domiciled there have an inherent right to change their religion and personal law and so to contract a valid polygamous marriage. If such an inherent right is to be abrogated it must be done by statute.

It was held that the respondent was not guilty of the offence of bigamy, because the second marriage was not void within the meaning of section 362 B of the Penal Code.

2. *Pasangna v. The Registrar-General* — 67 N.L.R. 33

A son born to a person registered as a citizen of Ceylon under the Indian and Pakistani Residents (Citizenship) Act does not suffer any prejudice, in respect of his rights under that Act, from the mere fact that, in the Birth Register, the race of his father or mother is described as Indian Tamil.

3. *Mrs. S. Kanapathy v. W. T. Jayasinghe* — 66 N.L.R. 549

During the pendency of an application for a writ of *habeas corpus*, an application for bail in respect of the *corpus* cannot be entertained.

Accordingly, a person who is detained under the provisions of the Immigrants and Emigrants Act will not be admitted to bail pending the hearing of an application made on his behalf for a writ of *habeas corpus.*

(C) Right to a Fair Trial

1. *Narthupana Tea and Rubber Estates Ltd. v. L. E. Perera* — 66 N.L.R. 135

A trial Judge's finding of fact is liable to be set aside in appeal if it was influenced by irrelevant considerations. Parties to an action are entitled to a judgement written without exaggeration or passion. The very circumstance that absolute privilege attaches to judicial pronouncements imposes a correspondingly high obligation on a Judge to be guarded and restrained in his comments, and to refrain from needless invective.

2. *Queen v. Murugan Ramasamy* — 66 N.L.R. 265

Section 27(1) of the Evidence Ordinance, No. 14 of 1895 is as follows :

" When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved. "

Section 122(3) of the Criminal Procedure Code No. 15 of 1898 is as follows :

" No statement made by any person to a police officer or an inquirer in the course of any investigation under this Chapter shall be used otherwise than to prove that a witness made a different statement at a different time, or to refresh the memory of the person recording it. But any criminal court may send for the statements recorded in a case under inquiry or trial in such court and may use such statements or information not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agent shall be entitled to call for such statements, nor shall he or they be entitled to see them merely because they are referred to by the court, but if they are used by the police officer or inquirer who made him to refresh his memory, or if the court uses them for the purpose of contradicting such police officer or inquirer, the provisions of the Evidence Ordinance, Sections 161 or Section 145, as the case may be, shall apply.

" Nothing in this sub-section shall be deemed to apply to any statement falling within the provisions of Section 32(1) of the Evidence Ordinance, or to prevent such statement being used as evidence in a charge under section 180 of the Penal Code. "

In a trial for attempted murder by shooting with a gun certain evidence was admitted by the presiding judge to effect that a gun capable of causing the injury actually inflicted on the injured person had been discovered in consequence of information of its whereabouts which the accused respondent had given to a police officer in a statement made by him in the course of an investigation set on foot under Chapter XII of the Criminal Procedure Code. It was not in dispute that at the time of making the statement the accused was in the custody of the police officer. The evidence that was admitted was not the entire statement but only that portion of it which related distinctly to the discovery of the gun. There was no application from the defence Counsel that the entire statement should be put in.

Held (i) that statements made during a police investigation by a person then or subsequently accused are within the prohibition imposed by section 122(3) of the Criminal Procedure Code and cannot be used at his trial. Section 122(3) extends to an accused person as much as to any other witness.

(ii) that the prohibition of using " statements " that section 122(3) of the Criminal Procedure Code imposes applies not only to the written records but also excludes oral evidence of anything said. Section 122(3) must be read as covering the use of oral evidence of statements made during police investigation just as much as the written records of such statements. R. V. Jinadasa (1950) 51 N.L.R. overruled on this question of construction.

(iii) that in determining what, if any, effect section 122(3) of the Criminal Procedure Code has upon

section 27 of the Evidence Ordinance, which had been enacted about three years earlier, the maxim of interpretation *generalia specialibus non derogant* is applicable. Accordingly, evidence falling within section 27 of the Evidence can lawfully be given at a trial, even though it would otherwise be excluded as a statement made in the course of an investigation under section 122(3) of the Criminal Procedure Code.

(iv) that the evidence that was admitted in the present case under the rule of section 27 of the Evidence Ordinance was not vitiated by the fact that it was only a limited portion of the statement made by the accused person to the police officer.

3. *Piyadasa v. The Queen* — 66 N.L.R. 342

It is illegal for the Crown to join in one indictment charges which formed the subject of separate non-summary proceedings terminating in separate commitments.

Three separate non-summary inquiries were held against the same accused person in respect of three cases of cheating. In each of the three cases the Magistrate committed the accused to stand his trial in the District Court, but the Attorney General drew up one indictment containing the counts inquired into in the three cases. Held that the indictment was not valid and the District Judge had no jurisdiction to try the accused on it. In such a case, the error strikes at the root of jurisdiction and cannot, therefore, be cured under section 425 of the Criminal Procedure Code.

4. *The Queen v. M. G. Sumanasena* — 66 N.L.R. 350

In a criminal case suspicious circumstances do not establish guilt. Nor does the proof of any number of suspicious circumstances relieve the prosecution of its burden of proving the case against the accused beyond reasonable doubt and compel the accused to call evidence.

5. *The Queen v. Martin Singho* — 66 N.L.R. 391

The question whether a confession recorded by a Magistrate in terms of section 134 of the Criminal Procedure Code was in truth voluntarily made is a question of fact for the Jury to decide. The fact the trial Judge has to determine the very question of fact before he permits the evidence of the confession to be given does not entitle him to withdraw the question from the Jury.

The Judge is not entitled to refer in his summing up to statements made to him by an accused person in the course of a preliminary inquiry held in the absence of the Jury. The Jury are not free to act on evidence not given before therein.

CHILE

NOTE[1]

LEGISLATION

I. Acts

Act No. 15476 of 17 January 1964 (*Diario Oficial* No. 25748 of 23 January 1964) amends Legislative Decree No. 425 of 1925 on " Abuse of Publicity ".

Act No. 15475 of 24 January 1964 (*Diario Oficial* No. 25749 of 24 January 1964) amends the Labour Code by adding to article 158: " After ten years' work, continuous or not and under one or more employers, every employee shall have the right to one day more of annual leave for each additional three years worked "; and to article 98: " After ten years' work, continuous or not, every worker shall have the right to one day more of annual leave for each additional three years worked. "

Act No. 15720 of 30 September 1964 creates an autonomous corporation, with legal capacity under the national law and with its seat in Santiago, entitled " National Council for Student Help and Scholarships ". The Council will apply co-ordinated measures for social and economic assistance to students up to fifteen years of age and to older students who have shown obvious ability. The assistance consists of: food, clothing, school utensils, transport and scholarships; loans for university students, boarding-school students and student homes; and medical and dental services, vacations, etc.

Act No. 15718 of 9 October 1964 (*Diario Oficial* No. 25962 of 13 October 1964) creates the corporation entitled " Institute of Chile ", which is intended to advance the practice, progress and diffusion of letters, science and fine arts on a higher level.

Act No. 15722 of 1 October 1964 (*Diario Oficial* No. 25793 of 26 October 1964) brings under the system of social insurance of the Insurance Fund for Private Employees persons who work regularly in cars for hire to the public, whether the cars are their own or not, when they are listed in the National Register of Professional Drivers for Hire.

Act No. 15714 of 26 September 1964 (*Diario Oficial* No. 25974 of 27 October 1964) amends article 112 of the Labour Code by substituting the following for clause 5: " From the date when the beginning of classification proceedings is recorded and until six months after the date of the relevant resolution of the Council the services of a subordinate cannot be terminated, except for a legitimate reason previously established by the competent Labour Tribunal "; and by replacing the phrase " until six months have been completed " in clause 8 by " for the whole duration of the incapacity ".

Act No. 15778 of 27 October 1964 (*Diario Oficial* No. 25977 of 30 October 1964) grants medical and para-medical personnel working in X-ray and radiotherapy services the right to a legal holiday of thirty days in summer and fifteen in winter.

Act No. 15944 of 2 December 1964 (*Diario Oficial* No. 26013 of 12 December 1964) grants the title of private employee for all legal purposes to professional electricians.

Act No. 15966 of 7 December 1964 (*Diario Oficial* No. 26013 of 12 December 1964) provides for family allowances for the full period of pregnancy, starting from the date of the applicable certificate of pregnancy and its verification.

II. Supreme Decrees

Decree F.L. No. 1050 of 2 April 1964 of the Ministry of Justice (*Diario Oficial* No. 25862 of 11 May 1964) establishes the definitive revised text of Act No. 15476 of 2 January 1964 and of Legislative Decree No. 25 of 1925 on " Abuse of Publicity ".

Decree No. 266 of 2 June 1964 of the Ministry of Foreign Affairs (*Diario Oficial* No. 25878 of 1 July 1964) promulgates the agreement between the Republic of Chile and the Federal Republic of Germany on the establishment of the Nuñoa Chilean-German Higher Industrial School in Santiago.

Decree No. 323 of 23 June 1964 of the Ministry of Labour (*Diario Oficial* of 5 July 1964) regulates the application of titles I-IV of Chapter III of the Labour Code which deal respectively with trade union organization, the constitution of trade unions, the constitution of an industrial union and the legal entity.

Decree No. 378 of 17 July 1964 of the Ministry of Labour (*Diario Oficial* No. 25911 of 8 July 1964) creates a Co-ordinating Commission for Employment and Labour.

Decree No. 388 of 22 July 1964 (*Diario Oficial* No. 25930 of 1 September 1964) promulgates the special agreement establishing a school for apprentices in small-fruit growing under the Basic Convention for Economic and Technical Co-operation signed with the Federal Republic of Germany in 1960.

Decree No. 14591 of 23 September 1964 of the Ministry of Education (*Diario Oficial* No. 25953 of

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

1 October 1964) institutes a "Day of Physical Education, Sports and Recreation".

Decree No. 601 of 2 November 1964 of the Ministry of Labour and Social Insurance (*Diario Oficial* No. 26019 of 19 November 1964) approves the provisions of Act No. 16478 bringing certain groups of artists under the insurance system of the Private Employees' Fund.

ACT No. 15576 OF 2 APRIL 1964 CONCERNING THE ABUSE OF PUBLICITY [2]

Title I

DEFINITION OF THE RIGHT AND OF THE FORMALITIES REQUIRED FOR ITS EXERCISE

Art. 1. The publication of opinions in the Press and the public dissemination of the spoken or written word by any medium whatsoever shall not normally be subject to any authorization or previous censorship.

The right guaranteed to all the inhabitants of the Republic by article 10(3) of the Political Constitution of the State shall include the right to freedom from persecution on account of their opinions and the right to investigate and receive information and to disseminate it by any medium of expression whatsoever without restrictions as to frontiers.

Abuse of this right shall be punishable only in the cases and in the manner prescribed by this Act.

...

Art. 4. The owner of every daily newspaper, magazine or periodical, and the concessionary of every radio or television station shall be a Chilean national. If the said owner or concessionary is a company or corporation, such company or corporation shall be deemed to have Chilean nationality, provided that 85 per cent of the capital of the company or of the assets of the corporation belong to natural persons or bodies corporate of Chilean nationality. In the case of bodies corporate which are partners in or form part of the holding corporation or company 85 per cent of their assets shall be owned by Chilean nationals.

Every daily newspaper, magazine, periodical, and radio or television station shall have a responsible editor and at least one deputy editor.

The editor and his deputies shall be Chilean nationals and they shall not be persons possessing immunity; they shall be in full possession of their civil and political rights and if they have already been convicted of an offence punishable under this Act must not again be convicted of such an offence within a period of two years. The above notwithstanding, a married woman may also be an editor.

In the case of daily newspapers, magazines or periodicals intended solely for students, the editor may be a student over the age of sixteen years.

The requirement of Chilean nationality prescribed in this article shall not apply to technical or scientific magazines, to publications published in foreign languages, or to magazines of an international character, published at home or abroad, which are printed in Chile and distributed in Chile and abroad. For the purposes of this article, technical or scientific magazines shall be those designated as such by the President of the Republic acting on the advice of the office of the Superintendent of Education, and international magazines shall mean those magazines which, their editorial management being situated abroad, circulate simultaneously in foreign countries. The provisions of the third paragraph of this article shall, however, apply to magazines of an international character.

Art. 5. It shall not be lawful to commence the publication of any daily newspaper, magazine, or periodical, or broadcasting from radio or television stations until the conditions prescribed in article 4 have been complied with and until the owner or owners, or the concessionary or concessionaries, as the case may be, if they are natural persons, or the legal representative, in the case of a body corporate, have given notice thereof in writing to the Governor of the department concerned.

Art. 6. Failure to comply with the requirement of Chilean nationality prescribed in article 4, and failure to give the notice stipulated in the foregoing article, shall be punishable by a fine of one to four times the statutory minimum wage in respect of each publication issued or broadcast made without complying with the requirement aforesaid.

Any other breach of the requirements laid down in articles 4 and 5 of this Act or failure to comply therewith or any irregularity in complying therewith, shall be punishable by a fine equal to not less than once the statutory minimum wage but not more than twice that wage, without prejudice to any penalty that may be imposed for making a false declaration.

...

Title II

RECTIFICATIONS AND THE RIGHT OF REPLY

Art. 8. All daily newspapers, magazines, periodicals and radio or television stations shall be obliged to insert or broadcast free of charge explanations or corrections sent to them by a natural person or body corporate who or which has been insulted or to whom unwarranted reference is made in any published, broadcast or televised report.

This obligation shall prevail even when the report to which the explanation or correction refers is supplied by third parties who have requested or contracted for the insertion thereof.

Explanations or corrections shall be limited in every case to the subject of the report to which they refer, and shall not exceed the length thereof in the case of natural persons or twice the length in the case of officials or bodies corporate, but it shall

[2] Text of the Act published in the *Diario Oficial*, No. 25862, of 11 June 1964. Extracts from this Act appear in the Secretary-General's *Annual Report on Freedom of Information, 1963-1964.*

not be lawful to demand that they should have less than five hundred nor more than two thousand words.

The injunction to the newspaper, magazine, periodical, radio or television station in which the explanation or rectification is requested, shall be addressed to the editor or director of the organ of dissemination or to his deputies, and may be verified by any of the legal means.

Notaries and officials of the court shall be obliged to inform the editor or director of the organ of dissemination in which the report calling for the explanation or rectification has been published, or his deputy, at the mere request of the person concerned. In that case notification shall be made by means of a document containing the entire text of the reply, which shall be delivered to the editor or director or his deputy, or, in their default, to any employee on the premises of the head offices referred to in article 5 (*d*), or in the seventh paragraph of article 5.

In the case of publication the communication containing the explanation or correction shall be published in full without insertions, on the same page and using the same type as the article to which it refers, or in the case of radio and television stations it shall be broadcast in the same area, programme or transmission, and with the same characteristics as the transmission to which it refers. The reply shall be inserted or broadcast in the first edition or transmission made after the twelve or four hours respectively following the time at which the originals in which it is contained are delivered. In the case of a publication not published every day, excluding Sundays, the explanation or correction shall be delivered at least seventy-two hours in advance.

The daily newspaper, magazine, periodical, radio or television station shall not refuse to insert or broadcast the reply without prejudice to the responsibility of the author and if further comments are made thereon, the author shall be entitled to a reply under the rules laid down above. Any such comments shall be made in any case in a form completely separate from the denial or correction.

Art. 9. If the reply is not duly published, a complaint shall be submitted to the competent judge of the criminal court, accompanied by evidence of the delivery of the reply, the copy of the publication to which the explanation or correction refers and the issue in which it should have been published. In the case of a radio or television broadcast, the copy of the publication in question shall be replaced by an attestation or certificate delivered by the Office of Information and Broadcasting of the Presidency of the Republic showing the text of the broadcast or programme, or by other evidence.

The court shall grant the editor three days in which to reply, and on the expiry of this period, irrespective of whether he has replied or not, shall deliver his decision without further proceedings, taking into consideration the circumstance that the plaintiff has been really insulted or mentioned in an unwarranted fashion, and the fact that the correction does not constitute an offence punishable under this Act. The complaint shall be served on the editor or his deputy by means of a writ which shall contain a complete copy of the complaint and the relevant interlocutory decision. The places of domicile indicated in accordance with the provisions of article 5 (*c*) and (*d*) and the seventh paragraph of article 5 shall be deemed to be the lawful places for the service of the writ. An appeal may be lodged against the decision and shall not effect a stay of proceedings; it shall be given priority without waiting for the parties to appear in court. In the decision ordering the publication of the reply, the court may impose upon the director a fine equivalent to one to three times the statutory minimum wage.

If the director disobeys the order he shall be punished for the offence of contempt under article 265 of the Penal Code, and shall also be subject to a further fine of six to ten times the statutory minimum wage and the immediate suspension of the publication or transmission in question. The latter sanctions shall be imposed forthwith by the court.

The owner of the publication or concessionary of the radio or television station may request the lifting of the suspension ordered by the judge by undertaking to insert or broadcast the reply in the next edition or broadcast. If, after the lifting of the suspension, the reply is not published or broadcast, the court shall order the final suspension of the publication or broadcast, in the latter case informing the competent administrative authority so that it may order the cancellation of the concession.

Art. 10. The right to which the preceding articles refer may be exercised by the spouse, parents, children or brothers of the person injured or referred to in the event of the death, illness or absence of that person. All these persons may act on their own account or through attorneys in the same way as the person offended or referred to.

Art. 11. The right of reply shall not be exercised in connexion with personal evaluations made in articles of literary, historic, artistic or scientific criticism, without prejudice however, to the penalty to which such articles may give rise if through their dissemination any of the offences punishable under the present Act are committed.

Title III

Offences Committed by Means of the Printed Word or Other Form of Dissemination

I. *Incitement to commit an offence*

Art. 12. For the purposes of this Act, the following shall be regarded as dissemination media: daily newspapers, magazines or periodicals; printed matter, posters, advertisements, notices, writing on walls, handbills or emblems which are sold, distributed or exhibited in public places or public meetings; and radio, television, cinema, loud-speakers, gramophones and in general any device suitable for giving permanence to the spoken word by recording, reproduction or transmission irrespective of the form of expression used, whether by sound or pictures.

Art. 13. Persons who, by using any of the dissemination media referred to in the foregoing article, aid and abet the principal or principals to commit one or more specific offences, shall be punished as accessories to a crime or offence, provided that such a crime or offence is actually committed.

The provisions of this article shall be without prejudice to the prosecution as a principal of a person who publicly aids and abets the commission of an offence, if the provisions of article 15(2) of the Penal Code are applicable to him. If the Acts in question amount to aiding and abetting the commission of a crime, offence or suicide, such persons shall be liable, even if the crime or offence is not actually committed, to the penalty one degree below that prescribed in the first paragraph of this article and to a fine equivalent to not less than the statutory minimum wage nor more than ten times that wage. If a person, by making use of the media referred to in the article last preceding, defends any crime, offence or suicide, he shall be subject to the penalty laid down in the paragraph above.

II. *False or unauthorized news*

Art. 14. The publication or reproduction of false news by any of the media enumerated in article 12 shall be punishable as follows :

(1) If the offence was committed with intent to deceive or with malice and if the news assumes importance or gravity, the penalty shall be medium-term rigorous imprisonment in the intermediate degree and a fine of not less than four nor more than eight times the statutory minimum wage; and imprisonment for the maximum term and a fine of not less than three nor more than six times the statutory minimum wage if the news assumes only average importance or gravity;

(2) if the offence was committed as a result of carelessness or negligence and if the news assumes importance or gravity the penalty shall be imprisonment for the maximum term and a fine of not less than three nor more than six times the statutory minimum wage, and imprisonment for the minimum term and a fine of not less than two nor more than four times the statutory minimum wage, if the news assumes only average importance or gravity, and

(3) the penalty shall be a fine of not less than one half nor more than twice the statutory minimum wage solely in any other case, provided that the publication or reproduction was made with intent to deceive or with malice.

In assessing the importance or gravity of the news, the court shall take into particular consideration the damage to reputation and the social, political or pecuniary loss it may have occasioned.

The provisions of the foregoing paragraphs shall be applicable to the publication or reproduction of supposititious or falsified documents, or documents wrongly attributed to another person. If a person, by any of the media mentioned in article 12, maliciously and substantially alters or misrepresents facts, statements, speeches or the contents of documents, he shall be liable to medium-term rigorous imprisonment for a period between the minimum and intermediate degrees and a fine of not less than two nor more than five times the statutory minimum wage.

A person who publishes or disseminates official decisions or documents of a confidential nature shall be liable to the same penalties. For the purposes of this article documents shall be deemed to be confidential when they are so designated by the law or by act of authority issued under the law and also those documents the divulgation of which, owing to their nature, would gravely harm the national interest.

III. *Offences against public decency*

Art. 15. If a person commits an offence against public decency by any of the media mentioned in article 12 he shall be liable to medium-term rigorous imprisonment in the minimum degree and a fine equivalent to not less than one statutary minimum wage nor more than forty times that wage.

The following persons in particular shall be deemed to have committed an offence against public decency and shall be subject to the penalty laid down in the paragraph above :

(1) A person who introduces, sells or places on sale, offers, distributes, exhibits or disseminates, or causes to be distributed, exhibited or disseminated in public, writings, whether printed or not, figures, prints, drawings, engravings, emblems, objects or images which are obscene and contrary to decency.

Such sale, offering, distribution or exhibiting to minors shall be punishable even if not done in public.

Home delivery of the writings or objects listed shall likewise be subject to the same penalty; but the mere fact of delivering them to the postal service or to some transport or distribution undertaking shall only be subject to criminal investigation if delivery is made in wrappers or open envelopes. After they reach the addressee, however, action may be taken.

(2) Persons who utter, cause to be uttered, transmit or disseminate expressions, acts or actions which are obscene and contrary to public decency.

(3) Persons who, by any media of dissemination, publish notices or correspondence which are obscene and contrary to public decency.

The penalty shall be doubled if the offence against public decency in any of the forms mentioned is intended to corrupt persons under the age of eighteen years.

It shall be presumed that the offence against public decency is intended to corrupt persons under the age of eighteen years when media of dissemination are used which, by their nature, are accessible to minors, or when writings, figures, objects or pictures which are obscene or contrary to public decency are offered, sold, supplied or exhibited to persons under that age, or when the offence is committed within a radius of 200 metres from a school, college, institute, university or any educational establishment or home intended for children and young persons.

IV. *Offences against the person*

Art. 16. The offences of offering an insult or of calumny committed by any of the means enumerated in article 12 shall be subject to the punishments laid down in articles 413, 418, paragraph (1), and 419 of the Penal Code, increased by one degree.

The amount of the fine, however, shall be not less than twice nor more than fifteen times the statutory minimum wage in the case of article 413 (1) and article 418; not less than once nor more than

seven times the statutory minimum wage in the case of article 413 (2), and not less than once nor more than three times the statutory minimum wage in the case of article 419.

Art. 17. A person who is accused of having caused injury through one of the media mentioned in article 12 shall not be entitled to produce evidence of the truth of the matter imputed except when the latter refers to a public official, a member of the Congress or a municipality, or a minister of a religion permitted in the Republic, in connexion with acts relating to the discharge of their functions, mandate or ministry; a witness in respect of any deposition he has made, and a director or manager of an industrial, commercial or financial undertaking that publicly solicits capital or funds. If the truth of the allegations is established, the person in question shall not be liable under the criminal law.

Art. 18. Defamation shall be punishable by medium-term imprisonment in a penitentiary for the minimum period and a fine of not less than once nor more than four times the statutory minimum wage. A person who disseminates, through any of the media enumerated in article 12, information or comments which, although not constituting insult or calumny, are harmful to the dignity, repute, honour or standing of a person, shall be deemed to be guilty of defamation.

If a person demands a service of any kind by threatening defamatory action he shall be liable to the same penalties.

If a person without the consent of another person records words uttered by that other person or takes pictures of him which are not intended for the public he shall be liable to the same penalties, provided that such words or pictures are of the kind mentioned in the first paragraph and are disseminated through any of the media enumerated in article 12.

If a person, by means of technical devices, listens to private utterances not addressed to him he shall be liable to the penalties prescribed in the first paragraph of this article, except where such action is taken with express judicial authorization for the investigation of some offence.

Information concerning facts which may affect the internal or external security of the State, or concerning acts in connexion with the exercise of a public office, or acts which may affect such exercise in a direct and specific form, and acts carried out in compliance with the provisions of the law or rulings of the court, shall be excepted from the provisions of the first paragraph of this article.

V. *Offences against foreign heads of State or diplomatic agents*

Art. 19. Simple abuse or insult directed against a foreign Head of State or Minister of State who is in Chilean territory, or against ambassadors and other foreign diplomatic agents accredited to the Government of the Republic, committed through any of the media enumerated in article 12, shall be punished by a fine equal to not less than once the statutory minimum wage but more than twelve times that wage where the provisions of the foregoing paragraph are not applicable.

VI. *Prohibitions and cases of immunity*

Art. 20. It shall not be lawful to divulge through any medium of dissemination documents or records forming part of proceedings which are in the preliminary stage of investigation. An offence against this provision shall be punished by medium-term rigorous imprisonment for a period between the minimum and intermediate periods, and a fine equal to not less than once the statutory minimum wage but not more than four times that wage.

It shall not be lawful, subject to the same penalty, to divulge through any dissemination medium information concerning actions arising out of insults in cases where it is not permissible to substantiate the truth of the insulting expressions. Nevertheless, the injured party may at all times cause the judgement convicting the person who injured him to be published.

Art. 21. It shall be prohibited, subject to the penalty prescribed in the preceding article, to divulge through any medium of dissemination any information concerning offences committed by minors, and to give information concerning the identity of such minors when they are the victims of offences due to private or semi-private actions; but if a trial is pending, publication may take place with the permission of the judge in the case.

Art. 22. The courts may prohibit the disclosure, through any dissemination medium, of information concerning certain proceedings of which they are cognizant. If a person contravenes this prohibition he shall be liable to medium-term rigorous imprisonment for a period between the minimum and intermediate periods and a fine equal to not less than once the statutory minimum wage but not more than four times that wage.

The judge may order the prohibition only if such disclosure may jeopardize the success of the investigation or constitute an offence against public decency, the security of the State or public policy.

The prohibition must be published free of charge in one or more daily newspapers designated by the judge in the department or in the capital of the province, if there is none in the department. Failure to publish the prohibition in question within a period of forty-eight hours shall constitute contempt of court.

An appeal may be lodged against the decision ordering the prohibition without stay of proceedings. The appeal may be lodged by the parties or by any registered journalist, and the Court of Appeal shall consider it in chambers.

Art. 23. It is prohibited to open or announce publicly subscriptions for the purpose of compensating anyone for fines, damages or deprivation of rights to which he is sentenced by a court of law owing to the commission of an offence. A contravention of this prohibition shall render the offender liable to imprisonment for a period between the intermediate and maximum terms and a fine equal to not less than once the statutory minimum wage but not more than four times that wage.

Art. 24. The dissemination or publication of news of a sensational nature concerning criminal acts shall constitute an offence against public decency

when the offenders and the crimes, offences or suicides are unduly stressed by the form, content and features of the presentation.

In determining this offence, the court shall take into account in particular whether the report consists of more than 500 words or is printed in ink of a colour different from that used in the rest of the publication, or in printing type of a size larger than the smallest ordinarily used in the reporting of minor news items or the headlines of which occupy more than three columns or are more than half a centimetre in height; and in the case of information disseminated through radio or television broadcasts, whether such reports have received more than three minutes of each hour of broadcasting time.

Photographs, drawings, prints or illustrations in general which concern crimes, offences or suicides, and refer to those charged with the deed, persons convicted thereof or victims and other persons that appear to be involved, as well as the spouses or relatives of any of them, and any instruments or objects used in the commission of the deed, may be published or disseminated only with the written permission of the court dealing with the case.

Any breach of the provisions of this article shall be punishable by a fine of not less than twice nor more than ten times the statutory minimum wage.

The same punishment shall apply in the case of publications or broadcasts which make veiled references to acts punishable under this article.

The following reports or publications shall be exempt from the provisions of this article:

(1) Those which refer to offences against the external or internal security of the State;

(2) Those which refer to offences committed by officials in the discharge of their duties and punishable under chapter VI of Title III and Title V of Book II of the Penal Code, or offences affecting fiscal affairs;

(3) Those made by order of the police and those the publication of which is authorized by the court dealing with the case;

(4) Those relating to final sentences passed by the courts, when they are confined to stating the offence to which the sentences refer, the particulars of the person tried and the sentence passed, all in accordance with the operative part thereof;

(5) Judgements which are published by virtue of decisions of the court which passed them;

(6) Those relating to offences having political implications; and

(7) Those given in books and publications of a specialized scientific nature.

Art. 25. It shall not be lawful on penalty of a fine of not less than one third nor more than four times the statutory minimum wage to divulge, through any medium of dissemination advertisements or reports which offer or advertise medicaments that have been declared harmful by the National Health Service.

Manufacturers and vendors who order the publication of the advertisements shall be liable in the case of a contravention of the provisions of the foregoing paragraph and of article 186 of the Public Health Code. The penalty for a repetition of the offence, shall be medium-term rigorous imprisonment for any of the periods prescribed, without prejudice to the provisions of article 49.

Art. 26. Senators and deputies shall be protected by absolute privilege in respect of any opinions they may express in the discharge of their functions.

Criminal proceedings shall not lie in respect of the faithful reporting by the daily newspapers of the debates in the legislative Chambers, or of statements made before courts of law, or reports or other documents printed to their order.

The disclosure of opinions expressed at closed meetings of the Senate or of the Chamber of Deputies or comments thereupon, through any of the media enumerated in article 12, shall be punished with medium-term imprisonment for a period between the minimum and the intermediate periods and a fine of not less than four nor more than eight times the statutory minimum wage. In case of a repetition of the offence the term of imprisonment shall be increased by one degree.

Title IV

Procedure and General Rules

Art. 27. The following are especially liable and shall be considered as principals in the first degree of the offences punishable under Title III of this Act:

(1) The editor or his deputy, in the case of a daily newspaper, magazine or periodical. The person who assumes the functions of editor in the act shall also be liable in the case to which the fifth paragraph of article 6 refers.

(2) In default of the above, the publisher, if any, and in his default, the printer.

(3) In default of the persons mentioned above, the distributors, vendors, deliverers, posters of written or printed placards, figures, prints, drawings, engravings, objects, emblems or images, provided always that they acted with malicious intent. Those who habitually carry on the trade of street newsvendor shall be excepted.

If the offences specified in Title III are committed through radio, television or another similar medium, the following persons shall be liable:

(1) The news director, if any, and in default thereof the director of the radio broadcasting station or television station, or their deputies. Nevertheless, they shall not be liable if an offence as provided by this Act has been committed by the commentator or announcer mentioned in the sub-paragraphs 3 and 4 below, unless either is guilty of a repetition of such offences.

In the case to which the fifth paragraph of article 6 refers, the person who exercises control in the act shall also be liable;

(2) The sponsor or advertiser for the programme or radio or television time in question who maintains his sponsorship or advertising in the following circumstances:

(*a*) If the court has delivered a final judgement of conviction with respect to the commission in the programme or during the television time of any of the offences punishable under this Act, and

(*b*) if subsequent to the judgement aforesaid any of the offences mentioned above are repeated in the said programme or television time following such a conviction;

(3) The librettist or commentator as the case may be; and

(4) The announcer, if not using a text or if he departs from the text which he has been instructed to read.

If the offences covered by Title III are committed through the cinema, in films which have not been authorized by the Council of Cinematographic Censorship, the following persons shall be liable:

(1) The importer, the distributor, and the owner of the film if filmed abroad; or the owner, the sponsor and the producer who undertook the filming if the film was filmed in Chile;

(2) The operator of the cinema in which the film is shown, and

(3) In default of the foregoing, the manager of the cinema in which it is shown, provided always that he acted with malicious intent.

If liability is attributable to a body corporate, a corporate penalty shall be imposed on the managers in the case of partnerships; the managing director in the case of limited liability companies and the chairman in the case of corporations or foundations.

Solely the author shall be liable for an article published or disseminated in the exercise of the right of the reply in the organ of dissemination which is compelled to accept it.

Nevertheless, in the case of the offence of distributing false news, the persons otherwise liable under this article may be held not liable if the information was supplied by a duly authorized news agency, in which case the director or head of the agency shall be liable.

The terms of this article shall not affect the liability of any person whose participation as principal, accessory or accessory after the fact is established in accordance with the general rules of the Penal Code.

CHINA

INFORMATION CONCERNING THE MEASURES TAKEN BY THE GOVERNMENT OF THE REPUBLIC OF CHINA FOR THE PROTECTION OF HUMAN RIGHTS IN ACCORDANCE WITH THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (1964)[1]

INTRODUCTION

In regard to the measures taken by the Government of the Republic of China for the protection of human rights in accordance with the Universal Declaration of Human Rights, detailed information was supplied by the Chinese Government in two documents, namely, " Notes on developments and progress in the field of human rights and personal freedoms in the Republic of China " and " Information concerning the measures taken by the Government of the Republic of China for the protection of human rights ", which were sent to the United Nations in 1963 and 1964 respectively. In the current year, the Chinese Government again placed the " Measures for the protection of people's rights and interests " at the head of its administrative programme, in accordance with the teachings of Dr. Sun Yat-sen, the Founder of the Republic, the Chinese Constitution and the related laws and regulations. Special emphasis was given to the following important measures:

1. Strengthening the proper execution of trial and prosecution functions;

2. Implementation of the Act governing the Adjudication of Juvenile Cases; and

3. Enforcement of (the Peace Protection) measures for the preservation of law and order.

STRENGTHENING THE PROPER EXECUTION OF TRIAL AND PROSECUTION FUNCTIONS

The proper execution of trial and prosecution functions has a direct bearing on the protection of human rights. With a view to ensuring the proper execution of these functions, the Ministry of Judicial Administration on 1 July 1964 issued an order (Tai (53) Criminal No. 3451) to the procuratorates of various levels throughout the country, stressing the fact that appropriate steps should be taken to improve the execution of such legal actions as the issue of summonses, arrests, the issue of circular warrants for arrest, searches or attachments, prosecution, the withdrawal of prosecution and execution (Annex 1).

Later, on 3 July 1964, in pursuance of a resolution adopted by the Conference on Judicial Administrative Matters held in the same year, the Ministry issued another order (Tai (53) Criminal 2 No. 5309) to the effect that the proper execution of such legal actions as detention, investigation, the issue of circular warrants for arrest, the gathering of evidence and the enforcement of peace protection measures was of the utmost importance (Annex 2). In the meantime, the Ministry completed the Draft Statute on Release on Bond of Accused Persons (Annex 3) with a view to facilitating the procedure of bond posting for accused persons in criminal cases. The draft is now under review and will be adopted and promulgated as soon as the review is completed. The Ministry also found that the amount of compensation specified in the Statute on Compensation for Wrongful Detention and Punishment was too low. Proposals for amendments to article 1, sections 1 and 5, of the said Statute have been sent to the Legislative Yuan (Annex 4). These proposals are also currently under review in the Executive Yuan.

IMPLEMENTATION OF THE ACT GOVERNING THE ADJUDICATION OF JUVENILE CASES

In pursuance of the terms of the Act governing the Adjudication of Juvenile Cases, the Ministry undertook the work of drafting regulations for the establishment of institutions for the protective control of juveniles and houses of correction for juveniles. The legislative process for the adoption of the Regulations for the Establishment of Institutions for the Protective Control of Juveniles has been completed. This document, consisting of 34 articles, was promulgated by a Presidential order issued on 4 September 1964 (Annex 5). The Draft Regulations for the Establishment of Houses of Correction for Juveniles are now under review in the Legislative Yuan (Annex 6).

ENFORCEMENT OF PEACE PROTECTIVE MEASURES

The Act governing the Enforcement of Peace Protection Measures was promulgated on 3 July 1963. In pursuance of article 89 of the Act, the Executive Yuan decreed in August 1964 that the Taiwan area should serve as the experimental area for the application of the peace protection measures. With a view to supplementing the provisions of the Act, the Government promulgated Regulations for the Progressive Application of Reformatory Education on 15 August 1964 (Annex 7).

[1] Information furnished by the Government of the Republic of China.

Annex 1.

Order of the Ministry of Judicial Administration (Tai (53) Criminal No. 3451)

Date : 1 July 1964

Subject : Administrative instructions concerning the proper execution of trial and prosecution functions.

Annex 2.

Order of the Ministry of Judicial Administration (Tai (53) Criminal 2 No. 5309)

Date : 3 July 1964

Subject : Administrative instructions concerning the proper execution of legal actions in criminal cases, as decided by the Conference on Judicial Administrative Matters held in 1964.

Annex 3.

Draft Statute on Release on Bond of Accused Persons in Criminal Cases.

Annex 4.

Proposals for amendments to article 1, sections 1 and 5, of the Statute on Compensation for Wrongful Detention and Punishment.

Annex 5.

Regulations for the Establishment of Institutions for the Protective Control of Juveniles.

Annex 6.

Draft Regulations for the Establishment of Houses of Correction for Juveniles.

Annex 7.

Regulations for the Progressive Application of Reformatory Education.

COLOMBIA

DECREE No. 1358 OF 11 JUNE 1964[1]

ESTABLISHING SOME PROVISIONS CONCERNING CRIMINAL PROCEDURE

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Chapter III

ORDINARY APPEALS

Art. 30. Orders granting or rejecting an application to become a civil claimant and those denying the admissibility or the submission and taking of evidence shall be subject to appeal, which shall suspend the enforcement of the order if it was issued during the trial, but not if it was issued during the preliminary examination.

Orders denying or directing joinder of proceedings and those evaluating the facts elicited in the preliminary examination shall be subject to appeal, which shall suspend the enforcement of the order, with the exception of orders for provisional suspension of proceedings, the enforcement of which shall not be suspended by appeal.

Art. 31. An appeal against an order to do what may be necessary shall not bar the enforcement of an order for detention of the defendant or of preventive measures concerning his property if they are included in the order of detention.

Art. 32. Every provisional suspension of proceedings which has not been appealed shall be reviewed. The review or appeal shall not suspend the reopening of the investigation.

Art. 33. Where an appeal against a judge's order is filed in due time, the judge, in the same order in which he grants permission to appeal, shall direct that the file or copies thereof, as the case may be, are to be transmitted to the higher court.

Art. 34. Where none of the parties appeals the order and it is to be reviewed, the judge shall, within forty-eight hours after the expiration of the period for filing appeals, order the file or the copies, as the case may be, transmitted to the higher court.

Art. 35. When the file or the copies have been received by the higher court, this procedure shall be followed : if the appeal has been lodged by the *Ministerio Público*, either alone or jointly with any other party, the file or the copies shall be transmitted for five days to the *fiscal* so that he may make a statement, and then the case shall be placed on the list for the same length of time so that the other parties may make their statements.

The same procedure shall be followed in review.

Where the *Ministerio Público* is not the appellant, the case shall be placed on the list for five days and then shall be transmitted to the *fiscal* for a further five days for the purposes stated in the first paragraph.

A decision shall be taken within ten days following the expiration of the time limits for transmission and listing.

These rules shall apply to appeals and reviews of judgements issued by courts of first instance, interlocutory orders and the order referred to in article 153 of the Criminal Procedure Code.

In appellate proceedings there shall be no time-limit for producing evidence.

Art. 36. If the judgement is not appealed within the time specified in article 188 of the Criminal Procedure Code, it shall be reviewed by the appropriate higher court, provided that the offence which is the subject of the proceedings is punishable by deprivation of liberty for more than five years. Where the offence which is the subject of the proceedings is punishable by other penalties and the judgement is not appealed, an order shall be issued for the enforcement of the judgement.

Chapter IV

DEFECTS RENDERING A DECISION NULL AND VOID

Art. 37. In criminal cases the grounds for rendering a decision null and void shall be :

1. Lack of jurisdiction;

2. Lack of standing of the civil claimant where the case is one in which action cannot be taken *ex officio* by the prosecuting authority;

3. Failure to give notice of the order to do what may be necessary, in due form, to the defendant and to his counsel, or to the latter in the case specified in article 433 of the Criminal Procedure Code. The order shall cease to be voidable if the defendant appears in court and makes no application to declare it null and void within fifteen days following the date on which the order is first read to him personally.

4. Failure to hold a public hearing, unless the law authorizes or directs the holding of a closed hearing, or failure to hold a hearing on the day and at the hour specified;

5. Commission, in order to do what may be necessary, of an error concerning the legal classification of the offence or the approximate time or place of its commission or the name or surname of the person responsible or of the victim.

[1] Text of Decree furnished by the Government of Colombia. For a comment on this Decree, see *Yearbook on Human Rights for 1963*, pp. 58-66.

Art. 38. In trials by jury the grounds for rendering a decision null and void shall include, in addition to those stated in the previous article :

1. In the jury selection proceedings, illegal replacement of a person selected for the jury or failure to replace him if there was legal ground to do so. In both cases the person alleging voidability must have made the appropriate objection during the jury selection proceedings or within five days thereafter;

2. Membership in the jury of a person whose name does not appear on the appropriate list;

3. An error in the jury selection report, which makes it impossible to determine exactly which persons were selected to form the jury.

Art. 39. When the law expressly provides that a given act will be invalid unless certain formalities are fulfilled and those formalities are not performed, that act shall be considered not to have taken place, without the need for a special court decision.

Art. 40. Article 171 of the Criminal Procedure Code is repealed.

Chapter V

ARREST, DETENTION AND RELEASE OF THE DEFENDANT

Art. 41. In prosecutions for offences punishable by deprivation of liberty, an order may be issued for the arrest of the accused for purposes of judicial interrogation, if in the judgement of the examining official there are grounds for taking a statement under article 346 of the Criminal Procedure Code.

Art. 42. The statement shall be taken within the three days following arrest, and during that period the accused may be deprived of communication with the outside. In no case and on no grounds may he be deprived of communication with the outside beyond the substantive time-limit laid down in this paragraph.

If the arrested person is in fact deprived of communication with the outside beyond the time laid down in this article, the official or judge conducting the examination of the case and the chief officer or director of the prison concerned shall be liable to a fine of fifty to five hundred *pesos* for a first offence, and to the same fine and to removal from office for a second offence. These penalties shall be imposed by the competent higher court or judge, *ex officio* or upon the request of the *fiscal* or the defendant, upon the mere submission of evidence that the defendant was deprived of communication with the outside beyond the substantive time-limit laid down in this article.

Art. 43. When the judicial interrogation has been concluded or the time-limit prescribed in the preceding article has expired, the legal position of the arrested person must be settled within no more than five days therefrom either by an order of detention pending trial if there is evidence justifying it or by an order of release. In the latter case, where there is some evidence against the interrogated person, the judge may require him to report regularly to his chambers on pain of a fine of not more than five hundred *pesos*.

Art. 44. Where the offence is not punishable by deprivation of liberty, the accused shall be summoned in order to make a statement; where, however, the summons has been read to him personally and he does not appear, his arrest may be ordered in order that the court's decision be observed.

Art. 45. When the accused has been arrested, the official concerned shall within the next twelve hours order the governor or chief officer of the appropriate prison to keep the defendant confined in the institution. This order shall contain a statement of the ground for arrest, and shall indicate whether the accused should be deprived of communication with the outside, stating the hour when the accused was arrested and the hour on which deprivation of communication with the outside must cease.

Whereupon the expiration of the twelve-hour time-limit the order referred to in the preceding paragraph has not been received, the governor or director shall ask for it within the next twelve hours, and if it does not arrive before a further twelve hours have elapsed, the accused shall be released on the responsibility of the remiss official. Where the last time-limit has expired without the order being received and the governor or director of the prison does not release the arrested person, he shall incur liability for arbitrary detention.

Art. 46. Where the order to confine the accused has been received by the governor or director of the prison in accordance with the provisions of the preceding article, and the time-limit of eight days from the date of arrest has expired, the official concerned shall ask for a release order or detention order. If within the following twelve hours he does not receive an order of detention, stating the date of the order and the offence to which it relates, he shall release the accused on the responsibility of the remiss official. If he fails to do so, he shall incur liability for arbitrary detention.

Art. 47. The time-limits referred to in the preceding articles, with the exception of those in article 45, shall be doubled where there are two or more accused persons in the same case and they were arrested on the same date.

Art. 48. The provisions of the preceding articles shall apply without prejudice to the provisions of articles 4, 364, 384 and 637 of the Criminal Procedure Code.

Art. 49. When the offence charged is punishable by deprivation of liberty, the defendant shall be detained if there is at least one witness's statement against him which there are substantial grounds for believing, or substantial evidence that he is criminally liable for committing or participating in the offence under investigation, or if the official who orders the detention saw him do the act which constitutes his participation in the offence.

Art. 50. An order for the detention of an official or public employee pending trial shall also direct the body or authority concerned to suspend him from his duties. While the suspension order is in force, surveillance and security measures shall be taken to prevent the accused from evading justice.

Ten full days after the date on which the order is communicated, the accused shall be arrested even if he has not been suspended.

Art. 51. When the higher court in its decision on an appeal revokes a detention order, the lower court which has jurisdiction of the matter shall issue a release order. Nevertheless, the latter court

may refrain from issuing such an order and may again order the defendant to be detained pending trial, where, after the granting of permission to appeal, fresh evidence justifying the application of article 379 of the Criminal Procedure Code has been produced in the case.

The judge shall be under a duty to issue a release order if he has not issued a new detention order within three days from the date on which he receives the decision of the higher court. If he fails to perform this duty, he shall incur liability for arbitrary detention.

Art. 52. An application for revocation of a detention order shall be transmitted to the appropriate official of the *Ministerio Público*, so that within forty-eight hours he may state his opinion on it.

Art. 53. Provisional release may be granted in the following cases :

1. In wilful offences punishable by minor penalties;

2. In negligent offences, except :

(*a*) When the injury is done in circumstances that make it very probable or readily foreseeable;

(*b*) In homicide and in the personal injuries provided for in articles 373, 374, 375, 376 and and 379 of the Criminal Code, in the cases referred to under the preceding number or when they occur in the exercise of some profession, skill or occupation and the person committing the offence lacks the licence, title, diploma, authorization or certificate required by the laws or regulations; or he is in a state of drunkenness or under the influence of narcotic drugs; or he violates in any other manner the regulations governing the activity concerned;

3. When the defendant has been detained pending trial for a period of time equal to the penalty of deprivation of liberty that he would incur in the light of the classification which should be given to the offence with which he is charged;

4. When, on the expiration of one hundred and eighty (180) days from the date on which the accused is actually deprived of liberty under a detention order, evidence required for issuing an order to do what may be necessary has not been produced. In that event provisional release shall be cancelled when that evidence is obtained, if the offence is one for which release is not permitted.

Paragraph. In the previously mentioned cases the examining official of the judge shall grant provisional release to the defendant, when he so requests and provided that he deposits sufficient financial security to ensure his appearance at the trial and the enforcement of the judgement. The defendant shall be under a duty to appear before the examining official or before the judge whenever he is summoned directly or through the surety.

Art. 54. In addition to the cases provided for in the preceding article, a defendant shall be provisionally released upon deposit of financial security if, in the first instance, the proceedings have been provisionally suspended, or he has been acquitted, or the order referred to in article 153 of the Criminal Procedure Code has been issued in his favour, regardless of the offence with which he is charged.

Art. 55. Provisional release may be granted only in the cases provided for by the two preceding articles.

Chapter VI

The Remedy of Habeas Corpus

Art. 56. Any person who is deprived of his liberty for more than forty-eight hours is entitled, if he considers that the law is being violated, to apply to the town judge dealing with criminal matters in the locality for the remedy of *habeas corpus*, which shall be governed by the procedure established below.

Art. 57. The application may be made directly by the aggrieved person or by another on his behalf; it shall state the facts relating to the deprivation of liberty, the place where he is confined, and if possible the identity of the official who ordered his arrest.

An application may also be submitted by the *Ministerio Público ex officio* or upon the request of any interested person.

The application shall be dealt with immediately and shall not be subject to assignment. The judge to whom it is made shall have exclusive jurisdiction of it.

Art. 58. If it appears from the application that the remedy will lie, the judge shall immediately request the appropriate authorities to inform him in writing, within twenty-four hours, concerning the date of the arrest and the grounds for it. He may also personally interrogate the aggrieved person when he deems it appropriate.

Art. 59. If it is proved by the reports referred to in the preceding article or by any other means that the applicant was arrested or detained without observance of the legal formalities, the judge shall order his immediate release and shall institute the appropriate criminal investigation.

Art. 60. The remedy of *habeas corpus* shall not lie when it appears that the applicant has been deprived of liberty by virtue of an order or judgement of a competent authority; or in the case of arrest, when the time-limits laid down in chapter V of this Decree have not expired.

Art. 61. If the remedy does not lie, the judge shall so declare, and shall communicate his decision to the person concerned.

Art. 62. If there is only one town judge dealing with criminal matters in the locality and it was he who ordered the detention, the application for *habeas corpus* shall be made to the higher judge whose jurisdiction extends over the town concerned.

Art. 63. An official who hinders the handling of an application for *habeas corpus* or does not deal with it immediately or does not act within the time-limits laid down in this Decree shall, by this fact alone, incur liability for arbitrary detention, without prejudice to the penalty of removal from office imposed by the higher court through the procedure provided for the imposition of disciplinary penalties.

Art. 64. The provisions of this chapter shall not apply to the cases covered by article twenty-eight, second paragraph, of the National Constitution.

CONGO (BRAZZAVILLE)

CONSTITUTION OF THE REPUBLIC OF THE CONGO OF 8 DECEMBER 1963[1]

PREAMBLE

The Congolese people solemnly proclaims the permanence of the spirit which ruled its revolution of August 13, 14 and 15, 1963.

It rejects, as a consequence:

any corruption, tribalism, or nepotism, as methods of Government or of consolidation of dictatorship and personal power;

any racial or religious discrimination.

It reaffirms its attachment to the principles of national sovereignty and to the Universal Declaration of December 10, 1948.

It proclaims its will to safeguard respect and guarantees for:

political liberties;
trade union liberties;
the right to strike;
the rights and liberties of the human person, the family and local units;
philosophic and religious liberties;
freedom of the press;
the right of property;
economic and social rights.

It proclaims its attachment to the principles of self-determination and the free will of peoples.

Desirous of preparing the way for African unity, it shall spare no effort to attain this end.

The Congolese People expresses its desire to co-operate with all other peoples of the world in peace, justice, freedom and equality.

Title I

The State and Sovereignty

Art. 1. The Congo, a sovereign state, is a Republic.

The Republic of the Congo is indivisible, secular, democratic and social.

It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs.

It shall guarantee to women rights equal to those of men.

...

Its principle is government of the people, by the people and for the people.

...

Art. 2. Sovereignty belongs to the people who shall exercise it:

through their deputies to the National Assembly;

by means of referendum.

No section of the people, nor any individual, may usurp this right.

Art. 3. All Congolese citizens of both sexes who have reached their majority and who enjoy civil and political rights may vote under the conditions to be determined by law.

Art. 4. Any act of racial, ethnic or religious discrimination, as well as any regionalist propaganda which might threaten the internal security of the State, the national unity or the integrity of the territory shall be punished by law.

Title II

Public Liberties and Liberties of the Human Person

Art. 5. The human person is sacred. The State is obliged to respect and protect it.

Everyone has the right to the free development of his personality subject to respect for the rights of others and the public order.

The freedom of the human person is inviolable.

No-one may be arrested or detained except by order of a legitimate authority.

No-one may be accused, arrested or detained except in the cases determined by a law promulgated prior to the infraction involved.

Art. 6. The domicile is inviolable. No search may be instituted except in the forms and conditions provided by law.

Art. 7. The secrecy of correspondance shall be guaranteed by law.

Art. 8. The right of property shall be incontestable, No-one may be deprived of his right of property except for reasons of public use and after the payment of damages or compensation under the conditions provided by law.

Art. 9. No-one may be incommodated because of his opinions so long as their manifestation does not disturb the public order established as law.

[1] Text furnished by the Government of the Republic of the Congo.

Free communication of thought and opinion shall be exercised by word and press subject to respect for the laws and regulations.

Art. 10. Freedom of association is guaranteed to all under the conditions established by law.

Meetings or groups whose purpose or activity would be illegal or contrary to public order shall be prohibited.

Art. 11. Marriage and the family are the natural basis of society. They shall be under the protection of the law.

Art. 12. The State shall guarantee equal access for children and adults to instruction, professional education and culture.

Every child has the right to instruction and education.

The State and the government units shall create the prior conditions and public institutions to provide for the education of children. Such education shall be provided by public and private schools. Private schools may be opened with the authorization and under the control of the State.

Art. 13. Freedom of conscience and religion is guaranteed subject to respect for public order. Religious institutions and communities shall have the right to develop without hindrance subject to respect for the laws and regulations.

Art. 14. Everyone has the right to work and to obtain employment. No-one may be injured in his work by reason of his origins, beliefs or opinions.

Any man may defend his rights and interests by trade union activity and may belong to the trade union of his choice.

Trade union liberties shall be exercised within the framework of the laws governing them.

Every worker shall participate through his trade union delegates in the collective determination of the conditions of work.

A law shall determine the conditions of assistance and protection accorded by society to workers.

Art. 15. The defence of the country and of the integrity of the territory of the Republic is the duty of every citizen.

Art. 16. All citizens of the Republic of the Congo have the duty to abide by the Constitution and laws of the Republic, to discharge their fiscal contributions and to fulfil honestly their social obligations.

Title III

PARLIAMENT

Art. 17. Parliament shall be composed of the National Assembly, whose members shall be elected by universal direct and secret suffrage for a term of five years and who shall bear the title of deputy.

Art. 18. The method of election of the members of the National Assembly, the conditions of eligibility and the offices incompatible with membership, as well as the number of deputies, shall be determined by law.

...

Title IV

THE PRESIDENT OF THE REPUBLIC

...

Art. 24. The President of the Republic shall be elected for five years by an electoral college composed of the members of the National Assembly, the prefectoral, sub-prefectoral and the municipal councils.

The election of the President of the Republic shall be by absolute majority on the first ballot. If this is not obtained, the President of the Republic shall be elected by relative majority on the second ballot.

Voting shall be secret. It shall begin upon convocation of the Government.

The election of a new President shall take place twenty days at least and fifty days at most before the expiration of the term of the incumbent President.

The President of the Republic shall be eligible for re-election once.

A law shall determine the conditions of eligibility and ineligibility, the presentation of candidacies, the conduct of elections, the counting of ballots and the proclamation of the results.

The Supreme Court shall supervise the regularity of these operations.

...

Title VII

RESPECTIVE DOMAINS OF THE LAW AND REGULATIONS

Art. 53. Laws shall establish the regulations concerning:

citizenship, civil rights and the fundamental guarantees granted to the citizens for the exercise of their public liberties; the obligations imposed by the national defence upon the persons and property of citizens;

nationality, status and legal capacity of persons, marriage contracts, inheritance and gifts;

procedures by which customs shall be ascertained and harmonized with the fundamental principles of the Constitution;

determination of crimes and misdemeanors as well as the penalties imposed therefor, criminal procedure; amnesty, the creation of new juridical systems and the status of magistrates;

the basis, the rate and the methods of collecting taxes of all kinds;

the electoral system for the National Assembly and the local assemblies;

the establishment of categories of public institutions;

the general statute for the civil service;

martial law and siege law.

Laws shall determine the fundamental principles of:

the general organization of national defence;

education;

the system of property, property rights, civil and commercial obligations;

legislation pertaining to employment, unions and social security;

the sale and administration of State property;

investment and savings;

the system of transport and telecommunications.

...

Title VIII

INTERNATIONAL RELATIONS

Art. 60. The Republic of the Congo shall conform to the rules of international law.

Art. 61. The President of the Republic shall negotiate and ratify treaties, with the following exceptions: treaties relating to international organization, peace treaties, those that modify the internal organization of the State, and those that affect the domain of law as defined in Articles 53 and following, may be ratified only by a law. They shall not take effect until they have been ratified.

Art. 62. Treaties and agreements, duly ratified, shall, upon their publication, have an authority superior to that of laws, subject to their application by the other party.

Art. 63. No cession, exchange or addition of territory shall be valid without the consent of the populations concerned.

Title IX

THE JUDICIAL AUTHORITY

Art. 64. Justice shall be rendered over the territory of the Republic in the name of the Congolese people.

Art. 65. Judges shall be subject only to the authority of the law in the exercise of their duties.

...

Art. 69. An organic law shall determine the status of the judiciary.

Art. 70. No-one may be arbitrarily arrested nor detained. The judicial authority, guardian of individual liberty, shall ensure respect for this principle under the conditions stipulated by law.

Title X

THE SUPREME COURT

...

Art. 73. The Supreme Court shall issue opinions and hand down decisions.

Decisions of the Supreme Court may not be appealed to any authority whatsoever. They shall be binding on the Government, the Parliament and the judicial authorities.

A provision which has been declared unconstitutional may neither be promulgated nor put into force.

Title XI

THE ECONOMIC AND SOCIAL COUNCIL

Art. 74. The Economic and Social Council may be consulted by the Government or by the National Assembly on any problem of an economic or social character of interest to the Republic.

It shall give its opinion on bills, ordinances or decrees submitted to it.

An organic law shall determine the composition, organization and functioning of the Economic and Social Council.

The office of member of the Economic and Social Council shall be honorary.

...

Title XIII

AMENDMENT OF THE CONSTITUTION

Art. 81. The President of the Republic and the members of the National Assembly alike shall have the right to initiate amendment of the Constitution.

Art. 82. In order to be taken under consideration, amendment bills must be passed by a majority of two thirds of the members of the National Assembly.

Amendments shall be submitted to approval by the people by referendum.

Art. 83. The republican form of Government may not be the subject of amendment.

...

ACT No. 25/64 OF 20 JULY 1964 ESTABLISHING THE SINGLE PARTY[2]

Art. 1. There is hereby established a single party known as the "*Mouvement National de la Révolution*" (National Revolution Movement) and designated by the acronym MNR.

The single party shall be the expression of the will of the Congolese people; it shall guarantee national unity and perpetuate the spirit which marked the Revolution of 13, 14 and 15 August 1963.

It shall frame the general policies of the nation and guide the action of the State in accordance with the profound aspirations of the masses.

It shall work for the progress and the social and economic advancement of the country.

Art. 2. The statutes of the *Mouvement National de la Révolution* adopted by the national congress held at Brazzaville from 29 June to 2 July 1964 are hereby approved.

The said statutes are annexed to the present Act, which shall be carried into effect as a law of the State.

STATUTES OF THE *MOUVEMENT NATIONAL DE LA REVOLUTION*

Chapter I

THE MOVEMENT AND ITS HEADQUARTERS

Art. 1. There is hereby established in the Republic of the Congo a single political party born of the revolution of August 1963 and bearing the title *Mouvement National de la Révolution* (MNR).

Art. 2. The *Mouvement National de la Révolution* shall be the crucible in which the political consciousness of the Congolese people is forged. It shall define the line and principles of action, and organize and educate the citizens. It shall realize the fundamental objectives of the Revolution, frame the general

[2] *Journal Officiel de la République du Congo*, 1 August 1964.

policies of the Nation and guide the action of the State in accordance with the profound aspirations of the masses.

Art. 3. Popular and democratic in its essence, the *Mouvement National de la Révolution* shall have as its function to bring together and unite all the vital forces of the Nation and to exhort the masses to work with a view to their betterment.

To this end, it shall be the purpose of the *Mouvement National de la Révolution* to struggle:

1. Against the under-development inherited from colonialism, neo-colonialism and imperialism — which presupposes the conquest and consolidation of national independence.

2. Against the political survivals of colonial domination: regionalism, tribalism and nepotism, whose persistence undermines the authority of the State and gives rise to impunity and irresponsibility.

3. Against the artificial social differences created by neo-bourgeois tendencies.

Art. 4. Guided by the fundamental principles of the historic Bandung Conference and the Charter of the Organization of African Unity, the *Mouvement National de la Révolution* endorses:

1. The ideal of Afro-Asian solidarity against the persistence of colonial domination, racial segregation and the exploitation of man by man.

2. The principle of political and diplomatic non-alignment, and the adoption in international institutions of positions strictly conforming to the profound aspirations of the Congolese people.

Art. 5. The headquarters of the party shall be established at Brazzaville. It may be transferred by the decision of the congress to any other place in the national territory.

...

Chapter II

MEMBERSHIP

Art. 6. Any Congolese who accepts the programme and statutes of the party, does active work in one of the basic party organizations and pays the regular dues may be a member of the party.

Art. 7. Every member of the party shall:

(*a*) Carry into effect the programme of the party and actively perform the task entrusted to him by the party;

(*b*) Strictly observe the statutes of the party, independently of his merits and his position;

(*c*) Preserve the cohesion of the party and strengthen its unity;

(*d*) Subordinate private interests to the interest of the party;

(*e*) Set an example at work both by his work and by his modesty;

(*f*) Raise the level of his awareness by study of the objective laws of social development;

(*g*) Be sincere and honest in regard to the party and show vigilance in regard to subversive activities by the enemy.

Chapter III

PRINCIPLES

Art. 15. The guiding principles of the party, from the political standpoint, shall be democratic centralism in its structure, and the intensive politicization of all social strata in the application of these principles.

Such democratic centralism implies:

The election of all the governing bodies of the Movement, from the lowest to the highest levels;

The effective participation in decision-making of all party organizations, from the lowest to the highest levels;

The strict obligation of the organizations of the Movement, vis-à-vis their respective deliberative bodies and vis-à-vis the organizations immediately superior to them, to apply the decisions they have helped to shape;

The rendering of periodic reports by party organizations to their respective deliberative bodies and to the organizations immediately superior to them;

Strict discipline and the submission of the minority to the majority. A quorum shall be constituted by one half the membership of the organization plus one.

...

Chapter VI

ORGANS PARALLEL TO THE PARTY

Art. 33. There are hereby established parallel to the party three special organs, one for the workers, one for youth and one for women.

Art. 34. There is hereby established parallel to the party a trade union organization to defend the legitimate interests of the working class, to promote the national economy, and to improve the education and living standards of the toiling masses.

Art. 35. The special youth organization, born of the merger of all the youth movements existing throughout the Republic of the Congo, shall function in their stead and shall bear the title *Jeunesse démocratique congolaise* (JDC) (Democratic Youth of the Congo).

The structure and functions of the JDC shall conform to the principles of democratic centralism, comprising, from the lowest to the highest level:

The special youth committee, directed by a special youth board composed of seven members including not less than two girls, all elected;

The branch, directed by an elected branch board;

The federation, directed by a federal youth board, likewise elected;

The JDC, formed by the totality of the federations and directed by the national youth board of ten members, including not less than three girls, elected by the congress.

The deliberative bodies of the JDC shall be identical with those of the movement.

General Assembly of the basic committee;

Conference and congress at the branch, federal and national levels.

Art. 36. The special women's organization shall bear the title *Union Démocratique des Femmes du Congo* (UDFC) (Democratic Union of Congolese Women). It shall be born of the merger of all the women's movements existing throughout the Republic of the Congo and shall function in their stead.

Its structure and functions shall be identical with those of the JDC.

CONGO (DEMOCRATIC REPUBLIC OF)

LEGISLATIVE ORDINANCE No. 122 OF 1 MAY 1964 TO PROMULGATE REGULATIONS RESPECTING INDUSTRIAL RELATIONS

SUMMARY

The text of the Legislative Ordinance was published in the *Moniteur congolais*, No. 11, of 1 June 1964.

Under section 1 of the Legislative Ordinance, the President of the Republic is empowered to :

(*a*) establish consultative bodies on the national as well as on the regional and provincial levels, responsible for examining problems concerning labour and the right to work, *inter alia*, the hiring of services, social security, industrial safety and hygiene, the vocational training, guidance and prevocational education of workers, employment policy, manpower trends, remuneration, job classification, collective bargaining and agreements, and in general the raising of the material and moral standards of workers, and all questions connected therewith, especially of an economic, financial and social nature.

(*b*) organise consultation and collaboration between the employer and his staff, within each undertaking, *inter alia*, by way of workers' representatives and works councils;

(*c*) organise procedure to be followed in the case of collective labour disputes where no procedure is laid down in any collective labour agreement;

(*d*) prescribe the rights and obligations of employers and workers who are parties to a collective labour dispute;

(*e*) prescribe the conditions to be fulfilled by workers, trade unions and employers' associations in order to be registered and recognised as such.

Other provisions of the Legislative Order deal with the duty of the President of the Republic to issue rules respecting the composition and working, and delimiting the material, territorial and occupational competence of the bodies created by virtue of section 1(*a*) and (*b*) of this Legislative Ordinance; with the minimum number of hours to which the workers' representatives referred to in section 1(*b*) shall be entitled for the purpose of discharging their duties; and with the " collective labour dispute " which shall mean any dispute arising between one or more employers, on the one hand and a certain number of their employees on the other hand concerning conditions of work, when such dispute is liable to interfere with the smooth running of or social harmony within the undertaking and does not fall within the competence of the ordinary courts of law.

The text of the Legislative Ordinance in French and a translation thereof into English have been published by the International Labour Office as *Legislative Series*, 1964 — Congo (Leo.) 1.

CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF THE CONGO OF 1 AUGUST 1964[1]

PREAMBLE

Proclaiming our adherence to the Universal Declaration of Human Rights;

Determined to safeguard the values we cherish and to guarantee to the family, the natural basis of any human society, special protection by the State authorities in such a manner as to ensure its cohesion and stability;

Affirming our determination to consolidate our national unity while respecting our regional characteristics, with a view to furthering, in justice, our material well being and our moral and spiritual fulfilment;

We, the Congolese People;

Conscious of our responsibility before God, the Nation, Africa, and the World;

Solemnly declare that we adopt the present Constitution.

Title I

GENERAL

Section I

The Territory and Sovereignty of the Republic

Art. 1. The Democratic Republic of the Congo constitutes, within its frontiers of 30 June 1960, a sovereign, indivisible, democratic and social State.

...

Art. 3. All power emanates from the people, which exercises it through its representatives or by referendum.

[1] *Moniteur congolais*, Special issue, of 1 August 1964.

No section of the people or individual person may assume the right to exercise it.

...

Section II

Nationality

Art. 6. There shall be a single Congolese nationality.

It shall belong as of 30 June 1960, to any person one of whose ascendants is or was a member of a tribe or a part of a tribe established in the territory of the Congo before 18 October 1908.

Nevertheless, any of the persons referred to in the second paragraph of this article who possess a foreign nationality on the date of the entry into force of the present Constitution shall acquire Congolese nationality only if they apply for the same by a declaration made in the form prescribed by the national law and if by making such declaration they lose their foreign nationality.

Such declaration shall be made within a period of twelve months from the date of the entry into force of the present Constitution if the declarant is 21 years of age or older on that date; if he has not reached the age of 21, the declaration shall be made within twelve months of the date of attaining that age.

Art. 7. Congolese nationality shall be acquired by birth, by naturalization, by option or by legal presumption, in the conditions prescribed by a national organic law. Such law shall also determine the conditions for the loss of Congolese nationality.

Any Congolese who voluntarily acquires the nationality of another State shall lose Congolese nationality.

Any Congolese who, at the age of 21, possesses both Congolese nationality and the nationality of another State, shall lose his Congolese nationality unless he declares, in the manner prescribed by national law, that he desires to retain Congolese nationality.

Section III

Treaties and International Agreements

...

Art. 9. Treaties or international agreements duly ratified or approved shall from the date of their publication prevail over the laws, subject, in the case of each such treaty or agreement, to its application by the other party thereto.

...

Title II

FUNDAMENTAL RIGHTS

Art. 11. In this Title the word " law ", when not preceded by the word " national ", shall mean both national and provincial laws.

Art. 12. It shall be the duty of the legislative, executive and judicial authorities of the Republic and of the Provinces to respect the rights set forth in this Constitution.

Where a state of emergency (l'état d'urgence) is proclaimed in conformity with the provisions of article 97, in no case may the provisions of the present article and of articles 13, 14, 15 (second and third paragraphs), 16, 20 (first and third paragraphs), 22 (second paragraph), 23, 24, 29, 30 (second paragraph), 31-37, 39-43 be waived.

Art. 13. All Congolese are equal before the law and are entitled to equal protection of the law.

Art. 14. No Congolese may in the matter of education or of access to public service in the Republic be made the object of a discriminatory measure, whether resulting from a law or from an act of the Executive, by reason of his religion, tribal association, sex, ancestry, place of birth or residence.

Art. 15. Every person has the right to respect for and protection of his life and physical inviolability.

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

No one shall be put to death except in the cases specified and in the manner prescribed by national law.

Art. 16. No one shall be held in slavery or servitude or in conditions analogous thereto.

No one shall be compelled to perform forced or compulsory labour except in the cases prescribed by law.

Art. 17. Individual freedom is guaranteed.

No one may be arrested or detained except in accordance with law and in the manner prescribed thereby.

Art. 18. Any person who is arrested shall be informed immediately, and in any case within twenty-four hours, in the language which he understands, of the reasons for his arrest and of any charges against him.

He may not be held in detention pending trial except under an order of the competent judge and in the cases and for the period expressly prescribed by law.

He has the right of appeal against orders made in the matter of detention pending trial.

Art. 19. Any person who is arrested or detained in violation of the provisions of articles 17 and 18 above, has the right to just reparation for the damage which he has suffered or to fair compensation.

Art. 20. Every person has the right to a fair hearing within a reasonable time before the competent judge.

He has the right to defend himself or to have the assistance of defence counsel of his choice.

No one may be removed, against his will, from the jurisdiction of the judge to whom the national law assigns him.

A national law shall determine the conditions of indigence and the severity of the penalty which justify the granting of legal assistance.

Art. 21. Hearings in the courts and tribunals shall be held in public unless such publicity is detrimental to public order and morality : In such case the court shall order the hearing held *in camera* by a reasoned decision in writing.

Art. 22. No one may be prosecuted except in cases provided for by law and in the manner prescribed thereby.

No one may be prosecuted for an act or an omission which did not constitute an offence both at the time when it was committed and at the time of prosecution.

Art. 23. Every person charged with an offence is presumed innocent until proved guilty by a final judgement.

Every judgement shall be given in open court. It shall be in writing and shall state the grounds on which it is based.

No penalty shall be pronounced or enforced except in pursuance of a law.

No one may be held guilty of any penal offence on account of an act or omission which did not constitute an offence both at the time when it was committed and at the time of conviction.

No heavier penalty may be imposed than the one which was applicable at the time the offence was committed.

If, under the law in force, the penalty for an offence is lighter than that prescribed under the law in force at the time of commission of the offence, the judge shall impose the lighter penalty.

A national law shall determine the grounds for justification, excuse and non-liability.

The right to appeal against a judgement is guaranteed to all in conformity with the law.

Art. 24. Every person has the right to freedom of thought, conscience and religion.

There is no state religion in the Republic.

Every person on reaching his majority has the right to change his religion or belief.

Every person has the right to manifest his religion or belief, either alone or in community with others, in public or in private, by worship, teaching, practice, observance and a religious way of life, subject to respect for public order and morality.

Art. 25. Every person has the right to freedom of expression.

This right implies freedom to express opinions and feelings, in particular by words, writing or illustration, subject to respect for public order and morality.

Art. 26. Freedom of the press is guaranteed to all Congolese.

No authorization to publish is required and no censorship may be established.

The formalities for giving notice of publication shall be prescribed by law.

No restrictions may be placed by law on the exercise of freedom of the press save to ensure the maintenance of public order and the protection of public safety, morality and the rights of others.

Where the author is known and has his residence in the Republic, the publisher, printer or distributor may not be prosecuted.

Art. 27. The right of radio and television broadcasting shall be exercised in conformity with national law.

The radio and television services organized by the public authorities are public services whose regulations, established by a national law, guarantees impartiality and respect for all beliefs in their broadcasts.

Art. 28. All Congolese have the right to assemble peacefully and without arms and to form or to join trade unions or other associations to promote their welfare and ensure the protection of their political, social, economic, religious and other interests.

The right to strike is guaranteed. The law shall regulate the procedure relating thereto and determine the conditions which shall ensure the functioning of the public services or services of vital public importance which may not be interrupted even in the event of a strike or lock-out.

Art. 29. Members of the armed forces, the constabulary and the police may not form or join trade unions or associations of a political character. They may not take part in any strike.

Art. 30. Every Congolese has the right to form or to join a political party.

No one may impose a single party on all or part of the territory of the Republic.

Political parties and groups shall collaborate in the expression of the public will. They may be formed and carry on their activities freely. They shall respect the principles of national sovereignty, democracy and the laws of the Republic.

Art. 31. Every person has the right to marry the person of his choice and to found a family.

The family shall be organized in such a manner as to ensure its unity and stability.

It shall enjoy the special protection of the public authorities. The care and education to be given to children constitute, for the parents, a natural right and duty which they shall exercise under the supervision and with the aid of the public authorities.

Art. 32. The public authorities shall protect young persons against exploitation and moral neglect.

Youth organizations and their co-ordinating agencies shall have an educational role. The public authorities shall give them their moral support.

Art. 33. Every Congolese has the right to education. Parents have a prior right to choose the kind of education that shall be given to their children.

Education shall be compulsory and free of charge, up to the level of study and the age prescribed by law.

Art. 34. Education shall be free.

Nevertheless, it shall be subject to supervision by the public authorities in the conditions laid down by national law.

Art. 35. It shall be the duty of the public authorities to make a national system of schools available to all Congolese.

The national system of schools shall comprise educational establishments organized by the public authorities and approved establishments organized by private individuals.

The establishment of schools by the public authorities and the approval by them of schools organized by private individuals shall be carried out in conformity with a general educational plan.

Schools which are part of the national system shall be administered in accordance with rules established by law.

The cost of operating the schools which are part of the national system shall be borne by the public authorities.

Public funds allocated for the operation of the national system of schools shall be apportioned among such schools in proportion to the actual number of their students.

Art. 36. All Congolese shall have access to national educational establishments without distinction as to place of origin, religion, race or political or philosophical opinions.

In co-operation with the religious authorities concerned, public educational establishments shall provide for all minors whose parents request it, and for students of full age who request it, an education in conformity with their religious convictions. A national law shall prescribe the procedure for the application of this paragraph.

Art. 37. Schools established by private individuals shall, at the request of the parties concerned, be approved by the competent public authorities as part of the national school system whenever they are not inferior to the schools established by the public authorities in respect of the level of studies and qualifications of the teaching staff and they comply with the standards laid down by law, in conformity with the present Constitution, in the matter of education.

The public authorities shall defray the cost of construction of schools to be established by private individuals, upon the latter's request, whenever they present proof that they have fulfilled the conditions prescribed by law.

Art. 38. Art and scientific research shall be free, subject to respect for public order and morality.

Art. 39. Every person has the right to the inviolability of his domicile.

The public authorities may not interfere with the exercise of this right, except in cases provided for by law and in accordance with the procedure prescribed thereby.

Art. 40. No Congolese may be expelled from the territory of the Congo.

All Congolese have the right freely to leave the territory of the Republic and to return.

The exercise of this right may be restricted only by a national law and only to the extent to which the present Constitution authorizes restriction of individual liberties.

Art. 41. Every Congolese has the right to change his domicile, to establish himself freely in any part of the territory of the Republic and to enjoy therein all the rights which are guaranteed to him under the present Constitution.

The exercise of this right may be restricted only by a national law and only in the interests of public order or when measures to remove the danger of an epidemic or to prevent the commission of criminal offences so require.

Art. 42. Every person has the right to privacy of correspondence and of every other form of communication.

The public authorities may not infringe this right except in the cases laid down by law.

Art. 43. Property rights, whether acquired by virtue of customary or written law, are guaranteed in conformity with the national laws.

No one may be deprived of movable or immovable property belonging to him and lawfully acquired in any region of the territory of the Republic, save on grounds of general interest and by virtue of a national law providing for the payment of equitable compensation beforehand and for the right of the person concerned, in case of disagreement, to have recourse to a court of law, which shall pronounce on his rights and fix the amount of the compensation.

The ownership of certain private enterprises affected with an essential national interest may be transferred to the Republic, a province or a public body by virtue of a national law.

Notwithstanding the provisions of the three preceding paragraphs, the legal status of transfers and grants of land made before 30 June 1960 shall be finally determined by a national law.

Art. 44. The right to carry on a business is guaranteed to all Congolese throughout the territory of the Republic under conditions determined by national law.

Goods may move freely throughout the Republic.

Art. 45. Without prejudice to any right of legal recourse which the public authorities may have, in a particular case, against their organs, the said authorities are civilly liable for acts performed by such organs in the exercise of their powers and functions.

A judicial remedy shall be afforded to every person whose rights are infringed by the public authorities. Save where other provision is made by virtue of this Constitution, such remedy shall be sought in the ordinary courts.

Art. 46. Subject to the exceptions established by national law, every alien in the territory of the Republic shall enjoy the protection accorded to persons and property under this Constitution.

He shall enjoy only to the extent established by national law the rights which under this Constitution are reserved to Congolese.

Title IV

NATIONAL INSTITUTIONS

...

Section I

The Central Executive Authority

1. *The President of the Republic*

...

Art. 55. The President of the Republic is elected for five years.

His term of office expires six months after the expiry of the term of office of the legislature.

Every native-born Congolese citizen who has attained the age of forty years and meets the conditions for election to the Senate is qualified to be elected President of the Republic.

The President of the Republic may be re-elected for a second successive term only once.

Art. 56. The President of the Republic is elected by an electoral college consisting of the members of the Parliament and of delegates from the city of Leopoldville, who vote in the capital, and of the members of the provincial assemblies, who vote in the chief town of the province which they represent.

The number of presidential electors designated by the city of Leopoldville shall be equivalent to the number of provincial councillors to which that city would have been entitled if it had been established as a province.

The voting shall be held on the call of the President of the Chamber of Deputies and shall take place not less than thirty nor more than sixty days before the expiry of the term of the President of the Republic holding office.

Declarations of candidature for the office of President of the Republic shall be deposited with the Chamber of Deputies not less than ninety nor more than 120 days before the expiry of the term of the President holding office.

Election shall be by an absolute majority of votes on the first or second ballot and by a relative majority on the third ballot. The only contenders in the second ballot shall be the two candidates who received the largest number of votes on the first ballot.

...

Section II

The National Legislative Authority

1. *The composition and functioning of the Parliament*

Art. 74. The National Parliament consists of the Chamber of Deputies and the Senate.

The deputies represent the nation.

Senators elected by provincial assemblies represent the province served by the assembly which elected them. Senators elected by the city of Leopoldville represent that city.

Art. 75. Deputies are elected by direct universal suffrage and secret ballot in the proportion of one deputy for each 100,000 inhabitants; a remaining fraction of population equal to or exceeding 50,000 gives the right to the election of an additional deputy.

The city of Leopoldville and the individual provinces are represented by six senators each. The senators representing the provinces are elected by the provincial assemblies. One of the six senators representing each province shall be a customary chief or a notable elected in that capacity.

The senators representing the city of Leopoldville shall be elected by direct universal suffrage and secret ballot.

In addition to the senators provided for in the second paragraph of this article, former Presidents of the Republic shall be *ex-officio* members of the Senate for life.

Art. 76. The term of office of the legislature is five years.

The powers of the Chambers expire on 15 June of the fifth year following their election.

The election of new Chambers takes place not less than sixty nor more than ninety days before the expiry of the term of office of the legislature.

A person shall be entitled to vote if he is a Congolese, has attained the age of eighteen years and is not barred on a ground provided in the national electoral law.

A person shall be eligible for the office of deputy if he is a Congolese, has attained the age of twenty-five years and is not barred on a ground provided in the national electoral law.

A person shall be eligible for the office of senator if he is a Congolese, has attained the age of thirty years and is not barred on a ground provided in the national electoral law.

The electoral law shall prescribe the electoral procedure and the conditions for the appointment of persons to replace a member of either Chamber until the new Parliament takes office.

...

3. *Special provisions*

Art. 98. No petition may be submitted to the Chambers except in writing.

Each Chamber is entitled to send the petitions addressed to it to the members of the Central Government.

The members of the Central Government shall furnish an explanation in reply to the contents of petitions whenever requested to do so by one of the Chambers.

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Title V

PROVINCIAL INSTITUTIONS

...

Section III

The Provincial Assemblies

Art. 111. The provincial assemblies consist of:

1. Provincial councillors elected by direct universal suffrage and secret ballot;

2. Provincial councillors co-opted by the elected councillors from among the notables and customary chiefs.

A provincial assembly comprises one elected representative for each 25,000 inhabitants. A remaining fraction of population equal to or exceeding 12,500 gives the right to the election of an additional representative. The number of elected members of a provincial assembly may not be less than fifteen.

The number of co-opted chiefs and notables shall be equal to one fifth the number of elected councillors but may not be less than three.

The provincial councillors represent the province and not the constituency or other administrative entity from which they originate.

...

Title VI

THE JUDICIAL AUTHORITY

Section I

General

Art. 122. The judicial authority is independent of the legislative and executive authority. It is vested in the courts and tribunals.

In no case may it be exercised by the organs of the legislative or executive authority.

Courts and tribunals may be established only by national law. No special tribunals or commissions, irrespective of how designated, may be established.

Justice is administered in the territory of the Republic in the name of the people.

Judgements, awards and orders of the courts and tribunals are executed in the name of the President of the Republic.

Art. 123. The courts and tribunals apply the law; they also apply custom in so far as it is in conformity with the law and with public order and morals.

Administrative regulations shall be applied by the courts and tribunals only in so far as they are in conformity with the law.

...

Title VII

AUXILIARY BODIES

Section I

Economic and social councils

Art. 131. A consultative assembly designated as the "National Economic and Social Council" shall be established as a body of the Central Government.

The Council shall be composed of representatives of the main activities of an economic and social character in the country and of representatives of the provincial economic and social councils referred to in the following article.

It shall comprise an education section and sections concerned with the main problems affecting activities of an economic and social character.

The education section shall comprise sub-sections each concerned with the problems affecting a particular branch of education. It shall include, in particular, delegates from the Ministry of Education and representatives of each branch of education in the national system of schools and in the private schools representatives of the teaching profession and representatives of the parents of students in each branch of education in the national system of schools.

The education section shall give advice and make proposals concerning scholastic programmes, teaching methods, educational planning and co-ordination and measures to ensure compliance with the provisions of articles 33 to 37.

Art. 132. An economic and social council shall be established as a body of each provincial government and shall comprise such number of sections as the law of the particular province prescribes.

Art. 133. The National Economic and Social Council shall be consulted by the Central Government or one of the Chambers on all economic and social problems of concern to the Republic.

The provincial economic and social councils shall be consulted by the provincial governments or the provincial assemblies on all economic and social problems of concern to the province.

The National Council and the provincial councils shall examine and give their opinion on every plan, programme, legislative proposal or bill of an economic or social character which is of concern to the Republic or the province, as the case may be, and is submitted to them by the Central Government or the provincial government or by the president of one of the Chambers or the president of the provincial assembly.

Any law adopted without an opinion from the National Council or the provincial council shall be null and void, save in the urgent cases provided by a national organic law. The same organic law shall specify the period within which the National Council and the provincial councils shall give their opinion. If the councils do not give their opinion within such period, the Chambers and the provincial assemblies may adopt the law without the opinion of the council.

The National Economic and Social Council and the provincial councils may, on their own initiative, draw the attention of the government authorities to the reforms which appear to them likely to promote the economic and social development of the country.

The councils may delegate one of their members to set forth before the Chambers or the provincial assemblies the opinion of the council on a legislative proposal or bill submitted to it.

...

Title XI

THE CONSTITUTIONAL COURT

...

Art. 167. The Constitutional Court has jurisdiction to adjudicate on:

1. A recourse for determination of the constitutionality of laws and of acts having the force of law;

2. A recourse for interpretation of the present Constitution, made in connexion with conflicts of jurisdiction bearing on the extent of the powers conferred and the obligations imposed by the present Constitution on the national or provincial authorities referred to in article 168, second paragraph;

3. All matters over which it has been given jurisdiction by the present Constitution;

4. All matters over which it has been given jurisdiction by national law.

The Constitutional Court shall exercise surveillance to ensure the regularity of elections for President of the Republic and governors of the provinces. It shall examine complaints and, in the case of the election for President of the Republic, shall declare the poll.

The Court shall, in case of dispute, give a ruling on the regularity of elections for members of the Parliament or of the provincial assemblies and on the decisions of the Parliament or the provincial assemblies declaring a vacancy in their membership on the grounds, as provided in articles 78 and 120, of disqualification or compulsory retirement.

It shall exercise surveillance over the regularity of the referendum procedure and shall announce the results of a referendum.

...

Title XIII

CONSTITUTIONAL REVISION

Art. 175. The initiative for revision of the Constitution vests jointly in the President of the Republic, the Conference of Governors, each Chamber of the Parliament and one quarter of the provincial assemblies.

Art. 176. A proposal for revision must be adopted in each Chamber by a majority of at least two thirds of the membership thereof.

...

COSTA RICA

NOTE[1]

1. Act No. 3344 of 5 August 1964, which ratified the following conventions of the International Labour Organisation: (*a*) Convention concerning the minimum age for admission to employment as fishermen, No. 112, 1959; (*b*) Convention concerning the medical examination of fishermen, No. 113, 1959; (*c*) Convention concerning fishermen's articles of agreement, No. 114, 1959.

2. Act No. 3464 of 4 December 1964, which ratified the Convention on dual nationality between Costa Rica and Spain, article I of which states:

"Persons who are Costa Rican by birth and reciprocally persons who are Spanish by birth may acquire Spanish or Costa Rican nationality respectively, under the conditions and in the manner laid down in the legislation in force in each of the High Contracting Parties, without thereby losing their former nationality.

"Possession of the nationalities of origin referred to in the preceding paragraph shall be established before the competent authority by submission of the documents which the latter considers necessary."

3. Decree No. 3458 of 20 November 1964, which amended Chapter VIII of Part II of the Labour Code promulgated by Act No. 2 of 27 August 1943.[2] The amendments affects articles 101-108 of the Code dealing with domestic employees. As amended articles 101, 102 and 107 read as follows:

"*Art. 101.* Domestic servants are persons who regularly and continuously perform cleaning, cooking, waiting and other household tasks which are not a source of profit to or a matter of business for the employer in a private house, residence or dwelling.

"*Art. 102.* In contracts of employment for domestic service, the first thirty days shall be deemed to constitute a probationary period and either of the parties may terminate the contract without notice and without liability. After that period, the party desiring to terminate the contract shall be required to give the other party fifteen days' notice or, in default thereof, to pay a sum equivalent to wages for that period; however, after one year of employment the notice required shall be one month. During the period of notice, the employer shall grant the servant leave of one half-day each week to enable him to seek employment.

"...

"*Art. 107.* If the contract of employment of the domestic servant is terminated by his unjustified dismissal, his resignation owing to serious offences on the part of the employer or of members of his household, or by death or *force majeure*, the servant or, where appropriate, his assigns as referred to in article 85 of this Code shall be entitled to a leaving grant in accordance with the rules laid down in article 29 of this Code.

"..."

[1] Note furnished by the Government of Costa Rica.

[2] For translations of the Code into English and French, see International Labour Office *Legislative Series* 1943-C.R.1. A previous amendment to the Code was made by Act No. 1948 of 4 October 1955, a summary of which appears in the *Yearbook on Human Rights for 1955*, p. 38 and translations of which into English and French have been published by the International Labour Office as *Legislative Series* 1955-C.R.1.

CYPRUS

NOTE[1]

The following legislative measures and administrative arrangements were introduced during 1964 covering the field of Labour and Social Insurance:

(*a*) *The Social Insurance Law (No. 2/64)*

For full details as to the objects and reasons of this Law, which was published in *Supplement No. 1 to the Official Gazette of the Republic of Cyprus* of 6 April 1964, see *Yearbook on Human Rights for 1963*, p. 84.

(*b*) *The Amendment of the Children and Young Persons Law, Cap. 178 (No. 61/64)*

The objects of this amendment, which was published in *Supplement No. 1 to the Official Gazette of the Republic of Cyprus* of 22 October 1964, are:

(i) to amend "night" (Clause 2 para. (*a*));

(ii) to include certain new definitions in the principal Law (Clause 2 para. (*b*));

(iii) to amend Section 7 of the principal Law so as to prohibit a child to engage in any occupation between the hours stated in the section;

(iv) to amend Section 16 of the principal Law so as to cast a liability upon a child or young person engaged in street trading to furnish certain information; and

(v) to create a punishable offence for the parent or guardian of a child or young person, engaged or employed in street trading, and create a punishable offence for the owner-occupier or licensee of a public place in which a child is found between certain hours.

(*c*) *The amendment of the Factories Law, Cap. 134 (No. 43/64)*

The objects of this amendment which was published in *Supplement No. 1 of the Official Gazette of the Republic* of 6 August 1964, are:

"Since the coming into operation of the principal Law in 1957 experience has shown that it is necessary mainly for the safety of persons working in factories and other places, to make certain amendments to the principal Law. Similar course has been followed in England where various amendments were made to the Factories Act, 1937, on which the principal Law was modelled, by the Factories Act 1959 for the better protection and welfare of persons working in factories.

Thus certain provisions of the principal Law relating to hoists and lifts, cranes and lifting machines, steam boilers and air receivers are strengthened by providing that before their installation they have to be examined and certified as safe and that such examination should be carried out at provided intervals.

Similarly certain further provisions are made, on the line of the English Factories Act 1959, with regard to protection against fire.

For every such examination the prescribed fee has to be paid but, as doubts have arisen as to the time of such payment, by a special provision it is cleared that the payment shall be made in advance.

The opportunity has been taken so as to extend the protective measures provided by section 58 to persons employed in loading, unloading and transporting goods or materials from a factory.

The inspection of factories was provided by the principal Law to be carried out by inspectors who are public officers.

By a proposed amendment power is given to the Minister to authorize persons who are qualified in this respect to carry out inspections and examinations under the Law under the supervision and directions of the Chief Inspector on payment of prescribed fees."

(*d*) *Establishment of a Pancyprian Safety Council*

A Pancyprian Safety Council was set up with terms of reference to advise the Minister of Labour and Social Insurance on matters of accidents prevention and on the development, propagation and maintenance of activities which will influence or require the attainment of safety among the employed, the employers, and the population of the State as a whole.

(*e*) *Scheme for the rehabilitation of the forcibly evacuated Turks*

By the decision No. 4206 of 15 October 1964, the Council of Ministers decided:

(*a*) to approve the Scheme enclosed with the Submission for the resettlement of Turkish Cypriots in the Orini area;

(*b*) to approve an expenditure of £7,500 for the repair of 68 houses in the area in question and the supply thereto of the main furniture, cooking utensils, etc., required, and for the repair of 4 public buildings;

(*c*) to approve an additional expenditure of £1,052 for the establishment for a period of three months of a hostel to accommodate Turkish Cypriots until their final resettlement in their villages; and

[1] Note furnished by the Government of Cyprus.

(*d*) to authorize the Minister of Finance to provide the required funds, if necessary by Supplementary Appropriation Legislation.

With regard to the suggestion of the Ministry of Labour and Social Insurance that Turkish Cypriots returning to their villages should be paid a monthly allowance until they are finally resettled and able to earn their living, it was agreed by the Council that this matter should be considered after the return to their villages and on the basis of the Public Assistance Scheme.

The decision of the Council of Ministers conforms with Article 25 of the Universal Declaration of Human Rights.

CZECHOSLOVAKIA

NOTE[1]

1. Elections to the National Assembly and National Committees Act[2]

The principles of this Act are an expression of the broadest democracy applied in the Czechoslovak Socialist Republic. The consistent democratism of the electoral system is manifested especially in the principle of general, equal and direct suffrage with secret ballot, in the active participation of the people in the organization and control of elections, in the democratic manner of putting up the candidates and of the election itself and, last but not least, in the right of constituents to recall a deputy.

Any citizen who has attained the age of 18 has the right to vote, irrespective of his national origin, sex, religion, employment, length of residence, social origin, property and previous activity. The right to vote is not enjoyed only by those citizens who had been deprived of their legal capacity because of mental illness or whose legal capacity has been limited due to such illness. The right to vote is not exercised by citizens who have been sentenced to imprisonment or who are in custody.

The right to be elected is enjoyed by all citizens who have the right to vote and have attained the age of 21.

Members of the armed forces and armed bodies have the right to vote.

Elections are held in constituencies which are formed according to the number of inhabitants. The elections are organized and controlled by constituents through electoral commissions consisting of representatives of working people's organizations.

The representatives are proposed by the National Front, which is the political expression of the union of workers and farmers and the other working people.

Candidates for elections to the National Assembly and to National Committees may be put up by the Communist Party of Czechoslovakia, other political parties and organizations associating the working people, assemblies of the working people in factories, offices and in the country and assemblies of soldiers and members of other armed bodies. Candidates are put up for individual constituencies. One or several candidates may be put up for each constituency. The respective electoral commissions are obliged to register all duly proposed candidates.

The candidate who has received a simple majority of votes is elected. If the candidate or any of the candidates has not received such a majority, there is to be a new election between the two candidates who have received the largest number of votes.

The elected deputies of the National Assembly and of the National Committees are duty bound to fulfil their function in closest connection with the constituents. This duty is guaranteed by the right of the constituents to recall at any time that deputy who has failed the confidence of his constituents.

2. Act of the Slovak National Council No. 35/1964 of the Collection, concerning Elections to the Slovak National Council

The Slovak National Council, which is the national body of state power and administration in Slovakia, constitutes an organic part of the system of representative bodies in the Czechoslovak Socialist Republic.

Elections to the Slovak National Council are guided by the principles applied in the elections to the National Assembly and National Committees.

3. Decision of the National Assembly of 24 September 1964, No. 182 of the Collection, containing the Principles for a Further Promotion of the Activities of the National Assembly

The aim of the Principles — in accordance with the guiding principles of the Czechoslovak socialist statehood, especially in the direction of promoting socialist democracy — is to achieve that the National Assembly should become a truly working institution of elected representatives of the people and that it should fulfil with consistency the objectives set before it by the Constitution, particularly in the sphere of control of all links of state machinery and the active participation in the implementation of the goals of the economic and cultural construction of the socialist society. The major road leading towards promoting this particular role of the National Assembly lies in promoting the control functions of the National Assembly and a further development of the legislative activities constituting particularly the needed prerequisites for increased participation of the people in the management of state affairs. The correct implementation of the objectives of the National Assembly therefore demands a closer link between the National Assembly and citizens, National Committees and deputies of the National Committees.

In all its activities the National Assembly closely co-operates with the other state bodies and leads

[1] Note furnished by the Government of the Czechoslovak Socialist Republic.

[2] Text published in *Sbírka Zákonů* No. 34/1964.

them towards increased responsibilities towards society for the implementation of set tasks and for consistent promotion of the interest of the entire society. In its relationship to the Slovak National Council, the National Assembly proceeds from the principle that the Slovak National Council is not only a Slovak national body but also a national link of the State political and economic administration for the territory of Slovakia. The National Assembly regularly deals with the constructive and organizational activities of the National Committees and adopts measures to bring about an improvement in their work. It directs the activities of people's control bodies and relies on their experiences. In order to promote socialist legality it follows the work of courts and takes advantage of their achievements in its legislative and control activities. The Principles also underline the significant tasks before the National Assembly in pursuing peaceful foreign policies and the application of the principles of peaceful coexistence of countries with different social systems, in promoting friendship among nations and consolidating world peace.

In these considerations the Principles set out the main directions of activities of the National Assembly, its Presidium, its Committees and deputies.

4. Act No. 183/1964 of the Collection on the Rules of Procedure and Work of the National Assembly

In accordance with the Constitution and the adopted Principles for a further promotion of the activities of the National Assembly, the Rules of Procedure and Work of the National Assembly provide for the basic principles of deliberations of the National Assembly and its bodies. They delimit the fundamental sphere of action of the plenary of the National Assembly, the principles governing the opening meeting of the National Assembly and the deliberations of other meetings and the principles governing the debates on bills. The Rules of Procedure and Work regulate also the composition, tasks and principles for deliberations of the Presidium of the National Assembly which directs the activities of the National Assembly and, with certain exceptions, implements the tasks of the National Assembly when the latter is not in session. The National Assembly establishes committees as its working bodies to deal with questions of the principal spheres of state and social activities. Finally, the Rules of Procedure and Work regulate the position of deputies of the National Assembly and the principles for their work, as well as the position of the Office of the National Assembly.

5. Act of the Slovak National Council No. 124/1964 of the Collection on the Rules of Procedure and Work of the Slovak National Council

In accordance with the principles of the Constitution of the Czechoslovak Socialist Republic, the Rules of Procedure and Work regulate the position, sphere of action and principles for deliberations of the plenary of the Slovak National Council and its executive bodies, which are the Presidium, Chairman, commissions, commissioners and other bodies established by the Slovak National Council. Further, the Rules of Procedure and Work set out the rights and responsibilities of the deputies of the Slovak National Council and delimit the position of the Slovak National Council machinery consisting of the Office of the Slovak National Council, offices of commissioners, machinery of commissions and other functional and subsidiary bodies of the Slovak National Council. The Rules of Procedure and Work of the Slovak National Council are based on the position of the Slovak National Council rooted in the concept of the socialist Constitution under which the Council is not only the Slovak national body dealing with matters of national or regional nature, but also a national link of the political and economic system for the territory of Slovakia which shares in the formulation and implementation of state policies.

6. Act No. 40/1964 of the Collection, the Civil Code

A significant codification act in the field of civil law in 1964 is represented by the new Civil Code which includes the regulation of all important and typical civil law relations existing in the field of satisfying material and cultural requirements of citizens.

Within this regulation the Civil Code stipulates also protection of every citizen's personality. The development of personality is inseparably linked with the development of society. The socialist social system frees the personality of man and creates the necessary prerequisites for his general development. However, while, on the one hand, technical progress makes possible an ever broader manifestation of man's personality, on the other hand it facilitates more numerous and more intensive interferences in its integrity (e.g. through radio, television, etc.). This is why the requirement of the protection of personality is becoming ever more urgent along with the development of society. The due assurance of such protection is likewise the necessary prerequisite for the exercise of the other citizens' rights emerging in the sphere of satisfying material and cultural requirements.

The Civil Code provides for the general principle of the protection of man's personality and likewise adduces some specific spheres, particularly the protection of life and health of man, protection of his civic honour, as well as protection of his name and manifestations of his personal nature. The general protection undoubtedly includes protection of the personal liberty of citizens, even though such protection is ensured primarily by regulations of penal law. Accordingly, protection of personality covers both the physical and moral integrity of the citizen's personality and the entire intimate sphere of his personality.

For that purpose the Civil Code provides each citizen with effective legal means. The citizen has the right of demanding that unjustified interferences in the right to the protection of his personality be abandoned and that the consequences of such interferences be eliminated. The court may also decide that the citizen should receive satisfaction of a moral nature. Eventual claims for compensation for the losses suffered by an unjustified intervention are not affected.

7. Act No. 184/1964 of the Collection excluding the Application of the Statute of Limitations on Penal Prosecution of the Gravest Penal Acts against Peace, Wartime Penal Acts against Humanity committed in Favour of or in the Service to the Occupants

Act No. 184 of the Collection excluding the application of the statute of limitations on penal prosecution of the gravest penal acts against peace, wartime penal acts and penal acts against humanity committed in the service to or in favour of the occupants was adopted on 24 September 1964. Under Section 1 of the Act the statute of limitations shall not be applied either on the penal prosecution or the execution of punishment for such acts when committed in the period from 21 May 1938 to 31 December 1946 by war criminals or their accomplices if the statute of limitations on penal prosecution was to be applied by 9 May 1965, or later, the statute of limitations is applied neither on penal prosecution nor on the execution of punishment. The Act entered into force on 1 October 1964.

The decision of nations to render a just punishment for crimes committed by fascism during World War II has been a natural reaction to such crimes. A number of international treaties and agreements providing for just punishment for war crimes have been adopted for that purpose. Those documents clearly formulate the principle that war criminals should be punished by the people who fell victims of their crimes and in the country where the crimes were perpetrated. The relevant international treaties and agreements do not recognize and do not mention that the statute of limitations on war crimes should be applied.

Accordingly, war criminals were judged and punished either where they were caught or where they were extradited and eventually by the International tribunal in Nürnberg. However, by their lenient approach, some countries made it possible that some war criminals were not affected. This wrong procedure was applied particularly in the Federal Republic of Germany where attempts were made to apply the statute of limitations even on war crimes.

Under these circumstances the Czechoslovak people who were among the first victims of fascism could not remain silent. Therefore the National Assembly of the Czechoslovak Socialist Republic, in accordance with the above-mentioned principles of international law, adopted the above Act.

8. Act No. 36/1964 of the Collection, concerning the Organization of Courts and the Election of Judges

The organization of the Czechoslovak system of courts creates optimum organizational conditions for the application of the constitutional principles outlined for the activities of courts and the position of judges.

The independence of judges in the performance of their functions as the pivotal principle of judiciary is provided for by the eligibility of judges of the courts of all levels. The method of the election of judges is regulated with respect to the nature of individual elements of the system of courts. The basic element of the system is constituted by district courts which, as courts of first instance, decide in criminal and civil law matters. Accordingly, judges are elected by citizens in a direct and secret ballot which creates a firm link between the court and the citizens and increases the responsibility of the judge for a right and conscientious performance of his function. The direct election of judges to courts rendering decisions also constitutes a guarantee of the confidence of citizens in the court in question and increases their interest in a just decision that would in full extent fulfil its social function and be implemented in time.

The regional courts fulfil mainly the role of supervision and cessation by reviewing court decisions of lower courts within the framework of appeal proceedings and guard the legality of their activities and the correct interpretation of laws. Their judges are elected by representative bodies.

The judges of the Supreme Court, which is the highest judicial body supervising the decisions of all other courts, are elected by the National Assembly, the highest representative and legislative body. The Supreme Court is authorized to review the legality of any enforceable judicial decision and, subject to exceptions provided for in the rules of the court procedure, may, along with the proposition of the Prosecutor General, and/or the President of the Supreme Court, within fixed terms, annul such decision which proves to have been issued in contravention to the law.

Decisions of Czechoslovak courts are passed by a majority vote. Senates of Courts of the 1st instance are composed of a professional judge, who acts as chairman, and two other judges who perform their functions besides their normal employment. Senates of courts of the 2nd instance have five members, of whom three are professional judges (one acting as chairman) and two other judges. Senates of the Supreme Court, unless it acts as court of the 2nd instance, consist of three professional judges.

The organization of the judicial system in the Czechoslovak Socialist Republic thus translates into reality the demand that Czechoslovak courts be bodies which, through binding and enforceable decisions, ensure the observance of legality, fortify the legal consciousness and feeling of citizens and educate them consciously to observe laws as well as the principles and rules of socialist coexistence.

LAW OF 31 JANUARY 1964 CONCERNING CZECHOSLOVAK TELEVISION[3]

Art. 1. Czechoslovak Television shall, by its activity, based on the policies of the Communist Party of Czechoslovakia, carry out political and educational work on a mass scale, support the creative initiative of the people and contribute to the achievement of the cultural revolution.

Art. 2. 1. Czechoslovak Television shall be exclusively entitled to prepare television programmes; together with the Central Administration for Communications, it shall determine the times and places at which broadcasts are made over the unified telecommunication network.

2. Czechoslovak Television shall fulfil its programme tasks, using agitation, propaganda and art, by the creation of its own programmes, by the reception and dissemination of the results of the activities of other institutions and by the exchange of television programmes with other countries.

Art. 3. In order to fulfil its tasks, Czechoslovak Television shall, in particular:

(*a*) Establish and manage television centres and their technical equipment;

(*b*) Make transmissions of public events and of cultural, artistic, sports and gymnastic performances and shows;

(*c*) Arrange public presentations and productions and establish and maintain artistic ensembles for the purposes of its work of creating television programmes;

(*d*) Prepare television recordings;

(*e*) Conduct exchanges of television transmissions and of picture and sound recordings with television organizations of other countries;

(*f*) Buy and sell the rights to television recordings from sellers or to purchasers in other countries through an organization entrusted with such work;

(*g*) Establish a system of its own reporters in Czechoslovakia and abroad;

(*h*) Take part, within its sphere of competence, in the activity of international technical organizations and conclude agreements with the competent foreign institutions;

(*i*) Inform the public concerning television broadcasts and investigate the effectiveness of its programme through constant communication with the spectators.

Art. 4. 1. Czechoslovak Television shall assist important organizations and institutions in the fulfilment of their tasks and shall, by agreement with them, disseminate information concerning their activity and acquaint an extensive public with the results of their work; all the organizations shall assist Czechoslovak Television in the performance of its tasks.

2. Organizers of public gatherings, concerts, theatrical presentations, variety shows, popular entertainment shows, and sports and gymnastic performances and shows shall, if Czechoslovak Television so requests, afford it an opportunity, free of charge, to make transmissions and recordings for broadcasting purposes. Transmissions of sports and gymnastic performances and shows shall be made on the basis of the outline agreement between Czechoslovak Television and the Central Committee of the Czechoslovak Union for Physical Culture.

3. The rights of authors and performing artists deriving from the copyright law and from other regulations concerning remuneration paid to performing artists for direct transmissions shall not be affected by these provisions.

Art. 5. 1. Czechoslovak Television is an independent central organization whose competence extends throughout the State. Czechoslovak Television may acquire rights and assume obligations in its own name.

2. A Director-General, whose appointment or dismissal shall be decided by the Government, shall be responsible to the Government for the activities of Czechoslovak Television.

3. The activities of Czechoslovak Television in Slovakia shall be directed by the Director-General through the Regional Director for Slovakia. The appointment or dismissal of the Regional Director for Slovakia shall be decided by the Presidium of the Slovak National Council, at the suggestion of the Director-General of Czechoslovak Television.

4. The Regional Director of Czechoslovak Television for Slovakia shall be responsible for the activities of Czechoslovak Television in Slovakia to the Presidium of the Slovak National Council and to the Director-General of Czechoslovak Television.

5. The principles of the internal structure and administration of Czechoslovak Television shall be contained in a code of regulations which shall be issued by the Government at the suggestion of the Director-General of Czechoslovak Television.

Art. 6. The signs and call signals of Czechoslovak Television shall not be used by any other organization or person.

Art. 7. This law shall enter into force on the date of its publication.

[3] Taken from the Secretary-General's *Annual Report on Freedom of Information*, 1963-1964.

LAW OF 31 JANUARY 1964 CONCERNING CZECHOSLOVAK RADIO[4]

Art. 1. Czechoslovak Radio shall, by its activity, based on the policies of the Communist Party of Czechoslovakia, carry out political and educational work on a mass scale, ensure that domestic and foreign listeners are fully informed of events taking place at home and abroad, support the creative initiative of the people and contribute to the achievement of the cultural revolution.

[4] Taken from the Secretary-General's *Annual Report on Freedom of Information*, 1963-1964.

Art. 2. Czechoslovak Radio shall fulfil its tasks by the preparation and dissemination of broadcast programmes. It shall be guided by the results of the activities of all economic, social, cultural and scientific organizations and shall co-operate closely with State authorities. The State authorities and socialist organizations shall actively assist it in the fulfilment of its tasks.

Art. 3. In order to fulfil its tasks, Czechoslovak Radio shall, in particular:

(*a*) Establish and manage broadcasting studios and their technical equipment;

(*b*) Make transmissions of public events and of cultural, artistic, sports, gymnastic and other performances and conduct exchanges of broadcast programmes and sound recordings with broadcasting organizations of other States;

(*c*) Prepare sound recordings;

(*d*) Arrange public presentations, performances and productions with a view to the preparation of programmes;

(*e*) Have a system of its own permanent and special reporters in Czechoslovakia and abroad;

(*f*) Establish and direct artistic groups and ensembles;

(*g*) Take part, within its sphere of competence, in the actions of international organizations and conclude agreements and co-operate with broadcasting organizations of other States.

Art. 4. Organizers of cultural, artistic, sports, gymnastic and other public presentations or performances and gatherings shall, upon prior request by Czechoslovak Radio, afford it an opportunity free of charge to make transmissions and prepare sound recordings for its programme purposes.

Art. 5. Czechoslovak Radio is an independent central organization whose competence extends throughout the State and which may acquire rights and assume obligations in its own name. A Director-General, whose appointment or dismissal shall be decided by the Government, shall be responsible to the Government for the activities of Czechoslovak Radio.

Art. 6. The activities of Czechoslovak Radio in Slovakia shall be directed by the Director-General through the Regional Director for Slovakia, whose appointment or dismissal shall be decided by the Presidium of the Slovak National Council, at the suggestion of the Director-General of Czechoslovak Radio.

Art. 7. The Regional Director of Czechoslovak Radio for Slovakia shall be responsible for the activities of Czechoslovak broadcasting in Slovakia to the Presidium of the Slovak National Council and to the Director-General of Czechoslovak broadcasting.

Art. 8. Broadcasting studios established in individual regions shall be guided, in the planning of their activities and the preparation of programmes to be broadcast in the region, by the needs of the region in question.

Art. 9. The principles of the internal structure of Czechoslovak Radio, of its method of administration and of the more detailed definition of its tasks shall be contained in a code of regulations which shall be issued by the Government at the suggestion of the Director-General of Czechoslovak Radio.

Art. 10. The signs, symbols, titles and signature time of Czechoslovak Radio shall not be used without its permission by any other organization or person.

Art. 11. The privileges of Czechoslovak Radio shall not affect rights deriving from the copyright law and from the regulations issued pursuant to that law.

Art. 12. Governmental Decree No. 63/1959 Sb., relating to changes in the organization of sound radio and television, and the provisions of article 3 of Law No. 137/1948 Sb., relating to the nationalization of Czechoslovak Radio, are hereby annulled.

Art. 13. This law shall enter into effect on the date of its publication.

LAW OF 5 JUNE 1964 ON TELECOMMUNICATION[5]

Article VIII

SECRECY IN TELECOMMUNICATIONS

...

Art. 20. 1. The organ operating the unified telecommunication network, their employees and other persons entrusted with the exercise of functions in the operation shall be required to maintain secrecy both with regard to the contents of messages received or forwarded and with regard to the names of the corresponding parties or the numbers of the participating stations between which a conversation was held; they shall not reveal any information regarding messages transmitted or forwarded.

2. Information concerning messages transmitted or forwarded may be given only to the sender and the addressee or their authorized representatives (or legal successors). Courts and other governmental authorities shall not be given any messages transmitted or forwarded, shall not be furnished with information concerning such messages and shall not be allowed to examine log-books, save in the cases provided for by law.

3. The provisions of the preceding paragraphs shall also apply, *mutatis mutandis*, to other operators of telecommunications establishments and their employees, and also to users of the unified telecommunication network who in their telecommunication relations learn, even if by chance, facts which are to be kept secret pursuant to the preceding paragraphs.

...

[5] Taken from the Secretary-General's *Annual Report on Freedom of Information*, 1963-1964.

ACT OF 25 MARCH 1964, TO IMPROVE THE ARRANGEMENTS MADE FOR THE CARE OF PREGNANT WOMEN AND MOTHERS

Entered into force on 1 April 1964

SUMMARY

The text of this Act was published in *Sbírka Zákonů*, No. 26, of 31 March 1964.

Article 1 of the Act provides that every pregnant woman or mother who is a party to an employment relationship shall normally be entitled to 22 weeks' maternity leave in connexion with her confinement and the care of a new-born child and that to enable her to make better provision for the care of the child she shall, on the expiry of this period, be guaranteed the right to an additional period of maternity leave until the child is 1 year old. Article 1 further states that in the event of her pregnancy and confinement a woman worker shall, for the period of her maternity leave and also, in certain cases, for part of her additional period of maternity leave, be granted a cash maternity allowance from the funds of the employees' sickness insurance scheme, subject to the conditions and to the extent prescribed in this Act.

Other provisions of the Act deal with regulations concerning cash maternity allowance and the regulation of certain conditions of employment in the case of pregnant women and mothers.

Translations of the Act into English and French have been published by the International Labour Office as *Legislative Series*, 1964-Cz. 1.

THE SOCIAL SECURITY ACT OF 4 JUNE 1964

Entered into force on 1 July 1964

SUMMARY

The text of this Act was published in *Sbírka Zákonů*, No. 44, of 15 June 1964. Under article 1 of the Act, the social security scheme instituted by that Act comprises:

(*a*) a pension scheme for employees; workers having the same rights and obligations as employees; professional members of the armed forces and security formations; other persons performing their military service; persons who fought against fascism; persons taking part in short-term or voluntary brigades; and artists;

(*b*) a pension scheme for the survivors of the persons mentioned under (*a*);

(*c*) a benefit scheme for the families of persons performing their military service, to the extent that they are not covered by other provisions;

(*d*) a pensioners' sickness scheme; and

(*e*) social security services.

Article 2 states that the farmers' social security scheme of co-operative farmers shall be governed by a special Act. Special regulations also provide for the social security of self-employed persons.

The Act consists of 148 articles and is divided into the following parts: Part I. Employees' Pension Scheme; Part II. Benefit Scheme for Persons Performing Their Military Service and Their Families; Part III. Pensioners' Sickness Scheme; Part IV. Common Provisions as to Benefits; Part V. Social Security Services; Part VI. Organization and Procedure; Part VII. Social Security Scheme for Professional Members of the Armed Forces and Security Formations; and Part VIII. Transitional and Concluding Provisions.

Translations of the Act into English and French have been published by the International Labour Office as *Legislative Series*, 1964-Cz. 2.

DAHOMEY

ORDINANCE No. 8 GPRD/SGG OF 11 JANUARY 1964 ESTABLISHING THE CONSTITUTION OF THE REPUBLIC OF DAHOMEY[1]

CONSTITUTION

PREAMBLE

The people of Dahomey, on the morrow of the Revolution of 28 October 1963, reaffirm their fundamental opposition to any régime based on arbitrariness and personal power.

They solemnly proclaim their adherence to the principles of democracy and human rights, as set out in the Declaration of the Rights of Man and of the Citizen of 1789 and the Universal Declaration of 1948, and as guaranteed by this Constitution.

They affirm their intention to co-operate in peace and friendship with all peoples that share their ideals of liberty, justice and human solidarity on the basis of the principles of equality, mutual interest and mutual respect for national sovereignty and territorial integrity.

They proclaim their devotion to the cause of African unity and pledge to do all in their power to achieve it.

Title I

THE STATE AND SOVEREIGNTY

Art. 1. The State of Dahomey is an independent, sovereign Republic.

...

Art. 2. The Republic of Dahomey is one and indivisible, secular, democratic and social.

Its principle is government of the people by the people and for the people.

Art. 3. National sovereignty shall be vested in the people.

No section of the people, no community and no individual may assume the exercise of sovereignty.

Art. 4. The people shall exercise sovereignty through their elected representatives and by way of referendum. The conditions in which recourse may be had to a referendum shall be determined by law.

The Supreme Court shall ensure the proper conduct of referenda and announce their results.

Art. 5. The vote shall be universal, equal and secret.

All Dahomean nationals of both sexes who are of full age and in full possession of their civil and political rights shall be entitled to vote under the conditions established by law.

Art. 6. Political parties and groups shall assist in the exercise of the franchise; they may be formed freely and may engage in their activities on the sole condition that they respect the laws of the Republic and the principles of democracy, national sovereignty and territorial integrity.

Title II

THE RIGHTS AND DUTIES OF THE CITIZEN

Art. 7. The Republic of Dahomey shall guarantee the fundamental freedoms.

It shall guarantee freedom of speech, of the Press, of assembly and of association and freedom to hold processions and to demonstrate under the conditions established by law.

Art. 8. The Republic of Dahomey recognizes the right of all citizens to work and shall endeavour to create conditions which will make this right effective.

Art. 9. Trade union rights and the right of workers to strike shall be recognized. These rights shall be exercised under the conditions established by law.

Art. 10. No person may be arbitrarily held in custody.

An accused person shall be presumed innocent until he is proved guilty under a procedure providing the safeguards essential to his defence. The judicial authority, as the guardian of personal freedom, shall ensure respect for this principle as prescribed by law.

Art. 11. The home shall be inviolable.

Art. 12. The secrecy of correspondence shall be guaranteed by law.

Art. 13. The Republic shall ensure equality before the law for all, without distinction as to origin, race, sex, religion or political affiliation. It shall respect all creeds.

Any particularist propaganda of a racial, regional or ethnic nature and any manifestation of racial discrimination shall be punished by law.

Art. 14. Defence of the nation and of its territorial integrity is a sacred duty of every Dahomean citizen.

[1] Text published in the *Journal officiel de la République du Dahomey*, No. 2, special number, of 12 January 1964 and furnished by the Government of the Republic of Dahomey.

Title III

THE PRESIDENT OF THE REPUBLIC

Art. 15. The President of the Republic shall be the Head of the State. He shall ensure observance of the Constitution. He shall ensure, through his arbitration, the functioning of public authority and the continuity of the State.

He shall be the guarantor of national independence, of the integrity of the national territory and of the observance of treaties and international agreements.

Art. 16. The President of the Republic shall be assisted by a Vice-President of the Republic, who shall be the Head of the Government.

The President and Vice-President of the Republic shall be elected by direct universal suffrage for a term of five years. They shall be eligible for re-election.

...

Title V

THE LEGISLATIVE POWER

I. The National Assembly

Art. 43. The Parliament shall be composed of a single assembly, known as the National Assembly, the members of which shall be known as deputies.

Art. 44. The deputies to the National Assembly shall be elected by direct universal suffrage.

The term of the legislature shall be five years.

The number of members of the National Assembly, the conditions of eligibility, the rules concerning ineligibility and incompatibility of offices, polling procedures and the procedure for filling vacant seats shall be established by law.

In the event of a challenge, the Supreme Court shall rule on the eligibility of candidates.

...

Title VI

THE COURTS

I. The Judicial Authority

Art. 77. The judiciary shall be independent of the executive and the legislature.

Art. 78. Justice shall be administered in the territory of the State in the name of the people.

In the performance of their functions, judges shall be subject only to the authority of the law.

Art. 79. The President of the Republic shall guarantee the independence of the judiciary.

He shall be assisted by the Superior Council of the Judiciary.

...

Title VII

TREATIES AND INTERNATIONAL AGREEMENTS

...

Art. 95. Treaties and agreements which have been duly ratified shall, from the time of their publication, take precedence over laws, provided that, in each case, the agreement or treaty is applied by the other party.

...

Title X

AMENDMENT

Art. 99. The initiative with regard to amendment of the Constitution may be taken by the President of the Republic following a decision of the Council of Ministers and by the members of the National Assembly.

In order to receive consideration, a proposed amendment must be approved by a three-fourths majority of the members of the National Assembly.

The amendment shall be considered finally adopted only after having been approved in a referendum, unless it has been approved by a four-fifths majority of the members of the Assembly.

No procedure for amendment may be initiated or continued when the integrity of the national territory is threatened.

The republican form of government shall not be subject to amendment.

...

DENMARK

INSTRUCTION No. 318 OF 2 NOVEMBER 1964 MAKING CERTAIN OCCUPATIONAL DISEASES NOTIFIABLE[1]

1. All medical practitioners, nursing homes, hospitals and other similar establishments shall be bound to declare to the Inspectorate of Labour, under section 4, first paragraph, any cases of occupational diseases which come to their notice, unless such diseases are to be notified to the Directorate of Insurance against Accidents.

2. (1) The rule as to compulsory notification shall apply to each case of an occupational disease referred to in the Schedule to this Notification, irrespective of whether such case has been the subject of a definitive diagnosis — more or less confirmed — or a provisional observation.

(2) The obligation to notify shall also concern all other occupational diseases which are duly proven.

(3) Sicknesses arising out of:

1. work carried out by seafarers which may be caused by their service, whether or not such service is done on board ship, and all work done on board ship;
2. work in fisheries; and
3. work connected with air navigation

shall not be compulsorily notifiable.

(4) The persons and institutions referred to above are also requested to notify cases of illness which are presumed to be occupational diseases, in so far as the assistance of the Inspectorate of Labour can be of use in diagnosis.

3. The obligation to notify shall be incumbent on each medical practitioner with respect to all cases occurring among his patients. In hospital establishments, sanitoria, preventoria, etc., the obligation to notify shall be incumbent on the chief medical practitioner responsible for each service[2].

...

[1] Text published in *Lovtidende*, No. 23, of 1964 and translations thereof into English and French have been published by the International Labour Office as *Legislative Series*, 1964 — Den. 1.

[2] In the latter cases, which are the most frequent ones, the Directorate of Insurance will notify the Inspectorate of Labour.

ECUADOR

NOTE[1]

1. During 1964, as in previous years, the main concern of the Government of Ecuador was to ensure the strict observance of all the principles embodied in the Universal Declaration of Human Rights, without distinction as to race, colour, sex, language, religion, ideology, national or social origin, property, birth or other status.

2. The life and security of all inhabitants of Ecuador were fully protected by the State and personal freedom was fully guaranteed, subject only to the restrictions required for the maintenance of public order and peaceful association. All political prisoners held because of their participation in subversive activities were released last December under the general amnesty ordered by the Military Council of Government.

3. The doors of the courts of justice remained open to all persons seeking to defend their legitimate interests.

4. Freedom of movement, of work, of expression of thought, of petition, of assembly and of association, which are guaranteed by the Constitution of the Republic, were diligently protected by the State.

5. Labour rights were given particular attention during the year. In order to guarantee the effective application of the principles set out in articles 23 and 24 of the Universal Declaration of Human Rights through justice in employee-employer relations, the Government of Ecuador, by Supreme Decree No. 2490 of 29 October 1964, published in *Registro Oficial* on 2 November 1964, amended Title I of the Labour Code[2] so as to institute basic reforms in favour of the working class. In general, those reforms are designed to ensure security of employment for the worker, improve working conditions, extend annual leave according to the length of service, increase worker participation in company profits, establish an appropriate system for regulating minimum wages, and increase family allowances and compensation in the event of premature dismissal.

6. In the field of education, the Government of Ecuador pressed forward with programmes to promote literacy and to improve primary, secondary and higher educational establishments in both an intellectual and a material sense; for this purpose, the Ministry of Education receives the largest appropriation under the national budget.

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[1] Note furnished by the Government of Ecuador.

[2] Promulgated by Decree No. 210 of 5 August 1938 and published in *Registro Oficial*, Nos. 78-81, of 14-17 November 1938.

EL SALVADOR

DECREE No. 116 OF 15 JULY 1964[1]

Art. 1. The Office of Trade Marks, Patents and Literary Property shall keep the Register and Archives of Literary and Artistic Property. For the purposes of these regulations, the officer in charge of the Register shall be known as the Registrar of Literary and Artistic Property and he shall act under the authority of the Secretary of the Office.

Art. 2. The Registrar shall be responsible for:

(*a*) The registration of works protected by the Copyright Act, of contracts relating thereto and of all documents whereby copyright is altered, transmitted, transferred, encumbered or extinguished;

(*b*) The filing and processing of records pertaining to the fulfilment of national legislative requirements and compliance with international conventions on the subject.

Art. 3. The Register and Archives of Literary Property are public. At the written request of interested parties, the Registrar shall issue certificates, which may be either verbatim copies or summaries, of the entries in the Register and the documents in the Archives, and shall authenticate them with his signature. Both the Register and the Archives may be consulted at the office, but no book, document or other article belonging to the office may be removed.

[1] *Diario Oficial*, No. 204 of 20 July 1964.

ETHIOPIA

REGULATIONS No 302 OF 1964 ISSUED PURSUANT TO THE LABOUR RELATIONS PROCLAMATION, 1963[1]

SUMMARY

The text of these regulations was published in *Negarit Gazeta*, No. 5, of 30 December 1964.

The regulations were issued by the Minister of National Community Development (article 1) and may be cited as the " Minimum Labour Conditions Regulations, 1964 ", (article 2).

Article 4 provides that except as otherwise expressly provided herein, these Regulations shall apply to all employees engaged in industrial, commercial and other profit-seeking enterprises, provided, however, that only articles 5, 6, 9 and 10 hereof dealing, respectively, with annual leave, public holidays, severence pay and more favourable conditions, shall apply to homeworkers engaged in the enterprises described in this article 4.

Other provisions of these Regulations deal with regular hours of work (article 7) and compensation for overtime (article 8).

Translations of the Regulations into English and French have been published by the International Labour Office as *Legislative Series*, 1964-Eth. 1.

[1] For extracts from the Labour Relations Proclamation, 1963, see *Yearbook on Human Rights for 1963*, p. 100.

FEDERAL REPUBLIC OF GERMANY

THE PROTECTION OF HUMAN RIGHTS IN 1964

A SURVEY OF LEGISLATION, JUDICIAL DECISIONS AND INTERNATIONAL AGREEMENTS[1]

CONTENTS

ABBREVIATIONS

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*))
JZ	*Juristenzeitung* (Lawyers' Journal)
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, *Referent* at the Max Planck Institute for Foreign Public Law and International Law, Heidelberg.

INTRODUCTION

In accordance with the practice followed hitherto, this report is arranged in the sequence in which human rights are mentioned in the United Nations Declaration of 10 December 1948. The author has endeavoured to give international agreements and legislative texts the fullest possible treatment, and in making his selection of judicial decisions has concentrated mainly on those whose subject-matter raises points of law not previously clarified.

1. PROTECTION OF HUMAN DIGNITY

(Universal Declaration of Human Rights, preamble and article 1)

During the year covered by this report, the command laid on the State by the Basic Law to respect the dignity of man again gave the courts new subject-matter to deal with. Thus the Federal Court of Justice, which had had occasion a few years previously to consider whether secretly-made tape recordings were admissible as evidence in criminal proceedings, had now to examine a case in which entries in a diary had been used in evidence against the will of the defendant. As it had done in the case of the secret tape recordings, the Federal Court of Justice, in its judgement of 21 February 1964 (*NJW* 1964, p. 1139), rejected the diary as evidence. As the Court observed, entries in a diary are not as a rule intended for other eyes. If the keeper of a diary cannot be sure that the notes he makes are safe from exploitation — and, more particularly, from use against his own interests — the development of his personality may be appreciably hampered as a result. For this reason, the Court continued in the statement of grounds for its decision, everyone must be free to keep his sensibilities, feelings, views and experiences to himself if he sees fit to do so. It is — the Court acknowledged — extremely important that criminal offences should be detected and punished, but this consideration comes second to the State's duty to respect the

dignity of man and to safeguard the development of his personality. This duty consequently rules out the introduction of such notes into evidence. Enlarging on its statement, the Court observed that the prohibition on use applies only to such notes as can be considered the genuine expression of the author's personality; in diaries this is usually the case. If, on the other hand, a criminal jots down notes concerning his crime or his victim, or if a foreign agent keeps a diary of his espionage activities, he has no claim to protection of his personality. Notes of this kind describe only events which have no connexion with matters of personality and, as such, do not fall within the scope of the prohibition on use as evidence.

Another case arising in similar circumstances came before the Federal Constitutional Court in 1964. In a decision of 14 July 1964 (*BVerfGE* 18, p. 146), the Court ordered the temporary suspension, pending further investigation by the trial court, of a penalty involving deprivation of liberty imposed in a judgement based on entries made in the offender's diary and on the contents of a letter which was found in his possession but which he had not dispatched. In stating the grounds for its decision the Court stressed, in particular, that deprivation of liberty in violation of constitutional rights always inflicts serious and irreparable injury, and that this in itself makes it mandatory to postpone execution of the sentence.

The year 1964 also afforded an opportunity to delimit the boundaries of the right to the protection of personal dignity, and thus to assist in throwing more light on the content of that right. Thus the *Land* High Court at Hamburg, in its judgement of 10 July 1964 (*NJW* 1964, p. 1814) had to determine whether human dignity had been violated by an order requiring a person convicted of homosexual offences to avoid henceforth any dealings with other people's children or with young people under twenty-one years of age. The convicted person considered this order, with which he was required to comply as a condition for the suspension of his sentence, to be incompatible with his human dignity. He argued in support of this position that, as an artist, he needed to deal with young people and would be hampered in his work, and thus in opportunity to develop his personality, if he could not do so. The *Land* High Court flatly rejected this argument. It stated, first of all, that the general freedom of action guaranteed to every human being by article 1, paragraph (1), of the Basic Law can legitimately be restricted by any rule falling within the limits of the Constitution. Consequently re-educational directions by the trial court, which are intended to be of guidance and help to the person concerned, do not as a rule conflict with human dignity or with the right to free personal development. This is particularly true where the necessary moderation is not exceeded in imposing restrictions. Only if the court subjected the convicted person to some form of coercion in highly personal matters would his human personality, and hence his dignity, be flouted. As the Court stated in explanation of the grounds for its decision, a ban on dealings with particular persons or groups of persons — especially where no family relationship exists — is no violation of human dignity, for the very reason that such dealings might afford the convicted person the incitement or opportunity to commit further offences. Similarly, the Federal Administrative Court held on 28 February 1964 (*NJW* 1964, p. 1384) that an order requiring a so-called "log-book" to be kept was no violation of human dignity. The owner of a motor vehicle can now be required to keep such a log-book if he seeks to evade liability for a traffic offence by claiming that a member of his family or other third party, and not he himself, was using the vehicle and committed the offence. If, in such a case, the vehicle-owner is discharged for lack of evidence of his guilt, he may nevertheless be required to keep a log-book and to record in it the names of all persons to whom he hands over the vehicle and the time for which he does so. In the case in question, the Federal Administrative Court was required, *inter alia*, to examine the admissibility of such log-books; it took the view that the help afforded by such a log-book in identifying a traffic offender did not violate human dignity even where the offender was a person for whose benefit the vehicle-owner had a statutory right to withhold evidence. However, as the Court pointed out, the contradictory situation in which a family member can be summoned as a witness and yet be entitled by law to refuse to testify does not arise in this case, because the vehicle-owner is free to decide whether or not to hand over his car to a member of his family.

In addition to the decisions reported here, which are chiefly concerned with the protection of human dignity, the courts examined the principle of protection for the dignity of the personality in a series of judgements relating primarily to other fundamental rights.

2. PRINCIPLE OF EQUAL TREATMENT

(Universal Declaration, articles 2 and 7)

In 1964, as in all the previous years for which reports have been submitted, doubts regarding compliance with the equality rule gave rise to much litigation. The main problems were concerned with equal treatment under labour law and social legislation; in other branches of law, the principles developed through court decisions have brought about a decline in the volume of judicial proceedings. Here too, however, new problems constantly arise. Thus the Federal Court of Justice had to decide whether, in cases where the rules of German private international law require the court to be guided by foreign law, the latter can be applied even if its provisions conflict with the principle of equal treatment as understood in the Federal Republic. This question arose in connexion with the petition for divorce filed by a former German national who had acquired her husband's nationality by marriage to a Netherlands national. Since the married couple resided in Germany, the German court applied to had local jurisdiction. In virtue of the provisions of German private international law, however, this court had to judge the facts of the case according to Netherlands law. Under Netherlands law, the behaviour alleged against the respondent husband did not afford sufficient grounds for divorce, whereas if German law had applied divorce would have been granted. This difference in legal consequence is due

to a difference between the Netherlands and the Federal Republic in the administration of the equality principle as applied to marriage. Hence the main question for the Federal Court of Justice to settle, in the judgement published on 29 April 1964 (*NJW* 1964, p. 2013), was whether Netherlands law was applicable even in where it disregarded the principle of equality as understood in the Federal Republic. The Federal Court of Justice, like all the courts which had preceded it in the case, answered the question in the affirmative. In stating the grounds for its decision, the Court observed that the application of foreign law would certainly be excluded if it would lead to a result utterly incompatible with the system protected by the Basic Law. However, the Court continued, the system under which the German State and society exist is not affected merely because the foreign law applicable in a lawsuit pays less attention than the Basic Law to the principle of equal treatment for men and women. This applies especially in the case of persons who are subject to a legal system other than the German system. Consequently they cannot circumvent that system by invoking the principle of equal treatment for both sexes. The German *ordre public* prohibits the application of foreign law only where it would involve very serious violations, which was not deemed to be true in the case in question.

In a decision of 12 February 1964 (*NJW* 1964, p. 976), likewise concerned with the law of marriage, the Federal Court of Justice found that the application of Spanish law, which abides by the provisions of canon law concerning the indissolubility of marriage, was also compatible with the German *ordre public*. The German legislator, who ties divorce to the nationality of the husband instead of to the domicile of the spouses, does not contravene the equality rule of the Constitution even if the foreign law differs substantially from German law. The ruling consideration in applying foreign provisions is rather to ensure that the marriage will also be recognized in the State to which the alien belongs.

As already mentioned, problems of equal treatment arise mainly in matters of labour law and social legislation. For example, the Federal Labour Court heard an action based on a clause in a wage agreement stipulating that children's allowance would be payable to female employees only upon application, while their male colleagues would receive it without having to apply. The Court held, in its judgement of 15 January 1964 (*NJW* 1964, p. 1092) that this arrangement was unconstitutional. It deemed the arrangement a violation of the equality rule, since that rule places men and women on an equal footing with respect not only to wages but also to allowances, which are a component part of wages. In addition the Federal Constitutional Court, on 26 November 1964 (*NJW* 1965, p. 195), set aside as incompatible with the principle of equality the provision of social insurance law under which admission to the State sickness and pension insurance scheme was denied in the case of an employment relationship between spouses. The Court held that the disqualification of an employed spouse for pension insurance discriminated between such an employment relationship and other employment relationships, to the disadvantage of the former. Although a contract of employment between spouses is modified by the conjugal community — the Court went on — nevertheless it remains in essentials a genuine employment relationship, with all the consequences thereof, especially where tax law and labour law are concerned. The disqualification for insurance, the Court then explained, was based on the idea — long since superseded and quite untenable today — that there is a clash of interests between employee and employer which, as such, must be kept out of marriage as a community embracing all aspects of life.

In the course of 1964, however, the courts also heard actions in which the parties were mistaken in supposing that the equality principle had been violated. Even so, some of these cases help to throw additional light on the content and scope of the equality rule. Thus an Austrian who had become naturalized in Germany filed a constitutional complaint with the Federal Constitutional Court because his application for a change of name had been rejected. The plaintiff had been prevented from using his nobiliary prefix by operation of the Act passed in Austria in 1919 concerning the abolition of nobiliary prefixes, and had applied, under the Act passed in the Federal Republic on 29 August 1960 concerning the change of surnames and given names, for a change of name permitting him henceforth to use the prefix " *von* " as part of his name. Under the Act in question, persons now of German nationality who were forbidden in their former countries of nationality to use nobiliary prefixes as part of their name are given an opportunity to change their names if the prohibition was mainly directed at members of the German minority. The plaintiff regarded the rejection of his application as a violation of the equality principle. The Federal Constitutional Court, in a decision published on 4 February 1964 (*DOV* 1964, p. 264), denied that there had been any such violation in his case and pointed out, in explaining its decision, that the Austrian nobility legislation had not been directed at a German minority at all, but at the entire population of the State. The constitutionality of the Act itself was not at issue in these proceedings, but the Federal Constitutional Court commented in an *obiter dictum* that, because it was drafted in very general terms, the text did not perhaps take the equality principle sufficiently into account. The Court's thinking on this point was based on the consideration that the Act does not make it clear that it is intended to cover and correct only measures against Germans. The " area of impact " (" *das* Betroffensein ") — as it is described in the text of the Act — is such that the Act can also be interpreted, in the Court's view, as a completely general measure against the nobility. On this interpretation, the danger then arises that changes of name will be initiated solely on account of the legal fate of the name concerned. The outcome would be nothing more than a remedy for the loss of nobiliary prefixes, which was not the intention of the legislator. The Court further censured the Act for making the decision depend upon whether or not the persons actually covered by the nobility legislation belonged mainly to the German minority. Persons who are now of German nationality but who previously belonged to a country where the German minority was the element mainly affected are no different — the Federal Constitutional Court went on to say — from those who previously belonged

to a State where the German minority was not the element mainly affected. Consequently, the Court concluded, there was little justification, from the standpoint of equal treatment, for making any such discrimination in the Act.

3. PROTECTION AGAINST ARBITRARY DEPRIVATION OF LIBERTY

(Universal Declaration, articles 3, 4 and 9)

The protection guaranteed by article 104 of the Basic Law against arbitrary deprivation of liberty, and the laws enacted on the basis of that constitutional principle, have created such an impregnable legal situation in the Federal Republic that no further development of the law on this subject has been found necessary recently, and no proceedings based on a violation of this right came before the courts in 1964.

4. JUDICIAL AND ADMINISTRATIVE GUARANTEES OF DUE PROCESS

(Universal Declaration, articles 8 and 10)

During 1964 the courts again performed a considerable volume of work on problems concerning legal remedies. The most noteworthy were questions arising out of the distribution of court business. Three cases of this kind went as far as the Federal Constitutional Court. The first constitutional complaint was filed in a case in which four judges had been assigned as regular members to four different chambers in such a way that each judge could, at will, be seated in any of the chambers in question. The losing party in an action filed a constitutional complaint against the judgement delivered by a chamber so constituted. The ground for the complaint was that the judgement violated the right to the lawful judge, which is guaranteed in article 101, paragraph (1), of the Basic Law. In order to rule on this submission, the Federal Constitutional Court accordingly had to determine how the expression " lawful judge " was to be construed. By its decision of 24 March 1964 (*DÖV* 1964, p. 415), it recognized as " lawful judges " only those members of the bench assigned by a court calendar laid down in advance, to decide the case. The adoption of such a calendar, explained the Federal Constitutional Court, is the only means of averting the danger that justice may be exposed to extraneous influences through the manipulation of judicial bodies, and especially that an *ad hoc* selection of the judge who is to rule in a particular case may affect the outcome of the decision. It does not matter which side does the manipulating, continued the Court in stating the grounds for its decision; a suitor is always entitled to have the action to which he is a party decided by his lawful judge. In order to guarantee this, the arrangement which serves to determine the lawful judge must specify as clearly as possible in advance which judicial body and which judges are called upon to decide the individual case. Hence the plan for the distribution of a court's business must leave no avoidable leeway in the assignment of the individual judges to decide a case and thus no vagueness as to who is the lawful judge. In a case presenting similar circumstances which was decided on 2 June 1964 (*DVBl* 1964, p. 629), the Federal Constitutional Court stated further that a judge who is called upon by the presiding judge to participate in the decision does not become the lawful judge within the meaning of the Basic Law even if he has been invited to collaborate in the individual case for objectively sound reasons. What the Court objected to in this case was not the discretionary decision of the presiding judge but the arrangement for the distribution of business which, inadmissibly, makes such a discretionary decision possible and necessary.

However, as the Federal Constitutional Court had already pointed out in its decision of 25 February 1964 (*DVBl* 1964, p. 393), the right to the lawful judge can also be violated where a regularly appointed full-time judge is virtually cut off, by the distribution of business, from the exercise of his judicial function. The action in this unusual case was brought by a judge who was considered by his colleagues to be of a particularly intractable disposition and who was therefore listed in the plan for the distribution of business merely as a deputy for a regular member of the court. The result of this arrangement was that, in a three-year period, the judge in question had been able to act as reporting member of the court in only one case. Of the other cases in which he had sat merely as an assessor, with no reporting duties, all but one had been settled by amicable arrangement or in some other manner without coming to judgement. The judge, left virtually unemployed by the distribution of business, had challenged the distribution plan without success. He then filed a constitutional complaint on the grounds that his *de facto* exclusion from judicial activity contravened the principle of equality, violated his human dignity and, in addition, encroached upon his right to develop his personality. In stating the grounds for its decision, the Federal Constitutional Court acknowledged that the president of a court might take the greater or lesser working capacity of a judge into account in drawing up the plan for the distribution of business, but not that he might describe a properly appointed judge as intolerable, unreasonable or utterly unfitted for the delivery of judgement, and on those grounds exclude him from that process. If a judge properly appointed for life proves unsuited to his task, his colleagues must bear with him unless he himself consents to serve in some other capacity. It is permissible — the Federal Constitutional Court went on — neither to refuse to work with him nor to replace him. In the present case, therefore, the president of the court, in his distribution of the court's business, had violated the guarantee of the judge's personal independence, for the distribution plans had virtually the same effect as a formal removal from office, which would be unconstitutional. Since this violation *ipso facto* rendered the distribution of business null and void, the Federal Constitutional Court did not go on to determine whether the equality rule or the judge's human dignity and right to develop his personality had also been violated.

An opportunity also arose in 1964 to determine what characteristics a court must possess in order to be classified as a State court. This determination, which the Federal Constitutional Court undertook on 24 November 1964 (*DVBl* 1965, p. 196), was

needed because medical professional courts had been established in the *Land* of the Rhineland-Palatinate to punish professional misconduct. The president of such a professional court was to be appointed by the Minister of Justice, whereas his assessors were to be designated by the professional association. Courts of this kind had been regarded as State courts and not merely as a form of arbitral tribunal, but the Federal Constitutional Court declared them unconstitutional because they did not depend sufficiently on the organization of the State. The Federal Constitutional Court ruled that a court cannot be deemed to be a State court unless it is securely bound to the State in the matter of personnel. To possess State jurisdiction, therefore, it is not enough for the court merely to have been established on the basis of State legislation; what is much more important is that the State should have the deciding voice in appointing the persons who are to exercise the jurisdiction. This means that the State must co-operate in the appointment of the judges, at least to the extent of confirming the appointments made. In the professional courts in question — the Federal Constitutional Court went on — only the president was to be State-appointed and not the assessors; thus the State had renounced much of its responsibility and there could be no talk of their being State courts.

Once again a number of decisions were delivered on questions concerning the right to a hearing in court. The Federal Administrative Court, in its judgement of 27 March 1964 (*NJW* 1964, p. 2125), found that a hearing in court had been denied where the parties to a lawsuit were given no opportunity to make final statements after all the evidence had been presented. The Bavarian Constitutional Court took a decision to the same effect on 31 August 1964 (*JZ* 1964, p. 763); it observed, however, that no reference to the legal concept of the court is required. The *Land* High Court at Hamburg, in a decision of 25 August 1964 (*NJW* 1964, p. 2315), held that the right to a hearing in court had not been violated by the failure of a penal institution to make known its opinion regarding the need to keep a prisoner in protective custody for a further period, where the decision to do so was arrived at on grounds other than those stated in the opinion. Furthermore, if a result more favourable to the convicted person could have been produced by making known the opinion and providing for a hearing, the opinion would have had to be made known and an opportunity provided for representations on the subject.

5. DUE PROCESS IN CRIMINAL PROCEEDINGS

(Universal Declaration, articles 10 and 11)

The protection of rights in criminal proceedings is an essential component of the German legal system. As already stated in previous reports, this system accordingly makes it unlawful to detain a person in custody longer than necessary for purposes of investigation. This prohibition, as the *Land* Court at Cologne decided on 9 June 1964 (*NJW* 1964, p. 1816), applies even in the case of persons detained for examination on suspicion of murder. On the basis of this prohibition, the *Land* Court accordingly released two persons who were accused of war crimes but who had already spent six years in custody pending examination. The Court stated that the order for their release was based on article 6, paragraph (2), of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. In spite of this, a person who is presumed innocent may be deprived of his liberty before he has been found guilty by a final judgement, for the sole reason that the suspect owes society a duty of sacrifice which, under certain circumstances, requires the citizen to submit to detention pending examination. However, if the State demands such a sacrifice it must also take care that the sacrifice is kept within tolerable limits and does not bear unreasonably heavily on the individual. If reasonable limits are exceeded, the suspect must be released from custody, however serious the offence with which he is charged and however great the suspicion that he will flee or the danger that evidence will be destroyed. The Court went on to consider in detail the question when the limits of reasonable sacrifice can be said to have been exceeded. Generally speaking, the time elapsing before trial may be found reasonable or unreasonable according to the degree of difficulty presented by the investigation. The deciding factors in this respect may be the number of witnesses and experts to be questioned, the availability of witnesses and co-defendants, the nature of their statements, and the doubts they leave to be cleared up. If these factors make for an exceptionally difficult investigation, this may justify prolonging the period of detention for that purpose. Within certain limits the accused has only himself to blame for this prolongation because it is justified by the facts and circumstances of the case. As the *Land* Court stressed, however, it is in any case the duty of the courts and the State Counsel's Departments, in cases where particular difficulty is anticipated, to assign all the staff and technical resources required to ensure that the case is brought to trial as soon as possible and that no one is kept in custody pending examination for an intolerably long time. In the case before it, the Court left open the question whether everything possible had been done to expedite the proceedings, for it decided on other grounds that the accused persons must be released. Even where the time for which a person is detained pending examination is not disproportionate, by accepted standards, to the term of the expected penalty, and where the inquiries are of such exceptional difficulty that protracted proceedings are unavoidable, detention pending examination must be terminated immediately if its continuance would break the spirit of the person in custody and thus undermine his capacity for defence. Such a result would be a grievous violation of his human dignity. The community can never demand such a sacrifice from a theoretically innocent person, however serious, even monstrous, the charges against him may be.

Problems concerning the protection of rights also arose, once again, in the form of a claim to a hearing in court. The Federal Constitutional Court decided on 22 April 1964 (*NJW* 1964, p. 1412) that such a hearing can be claimed even in criminal proceedings

instituted by private complaint *(Klageerzwingungsverfahren)*. This is a special procedure in which the *Land* High Court, on the complaint of the injured party, has to decide whether there is still a charge to be brought even though proceedings have been discontinued by the State counsel. Although in this case the injured party is appealing from a decision of the State counsel and not proceeding against the author of the injury himself, the Federal Constitutional Court pointed out that a decision granting the application alters the legal situation of the accused to his disadvantage and produces direct legal effects unfavourable to him. The Federal Constitutional Court found that the failure to communicate the complaint to the accused violated his right to a hearing in court. Another court decided that failure to make known an appeal by the State Counsel's Department against the order of a court of first instance for the conditional release of a convicted offender, such appeal having led to his re-arrest, also violated the right to a hearing in court. The principle of such a hearing was further violated by the fact that only the defence counsel, and not the convicted offender himself, was given an opportunity to make a statement (*Land* High Court at Stuttgart, decision of 23 March 1964; *NJW* 1964, p. 1333).

6. PROTECTION AGAINST INTERFERENCE WITH PRIVACY

(Universal Declaration, articles 6 and 12)

Information issued by the Bavarian *Land* Office for the Protection of the Constitution to the effect that a certain person was unfit to be trusted with secrets led to a lawsuit which was decided by the Munich Administrative Court on 11 March 1964 (*DVBl* 1965, p. 447). The plaintiff had applied for a post as a translator in an enterprise which performs under State contract, work subject to official secrecy. In the course of the applicant's probationary period, the firm consulted the Office for the Protection of the Constitution regarding his fitness to be entrusted with secrets. It was informed that, during the applicant's previous employment, several incidents had occurred which cast doubt on his capacity to preserve secrecy. As a result, the enterprise did not award him a final contract of employment. The translator then filed suit against the Minister responsible for the Office in question, asking that he should be ordered to withdraw the statement that the plaintiff was unfit to be trusted with secrets. He further requested that the authorities should be enjoined to refrain henceforth from issuing any such information concerning him. The Administrative Court, stating the grounds for its decision, began by pointing out that, according to the principles of a State governed by law, the plaintiff was entitled to protection of his privacy and could therefore require that knowledge concerning him which was gained by the authorities in the course of their official activity should be communicated to third parties only where circumstances so warranted and after careful verification. In the case before it, the Court readily acknowledged that the authorities were entitled to give information and, furthermore, held that the substance of the information given was objectively fair in view of the circumstances in which the plaintiff was situated. Secrets — the Court went on — cannot be successfully kept unless the person entrusted with them is both resolved to keep silence about his work and possessed of the necessary personal capacity to maintain his resolution against outside pressure. Consequently, in order to prevent a betrayal of secrecy prejudicial to the constitutional order, employees who are to be entrusted with secrets must be carefully chosen. For this reason the Court found that the *Land* Office, in issuing its statement, had not violated the constitutionally guaranteed rights to the free development of personality and the free choice of place of work. The information supplied — the Court concluded — is in no way intended to encroach upon these fundamental rights of the plaintiff, but is a means of enabling his employer to discharge his (the employer's) contractual obligations to the Federal Republic. The Bavarian Constitutional Court, to which the plaintiff then applied, concurred in the view of the Administrative Court and accordingly rejected the constitutional complaint submitted to it.

A further case, decided by the Federal Court of Justice on 5 May 1964 (*NJW* 1964, p. 1471), dealt with the question of justification for a factually accurate press report on matters within the scope of a person's privacy. This question was raised by a newspaper publisher who had expressed, in the Press under his control, indignation at moral lapses on the part of the proprietor of a rival firm. However, criminal proceedings were pending against the publisher himself for procuring, and the rival proprietor whom he had so fiercely attacked reported very fully, in his turn, on the former's misdeeds. The publisher therefore claimed the protection of his privacy guaranteed by the Constitution and applied for an order prohibiting the dissemination of facts concerning his private life. His application was, however, rejected at all judicial levels. The Federal Court of Justice, which gave the final ruling in the case, held that a person who has himself made the private affairs of another the subject of a press campaign cannot claim complete immunity from publicity in his own private life.

7. THE RIGHT TO FREEDOM OF MOVEMENT AND THE RIGHT TO LEAVE THE COUNTRY

(Universal Declaration, article 13)

No legislation was enacted and no judicial decisions were rendered in 1964 concerning the right to freedom of movement guaranteed to all Germans by article 11 of the Basic Law or concerning the right to leave the country temporarily or permanently, which derives from the right to the free development of the personality.

8. THE RIGHT OF ASYLUM; DEPORTATION; EXTRADITION

(Universal Declaration, article 14)

By an Act of 3 November 1964 (*BGBl* 1964 II, p. 1369) the Federal Republic acceded to the European Convention on Extradition, concluded in Paris between the Members of the Council of Europe on 13 December 1957. This Convention

places the Contracting Parties under the obligation to grant extradition in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty for at least one year. Extradition is not to be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence. The taking or attempted taking of the life of a Head of State or a member of his family is not, however, deemed to be a political offence. Again, extradition is not to be granted, even in respect of an offence punishable under ordinary criminal law, if the requested Party has substantial grounds for believing that the request for extradition has in the last analysis been made for the purpose of prosecuting or punishing a person on account of his race, religion or political opinion. Furthermore extradition for offences under military law which are not offences under ordinary criminal law is excluded from the application of the Convention. Limitations are also imposed with respect to offences in connexion with taxes, duties, customs and exchange, for which extradition is to be granted only if the Contracting Parties have so decided. A Contracting Party has the right to refuse extradition of its nationals. In that event, however, the requested Party must submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate, and the requesting Party must be informed of the treatment of the case. Moreover extradition is not to be granted if final judgement has already been passed by the requested Party upon the person claimed. Extradition may be refused if the competent authorities of the requested Party have decided either not to institute or to terminate proceedings. Extradition is not to be granted when the person claimed has, according to the law of either the requesting or the requested Party, become immune by reason of lapse of time from prosecution or punishment. Extradition may also be refused if the offence is punishable by death under the law of the requesting Party and if in respect of such offence the death-penalty is not provided for by the law of the requested Party or is not normally carried out. However, if the requesting Party gives such assurance as the requested Party considers sufficient that the death-penalty will not be carried out, extradition must not be refused. The Convention further provides that a person who has been extradited shall not be proceeded against or sentenced for any offence other than that for which he was extradited, except when the Party which surrendered him consents or when that person, having had an opportunity to leave the territory of the Party to which he has been surrendered, has not done so within forty-five days of his final discharge, or has returned to that territory after leaving it. Again, the consent of the State which first surrendered the person concerned is required for his re-extradition to a third State.

The Treaties between the Federal Republic and the Principality of Monaco concerning extradition and concerning legal assistance in criminal cases also entered into force in 1964 (Act of 29 September 1964, *BGBl* II, p. 1297). The content of the two treaties corresponds in essentials to the European Convention on Extradition described above.

The question whether the Basic Law permits extradition in respect of an offence punishable in the requesting State by death was also the subject of a decision by the Federal Constitutional Court (decision of 30 June 1964, *BVerfGE* 18, p. 112); the European Convention on Extradition had not entered into force at the time and hence of course could not be used for guidance. The decision was rendered on a constitutional complaint submitted by a person of Yugoslav birth who had fled from the French Foreign Legion to the Federal Republic. He was prosecuted by the French authorities for raiding a dwelling-house in an Algerian village and killing several of the occupants. French law prescribes the death penalty for this offence. The German-French Extradition Treaty of 29 November 1951, approved by the Bundestag by the Act of 26 June 1953, provides that in cases where the extraditable offence is punishable by death the requested State is entitled only to make a recommendation to the effect that, if the death penalty is imposed, it should be commuted into the next lesser penalty prescribed by the law of the requesting State; extradition was accordingly ordered, and the Foreign Legionary filed a constitutional complaint. He based his complaint on the grounds that he had collaborated with the *Organisation de l'Armée secrète* (OAS), that he had been politically persecuted in France because of it, and that he enjoyed the right of asylum in the Federal Republic. Apart from that, he cited the abolition of the death penalty in the Federal Republic as an argument against his extradition. In his contention the right to life, which was constitutionally guaranteed and significantly secured by article 102 of the Basic Law, overrode article 18 of the German-French Extradition Treaty and nullified its effect. The Federal Constitutional Court, however, took the view that the fundamental right conferred on the plaintiff by article 2, paragraph (2), of the Basic Law would not be violated by his extradition even if he was sentenced to death in France and the death penalty was carried out. The Court decided that the Basic Law does not prohibit the German State authorities from rendering legal assistance to another State in criminal proceedings even if this may result in the imposition and execution of the death penalty by such other State.

In stating the grounds for its findings, the Court first examined the meaning of article 102 of the Basic Law. The abolition of the death penalty, it explained, means more to the Federal Republic than a mere provision of positive law eliminating one of several penalties prescribed by the traditional penal system. It is an acknowledgement of the essential value of human life, and of an attitude on the part of the State that stands in tangible contrast to the views of a political régime to which life meant little and which accordingly committed limitless misuse of the power of life and death it had arrogated to itself over the citizenry. The abolition of the death penalty in the Federal Republic must therefore be understood in terms of the special historical situation which gave rise to it. It cannot, consequently, imply a judgement as to the value of systems of law which have not had such experience of an unjust order and which, because they have followed a different course of historical development and

because the elements of their State policy and the basic assumptions of their State philosophy have been different, have not made such a decision for themselves. Furthermore, the Court went on, there is nothing inherent in the German legal system to warrant making constitutional decisions against the death-penalty into an absolute rule. In this connexion, the Court pointed out that even the Universal Declaration of Human Rights proclaimed by the United Nations, despite its emphatically humanitarian character, expresses no opinion regarding the death-penalty. The European Convention for the Protection of Human Rights and Fundamental Freedoms, moreover, allows for it as a possible penalty. It is true — continued the Court — that the Federal Government, in negotiating extradition treaties, has always drawn attention to the abolition of the death-penalty in the Federal Republic and has succeeded almost without exception in making the conventional obligation to extradite conditional upon a promise that, if the person claimed is sentenced to death, the sentence will not be carried out. In the extradition treaty with France, all it was able to obtain was the right to make a recommendation to the effect that a penalty of deprivation of liberty should be imposed instead of the death-penalty. Despite certain misgivings expressed in the Bundestag during the debates on the legislation to approve this treaty, the Bundestag went on to approve it because even the possibility of making such a recommendation was regarded as a step forward in the legal relations between France and the Federal Republic. The Court, continuing the statement of the grounds for its decision, observed that it is one thing for the Federal Republic, in law-making by international treaties, to give effect to the attitude towards the death-penalty which is expressed in principle in article 102 of the Basic Law, and accordingly to strive for a limitation of that penalty, and quite another matter for it to make its own legal order prevail over an international law-making treaty in which the legitimate interests and legal outlook of other States are also taken into account and, within the limits of the politically possible, brought into balance with those of the Federal Republic. Such behaviour would not be in keeping with the favourable attitude towards international law inherent in the Basic Law, which puts respect for foreign legal systems and legal outlooks before all other considerations. Such behaviour, the Federal Constitutional Court added, would interfere with the general flow of legal assistance in criminal cases and would make the campaign against even the most serious crimes, in which all States have a common interest, far more difficult. On these grounds, it ruled that the extradition order granted was in accordance with the Constitution.

Another case concerning the right of asylum came before the *Land* High Court of Bavaria for decision. In the case settled by its decision of 23 March 1964 (*DVBl* 1964, p. 588), a Turkish national of Kurdish origin had been sentenced to a term of imprisonment by a German court for treasonable dealings. After he had served his sentence, the competent administrative authority prohibited his residence in the Federal Republic and ordered his immediate deportation. The competent court of first instance, on the petition of the administrative authority, issued an order for his detention pending deportation. It based its order on the ground that the person concerned, who represented a danger to the security of the Federal Republic, enjoyed no right of asylum. The *Land* Court, however, held that he had the right of asylum and set aside the order of the lower court. The *Land* Court based its decision on the ground that the person concerned was liable to political persecution in Turkey for his activity as a Kurdish nationalist. Since he was exempt from deportation on that ground, he could not be detained pending deportation.

This ruling was appealed in its turn, making it necessary for the *Land* High Court of Bavaria to undertake a detailed study of the right of asylum. It found article 105 of the Bavarian Constitution, which grants the right of asylum, to be inapplicable because the person concerned had not fled to Bavaria in order to escape persecution abroad; but it recognized the right of asylum under the Convention relating to the Status of Refugees of 28 July 1951 (*BGBl* 1953 II, p. 559). However, the right of asylum under this Convention is limited inasmuch as expulsion and even return, "*refoulement*", to a country where political persecution threatens can be ordered on grounds of national security. After the person concerned had been sentenced for treasonable dealings, as the *Land* Court had already pointed out, there were adequate grounds for expulsion and return ("*refoulement*"). It is another matter, however, if the refugee is threatened with the death penalty in the country of his nationality. According to the principle of proportionality which governs the whole of the State's right to intervene, deportation and hence also the issue of an order for detention pending deportation are subject to the condition that deportation and detention pending deportation should remain duly proportionate to their purpose: that of ensuring that the person concerned is deported. Since the Basic Law rejected the death-penalty, the Court observed, the inference was that according to the Basic Law it would be disproportionate to expose the refugee to the death-penalty in the country of his nationality. For that reason he could not be deported to Turkey or kept in custody in order to ensure that he was so deported.

9. THE RIGHT TO A NATIONALITY

(Universal Declaration, article 15)

No legislation was enacted during the year under review. Such gap as had existed was filled by the Act of 19 December 1963, which was mentioned in last year's report. No basic issues relating to nationality were brought before the courts for adjudication.

10. PROTECTION OF THE FAMILY

(Universal Declaration, article 16)

Concern for protection of the family led the *Land* government of Baden-Württemberg to reformulate and, to some extent, to expand the generally prevailing right to maternal welfare in an ordinance specially adapted to the interests of women civil servants and women judges. Under the terms of this ordinance, which was promulgated on 13 May 1964 (*GBl* 1964, p. 256), women civil servants and

women judges must be excused from their duties throughout the entire period of their pregnancy if medical evidence shows that their continuing to work would endanger the life or the health of mother and child. The performance of any duties during the last six weeks before confinement is prohibited unless the woman concerned expressly gives her consent. The ordinance also enumerates a number of duties which must not be performed by women covered by the ordinance. In addition, such women may not be on duty on Sundays or holidays, or between 8 p.m. and 6 a.m., during the period of their pregnancy.

During the year under review, the basic right to protection of the family once again gave the Federal Constitutional Court occasion to rule on a question of law relating to taxation (30 June 1964, *NJW* 1964, p. 1563). The Court, which in 1957 had held that the joint assessment of spouses for taxation purposes was inimical to the family, now ruled that a joint assessment of parents and children was also unconstitutional. Taxation of that kind placed a heavier burden on the family as a whole than would be the case if its members were assessed separately. As the Federal Constitutional Court emphasized, such an extra burden placed the family at a disadvantage. It contravened article 6, paragraph (1), of the Basic Law and was therefore not permissible. The Court concluded by observing that the constitutional precept of protection of the family must prevail over the technical administrative considerations which argued in favour of a joint assessment.

11. PROTECTION OF PROPERTY

(Universal Declaration, article 17)

Although there already exists a considerable body of precedent with regard to the law relating to expropriation, acts of expropriation nevertheless continue to raise questions, the solution of which often produce general guiding principles. For instance, a case decided by the Federal Administrative Court on 18 August 1964 (*DVBl.* 1965, p. 237) provided the occasion for a detailed exposition of the " principle of the least possible encroachment on property ". This case arose out of the expropriation of a piece of land for the purpose of constructing living quarters for foreign military personnel. The owner of the property opposed this measure and argued that the purpose sought through expropriation would have been equally well attained through the establishment of a right of use. The Court agreed with that view. In the first place, the guarantee of property, as embodied in article 14, paragraph (1), of the Basic Law, would be incomplete without the principle of the least possible encroachment on property. That principle meant that expropriation could take place only if the purpose to be attained through such a measure was not attainable through a less repressive encroachment. Thus, the Court emphasized, a deprivation of ownership must be eschewed whenever the purpose sought through the measure was equally attainable through the mere imposition of a right *in rem*, provided that the person affected wished to retain ownership despite such an imposition. The Court went on to say that, since any imposition on a property owner over and above what was absolutely necessary violated the constitutional protection of the owner of property, even the imposition of a right *in rem* must be eschewed if an obligatory arrangement would suffice. As neither expropriation nor the imposition of a right *in rem* was necessary for the construction of living quarters for military personnel, the Court held that expropriation for this purpose was unconstitutional and therefore void.

12. FREEDOM OF BELIEF, FREEDOM OF OPINION AND FREEDOM OF RELIGIOUS PRACTICE

(Universal Declaration, articles 18 and 19)

Whereas freedom of belief and freedom of religion do not for the time being require any new legislation or give rise to any litigation, the right to the free expression of opinion constantly raises new issues and problems. During the year under review, two of the Federal *Länder*, Baden-Württemberg and Schleswig-Holstein, enacted laws relating to the Press which take account in an exemplary manner of the development of the law. Both Acts (*BWGBl.*, p. 11, and *Schl.H.GBl.*, p. 71) describe the activities of the Press as a public service and provide that it shall not be subjected to any licensing requirements. In order to make the performance of this service possible, both Acts impose on the authorities an obligation to supply representatives of the Press with the necessary information. The Press, for its part, is required to act with special conscientiousness. Thus, it must check all news before publication with such attention to the wording, content and origin as may be necessary in the circumstances of each case. Under the terms of the Acts, any person who is affected by an assertion of facts appearing in a publication is accorded the right of reply. As in the past, only a judge can order confiscation. However, if confiscation was unlawful or if a confiscation order proves to have been unwarranted, suitable compensation must be granted to the person directly affected by the confiscation. One innovation in both Acts is the introduction of a right to refuse to testify to the identity of the author or contributor of, or the authority for, a published item. This right may not, of course, be invoked in the case of items the contents of which are punishable, unless the responsible editor has been or can be punished. Similarly, no right of refusal to testify exists if there is reason to assume that the documents or information on which the item is based were obtained in contravention of a penal law prescribing deprivation of liberty for a term of not less than one year.

Freedom of opinion is of particularly vital importance in the sphere of art. Freedom to practise art is expressly guaranteed in article 5, paragraph (3), of the Basic Law. The *Land* High Court of Bavaria considered the scope of the right to such freedom in its judgement of 22 January 1964 (*NJW* 1964, p. 1149). The Court, in stating the reasons for its decision, observed that artistic freedom meant freedom of artistic practice, including freedom to make the works created generally accessible. That freedom was not unlimited, however, but could, like the right to other freedoms, be restricted by penal laws. By this interpretation, the Court dissented from the widely-held view that the artistic treatment

of a subject was always a sufficient defence in criminal proceedings. The Court added that art was not an absolute supreme value to which all other community values were to be subordinated; rather, it was one community value among others. Consequently, the artist was not free from all restraint, even if that fact operated to the detriment of complete artistic expression. The Court made it clear, however, that article 5, paragraph (3), of the Basic Law had an effect on those penal laws which circumscribed artistic freedom, in that works created by artistic activity must be appraised in criminal proceedings by criteria different from those applied to other evidence or other articles.

13. PROHIBITION OF POLITICAL PARTIES AND ASSOCIATIONS

(Universal Declaration, articles 20 and 30)

A new Associations' Act, adopted in the Federal Republic on 5 August 1964 (*BGBl.* I., p. 593), is of some consequence to political parties also. The Act begins by providing that associations may be freely established. An association may be prohibited only if its object or activities violate penal laws or if it is directed against the constitutional order or against the idea of international understanding. Associations all or most of whose members or leaders are aliens may, however, be prohibited if, through their political activities, they damage or endanger the internal or external security, the public order or other substantial interests of the Federal Republic or any of its *Länder*. Workers' and employers' organizations enjoying the protection of International Labour Organisation Convention No. 87 are less easily dissolved, however, since prohibitions do not become effective until the Court has confirmed that the prohibition is lawful. Article 22 of the new Associations' Act introduces an amendment to article 90*a* of the Criminal Code. Under this article, as revised, any person who continues to conduct a political party which has been declared unconstitutional by the Federal Constitutional Court or in any other way maintains its organizational structure or establishes a substitute organization in its stead is liable to imprisonment for a term of not less than three months. In addition, any person who is a member of a prohibited party or a substitute organization created in its stead or who agitates for or supports such a party or organization is liable to a term of imprisonment. The same applies to associations which have been prohibited without recourse.

According to a ruling of the Federal Court of Justice of 9 October 1964 (*NJW* 1965, p. 53), however, article 90*a* of the Criminal Code applies only to organizations which exist inside the Federal Republic. Consequently, the penal clause does not apply to the German Socialist Unity Party (SED) or the other parties and organizations in the Soviet zone subordinate to it, provided that they limit their activities against the Federal Republic to their members in the Soviet zone. An association whose intellectual centre, leadership, headquarters and predominant membership are in the Soviet occupation zone cannot be a substitute organization unless it exists in the territory of the Federal Republic also. It is not enough that it merely exerts influence in the Federal Republic from outside through such means as infiltration and instigation, broadcasting or the dissemination of written matter, or that it operates in the Federal Republic through isolated acts, e.g., through agitators or agents or with the help of individuals. Since the entry into force of article 90*a* of the Criminal Code, it is no longer a punishable offence, according to a further ruling by the Federal Court of Justice on 30 October 1964 (*NJW* 1965, p. 162), to promote an anti-constitutional association which has not yet been prohibited.

14. THE SUFFRAGE AND SELF-DETERMINATION

(Universal Declaration, article 21)

The question whether the content of a pastoral letter circulated in Catholic churches constituted an impermissible attempt to influence an election was the subject, in 1964, of a decision by the Federal Constitutional Court of 17 January 1964 (*DÖV* 1964, p. 312), which gave rise to much discussion. Such a pastoral letter was read in the churches of North Rhine-Westphalia on the occasion of the municipal elections there. It discreetly deprecated abstention from voting and recommended the election of candidates who could be expected to represent Christian and ecclesiastical interests in local affairs. The Federal Constitutional Court's first comment on such conduct was that even persons who were not themselves seeking election were entitled to intervene in the campaign and collaborate in informing the voters. They were therefore also entitled to recommend certain candidates and deprecate others. Under article 5 of the Basic Law, such utterances were permitted and, indeed, were essential to the preparations for the election. Thus, they did not constitute an impermissible attempt to influence the election, nor did they violate the principle of free elections embodied in article 28, paragraph (1), second sentence, of the Basic Law. The Court pointed out that even local elections affected religious and ecclesiastical interests, since the members elected to municipal bodies exercised a decisive influence on the composition of the local authorities and on the way in which they performed their duties. They were responsible, within their sphere of competence, for ensuring that freedom of belief and of religious creed was not infringed and that the exercise of religion without interference continued to be safeguarded. The Court then took up the question whether a bishop could intervene in the electoral campaign in his official capacity. In that connexion, the Court observed that the prohibition which had existed at the time of the constitutional monarchy had since become irrelevant, since the executive branch was now normally headed by political personalities who conducted the electoral campaign without being challenged and who, moreover, were empowered to do so under articles 5 and 21 of the Basic Law. In any event, the churches and their organs were not State organs. The pastoral letter in question was therefore not held to be an impermissible attempt to influence the election.

15. THE RIGHT TO CHOOSE AND EXERCISE A PROFESSION OR OCCUPATION

(Universal Declaration, article 23)

Questions relating to profession or occupation, and particularly questions relating to the constitutionally guaranteed right to choose a profession or occupation, are constantly being brought before the courts. One such question came before the Federal Constitutional Court in 1964. In its decision of 5 May 1964 (*NJW* 1964, p. 1516), the Court had to decide whether the *numerus clausus* imposed with respect to the exercise of the profession of notary violated the fundamental right to the free choice of a profession or occupation. The Federal Constitutional Court ruled that it did not, basing its decision on the ground that the profession of notary served to perform State business; thus, the notary exercised a " public office ", but without, of course, the public-law status of a State employee. The Court emphasized that, when State business was placed in the hands of persons outside the public service, the decisive question was how near the profession concerned came to the public service. The nearer it stood to the public service, the more readily could it be subjected to special rules, which then operated in restraint of the fundamental right to the free choice of a profession or occupation. Conversely, the more apparent the distinctive features of the independent profession, the more powerful was the influence of the fundamental right. In the case of the profession of notary, as a public office but one which did not form part of the public service, the self-determination of the individual was restricted accordingly. Thus, in this case, the free choice of a profession could be exercised only to the extent that the structure of offices created by the State made it possible, and the profession of notary could be freely chosen only in so far as the State made official posts available.

16. THE PROTECTION OF RIGHTS IN LABOUR LEGISLATION

(Universal Declaration, articles 23, 24 and 25)

With a view to protecting young people from moral harm as a result of certain types of employment, the Federal Minister of Labour issued an ordinance on the subject on 3 April 1964 (*BGBl.* I, p. 262). In accordance with the ordinance, females under twenty-one years of age may not be employed after 1 June 1964 as exotic dancers or strip-tease performers, dance-hall hostesses or partners, or café or bar hostesses. Juveniles of either sex may take part in variety, cabaret and revue acts only in the case of productions which juveniles are permitted to attend publicly under the Juvenile Protection Act. This does not apply to artistic performances jointly with a parent. Juveniles are also prohibited from appearing in acts having a brutalizing influence.

With a view to preventing damage to the health of juveniles, a further ordinance, concerning labour welfare for juvenile federal employees, was issued on 5 November 1964 (*BGBl.* I, p. 853). In accordance with this ordinance, the working day for persons under twenty-one years of age may not exceed eight hours, and they may not be required to work for more than a total of forty-four hours in any one week. The ordinance also prescribes that at least twelve hours must elapse between the end of the working day and the beginning of the next duty period. Juveniles may not be employed between the hours of 8 p.m. and 6. a.m. In addition Sunday and holiday work is prohibited, except in cases of emergency. Compensatory time off must be given within four weeks for any overtime.

During the year under review, the courts had occasion to deal, for the most part, only with routine matters. An exception to this was the decision of the Federal Labour Court of 10 June 1964 (*NJW* 1964, p. 2269), in which the principle of equal pay for equal work was the main point at issue. As the Court pointed out, the basic idea of fair remuneration, which is a subordinate instance of social and communal justice, is that all employees should be treated equally in respect of their work, their performance and their remuneration. Thus, as the Court emphasized, this principle prohibits arbitrary and purely discretionary determinations of the amount of remuneration in the case of persons entitled to equal treatment. In this connexion, of course, " equal " does not mean " identical ", but " analogous ". The Court therefore concluded that there were quite distinct occupations which were " equivalent " and might thus be considered " equal " for the purpose of remuneration.

17. STATE CARE FOR PERSONS IN NEED OF ASSISTANCE

(Universal Declaration, articles 22 and 23)

Apart from an adaptation of social security and accident benefits to the general price structure, no welfare legislation was enacted during the year under review, nor were there any basic rulings by the courts.

18. THE RIGHT TO EDUCATION

(Universal Declaration, article 26)

By Acts of 10 May 1964 (*BWGBl.* 1964, p. 107 and 22 June 1964 (*Nds. GVBl.* 1964, p. 97) respectively, *Land* Baden-Württemberg and *Land* Lower Saxony approved the Convention against discrimination in education, adopted on 14 December 1960 by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) at its eleventh session in Paris. This Convention — the preamble of which, moreover, expressly refers to the Universal Declaration of Human Rights — has thus acquired the status of law within the jurisdictions of these *Länder*. It prohibits any distinction, exclusion or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education. The Convention imposes on the States Parties an obligation to ensure that education is directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms, that it promotes understanding, tolerance and friendship among all nations, racial or religious groups, and that it furthers the activities of the United Nations for the maintenance of peace.

19. INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF HUMAN RIGHTS

(Universal Declaration, article 28)

By Act of 19 September 1964 (*BGBl.* II, p. 1261), the Bundestag approved the European Social Charter, signed at Turin on 18 October 1961 by the members of the Council of Europe. In this Charter, the body of which includes a lengthy enumeration of general social fundamental rights, the Contracting Parties undertook to ensure in their respective territories, with all the legislative and political means at their disposal, that such rights were guaranteed to everyone. In order to secure compliance with this undertaking, the signatories agreed to send to the Secretary-General of the Council of Europe at two-yearly intervals a report on measures taken pursuant to the Charter.

FINLAND

NOTE[1]

I. LEGISLATION

Electoral Rights

Act No. 49, of 7 February 1964, on Communal Elections (*Suomen Asetuskokoelma*, hereinafter referred to as *AsK* /Official Statute Gazette of Finland/ No. 49/64) regulates the way Members of Communal Councils and their deputies are elected and repeals the previous Act on the same subject of 8 May 1953.

A wide measure of self-government by the population has always been characteristic of local administration in Finland. In the earliest days self-government was practised by villages and towns. With the linking up of several villages in rural communes, a special communal administration has been gradually developed.

The latest phase in the development of local administration in Finland is the codification of legal provisions concerning the self-government of communes into the Communal Act, of 27 August 1948 (*AsK* No. 642/48). Within the framework of this Act which applies to all communes, both rural and municipal, the communes are entitled to administer local matters concerning public order and economy, social welfare, etc., provided that they are not expressly reserved by law to State organs.

In local administration the deciding and executive organs are separated from each other. The power to decide upon local matters is entrusted to Communal Councils, the Members of which are elected by the inhabitants of the respective communes in general elections for a term of four years at a time.

According to Act No. 49, each commune, whether rural or municipal, constitutes an electoral district divided into voting areas having at most three thousand inhabitants. The polling-places shall be located in the appropriate voting areas.

The register of voters is drawn up by the Communal Government, the executive organ of the commune. As a basis for the register, the appropriate census authority shall provide the Communal Government with a list of persons of voting age residing in the commune. The register shall be drawn up separately for each voting area. In the register there shall be included every person who, before the beginning of an election year, has reached the age of twenty-one and who, in that election year, has been or should be registered as a resident of the commune.

Every election year the register of voters shall be available for examination in the voting area during six working days following 15 August of the year concerned from 9 a.m. to 8 p.m. The voting areas and the places where the registers of voters will be available for examination shall be announced in the same way as communal announcements in general are made.

To every person entitled to vote, whose address is known, shall be sent a card containing all the data concerning him incorporated in the register of voters, as well as information on the appropriate voting area and on the facts about where and when the register of voters will be available for examination and where and when the voting will take place.

If someone considers that he has been erroneously left out of the register of voters or taken as a person not entitled to vote, he may file a written demand of rectification with the Communal Government or, in rural communes, with the person under whose supervision the register is kept available for examination, not later than on 31 August before 4 p.m.

If someone considers that another person has been erroneously included in the register of voters as a person entitled to vote, he may file a written demand of rectification with the Communal Government not later than on 25 August before 4 p.m. The person concerned shall be notified of the demand and given the opportunity to make his remarks to the Communal Council not later than on 2 September before 4 p.m., at the peril of the matter being decided without his remarks.

If the census authority considers that a person has been erroneously left out of the register of voters, or included in it, he is entitled to make a demand of rectification *ex officio*.

All the demands of rectification shall be decided upon at the meeting of the Communal Government on 4 September. In each case the decision and the reasons for it shall be taken into the records kept at the meeting, and the person concerned shall be notified of them. If he is discontented with the decision, he may appeal to the County Government not later than on 14 September before 4 p.m. The decision of the County Government is final. However, if the person concerned considers that, from the point of view of the application of law, it is important to bring the matter to a higher body for its consideration, he may request the Supreme Administrative Court that he be permitted to appeal to this Court. The application for such a permission shall be filed with the County Government not later than on the fourteenth day before noon after

[1] Note prepared by Mr. Voitto Saario, Justice of the Supreme Court of Finland, government-appointed correspondent of the *Yearbook on Human Rights*.

the day he has been notified of the decision of the County Government.

After all eventual rectifications have been made, the Communal Government shall confirm that the list of voters has become legal. Such a list shall be observed in voting.

Not less than ten persons entitled to vote may establish an electoral association having the power to nominate a candidate for a member of the Communal Council and have his name published in the combination of the lists of candidates. A person can be a founder of one electoral association only. If the commune is scarcely populated, the Communal Government may rule that an electoral association can be established by a smaller number of people but not less than by three persons.

Two or more electoral associations may join together to become one electoral union. Such a union may have lists of candidates which correspond with double the number of members of the Council to be elected.

Election shall be commenced on the first Sunday of October and brought to an end on the following day. The notification of an election shall be announced to the inhabitants of a commune in the same way as communal announcements are made in general. Voting is started on the first election day at noon and on the second election day at 9 a.m., on both days to last until 8 p.m. Every voter who has come to the polling-place before 8 p.m. is entitled to vote on that day. Certain measures provided for in detail by Act No. 49 shall be taken by the local Election Board to the end that voting can take place without any technical obstacles and outside interference and that the secrecy of voting will be secured.

Each voter, after his right to vote has been verified, shall be given a voting-card on which he shall write down the number of the list of candidates he wants to support. After having folded up the voting-card, the voter shall have it stamped by the Election Board, and shall put it himself in the ballot-box. At the same time, a note shall be made on the register of voters and on the records kept by the Election Board that the person in question has voted.

After the votes have been counted in the way provided for by Act No. 49, the Central Electoral Board of the commune shall confirm the result of the election on 23 October.

Any member of a commune, who considers that his private rights have been violated in the election or who considers that the election has not been performed in legal order, may appeal against the decision of the Central Electoral Board to the County Government. In cities and towns this must be done within fourteen days and in rural communes within thirty days from the day of the announcement of the result of the election.

If the appeal is sustained and the County Government rules that the election is void and a new election shall be performed, the Central Electoral Board shall, without delay, take appropriate measures to that end. In the new election the legal register of voters shall be observed. The Members of the Communal Council shall remain in office until the result of the new election has been announced in due course.

The decision of the County Government is subject to appeal to the Supreme Administrative Court in the order as provided for by law in administrative matters in general.

II. INTERNATIONAL AGREEMENTS

1. Decree No. 105, of 28 February 1964, (*AsK* No. 105/64) brings into force the amendments made by the 16th World Health Conference on 23 May 1963 to Articles 1, 3, 36 and 97 of the International Sanitary Ordinance (Règlement sanitaire international) No. 2 of the WHO.

2. Decree No. 375, of 26 June 1964, (*AsK* No. 375/64) brings into force the Convention concerning the partial revision of the Conventions adopted by the General Conference of the International Labour Organisation at its first thirty-two sessions for the purpose of standardizing the provisions regarding the preparation of reports by the Governing Body of the International Labour Office on the working of Conventions, adopted at the 45th Session of 1961.

3. Decree No. 558, of 13 November 1964, (*AsK* No. 558/64) brings into force the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, signed in New York on 10 December 1962.

FRANCE

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS IN 1964[1]

With the backwash caused by the end of the Algerian conflict subsiding, and the lapse of some exceptional measures to which this backwash had given rise, the year 1964 was characterized by a more serene situation in fact and in law so far as human rights were concerned.

There was little legislation, however.

The most important activity was the continuation of a progressive revision of some of the big juridical institutions born of the Civil Code. The reform of guardianship described below brought a happy ending to a desire to be up to date and at the same time to respect the Napoleonic juridical edifice, whose foundations are still sound.

Extracts from the Act creating the statute of the Office for French Radio-broadcasting and Television are given below.

Civil and Individual Rights

Amnesty

The need to forget the dramatic events preceding the proclamation of Algerian independence gave rise to the Amnesty Act of 23 December 1964[2].

This Act provides that: " There shall be *ipso facto* pardon for all offences committed in Algeria before 20 March 1962 in rejoinder to the excesses of the Algerian rebellion, provided that they were not connected with any movement intended to prevent the State exercising its authority or to substitute an illegal authority for it ".

Article 2 extends the amnesty to minors who took part in subversive political activity when they were sentenced to not more than five years' imprisonment, account being taken of intervening remissions.

The Act also authorizes amnesty in individual cases, as well as exemption from certain restrictions and forfeitures.

Civil Code — Administration of Minors — Guardianship

An Act of 14 December 1964[3] greatly altered the administration of guardianship over minor children's property. It recasts about a hundred articles of the Civil Code and modernizes the Code in conformity with changes in social and family structure.

The role and responsibilities of the family, as represented by the family council, are reaffirmed. But the creation of a guardianship judge makes up for, or prevents, any deficiencies on the part of either the guardian or the family council. The judge's work also extends to supervision of the legal administration of a minor's property by one of his parents, in the event of the death of one parent, divorce or separation.

Article 395 of the Civil Code states that the guardianship judge has general supervision of the legal administration and guardianships within his competence.

In language fortunately clear the new provisions define the authority of the legal administrator and the guardian, organize and simplify the working of the guardianship and endow the guardianship judge with very broad powers of intervention, so as to ensure smooth working of the guardianship and protection of the minor. The guardianship judge's duty is to stimulate the family council's zeal and efficiency to whatever extent is necessary.

By the same Act the regulations for *emancipation of minors* are changed. If emancipation is deferred to the age of eighteen years (instead of fifteen), the emancipated minor thereafter has greater autonomy and complete civil control over the management of his property. He is no longer subject to the supervision and aid of a trustee. Only marriage and the practice of trade are still subject to authorization.

This evolution also conforms to that of the social structure; even before their legal majority young adults are often practising a profession and profiting from income which they claim the right to manage.

The Act of 6 August 1963 and the decree of 24 September 1964[4] provided stronger protection for *children working as entertainers.*

Individual freedoms

On 20 March 1964, the *Conseil d'Etat* gave a decision[5] on the forfeiture of French nationality or the civil rights of a Frenchman.

The Nationality Code provides for this penalty in the case of a Frenchman (by birth or naturalization) who in fact behaves as if he were a national of

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[1] Note prepared by Mr. E. Dufour, Master of Requests in the Conseil d'Etat, Paris, government-appointed correspondent of the *Yearbook on Human Rights.*

[2] Act No. 64-1269, *Journal Officiel,* December 1964, p. 11499.

[3] Act No. 64-1230, *Journal Officiel,* December 1964, p. 11140.

[4] Act No. 63-808, *Journal Officiel,* August 1963, p. 7349 and Decree 64-1020, *Journal Officiel,* October 1964, p. 8890.

[5] Compendium of decisions of the Conseil d'Etat, Lirey, 1964, p. 197.

a foreign country. In assessing such behaviour, the administration is subject to the judge's supervision. In this case the administration had found that in the course of foreign sporting and social events there had been activities whose real purpose was to restrain the assimilation of immigrants in a particular country. The *Conseil d'Etat*, however, decided that French associations had taken part only in sporting activities and that there had been no peculair action connected with them which would require deprivation of nationality; the decision was annulled.

Freedom of thought, opinion and expression

Freedom and objectivity of information were widely discussed in Parliament during the debate on the Act of 27 June 1964 [6] creating a Statute for the Office for French Radio-broadcasting and Television and superseding the former direct dependence of Radio-broadcasting and Television on the Ministry of Information.

The debate centred on article 4 of the Statute, which is annexed.

Social Rights

There were decrees in application of the Act of 23 November 1957 (*Yearbook on Human Rights*, 1957, France, p. 80) on the *resettlement of handicapped workers*, that is persons whom accident or disease has deprived of their normal physical capacity for work. A decree of 7 February 1964 [7] states how they shall be paid if they are wage-earners and a decree of 22 September 1964 [8] lays down the conditions for the grant of a loan on trust to enable them to take up an independent trade.

In fairly recent times public opinion has been concerned about the possibility of bringing back to work, earning or at least social life, disabled children, spastic or mentally deficient, who hitherto could count only on private or institutional charity. The Act of 31 July 1963 [9] provided for a specialized education grant for families responsible for such children, the grant is made not only in accordance with the care the children receive in approved establishments, but also with their education and also, in case of need, suitable vocational training. A decree of 23 May 1964 [10] defines the conditions under which this grant is made, as well as the conditions for approval of specialized educational establishments.

A decree of 1 April 1964 [11] lays down the terms for grants to the aged from the National Fund for Solidarity created by the Act of 30 June 1956 (*Yearbook on Human Rights*, 1956, p. 68) to supplement pensions, superannuation, annuities and old-age allowances.

Repatriated persons

Following the arrangements noted in the *Yearbook on Human Rights*, 1963, for Frenchmen who had to return to France because of the events accompanying or preceding the Algerian declaration of independence, an Act of 26 December 1964 [12] settled the problems raised by the take-over and re-evaluation of the social rights and privileges they might have acquired in Algeria (old-age insurance, health insurance and workmen's compensation, including that resulting from acts of war or attempts on life).

International instruments

The Act of 14 December 1964 [13] specifically authorized the Government " to take by ordinance before 1 January 1966 and under the conditions laid down in article 38 of the Constitution such normal legal measures as may be needed to give effect to the directives of the Council of the European Economic Community so as progressively to attain freedom of establishment and provision of services within the community in accordance with the Rome Treaty ".

[6] Act No. 64-621, *Journal Officiel*, June, p. 5636.

[7] Decree No. 64-127, *Journal Officiel*, February, p. 1528.

[8] Decree No. 64-1006, *Journal Officiel*, September, p. 8740.

[9] Act No. 63-775, *Journal Officiel*, August 1963, p. 7154.

[10] Decree No. 64-454, *Journal Officiel*, May, p. 4508.

[11] Decree No. 64-300, *Journal Officiel*, p. 3166.

[12] Act No. 64-1330, *Journal Officiel*, December, p. 11790.

[13] Act No. 64-1231, *Journal Officiel*, December, p. 11146.

ACT No. 64-621 OF 27 JUNE 1964 ESTABLISHING THE STATUTE OF THE OFFICE FOR FRENCH RADIO-BROADCASTING AND TELEVISION

Art. 1. The Office for French Radio-broadcasting and Television is a State public institution of industrial and commercial nature. It ensures public service of radio-broadcasting and television, under the conditions set forth in articles 1, 2, 3 and 4 of ordinance No. 59-273 of 4 February 1959, in order to meet the public's need for information, culture, education and entertainment.

...

Art. 4. The Executive Board shall lay down the general lines of the institution's activities; it shall debate the institution's budget and supervise the execution thereof.

The Board shall ensure the quality and morality of the programmes.

It shall see to it that the information broadcast by the Office is objective and accurate.

It shall ensure that the main tendencies of thought and the major currents of opinion are expressed through the Office.

GABON

ACT No. 15/54 OF 29 OCTOBER 1964 ESTABLISHING THE *SOCIETE GABONAISE DE PRESSE* (SOGAPRESSE)[1] (GABONESE PRESS ASSOCIATION)

Art. 1. There is hereby established a public industrial and commercial organization with corporate personality and financial autonomy, to be known as the *Société Gabonaise de Presse* (SOGAPRESSE) (Gabonese Press Association). It shall be placed under the authority of the Minister for Information.

Art. 2. The purpose of SOGAPRESSE shall be the issue and circulation of publications of national interest.

To that effect it shall be empowered to acquire property of all kinds, to lease, manage and alienate such property, to effect banking transactions, to contract loans, and in general to undertake all operations compatible with its purpose.

Art. 3. SOGAPRESSE shall be financed by the income from its operations, by such gifts, bequests and grants of all kinds as may be made to it and by endowments and subsidies from the State.

The appropriations hitherto allocated to the Newspaper *Gabon d'Aujourd'hui* (Gabon Today) shall be paid to SOGAPRESSE as an initial State subsidy.

...

[1] *Journal officiel de la République gabonaise*, No. 36, of 3 December 1964.

GHANA

NOTE[1]

1. THE CONSTITUTION (AMENDMENT) ACT 1964

(Act 224 of 21 February 1964)

On 24, 28 and 31 January 1964 a referendum was held throughout Ghana seeking the authority to make certain amendments to the Constitution since the power to effect these amendments (which are contained in Part 1 of the Act) is reserved to the people under the Constitution and may, under Section (2) of Article 20 of the Constitution, be conferred on Parliament by a majority decision of the electors in a referendum ordered by the President.

(*a*) Of the total electorate of 2,988,598, as many as 2,776,372, representing 92.89 %, cast their votes at the referendum; out of this number, 2,773,920, representing 92.81 % of the total electorate, recorded their votes in favour of the changes in the Constitution outlined in Part 1 of this Bill; and only 2,452 representing .08 % voted against these proposals. The overwhelming majority of the electors have, therefore, clearly and conclusively expressed their support for these amendments. The Parliament therefore, got a legal mandate from the people to pass the necessary legislation to bring these constitutional changes into effect.

(*b*) These amendments are designed :

(1) To emphasize the fact that the powers of the State derive from the people as the source of power and the guardians of the State;

(2) to provide for the establishment of the Convention People's Party as the one National Party and to give legal recognition to its position as the vanguard of the people in their struggle to build a socialist society;

(3) to lay emphasis on the fact that the sovereignty of Ghana cannot be surrendered or diminished by Parliament on any grounds other than the furtherance of African Unity;

(4) to redefine Parliament as the corporate representative of the people and not as a mere collection of individuals representing sectional and parochial interests; and

(5) to enable the President at any time for reasons which appear to him sufficient to remove a Judge of the Supreme Court or a Judge of the High Court.

(*c*) Part II of the Act contains amendments to the Constitution which Parliament could effect at its discretion without reference to the people. By virtue of these amendments the existing Flag of Ghana was changed to a composition consisting of three equal horizontal stripes, the upper stripe being red, the middle stripe white and the lower stripe green with a black star in the centre of the white stripe; that is, the yellow stripe of the existing Ghana flag gave way to a white stripe, so that the national flag now has the same colours as those of the Convention People's Party.

Section 8 of the Act amends Article 18 of the Constitution to enable the President to appoint a standing Presidential Commission of three persons who, in the event of the death, resignation, illness or absence of the President from Ghana or if the President should be declared incapable of acting, shall execute the office of the President pending the election of his successor, his recovery from illness or his return to Ghana, as the case may be. Previously the appointment of the Commission was *ad hoc* and could only be made when the circumstances requiring its appointment had occurred or were about to occur.

Section 8 of the Act further amends the Constitution so as to make the National Assembly, acting through its Speaker, responsible for declaring the President incapable of acting in his office if this becomes necessary in the circumstances outlined in the Constitution. The effect of this amendment is thus to transfer this important political function from the Chief Justice and the Speaker to the corporate representative of the people; this means, in effect, that the function of declaring the President incapable of acting is being transferred to the whole nation.

Section 9 of the Bill also amends Article 46 of the Constitution so as to make it no longer legally obligatory for the National Assembly to approve the payment of additional allowances to the Chief Justice apart from his salary as a Judge of the Supreme Court. The changes proposed in the Act constitute a revolutionary landmark in the political history of Ghana. In the first place, it will make more effective the people's control over all the organs of the State including the Judiciary. It gives recognition in Ghana Constitution of the aspirations of the people to build socialism and to remodel our society in accordance with the principles of social justice.

Sections 1, 1A, 2, 3, 18, 20, 45 and 46 of the Constitution of 1960[2] as amended by Act 224 of 21 February 1964 read as follows :

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[1] Note furnished by the Government of Ghana.

[2] For extracts from the Constitution of 1960, see *Yearbook on Human Rights for 1960*, pp. 145-146.

Part I

POWERS OF THE PEOPLE

1. The powers of the State derive from the People, as the source of power and the guardians of the State, by whom certain of those powers are now conferred on the institutions established by this Constitution and who shall have the right to exercise the remainder of those powers, and to choose their representatives in the Parliament now established, in accordance with the following principle:

That, without distinction of sex, race, religion or political belief, every person who, being by law a citizen of Ghana, has attained the age of twenty-one years and is not disqualified by law on grounds of absence, infirmity of mind or criminality, shall be entitled to one vote, to be cast in freedom and secrecy.

1A. (1) In conformity with the interests, welfare and aspirations of the People, and in order to develop the organisational initiative and political activity of the People, there shall be one National Party which shall be the vanguard of the People in their struggle to build a socialist society and which shall be the leading core of all organisations of the People.

(2) The National Party shall be the Convention People's Party.

2. In the confident expectation of an early surrender of sovereignty to a union of African States and territories, the People now confer on Parliament the power to provide for the surrender of the whole or any part of the sovereignty of Ghana:

Provided that the sovereignty of Ghana shall not be surrendered or diminished on any grounds other than the furtherance of African unity.

3. With the exception of section (2) of Article 1A, the power to repeal or alter this Part of the Constitution is reserved to the People.

...

Part III

THE PRESIDENT AND HIS MINISTERS

Head of the State

...

Supplemental provisions as to President

18. (1) There shall be a Presidential Commission consisting of three persons appointed by the President to execute the office of the President in accordance with advice tendered by the Cabinet in the event of:

(*a*) the death or resignation of the President before the assumption of office of his successor; or

(*b*) the illness of the President or his absence from Ghana during which he cannot conveniently perform the functions of his office; or

(*c*) the President being adjudged incapable of acting:

Provided that nothing in this section shall be taken to prejudice the power of the President, at any time when he is not adjudged incapable of acting, to delegate any exercise of the executive power to some other person.

(2) A Presidential Commission may act by any two of its members.

(3) The President may at any time revoke the appointment of any or all members of the Presidential Commission.

(4) The President shall be deemed to be adjudged incapable of acting if the Speaker in pursuance of a resolution of the National Assembly:

(*a*) has declared that, after considering medical evidence, the National Assembly is satisfied that the President is, by reason of physical or mental infirmity, unable to exercise the functions of his office, and

(*b*) has not subsequently withdrawn the declaration on the ground that the President has recovered his capacity.

...

Part IV

PARLIAMENT

20. (1) There shall be a Parliament consisting of the President and the National Assembly.

(2) So much of the legislative power of the State as is not reserved by the Constitution to the People is conferred on Parliament as the corporate representative of the People; and any portion of the remainder of the legislative power of the State may be conferred on Parliament at any future time by the decision of a majority of the electors voting in a referendum ordered by the President and conducted in accordance with the principle set out in Article One of the Constitution:

Provided that the only power to alter the Constitution (whether expressly or by implication) which is or may as aforesaid be conferred on Parliament is a power to alter it by an Act expressed to be an Act to amend the Constitution and containing only provisions effecting the alteration thereof.

(3) Subject to the provisions of Article Two of the Constitution, Parliament cannot divest itself of any of its legislative powers:

Provided that if by any amendment to the Constitution the power to repeal or alter any existing or future provision of the Constitution is reserved to the People, section (2) of this Article shall apply in relation to that provision as if the power to repeal or alter it had originally been reserved to the People.

(4) No Act passed in exercise of a legislative power expressed by the Constitution to be reserved to the People shall take effect unless the Speaker has certified that power to pass the Act has been conferred on Parliament in the manner provided by section (2) of this Article; and a certificate so given shall be conclusive.

(5) No person or body other than Parliament shall have power to make provisions having the force of law except under authority conferred by Act of Parliament.

(6) Apart from the limitations referred to in the preceding provisions of this Article, the power of Parliament to make laws shall be under no limitation whatsoever.

(7) The power to repeal or alter this Article is reserved to the People.

...

Part VI

LAW AND JUSTICE

...

Judges of the Superior Courts

...

45. (1) The Judges of the Supreme Court and the Judges of the High Court shall be appointed by the President by instrument under the Public Seal.

(2) Provision shall be made by law for the form and administration of the judicial oath which shall be taken by every person appointed as a Judge of the Supreme Court, or as a Judge of the High Court before the exercise by him of any judicial function.

(3) Subject to the following provisions of this Article, no person shall be removed from office as a Judge of the Supreme Court or a Judge of the High Court except by the President in pursuance of a resolution of the National Assembly supported by the votes of not less than two-thirds of the Members of Parliament and passed on the grounds of stated misbehaviour or infirmity of body or mind:

Provided that the President may at any time for reasons which to him appear sufficient remove from office a Judge of the Supreme Court or a Judge of the High Court.

(4) Unless the President by instrument under his hand extends the tenure of office of the Judge for a definite period specified in the instrument, a Judge of the Supreme Court shall retire from office on attaining the age of sixty five years and a Judge of the High Court shall retire from office on attaining the age of sixty-two years.

(5) A Judge of a superior court may resign his office by writing under his hand addressed to the President.

(6) The power to repeal or alter this Article is reserved to the People.

46. (1) The salary of a Judge of a superior court shall be determined by the National Assembly and shall not be diminished while he remains in office.

(2) All salaries and allowances paid under this Article and all pensions and other retiring allowances paid in respect of service as Chief Justice or other Judge of a superior court are hereby charged on the Consolidated Fund.

...

2. THE PREVENTIVE DETENTION ACT 1964

(Act 240 of 22 May 1964)

The Act seeks to consolidate all the existing enactments relating to preventive detention and to confer power on the President to impose a restriction order on a person who, normally, would be the subject of a detention order; that is, a person whose conduct or act is found to be prejudicial to the defence of Ghana, or the relations of Ghana with other countries or the security of the state.

The previous legislation on preventive detention did not confer a discretionary power on the President to order a person to be restricted to a prescribed area.

The new power being conferred on the President to enable him to restrict the movements and political activities of infirm but dangerous persons is therefore an improvement on the previous legislation which left the Government no choice in such a situation.

Section 2 of the Act empowers the President to issue a restriction order instead of a detention order for a period not exceeding five years, if in the opinion of the President a detention order would not be suitable on account of the age or health of the person to be detained or for any other reason.

Section 8 of the Act is a consequential provision which empowers the President to substitute a restriction order on a person already under a detention order, if he is satisfied that a detention order is not appropriate.

Apart from Sections 2 and 8, the Act is in the main, a reproduction of the existing legislation on Preventive Detention in Ghana.

In the exercise of the executive powers under the Preventive Detention Act, the President does so normally after consultation with and with the approval of his Cabinet.

Sections 1-8 of the Preventive Detention Act 1964 read as follows:

1. Subject to the provisions of this Act, the President may make an order (in this Act referred to as a " detention order ") for the detention for a period not exceeding five years of any person who is a citizen of Ghana if the President is satisfied that the order is necessary to prevent that person from acting in a manner prejudicial to:

(*a*) the defence of Ghana;

(*b*) the relations of Ghana with other countries; or

(*c*) the security of the State.

2. (1) The President may, in lieu of making a detention order in respect of a person liable to be detained under section 1 of this Act, make an order (in this Act referred to as a " restriction order ") restricting the movements of such person for a period not exceeding five years within such place or area as may be specified in the order if in the opinion of the President a detention order would not be suitable on account of the age or health of the person or for any other reason.

(2) A restriction order made restricting the movements of any person may impose such conditions as may be specified in the order in respect of his employment or business, and in respect of his association or communication with other persons.

3. A detention order or a restriction order made in respect of any person may, at any time before the expiration of such order, be extended for a further period not exceeding five years if in the opinion of the President the release of the person detained or the removal of the restrictions imposed on the movements of the person, as the case may be, would be prejudicial to the matters specified in paragraphs (*a*), (*b*) or (*c*) of section 1 of this Act.

4. Any person who is detained under a detention order or whose movements are restricted under a restriction order shall, not later than five days from the beginning of his detention or of the restriction of his movements, as the case may be, be informed on the grounds on which he is being detained or

his movements are being restricted and shall be afforded an opportunity of making representations in writing to the President with respect to the detention order or the restriction order as the case may be.

5. An order made in respect of any person under this Act shall constitute an authority to any police officer:

(*a*) in the case of a detention order, to arrest the person in respect of whom the order is made to be detained at such place as may be specified by the President; and

(*b*) in the case of a restriction order, to arrest the person in respect of whom the order is made in order to restrict his movements in accordance with the restriction order.

6. (1) If the President has reason to believe that a person in respect of whom a detention order or a restriction order has been made is attempting to evade arrest, he may by a notice in the *Gazette* direct that person to report to a police officer at such place and within such period as may be specified in the notice.

(2) If any person in respect of whom a notice has been published under subsection (1) of this section fails to comply with the notice, he shall:

(*a*) in the case of a detention order, on being arrested, be detained, during the President's pleasure for a period not exceeding double the period specified in the order; and

(*b*) in the case of a restriction order, be guilty of an offence, and on conviction thereof, shall be liable to imprisonment for a term not exceeding five years.

7. Notwithstanding the preceding provisions of this Act, the President may, by order, at any time before the expiration of a detention order or of a restriction order:

(*a*) terminate such order; or

(*b*) reduce the period of detention or restriction of movements specified therein, or

(*c*) suspend the application of such order to the person to whom it relates either unconditionally or subject to such conditions as the President may determine.

8. If the President is satisfied in the case of any person detained in pursuance of a detention order that, in all the circumstances, the restrictions imposed by a restriction order would be more appropriate than such detention the President may in that case substitute a restriction order for the detention order under which such person is detained.

...

3. THE HABEAS CORPUS ACT 1964

(Act 244 of 26 May 1964)

The Act forms part of the general scheme of statute law revision in Ghana and seeks to re-enact, with amendments, in one statute, the law relating to *habeas corpus* contained in a number of United Kingdom statutes of general application which applied in Ghana before the Act.

Application for the writ of *habeas* is the procedure by which a person who claims that he has been unlawfully or unjustifiably detained is able to secure his release. The application is normally made *ex parte* to the High Court by the person detained or his representative and is accompanied by an affidavit setting out the nature of the detention. The Court, if satisfied that a prima facie case has been made against the detention, makes a conditional order for the issue of the writ. The merits of the detention are then argued upon a motion to make the order absolute. The writ of *habeas corpus* is thus designed to protect individual liberty for the common law considers every interference with the liberty of the individual as illegal unless there is justification in law.

Section 1 of the Act changes the previous rule under which an application for a writ of *habeas corpus* could have been made successively to other judges of the High Court notwithstanding that the application had already been refused by a Judge of that Court. The Act provides that once an application has been made to and heard by the High Court or a Judge of that Court no such application can again be made to that Court or Judge or to any other Court or Judge unless fresh evidence is produced to support the subsequent application.

Section 2 enables the High Court or Judge of that Court to whom the application is made to enquire into the allegation of the unlawful detention and to make an order requiring the person, in whose custody the detainee is, to produce the detainee before the High Court on a specified date and to furnish the Court with the grounds of the detention.

Section 3 provides that the Court, before which the detained body is to be produced in pursuance of an order of *habeas corpus*, should be composed of one Judge only or of three Judges if the Chief Justice, or if he is not available the most Senior Judge of the Supreme Court, so directs.

Section 4 provides for the release by an order of the High Court of the person detained unless the High Court is satisfied that he is detained in accordance with law.

Section 5, which is also new, provides for appeals to the Supreme Court in *habeas corpus* cases. Under the existing common law, no appeal lies once a writ of *habeas corpus* has been granted. An appeal to the Supreme Court against an order of the High Court granting or refusing the application for *habeas corpus* has now been provided for.

These proposed changes in the law are not only an improvement generally on existing rules relating to *habeas corpus* but also make these rules suit present conditions in Ghana.

Sections 1-5 of the Habeas Corpus Act, 1964 read as follows:

1. (1) Where an allegation is made by any person that he is being unlawfully detained an application may be made under this section to the High Court or any Judge thereof for an enquiry into the cause of the detention.

(2) The application may be made by:

(*a*) the person alleging that he is being unlawfully detained,

(*b*) any person entitled to the custody of the person detained,

(*c*) any other person acting on behalf of the person detained.

(3) Every such application shall be in writing containing the following particulars :

(*a*) the name and other description of the person detained;

(*b*) the place of detention;

(*c*) the mode and manner of arrest; and

(*d*) any other particulars the applicant may wish to bring before the High Court.

(4) Notwithstanding anything in any enactment or rule of law, where an application has been made to the High Court or a Judge thereof under this section by or on behalf of any person, no such application shall again be made by or on behalf of that person on the same grounds, whether to the same Court or Judge or to any other Court or Judge, unless fresh evidence is adduced in support thereof.

2. The High Court or the Judge thereof to whom an application is made under section 1 of this Act shall immediately enquire into the allegation of unlawful detention and may make an order requiring the person in whose custody the applicant (or the person on whose behalf the application is made) is detained,

(*a*) to produce the body of the person so detained before the High Court on a day specified in the order, and

(*b*) to submit a report in writing stating the grounds of the detention.

3. The High Court before which the body of a person is to be produced in pursuance of an order made under section 2 of this Act shall, if the Chief Justice or, if he is not available, the Judge of the Supreme Court who is exercising the office of the Chief Justice so directs in respect of any particular case, consist of three Judges, and shall, in every other case, consist of one Judge only.

4. (1) The High Court shall, upon the body of the person detained being produced before it and after giving the person in whose custody he is detained an opportunity of justifying the detention, order the release of the person detained unless satisfied that the detention is in accordance with law.

(2) Where the High Court is satisfied that the detention is in accordance with law, but a question arises as to whether such law is in excess of the powers conferred upon Parliament by or under the Constitution, the hearing shall be adjourned and the question referred to the Supreme Court under section (2) of Article 42 of the Constitution for decision.

(3) The Supreme Court may allow the person detained, to be at liberty on bail on such conditions as it thinks fit until the question so referred to it has been decided.

5. An appeal shall lie to the Supreme Court, in any proceedings under this Act, against an order for the release of the person detained as well as against the refusal of such an order.

...

4. GHANA SEVEN-YEAR DEVELOPMENT PLAN 1963/64-1969/70 [3]

The Seven-Year Development Plan was presented to Parliament on Wednesday 11 March 1964 by Dr. Kwame Nkrumah, President of Ghana. The main tasks of the Plan are :

Firstly, to speed up the rate of growth of Ghana's national economy.

Secondly, to enable Ghana to embark upon the Socialist transformation of Ghana's economy through the rapid development of the State and co-operative sectors.

Thirdly, to aim at completely eradicating the colonial structure of Ghana's economy.

With the first Seven-Year Development Plan Ghana enters upon a period of economic reconstruction and development aimed at creating a socialist society in which the individual Ghanaian will be able to enjoy a modern standard of living in his home supplemented by an advanced level of public services outside. The Government regards the well-being of the individual Ghanaian, however humble, as the supreme law. All the energies of the nation and the Government must be mobilized to promote it.

Ghana has chosen the socialist form of society as the objective of her social and economic development. This choice is based on the belief that only a socialist form of society can assure Ghana a rapid rate of economic progress without destroying that social justice, that freedom and equality, which is a central feature of our traditional way of life.

Ghana's socialist policy is based on certain fundamentals, which include the following :

(i) The economy must be developed rapidly and efficiently so that it shall within the shortest time possible assure a high rate of productivity and a high standard of living for each citizen based on gainful employment.

(ii) The income from physical assets and from the labour of the people applied to these assets year by year must be utilized for socially purposeful ends. Never must public want and private affluence be allowed to co-exist in Ghana. And among the most important ends that the community must provide for out of its incomes should be the education and welfare of its children, and the continued expansion of the economy itself.

(iii) The community through its Government must play a major role in the economy, thus enabling it to assure the maintenance of a high level of economic activity, the provision of adequate employment opportunities, the equitable distribution of the nation's output, and the availability of the means of satisfying over-riding social ends. Accordingly the need for the most rapid growth of the public and co-operative sector in productive enterprise must be kept in the forefront of government policy.

In order to ensure that Ghana's progress in the construction of a socialist form of society shall be as speedy and efficient as possible, the correct transitional arrangements must be made based upon

[3] Extracts from note furnished by the Government of Ghana.

objective considerations. The Government has therefore decided as follows :

(i) During the transition to a socialist form of society the economy of the country will remain a mixed economy, in which public and private enterprise will each have a legitimate, recognizable and very important contribution to make towards economic growth. In this and subsequent development plans separate tasks will be clearly assigned to public and private capital in the field of both productive and non-productive investment.

(ii) Under the mixed economy system, conditions must be preserved in which both public and private investment can fulfil their assigned tasks. The plans for national economic development will assign tasks which must be fulfilled by each sector if the momentum of progress towards the ultimate objective of a prosperous Ghana is to be maintained. Any suggestion that vigorous state and private sectors within the same economy are incompatible is unacceptable. Ghana's policies will be so designed as to obtain the maximum contribution from each sector towards the over-all growth of the economy.

(iii) The Government will actively encourage the voluntary association in co-operative societies of farmers and those engaged in small scale manufacturing and service industries. In this way they will be able to have access to capital resources and technical assistance much more readily than will be possible if they continue as individual operators.

GREECE

NOTE[1]

In the course of 1964 several cases relating to human rights were dealt with through legislative action inspired from the Universal Declaration of Human Rights, in general, and article 23 thereof (concerning the right to work), in particular, as well as by the Greek Constitution which excludes any sort of dicrimination.

Two statutes enacted in 1964 are worth mentioning here : Law No. 4377 regarding measures for the protection of Greek citizens and persons of Greek descent departing from Egypt and settling in Greece, and Law No. 4378 regarding measures for the protection of Greek citizens compelled to leave their homes in Turkey.

Both Laws aim at assisting, professionaly and otherwise, several thousands of the aforementioned categories of persons, who were constrained to start life anew in Greece, primarily during the initial difficult period of readjustment. They also provide for the extension to these people of social security and other welfare benefits on the basis of their status and past qualifications, etc. in the country of their former residence.

[1] Note furnished by the Government of Greece.

GUATEMALA

COMMUNITY DEVELOPMENT ACT

Promulgated by Legislative Decree No. 296 of 24 November 1964[1]

Art. 1. The promotion and administration of community development, and all activities relating to programmes connected with such development, shall be carried out by the Chief Executive through the Secretariat of Social Welfare, which shall act in co-ordination with the Ministries of State and with the decentralized, autonomous and semi-autonomous State agencies.

Art. 2. The Secretariat of Social Welfare shall perform its duties without encroaching upon the powers and functions assigned by law to the above-mentioned Ministries and agencies.

Art. 3. For the purposes of article 1 of this Decree, the Secretariat of Social Welfare shall:

(*a*) Study and classify social needs and the action taken by the State and private bodies to satisfy them, as well as the human and economic resources used and the fields covered in this respect, in order that such action may be directed towards more effective achievements as quickly as possible, thus improving the community as a whole;

(*b*) On the basis of the studies referred to in the previous paragraph and the priorities derived therefrom, formulate and propose the work programmes required to satisfy those needs, decide on the fields which those programmes shall cover and the means and components to be used in each programme;

(*c*) Examine and propose systems of collaboration and co-ordination among the various services — national, regional and local, public and private — concerned with community development and with the solution of social problems and needs;

(*d*) Train different categories of personnel in the methods and techniques to be used in order to obtain better results in the community development process;

(*e*) Within the limits of its economic resources, provide technical and training materials and organize seminars and technical study groups on various aspects of community development;

(*f*) Stimulate by every possible means the interest of the inhabitants of urban and rural areas in the programmes to be undertaken, in order to obtain their co-operation;

(*g*) In order to avoid duplication of effort, refrain from establishing committees in fields where they have already been organized so that existing committees will continue to operate under the jurisdiction of the organ or department which established them.

Art. 4. The Secretariat of Social Welfare shall have the technical and administrative departments to perform the functions assigned to it by this Act.

Art. 5. In each fiscal year an appropriate allocation shall be made to cover the budget of the Secretariat of Social Welfare.

Art. 6. The Secretariat of Social Welfare shall draw up appropriate regulations, which shall be approved by the Executive.

...

[1] *El Guatemalteco*, No. 25, of 26 November 1964.

GUINEA

ACT No. 31 OF 1964 TO AMEND AND STANDARDIZE RATES OF FAMILY ALLOWANCES PAYABLE TO OFFICIALS AND EMPLOYEES OF THE STATE, TO AUXILIARY ADMINISTRATION PERSONNEL AND TO WAGE-EARNERS COVERED BY THE SOCIAL SECURITY SCHEME[1]

Art. 1. The rates of family allowances payable to officials and employees of the State, to auxiliary personnel of the administration and to wage-earners covered by the social security scheme are hereby standardized.

Family allowances shall be payable in respect of legitimate children and of legitimized natural children :

1. Up to the age of twelve years;

2. For a maximum of six children.

Art. 2. The standard rate of family allowances is hereby fixed at 940 francs per child per month.

Art. 3. However, the previous régime shall continue to apply to children born prior to the date on which this Act enters into force on an individual basis, on the understanding that in such cases subsequent births shall create entitlement to family allowances only if the number of children in respect of whom they are already payable is less than six.

...

[1] Text promulgated in the *Journal Officiel de la République de Guinée*, No. 1, of 1 January 1965.

HAITI

NOTE[1]

General Comment

During 1964 no new international convention was ratified in Haiti. Nor was any legal decision directly or indirectly concerning human rights published.

The only information to be communicated on this matter refers to constitutional changes carried out at the highest legislative level.

Constitutional Changes

In line with the general rule in modern democracies today, the Constitution of Haiti, basic law of the State, cannot be changed by ordinary legislation. It was drawn up and adopted by a National Assembly constitutionally invested with a special mission and, no less because of its origin than because of the safeguards it establishes, it is the main and consecrated depository of human rights in the country. Hence the need to state objectively the constitutional changes modifying or likely indirectly to modify the provisions relating to human rights.

During the year 1964 the Haitian nation was governed in succession by two Constitutions: from 1 January to 21 June by that of 19 December 1957 and from 21 June by the Constitution of 1964, which replaced the former Constitution.

It must be especially remembered that the Constitution of 1957 provided for reform of the organic structure of the Legislative Power in articles 48 *et seq.*, supplemented by the final transitional provisions laying down that the two existing Chambers could continue to exercise the Legislative Power until April 1963. This reform consisted essentially in replacement of a bicameral system by the Single Chamber and could thus be carried out in April 1961, before the Constitution of 1964 was drawn up and voted upon. The same Single Chamber thus created, meeting as a Constituent National Assembly, took the initiative in the new constitutional reform and followed it through in the orthodox democratic procedure calling for previous direct approval of the People for ratification of anything beyond its competence; that is, the grant, exceptionally, of the powers of the President of the Republic for life. Three decrees of the National Assembly and an order of the President of the Republic marked the main stages of this procedure, as follows:

1. *Decree of the National Assembly* of 23 April 1964 stating unanimously that the Constitution of 1957 must be completely revised and its organic and political provisions brought into agreement with the original and permanent characteristics of the national will (*Le Moniteur* No. 39 of 24 April 1964).

2. *Decree of the National Assembly* of 25 May 1964, unanimously adopted after the new Constitution had been drawn up and voted, requesting the Executive to submit to popular ratification the provision of article 197 of the new Constitution granting a life term to the present President of the Republic, in view of the fact that this provision goes beyond the existing Constitution and must be approved by the People itself (*Le Moniteur* No. 49 of 26 May 1964).

3. *Order of the President of the Republic* of 27 May 1964 calling for electoral meetings on 14 June 1964 to decide on the question raised above in article 197 (*Le Moniteur* No. 51 of 27 May 1964).

4. *Decree of the National Assembly* of 21 June 1964 finally incorporating in the Constitution the last above-mentioned provision of article 197, which had been voted by the National Assembly and ratified by a massive vote by the People of 2.8 million "YES" to 3,234 "NO" and bringing the Constitution into effect (*Le Moniteur* No. 60 of 21 June 1964).

This last provision sanctifies the main change caused by the latest revision of the Constitution and is in reality fully justified by a series of twelve meritorious acts, listed in article 197, by the First Magistrate of the Republic, who is the beneficiary of it. Such a provision is not new to the annals of Haitian public law. In order to explain its exact significance for the members of the Constituent Assembly of 1964, and while remaining within the statutory bounds of the *Yearbook* and continuing to be objective, it may be recalled that after almost a century this provision revives an old tradition, born of similar Haitian constitutional experiments, repeated seven times with prolonged effectiveness, sometimes for more than five, ten or even twenty years (in 1805, 1807, 1811, 1816, 1846, 1849, 1859-60 and up to 1867). In the past, during the heroic period of six decades following Haiti's proclamation of independence, the purpose was to ensure through a single man the continuity of defensive vigilance so as to protect the Haitian's freedom and individual rights against foreign enslaving and colonialist ventures. Today, the purpose is still the democratic one of finally ensuring, by long enough firm action, that all Haitians enjoy this liberty and these rights equally, notwithstanding any internal resistance or foreign pressure.

[1] Note communicated by Dr. Clovis Kernisan, Dean of the Faculty of Law in the University of Port-au-Prince, government-appointed correspondent of the *Yearbook on Human Rights*.

This latest revision is more political than the previous one, but has brought, neither directly nor indirectly, any adverse change in the provisions concerning human rights. It merely gave an opportunity to supplement or define a few of these provisions, such as those in article 12 on the rights of foreigners or those in articles 46 and 47 dealing with national sovereignty.

Nevertheless, in order to provide complete information on the present constitutional guarantees of human rights in Haiti, we reproduce below the main texts of the new Constitution corresponding to those of the previous Constitution, which was published in the *Yearbook* for 1957 (pages 121-126). In case of need, the two texts may be compared.

CONSTITUTION OF THE REPUBLIC OF HAITI OF 1964

PREAMBLE

The Haitian people proclaims this constitution

To consecrate its sovereignty;

To define its rights, duties and responsibilities;

To establish the balance of the State powers;

To set up an efficient administration;

To protect labour;

To guarantee justice and social security;

To ensure that all Haitians without distinction enjoy the benefits of culture;

To protect and promote the health of the people;

To consolidate internal peace;

And thus to constitute a socially just, economically free and politically independent Haitian nation, practising a democracy adapted to its customs and traditions.

TITLE I

THE TERRITORY OF THE REPUBLIC

Art. 1. Haiti is an indivisible, sovereign, independent, democratic and social republic.

...

TITLE II

RIGHTS

Chapter 1

HAITIANS AND THEIR RIGHTS

Art. 3. The rules governing nationality are prescribed by law.

Art. 4. Every person born of a father who was himself Haitian-born is a native-born Haitian. Also any person born in Haiti of an unknown father, but of a Haitian-born mother, is a native-born Haitian.

Art. 5. The life and liberty of Haitians are inviolable and must be respected by individuals and by the State.

The State has further the obligation to ensure culture, economic well-being and social justice for the citizens of the Republic.

Chapter 2

CIVIL AND POLITICAL RIGHTS

Art. 6. The aggregate of civil and political rights constitutes citizenship.

The exercise of civil rights, as distinct from political rights is regulated by law.

Art. 7. The exercise, enjoyment, suspension and oss of political rights are regulated by law.

Art. 8. All Haitians of either sex who have completed their twenty-first year may exercise their civil and political rights provided they fulfil the conditions laid down in the Constitution and the law.

Chapter 3

ALIENS

Art. 9. Any alien woman married to a Haitian takes her husband's nationality. Any Haitian woman married to an alien keeps her Haitian nationality.

Any alien woman marrying a Haitian must make the following statement, which will be inserted in the marriage certificate: " I renounce all countries other than Haiti. "

Art. 10. After ten years of continuous residence in the Republic, aliens may acquire Haitian nationality if they conform to the rules prescribed by law.

Naturalized aliens are not allowed to exercise political rights until five years after the date of their naturalization.

Art. 11. The status of naturalized Haitians is lost in all the cases prescribed by law, for example by continuous residence of more than three years outside Haitian territory without due authorization.

Anyone who loses nationality in this way cannot recover it.

Art. 12. Aliens cannot benefit from the advantages specially reserved for Haitians through the use of corporate bodies established in accordance with the laws of the Republic. Retail trade, for example, is reserved exclusively for Haitians.

Art. 13. Any alien in Haitian territory must obey the laws and regulations of the country and enjoys the same protection as is granted to Haitians, save for any measures which may be found necessary in the case of nationals of States where the Haitian does not enjoy like protection.

Art. 14. The right to own real property is granted to an alien residing in Haiti and to alien companies for the purposes of their agricultural, commercial, industrial or educational undertakings, within the limitations and conditions prescribed by law.

The same right is granted to an alien residing in Haiti for the needs of his stay. Alien building companies have a special status under the law.

An alien residing in Haiti may not, however, own more than one house in the same district. He cannot in any circumstances engage in the renting of real estate.

The right to own real estate shall lapse two years after the date when the alien ceases to reside in the country or when the operation of agricultural, industrial, commercial or educational undertakings by alien persons or companies ends.

On the end of residence or operation in Haiti, the law prescribes the regulations to be followed in liquidating the assets alien persons or companies have acquired.

Any violation of the provisions of the first and second paragraphs of this article will result in outright seizure of the assets by the State.

Any citizen may lay an information about such violations, as well as about cessation of residence or operation.

Art. 15. In cases prescribed by law an alien may be refused permission to enter or stay in the territory of the Republic.

An alien may be expelled if he directly or indirectly meddles in the political life of the State or propagates anarchist or undemocratic doctrines.

Chapter 4

PUBLIC LAW

Art. 16. Haitians are equal before the law, except that native-born Haitians have certain privileges.

Every Haitian has the right to take an effective part in the government of his country, to hold public office or to be appointed to state employment, without distinction as to colour, sex or religion.

There shall be no privilege, favour or discrimination in the administration of the State public services so far as appointments and terms and conditions of service are concerned.

Art. 17. Individual liberty is guaranteed. No person may be prosecuted, arrested or detained except in the cases defined and in the manner prescribed by law.

Furthermore, no person may be arrested or detained except on a warrant issued by an official competent under the law.

Before a warrant may be enforced it must:

1. State formally the reason for the detention and the legal provision under which the alleged act is punishable; and

2. Be served on, and a copy given to, the indicted person except in case of *flagrante delicto.*

No person shall be kept in detention for more than forty-eight hours unless he has appeared before a judge who has ruled on the legality of the arrest and confirmed the detention.

In the case of a petty offence, the detained person shall be handed over to a magistrate, who shall give a final ruling.

In the case of a crime or correctional offence, he may, without previous authorization and on a simple memorial, apply to the senior judge of the competent court who, on the oral submission of the *Commissaire du Gouvernement,* shall give a special ruling on the legality of the arrest during the hearing, without delay and regardless of the roster, all other business being suspended.

In either case, if the arrest is ruled illegal, the detained person shall be set free, notwithstanding an appeal or application to the Court of Cassation.

Any force or constraint that is not necessary to apprehend a person or to keep him in detention and any moral pressure or physical brutality are forbidden.

Any violations of these provisions are arbitrary acts against which the injured parties may, without previous authorization, appeal to the competent courts by instituting proceedings against either the principals or the agents, whatever their rank or the body to which they belong.

Art. 18. No person may be separated from the judges assigned to him by the Constitution or the law. A civilian may not be tried by a military court, of whatever kind, nor a soldier removed from the courts of ordinary law in cases concerning ordinary law, except when a state of siege has been lawfully declared.

Art. 19. No house search or seizure of papers may take place except in pursuance of, and in the form prescribed by the law.

Art. 20. The law cannot be applied retroactively except in penal cases where it is favourable to the offender.

A law shall be deemed retroactive whenever it destroys acquired rights.

Art. 21. No penalty may be established except by law or applied except in cases prescribed by law.

Art. 22. The right of citizens to property is guaranteed. Expropriation in lawfully determined public interest may take place only on payment, or deposit in favour of the person entitled, of fair prior compensation.

Property also entails obligations. It must be used in the public interest.

The landowner has a duty to the community to cultivate and exploit the soil and to protect it, for example against erosion.

The law provides penalties for failure to meet this obligation.

The right to property does not extend to underground springs, rivers or other watercourses or to mines and quarries. They are part of the public domain of the State.

The rules governing freedom of prospecting and the right to exploit mines — open mines and quarries — are prescribed by the law in such manner as to ensure equal shares in the profits to the owner of the land and the State or its concessionaries.

The maximum height to which the right to property extends is prescribed by law.

Art. 23. Freedom to work is exercised under control and supervision of the State and in conditions laid down by the law.

Nevertheless, with certain exceptions and qualifications prescribed by law, importers, commission agents and manufacturers' agents are forbidden to engage in retail trade, even through an intermediary.

The meaning of intermediary shall be defined by law.

Art. 24. Every worker has the right to a fair wage, to the completion of his apprenticeship, to health protection, to social security and to the well-being of his family to the extent commensurate with the economic development of the country.

Employers are under a moral obligation to contribute, according to their means, to the education of their illiterate workers.

Every worker has the right to take part, through his representatives, in collective determination of working conditions. Every worker has the right to rest and leisure.

Every worker has the right to protect his interests through trade union action.

Annual paid leave is compulsory.

Art. 25. The death penalty may not be imposed in political matters, except for the crime of treason.

Treason consists in taking up arms against the Republic of Haiti, joining its declared enemies or giving them aid and comfort.

Art. 26. Everyone has the right to express his opinion on any subject and by all the means within his power.

Expression of thought in any form cannot be subjected to previous censorship, except when a state of war has been declared.

Abuses of the right of expression are defined by and suppressed by law.

Art. 27. All religions and forms of worship are equally recognized and free. Everyone has the right to profess his religion and to exercise his form of worship, provided he does not disturb public order.

No one may be compelled to take part in a religious association or to follow a religious instruction contrary to his beliefs.

Art. 28. Since marriage tends to purify morals by contributing to better organization of the family, which is the foundation of society, the state must by every means facilitate its realization and encourage its propagation among the people, and especially among the peasant class.

In the matter of marriage the law shall afford special protection to Haitian women.

Art. 29. Freedom of education must be exercised in conformity with the law, under the control and supervision of the State, which must watch over the moral and civic training of youth.

Public education is a responsibility of the State and the communes.

Elementary education is compulsory.

Public education is free at all levels.

Technical and professional education must be spread wider.

Access to higher education must be open to all on equal footing and solely on the basis of merit.

Art. 30. In cases prescribed by law, a jury shall be established for trial of crimes and political offences committed by way of the press or otherwise.

Art. 31. Without previous authorization, Haitians have the right of peaceful and unarmed assembly, even for political purposes, provided they conform with the laws governing the exercise of this right.

This provision does not apply to public gatherings, which are wholly governed by the police laws.

Art. 32. Haitians have the right to join together and to form political parties, trade unions and co-operatives.

This right may not be subjected to any preventive measures. And no one may be compelled to join an association or a political party.

The law regulates the conditions under which such groups operate and encourages their formation.

Art. 33. The right of petition may be exercised by one or several persons in their individual capacity, but never in the name of a body.

Every petition addressed to the legislature must be dealt with according to an established procedure which allows of a ruling on its purpose.

Art. 34. The privacy of correspondence is inviolable under penalties provided by the law.

Art. 35. French is the official language. Its use is compulsory in the public services. Nevertheless, the law prescribes cases and conditions in which the use of Creole is permitted and even recommended in order to protect the material and moral interests of citizens whose knowledge of French is inadequate.

Art. 36. The right of asylum is granted to political refugees, provided that they conform with the laws of the land.

Art. 37. Extradition for political reasons is not permitted.

Art. 38. The law cannot add to or derogate from the Constitution. The letter of the Constitution must always prevail.

...

TITLE IV

NATIONAL SOVEREIGNTY

Chapter 1

Exercise of National Sovereignty

Art. 47. Subject to the provisions of the preceding article, the exercise of national sovereignty is delegated to three powers: the legislative power, the executive power and the judicial power.

They constitute the government of the republic, which is essentially civil, democratic and representative.

Art. 48. Each power is independent of the two others in its duties, which each performs separately.

None of them may delegate its duties, or depart from the bounds set for it.

Responsibility for its acts is attached to each of the three powers.

Chapter 2

The Legislative Power

Section 1 — *The Legislature*

Art. 49. Legislative power is exercised by a single assembly known as the Legislative Chamber.

...

Art. 51. A member of the legislative body must:

1. Be a Haitian who has never renounced his nationality;

2. have completed his twenty-fifth year;

3. be in enjoyment of his civil and political rights; and

4. have resided at least five years in the district to be represented.

...

Art. 54. The following cannot be members of the legislative body:

1. Persons having contracts with or holding concessions from the state for exploitation of public services or the national wealth; and

2. The representatives and authorized agents of individuals or companies holding concessions from or contracts with the state;

unless the persons concerned publicly liquidate their contracts or transfer them to third parties other than members of their families, relatives and associates; or unless they publicly and in fact give up their positions as representatives or authorized agents of contractors with, or concessionaries from, the state.

...

Section 2.

Art. 56. The powers of the National Assembly are:

1. to receive the constitutional oath from the President of the Republic;

2. to declare war upon the advice of the executive power;

3. to approve or reject treaties of peace and other treaties and international conventions;

4. to revise the Constitution; and

5. to constitute itself a high court of justice.

...

Chapter 3

THE EXECUTIVE POWER

Section 1 — *The President of the Republic*

Art. 90. Executive power is exercised by a citizen receiving the title of President of the Republic. He is assisted by secretaries of state and under-secretaries of state.

Art. 91. A President of the Republic must:

1. Be Haitian-born and never have renounced his nationality;

2. have completed his fortieth year;

3. be in enjoyment of his political and civil rights;

4. have his domicile in the country; and

5. have already received a discharge from his duties if he has been responsible for the management of public funds.

Art. 92. Before taking office the President of the Republic takes the following oath before the National Assembly:

"I swear before God and before the nation faithfully to observe and enforce the Constitution and the laws of the Republic, to respect the rights of the Haitian people, to work for their prosperity and greatness and to maintain national independence and the integrity of the territory."

...

Chapter 4

THE JUDICIAL POWER

Art. 119. The hearings of courts shall be public, unless such publicity would endanger public order or morals. In such case the court shall make an order to that effect.

Political and press offences cannot be tried *in camera.*

Art. 120. Every decision or judgement shall state the reason on which it is based and be pronounced in open court.

...

TITLE VIII

THE ECONOMIC SYSTEM

Art. 159. The economic system is intended to ensure all members of the community an existence worthy of human beings. It is based essentially on principles of social justice.

Art. 160. Economic freedom is guaranteed in so far as it is not contrary to the public interest.

The State protects private enterprise and sees to it that it develops in such conditions as will increase the national wealth and in such a way as to ensure that the greatest possible number share in the benefits of this wealth.

...

Art. 164. The construction of dwellings is declared a matter of public interest.

The State shall endeavour to enable as many Haitian families as possible to own their homes. It shall see to it that every agricultural or industrial undertaking provides hygienic and comfortable housing for its workers.

...

TITLE IX

THE SOCIAL SYSTEM

Chapter 1

THE FAMILY

Art. 166. The family, foundation of society, is protected by the State, which shall promulgate the necessary laws and provisions to protect mothers and children so that every home may have the degree of well-being essential to its tranquillity and to its collaboration in public order and social peace.

Art. 167. Marriage rests on the political and economic equality of the spouses.

Art. 168. Legitimate and legally recognized illegitimate children have equal rights to education, protection and assistance and to the care of their parents.

...

Art. 170. The status of children born of adulterous and incestuous unions is regulated by law.

Art. 171. The State protects the physical, mental and moral health of minors and guarantees their right to assistance and education.

Art. 172. Juvenile delinquency is subject to special legal provisions.

Chapter 2

WORK

Art. 173. Work, a social duty, enjoys the protection of the State and is not to be exploited.

The State aims to provide the manual or intellectual worker with an occupation which will allow him to ensure the economic conditions necessary to ensure a worthy existence for his family and himself.

Art. 174. Work is regulated by a labour code, whose main purpose is to harmonize relations between capital and labour and which is based on general principles directed to improvement of the workers' living conditions.

Art. 175. The rights of workers may not be renounced and the laws establishing them are binding on all the inhabitants of the territory.

Art. 176. The state takes care of paupers who are unable to work by reason of their age or physical or mental incapacity.

TITLE X

CULTURE

Art. 177. The development and dissemination of culture is a primordial obligation and aim of the State.

Education is an essential function of the State, which organizes the educational system and creates the services needed.

Art. 178. Education must be aimed at the full flowering of the personality of those affected so that they may make a constructive contribution to society and help to inculcate respect for human rights, to combat any feeling of intolerance and hate, and to develop the ideal of national, pan-american and world unity.

Basic education is compulsory and must be provided free by the State with a view to reducing the number of the wholly illiterate and allowing all to carry out, in full awareness, their parts as workers, fathers of families and citizens.

Art. 179. No educational establishment, public or private, may refuse pupils because of the nature of their parents' or guardians' union or because of social, racial, political or religious differences.

Art. 180. A teacher must prove his qualifications in the manner prescribed by law.

In all educational establishments, public or private, teaching of the history and geography of Haiti and of civic ethics and the Constitution governing the people, must be given by Haitian teachers.

Art. 181. The folkloric, artistic, archaeological and historical wealth of the country forms part of the Haitian inheritance. It is protected by the State and subject to special laws to ensure its preservation and safe-keeping.

TITLE XI

HEALTH AND PUBLIC ASSISTANCE

Art. 182. The health of the inhabitants of the territory is a public asset.

The State provides free medical aid for the sick and, above all, has an imperative duty to prevent and, in case of need, to control the spread of contagious and endemic diseases.

...

TITLE XII

THE ARMED FORCES

Art. 187. The armed forces are apolitical and essentially subordinate. Their organization and the exercise of their activities are subject to special laws, provisions and regulations.

Soldiers on active duty are not eligible for representative or executive office. Any soldier who is a candidate for one or the other kind of office must resign at least a year before the date of the elections. Soldiers on active duty cannot be called to any public office.

...

TITLE XIV

SPECIAL PROVISIONS

Art. 196. The Legislative Chamber set up by the election of 30 April 1961 shall exercise the legislative power until the second Monday of April 1967, when the mandates of the present Deputies expire.

Citizen Dr. François DUVALIER, Supreme Head of the Haitian nation, who has aroused the national conscience of Haiti for the first time since 1804 through radical changes in political, economic, social, cultural and religious life, is elected President for life, so as to ensure that the conquests of the Duvalierist revolution endure under the banner of national unity.

Art. 197. Because he has :

1. Ensured order and peace, dangerously disturbed after the tragic events of 1957, by a timely reorganization of the armed forces;

2. Made possible and achieved reconciliation of the political factions which were savagely opposed to each other at the time of the fall of the régime of 1950;

3. Laid the foundations of national prosperity by establishing great works of infrastructure to promote agriculture and progressive industrialization in the country;

4. Achieved the economic and financial stability of the State, despite the baneful action of conjoined forces within and without, an action aggravated by the cyclical disasters born of the violence of the elements;

5. Organized effective protection of the working masses by harmonizing the interests and aspirations of capitalists and wage-earners;

6. Advocated and set in motion a rational organization of the Rural Section and, with a new code, regulated life in the country in such a manner as to establish justice and thus open the way to permanent rehabilitation of the peasant;

7. Undertaken and achieved the literacy of the masses and thus fulfilled the highest aspirations of the little people and the humble towards light and well-being;

8. Created organizations for the protection of women, mothers, children and the family;

9. Established the State University of Haiti in response to the legitimate aspirations of a youth

reaching for the summits of knowledge and the conquest of the future by learning;

10. Imposed respect for the rights of the people and the prerogatives of national sovereignty, consolidated the prestige and dignity of the Haitian community and protected the sacred heritage of our ancestors against all attacks;

11. By this domestic policy embraced all social strata in his care and by a skilful and dignified foreign policy defended the integrity of the territory and national independence; and

12. Finally, concentrated his efforts on the making of a strong nation, capable of fulfilling its destiny in full freedom and pride, to the good fortune of its sons and the peace of the world.

Because he has thus become without question the leader of the revolution, the apostle of national unity, the worthy heir of the founders of the Haitian nation, the restorer of the fatherland and because he has deserved to be unconditionally acclaimed by the vast majority of the people as Head of the National Community without time-limit;

Citizen Dr. François DUVALIER, elected President of the Republic, shall exercise his high office for life, as provided in article 92 of this Constitution.

HUNGARY

NOTE ON THE DEVELOPMENT ON HUMAN RIGHTS[1]

DECREE NO. 8/1964. (XII.10.) OF THE MINISTER OF LABOUR ON LABOUR EXCHANGE

Sect. 8. (1) Applicants for employment shall be required to produce their workbook and identity card to benefit by labour exchange service.

(2) Applicants shall be directed to employment in consideration of their skill, fitness for work and social circumstances, and generally in order of application.

(3) The plant shall not be obliged to employ a worker directed to it through labour exchange, if he fails to satisfy the professional and other requirements of the type of work in question. Similarly, the worker shall not be obliged to accept the type of work offered to him by way of labour exchange. In case of failure, labour exchange may be attempted several times.

(4) A plant may also request workers to be directed to it by person (name) if justified by the applicants' special skill or by some other interest of the plant, provided it is not incompatible with the directives for local manpower management. The exchange of a worker by person shall be compulsory, if his employment with the plant in question takes place in virtue of legislative provisions.

(5) Applicants for employment shall not be excluded from labour exchange on any ground whatsoever.

(6) Labour exchange shall be free of charge.

Sect. 9. The special labour agencies (labour exchange offices) shall be obliged to provide to the special administrative organs of territorial competence and their representatives information and access to relevant documents on any matter relating to labour exchange.

LEGISLATIVE DECREE NO. 6 OF 1964 ON THE UNIFICATION OF THE SOCIAL INSURANCE ORGANIZATION

The building of socialism and the development of democracy have notable results to their credit. These results, coupled with the successful activity carried out by the trade unions in the field of social insurance, justify the relegation to the trade unions of further functions concerning social insurance. This will promote the uniform direction, supervision and administration, as well as the continued development of social insurance.

Therefore, the Presidential Council of the Hungarian People's Republic issues the following legislative decree :

Sect. 1. (1) The Hungarian People's Republic attends to the direction, supervision and control of social insurance fully by way of the Hungarian Trade Unions Council and takes care that the material means required for the handling of social insurance are available to the Hungarian Trade Unions Council.

(2) In its social insurance functions the Hungarian Trade Unions Council :

(*a*) deals with the further development of social insurance;

(*b*) frames and presents to the Council of Ministers bills, drafts of legislative decrees, government decrees and government decisions on social insurance;

(*c*) issues rules regulating the questions of social insurance assigned to it;

(*d*) draws up the national budget of social insurance, prepares the budget account and presents them to the Council of Ministers through the Minister of Finance;

(*e*) organizes, subject to Sections 2 and 3, trade unions and administrative organs taking care of social insurance and determines their functions;

(*f*) exercises control and supervision over the activity of social insurance organs.

Sect. 2. (1) The tasks of social insurance are carried out by the trade union organs assigned for this purpose.

(2) The Hungarian Trade Unions Council shall set up a General Directorate of Social Insurance to take care of the administration of social insurance.

(3) Certain questions concerning social insurance administration may also be assigned to employers and co-operatives.

Sect. 3. Organs representing the interests of non-unionists shall have the right to set up an agency in the trade union organs carrying out social insurance functions including those concerning non-unionists.

DECREE NO. 2/1964. (IV.3.) OF THE MINISTER OF LABOUR ON COMPENSATION FOR DAMAGE CAUSED BY INJURY TO WORKERS' HEALTH OR PHYSICAL INTEGRITY

I.

General Provisions

Sect. 1. In case of injury to a worker's life, health or physical integrity in the domain of his employment (hereinafter called injury), the plant

[1] Extracts from laws furnished by the Government of the Hungarian People's Republic.

shall be liable to give compensation, in accordance with the provisions of Sections 2 to 12, for the worker's — in case of his death, for his dependants' — full material damage, such as loss of income and damage to property suffered in consequence of injury, as well as expenses and costs incurred by injury.

Loss of Income

Sect. 2. (1) To cover the loss of income, compensation shall be due for damage suffered by the worker by missing his earnings for reason of incapacity for work or reduction of working capacity or by not reaching the amount of earnings enjoyed prior to the injury. Compensation shall also be due for the amount whose loss has been averted by the worker's extraordinary performance rendered in spite of his considerable physical infirmity resulting from the injury.

(2) To cover the loss of income suffered in the domain of employment, compensation shall be due for the loss of wages fixed in cash or in kind and for the monetary value of such other regular benefits (like uniform, not wage-like benefits in kind) to which the worker is entitled over his wages on the strength of employment, provided he made use thereof regularly prior to the occurrence of injury. No compensation shall be due for the value of benefits which in view of their purpose are afforded only in case of actual work (e.g. protective food and beverages, work clothes, protective garment).

(3) To cover the loss of income suffered outside the sphere of employment, compensation shall be due for such other regular earnings as have been lost in consequence of the injury. The sum of reimbursed expenses shall not be taken into account in establishing the amount of the earnings lost.

Sect. 3. (1) The amount of the wages lost (paragraph 2 of Sect. 2) shall be established on the basis of average earnings calculated in view of the total benefits granted from the wage fund and of the profit-share received. The calculation of average earnings shall be based on the periods of time specified in paragraphs 1 and 3 of Sect. 140 of the Enforcement Decree of the Labour Code.

(2) If during the period of time to be taken into account for the calculation of average earnings there has been a change in the worker's wage, the average wages of workers employed on the time-work basis shall be calculated in the light of basic wages effective at the time of calculation. With regard to workers employed in the output wage system, average earnings shall be calculated only from the date of wage adjustment if within one year or within the time spent with the plant there has been a general revision of wages.

(3) In establishing the amount of the wages lost, account shall also be taken of any future adjustment which can with complete certainty be expected in advance to take place in a given period of time.

(4) If the worker has spent less than one month with the plant, his average earnings shall be calculated on the basis of the average earnings of a worker employed on an identical work and having identical qualifications and practice or, failing this, of a worker employed on a similar work and having similar qualifications and practice.

(5) For the calculation of average earnings under paragraphs 1 and 2, account shall not be taken of the periods of time for which the worker received no wage (e.g. illness or military service).

Sect. 4. The value of benefits in kind shall be calculated at the retail prices effective at the time of establishing the damages.

Damage to Property

Sect. 5. (1) Compensation shall be due for any damage caused by injury to the worker's clothing, personal belongings or any other things on him.

(2) The amount of damage to property shall be calculated at the retail prices effective at the time of establishing the damages, except if the worker is entitled to purchase the thing at the plant at a reduced price.

(3) The amount of damages shall be established with allowance for the depreciation of the property.

(4) If the thing damaged can be repaired without a fall in its value, compensation shall be awarded in the amount of repairs.

Costs and Expenses

Sect. 6. The plant shall also be obliged to pay the worker's costs and expenses necessary for averting the consequences of the injury (costs of improved provision, extra costs of at-home treatment, transport charges, etc.), as well as other justified costs and expenses incurred by the injury (e.g. justified expenses of visiting the sick living in the worker's household).

Damage Suffered by Dependants

Sect. 7. (1) In case of the worker's death, the plant shall be obliged to compensate the dependants for the loss of maintenance and to pay the justified costs and expenses incurred by the injury (e.g. funeral expenses).

(2) Dependants may only claim damages to the extent of their need.

Grant of Allowance

Sect. 8. A monthly allowance shall be granted in general, if the loss of income or the costs and expenses continue for a long period.

Change in Circumstances

Sect. 9. (1) The injured person as well as the plant may request the modification of established damages if following the establishment of damages a change has occurred in the essential circumstances, particularly in the health condition of the worker who has suffered an accident, in his qualifications, type of work or — in consequence of wage adjustment — in the wages of workers doing similar work, as well as in the worker's employment under Government Decree No. 33/1963. (XII.3.). However, the increase of income received as a result of the acquisition of qualifications or of higher qualifications shall not be taken into account for a period of one year following the acquisition of qualifications.

(2) The amount of damages awarded to a minor shall be revised on completion of his 18th year or

on expiration of one year following completion of his studies pursued to acquire higher qualifications and shall, for the subsequent period, be re-established to correspond to the change in his working capacity or qualifications. This revision shall not exclude the modification of established damages if it may be necessary in the other cases referred to in paragraph 1.

General Damages

Sect. 10. Should it be impossible to establish the exact measure of the loss sustained by the property, the plant may be obliged to pay such amount of general damages as will be sufficient for the full material indemnification of the person injured.

ICELAND

THE NATIONAL INSURANCE ACT OF 30 APRIL 1963

SUMMARY

The text of the Act was published in *Stjórnartíðindi*, 4, p. 251 and translations thereof into English and French have been published by the International Labour Office as *Legislative Series*, 1963-Ice. 1.

Section 1 of the Act prescribes that national insurance shall be divided into pension insurance; employment injury insurance; and health insurance.

Under section 2, the State Social Security Institution is charged with the administration of pension insurance and employment injury insurance, and shall be responsible for the supervision and control of health insurance, all under the general supervision of the National Government (Ministry of Social Affairs).

Section 5 provides that following each general election, Parliament shall elect at its first sitting five persons to constitute the Social Security Board which, by virtue of section 6, shall supervise the finances, administration and activities of the Social Security Institution, and make sure that it acts at all times in compliance with existing laws and regulations.

As stated in section 7, the Federation of Icelandic Employers, the Icelandic Federation of Trade Unions, the Farmers' Association and the Union of Icelandic Fishing Vessel Owners shall each appoint one person with the right to take part in the deliberations of the Social Security Board, and the right to make proposals, when determining the classification of risks and premiums payable by employers in the case of employment injury insurance.

Other provisions of the Act deal with pensions; employment injury insurance; and sickness insurance.

On 22 January 1964, the Minister of Social Affairs, pursuant to section 40 of the Act, issued regulations (published in *Stjórnartíðindi*, Series B, No. 7, p. 15) respecting premiums payable to the employment injury insurance scheme.

INDIA

DEVELOPMENT OF HUMAN RIGHTS IN 1964[1]

I. CONSTITUTION

Following on the reorganisation of States and the transfer of areas from one State to another, the expression " estate " in many of the Acts relating to land reforms had to be redefined. Further, certain Acts which had been struck down by the courts on the ground that they were violative of some of the fundamental rights guaranteed by the Constitution had to be validated because the Acts were essential measures of land reform. The Constitution (Seventeenth Amendment) Act, 1964, made the necessary amendments in the Constitution and at the same time provided that where a law makes provision for the acquisition by the State of any land held under personal cultivation it shall not be lawful for the State to acquire any such portion of the land as is within the ceiling limit applicable to the person concerned unless the law relating to the acquisition of such land provides for payment of compensation at a rate not less than the market value thereof. It may be mentioned in passing that under article 31 of the Constitution as it now stands it is for the Legislature to provide for suitable compensation in cases where lands are acquired for a public purpose and the courts may not question any law so made on the ground that the compensation provided by that law is not adequate.

II. LEGISLATION

A. *Political and Personal Rights*

Central Legislation

An amendment to the Companies Act, 1956 (Central Act 32 of 1964) seeks to afford protection to employees of companies in cases where their affairs have become the subject-matter of investigation under the Companies Act, 1956. The object is to prevent victimization. No employee of any such company may be dismissed, removed from service or otherwise punished unless due notice of the proposed action is first given to the Company Law Board set up under the Companies Act.

State Legislation

The Andhra Pradesh Legislature (Continuance of the English Language) Act, 1964 (A.P. Act 16 of 1964); the Assam State Legislature (Continuance of the English Language) Act, 1964 (Assam Act 23 of 1964); the Gujarat State Legislature (Use of the English Language) Act, 1964 (Gujarat Act 28 of 1964); the Madras State Legislature (Continuance of use of English Language) Act, 1964 (Madras Act 38 of 1964) and the West Bengal Official Language (Amendment) Act, 1964 (West Bengal Act 19 of 1964) provide for the continued use of the English language for the transaction of business in the State Legislatures even after the expiration of the transitional period of 15 years prescribed by the Constitution for the switch over to Hindi as the official language of the Union.

The question of suitably amending the Central Official Languages Act of 1963, for the continued use of the English language in addition to Hindi is receiving the active consideration of the Union Government at the present moment.

The Punjab Separation of Judicial and Executive Functions Act, 1964 (Punjab Act 25 of 1964) seeks to ensure that functions which are purely judicial in character are performed by Judicial Magistrates and functions which are of an executive nature, like controlling access to public places and so on are performed by executive magistrates. This reform in judicial administration has already been carried out in most of the States in India by suitable amendments to the pre-independence Code of Criminal Procedure. A few years ago the Law Commission of India had included a specific recommendation to this effect in one of its Reports.

The Madhya Pradesh Local Authorities (Electoral Offences) Act, 1964 (Madhya Pradesh Act 13 of 1964) declares certain acts to be offences in connection with elections to municipal corporations, municipal councils, janpada panchayats, gram panchayats and adivasi panchayats. These offences include the holding of public meetings on the day of polling or one day prior thereto, the causing of disturbance at public meetings, the canvassing for votes in or near polling booths and the hiring or procuring of conveyance for voters.

The Mysore Cinemas (Regulation) Act, 1964 (Mysore Act 23 of 1964) authorizes the State Government, *inter alia*, to issue directions to any licensee or licensees generally, requiring him or them to exhibit scientific or educational films, films dealing with news and current events and documentary films of special interest to the public. It is, however, provided that the time taken for such films should not exceed one fifth of the time for the entire show.

The Punjab Dramatic Performances Act, 1964 (Punjab Act 10 of 1964) authorizes the District

[1] Note furnished by Shri G. R. Rajagopaul, Legislative Department, Ministry of Law, formerly Secretary to the Government of India, Member Law Commission of India, Member Monopolies Inquiry Commission, government-appointed correspondent of the *Yearbook on Human Rights*.

Magistrate to prohibit any objectionable performance which is defined as a performance which is intended to outrage the religious feelings of any community, or is grossly indecent or obscene or is scurrilous or is likely to incite any person to resort to violence or sabotage for the purpose of overthrowing the Government or to incite any person to commit any offence involving violence or to seduce any member of the armed forces or the police forces from his allegiance to his duty or incite one section of citizens to acts of violence against another. Before any such action is taken, the person concerned should be given an opportunity of showing cause and care is also taken to ensure that ordinary criticism of governmental acts or laws are not brought within the scope of the Act.

The Mysore Dramatic Performances Act, 1964 (Mysore Act 39 of 1964) gives similar powers to the State Government in respect of dramatic performances in that State.

The Maharashtra Felling of Trees (Regulation) Act, 1964 (Maharashtra Act 34 of 1964) prohibits the felling of trees on any land, whether *owned* by the person concerned or otherwise, except with the previous permission of the prescribed authority, but such permission cannot be withheld if the tree is dead, diseased or is an obstruction to cultivation, etc.

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. So also the Defence of India Act, 1962 (Central Act 51 of 1962).

During the year under review, the Jammu and Kashmir State Legislature enacted the Jammu and Kashmir Preventive Detention Act, 1964 (Jammu and Kashmir Act 13 of 1964) providing for the detention of persons who may be acting, *inter alia*, in a manner prejudicial to the security of the State or the maintenance of public order. This Act is modelled on a similar legislation in force in the rest of India. Under this Act the grounds of detention have to be communicated to the detenu within a specified time and orders of detention are subject to scrutiny by an Advisory Board constituted for the purpose.

C. *Certain aspects of family rights.*

State Legislation

The Child Marriage Restraint (Gujarat Amendment) Act, 1963 (Gujarat Act 11 of 1964) amends the Central Act relating to child marriages by making offences thereunder cognizable and providing for the appointment of Restraint Officers whose duty it will be to prevent child marriages by taking appropriate action. Under the law the male partner must be above 18 years and the female partner above 15 years to be free from the guilt of contracting a child marriage.

D. *Social and Economic Rights*

State Legislation

The Mysore Children Act, 1964 (Mysore Act 19 of 1964) consolidates the law relating to the care, protection, maintenance, welfare, training, education and rehabilitation of destitute children and of juvenile offenders.

The Mysore Borstal Schools Act, 1963 (Mysore Act 24 of 1964) consolidates the law relating to borstal schools and provides for their establishment where young offenders are given such training and other instructions and are subjected to such disciplinary and moral influences as will conduce to their reformation and the prevention of crime.

The Assam Prevention of Begging Act, 1964 (Assam Act 18 of 1964) provides for the detention in certified institutions of persons found begging. They are to be discharged after a specified period, the period of detention being utilized as a corrective.

The Gujarat Obsequial Dinners (Control) Act, 1964 (Gujarat Act 8 of 1964) seeks to control the number of persons who may be invited to any dinner in connection with ceremonies connected with the demise of a person during a period of 13 months from the date of the demise.

III. JUDICIAL DECISIONS

1. *Freedom from Discrimination; Equality before the Law*

What is meant by article 14 of the Constitution (equality before law) is equality among equals. The article is not aimed at an absolute equality of treatment to all persons in utter disregard in every conceivable circumstance of differences which may exist as regards age, sex, education and so on. The aim is only to ensure that invidious distinction or arbitrary discrimination is not made by the State between one citizen and another who answers the same description and the differences between them, if any, have no significance for the purpose of applying the particular law. (*T. Devadasan* V. *Union of India and another*, A.I.R. 1964 S.C. 179.)

It is an accepted fact that members of the scheduled castes and tribes are by and large backward in comparison with other communities in the country. This is the result of historical causes. Article 16 (4) therefore seeks to ensure that such people because of their backwardness are not unduly handicapped in the matter of securing employment in the various services of the State. When therefore the State makes a rule providing for reservation of appointments and posts for such backward classes, it cannot be said to have violated article 14, merely because members of the more advanced classes would not be considered for appointment to these posts even though they may be equally or even more meritorious or merely because such reservation is not made in every kind of service under the State.

2. *Security of Person*

A convict sentenced to imprisonment was released from custody on grounds of ill-health. He was subsequently re-arrested. In the decision arising out of this case (*State of Bihar* V. *Kameshwar Prasad Varma*, A.I.R. 1965 S.C. 575) the court observed that no member of the executive can interfere with the liberty of a subject except on condition that he can support the legality of the action before a court of justice. In the absence of any such authority the re-arrest and detention would be illegal.

A case which evoked and is still evoking extraordinary interest is the one dealt with in the advisory opinion of the Supreme Court on a reference made by the President of India under article 143 of the Constitution in connection with a sharp conflict which had arisen between the Uttar Pradesh Legislative Assembly and the High Court of that State. (Special Reference No. 1 of 1964.) The salient facts of that case need recapitulation. The Uttar Pradesh Legislative Assembly had passed a resolution that a reprimand be administered to one Keshav Singh for having committed contempt of the Assembly by publishing a certain pamphlet libelling one of its Members. Keshav Singh, in spite of being repeatedly required to do so, failed to appear before the Assembly to receive the reprimand. He was therefore brought under the custody of the Marshal of the Assembly in execution of a warrant issued by the Speaker. On his appearance before the House he showed great disrespect to the House by turning his back to the Speaker and so on. After the reprimand was administered, the Speaker brought to the notice of the Assembly a letter written by Keshav Singh in which, *inter alia*, he stated that a brutal attack had been made on democracy by issuing the warrant upon him. The Assembly thereupon passed a resolution that Keshav Singh be sentenced to imprisonment for seven days for having written a letter worded in language which constituted a contempt of the House and for his misbehaviour in view of the House. A general warrant was then issued. Before the expiry of the sentence one B. Solomon, an advocate, presented a petition to a Bench of the High Court for a writ of *habeas corpus*. On the same date an order for releasing Keshav Singh on bail was passed and notice was issued to respondents. The Assembly thereupon passed a resolution that the Judges who passed the order and the advocate who presented the petition had committed contempt of the House and that they be brought in custody before the House. The Judges immediately moved the High Court by separate petitions under article 226 for a writ of *certiorari* quashing the resolution. The petitions were heard by all the Judges of the High Court excepting the two Judges who constituted the earlier Bench (28 in number) and they passed an order directing that the implementation of the resolution be stayed. The advocate had also presented a similar petition. On the day the High Court passed the order for stay the House passed a clarificatory resolution cancelling the warrants against the Judges and giving them an opportunity for an explanation before deciding the matter.

The main question which thus arose out of the Presidential reference was whether the Assembly had the privilege of committing by general warrant a citizen, not a member of the House, to prison for contempt committed outside the House, that is to say, without stating the facts which constituted the contempt; and, if it was so, whether the courts of law had the power to examine the legality of such a committal. In other words, if there was such a privilege, would it take precedence over the fundamental rights of the detained citizen?

Under article 194(3) of the Constitution the powers, privileges and immunities of the House, pending definition by law, are those of the House of Commons of the Parliament of the United Kingdom at the commencement of the Constitution. Holding that the decision as to the construction of that article must lie exclusively with the judiciary, the court embarked upon an elaborate inquiry into the origin and the history relating to the privileges of the House of Lords and the House of Commons in England in order to find out what those privileges were at the commencement of the Constitution. Observing that unlike the British House of Commons the Indian Legislature cannot claim the status of a court of record and further that to the absolute constitutional right to move the court for appropriate writs in safeguard of fundamental rights guaranteed by article 32 no exception is made by the Constitution, the Supreme Court came to the conclusion that in respect of a general warrant issued by the House in respect of a contempt alleged to have been committed by a citizen who is not a Member of the House outside the four walls of the House it would be open to the courts to entertain questions regarding the legality of the sentence of imprisonment imposed by the House because the fundamental right of personal liberty guaranteed to a citizen is involved. In the circumstances a Judge of a High Court who entertains or deals with a petition challenging any order or decision of a Legislature imposing any penalty on the petitioner or issuing any process against the petitioner for contempt or for infringement of the privileges and immunities or who passes any order on such petition does not commit contempt of the Legislature and the Legislature is not competent to take proceedings against the Judge in the exercise and enforcement of its powers, privileges and immunities.

Sarkar J. who dissented from the majority opinion shared by six Judges was of the opinion that when a House commits a person for contempt by general warrant that person has no right to approach the court nor can the court sit in judgement over an order for committal. Article 194(3) and the Chapter on Fundamental Rights should receive a harmonious construction and it would be wrong to say that the fundamental right must have precedence over the privilege simply because it is a fundamental right. He, however, felt that on the facts of the case no contempt by the Judges had been committed because they had every jurisdiction to entertain any petition for *habeas corpus* and the stage for deciding whether the present petition was competent or otherwise had not been reached when the Legislature passed its resolution against the Judges.

This advisory opinion was considered later at a conference of Speakers at which it was resolved that suitable amendments should be made in the Constitution in order to make it clear that the Legislature has the sole power to adjudge and punish in cases of contempt of their authority, whether committed by a Member or a stranger and whether inside the House or outside.

3. *Principles of Natural Justice*

In connection with a departmental inquiry against a government employee, the court made the following observations, which the court observed were elementary propositions. (*Golam Mohiuddin* V. *State of West Bengal*. A.I.R. 1964 Cal. 503.):

" An administrative tribunal must act in good faith, must have regard to relevant considerations only, must disregard all irrelevant considerations, must not seek to promote purposes alien to the letter or spirit of the legislation that gives it power to act and must not act arbitrarily or capriciously. In other words, an administrative tribunal must act *bona fide* on relevant considerations and must also act with a sense of responsibility in the discharge of its duties. "

The following observations from decisions to which educational institutions were made parties deserve reproduction:

" Wherever any body of persons has legal authority to determine questions affecting rights of subjects it has the duty to act judicially. Although an order of rustication of a medical college student made by the University authorities may be according to the University regulations, it cuts short the student's right to continue in the college and is likely to affect his future career, reputation, status in life and future prospects. Therefore, if the University authorities do not act according to principles of natural justice and the student concerned has had no opportunity of showing cause, the court has the power to interfere as the act complained of is really in the nature of a quasi-judicial act. It is not a mere administrative act. "

" No party ought to be condemned unheard and the opportunity to be heard must be real. Although the University authorities may not be tribunals and are not bound by strict rules of evidence or procedure, the opportunity to be heard must be a fair one. "

(*Surindra Pal Trikha* V. *Principal, Government Medical College*, A.I.R. 1965 J & K 23; *the University of Madras* V. *R. Nagalingam*, A.I.R. 1965 Mad. 107; *Ramesh Kapur* V. *Punjab University*, A.I.R. 1965 Pun. 120 F.B.)

4. *Social Justice*

In considering the question whether the Malis (Gardners) employed by certain cotton spinning and weaving mills in the bungalows provided by them for their officers could be said to be employed in work incidental to the industry carried on by the mills for the purpose of the Industrial Disputes Act, 1947, the Supreme Court made the following observations. *(M/s J.K. Cotton Spinning and Weaving Mills Co. Ltd.* V. *The Labour Appellate Tribunal of India*, A.I.R. 1964 S.C. 737.)

" The concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes. The concept of social justice is not narrow or one-sided or pedantic and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities; nevertheless in dealing with industrial matters it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions but adopts a realistic and pragmatic approach. It therefore endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both parties with the object of establishing harmony between capital and labour, and good relationship. The ultimate object of industrial adjudication is to help the growth and progress of national economy and it is with that ultimate object in view that industrial disputes are settled by industrial adjudication on principles of fairplay and justice. "

IRAN

NOTE[1]

1. *Amendment to the Labour Act.*

As proposed by the Ministry of Labour and Social Services, the Council of Ministers, on 20 September 1963, approved a Legislative Decree amending article 15 note 2 and article 25 of the Labour Act of 17 March 1959.[2] Articles 15 note 2 and 25, as amended, deal respectively with regulations concerning holidays with pay and the definition of trade unions.

2. *Amendment to the Legislative Decree of 7 January 1963.*

The Council of Ministers, on 2 October 1963, approved a Legislative Decree,[3] *inter alia*, amending section 2 of the Legislative Decree of 7 January 1963 respecting the participation of workers in the profits of industrial and production undertakings[4] to the effect that notes 3 and 4 were added to that section. These notes deal, respectively, with the right of the Minister of Labour and Social Services to fix a maximum period of three months for the conclusion of a collective labour contract and with the provision that any collective labour contract signed by 51 per cent of the labour force of an undertaking shall be applicable to the whole force.

3. *Regulation concerning the Constitution of Trade Unions.*

This regulation, which consists of 9 chapters and 69 articles, implements articles 25-29 of the Labour Act of 17 March 1959.[5] It was promulgated by the Ministry of Labour and Social Services on 8 June 1964 after its approval by the Council of Ministers.

4. *Land Reform Act of 9 January 1962.*[6]

This Act amends the Act of 16 May 1960 and consists of 9 chapters and 38 articles dealing, *inter alia*, with ownership limits; lands subject to distribution; assessment and payment; land distribution and transfer regulations; regulations governing distributed lands; landlord-peasant relationship; financial regulations; and regulations governing technical aid and protection of farmers and peasants.

The following decrees and regulations, promulgated by the Council of Ministers, relate to the Land Reform Act :

(*a*) *Decree No. 34262 of 10 February 1962.* This Decree implements article 30 of the Land Reform Act and provides for the formation of the Maragheh Independent Development Organization, with the purpose of supervising all development activities of the Maragheh Pilot Project Area through a responsible chief and three assistants.

(*b*) *Decree No. R.C./3510 of 19 February 1962.* This Decree, in implementation of article 27 of the Land Reform Act dealing with the Agricultural Bank, contains further provisions in relation to that bank.

(*c*) *Decree No. 36104 of 3 March 1962.* By this Decree regulations concerning the voluntary transfer of land by landowners to the Government were enacted.

(*d*) *Decree No. T/986 of 19 April 1962.* The regulations contained in this Decree were adopted in pursuance of article 2, note 3, of the Land Reform Act and deal with the transfer of ownership by landlords of their scattered property to the peasants of the same village.

(*e*) *Decree No. T/8818 of 7 August 1962.* This Decree contains further regulations concerning the enforcement of article 2, note 3, of the Land Reform Act.

(*f*) *Decree of 23 August 1962.* This Decree, in implementation of article 24 of the Land Reform Act, provides for regulations concerning the distribution of shares in crops between landlord and farmer.

(*g*) *Decree No. T/20040 of 29 August 1962.* This Decree amends the Land Reform Act by adding to its article 10 a note dealing with the determination of the value of villages not having been evaluated before for tax purposes.

(*h*) *Decree of 17 January 1963.* By this Decree the Land Reform Act was amended to embody regulations concerning villages and farms not qualifying for distribution and remaining in private ownership.

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[1] Note based upon texts furnished by Professor A. Matine-Daftary, Member of the Senate of Iran, President of the Iranian Association for the United Nations, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] For a summary of the Labour Act, see *Yearbook on Human Rights for 1959*, p. 158.

[3] Text published in the *Official Gazette*, No. 5684, of 2 chahrivar 1343 (24 August 1964).

[4] For a summary of the Legislative Decree of 7 January 1963, see *Yearbook on Human Rights for 1963*, p. 161.

[5] For a summary of the Labour Act, see *Yearbook on Human Rights for 1959*, p. 158.

[6] Translations of the Act into English and French have been published by the United Nations Food and Agriculture Organization in *Food and Agricultural Legislation*, Vol. XI - No. 2, 1 December 1962.

(*i*) *Regulations of July 1964 in implementation of the Land Reform (Second Stage) Act.* Under these regulations, entered into force on 23 October 1964, landowners have to adopt one of the following three lines of conduct : sell their land; lease their land; or share the crops of their land.

5. *Health Corps Act, 1964.*

Section 1 of this Act, with a view to making rural areas enjoy the benefits of a health and medicine service, establishes a health corps composed of a group of medical practitioners and male nurses.

IRAQ

NOTE[1]

1964 may be considered the most important year in the history of Iraqi social legislation and social policy development. A series of laws were promulgated and put into effect in 14 July 1964, on the occasion of the sixth anniversary of the National Revolution, and in the implementation of the Iraqi Interim Constitution. This event marked a social revolution anchoring the sound basis for an economic and social system aimed at increased production, equitable distribution of income, narrowing class differences and eventually achieving substantial progress in the field of human rights and fundamental freedoms. Below is a brief summary of the said laws which provide the working class particularly with certain rights and guarantees.

Law No. 96 of 1964

This Law provides for the establishment of a public organization enjoying a governmental status and an administrative as well as financial independence under the name of " The Economic Organization ". The Organization aims at participation in the development of the national economy by way of economic activity in the public sphere.

It includes three establishments, namely : The Public Establishment for Industry, the Public Establishment for Trade and the Public Establishment for Insurance.

Law No. 99 of 1964

This Law provides for the nationalization of insurance and re-insurance companies in Iraq in addition to the 30 existing major establishments.

Law No. 100 of 1964

According to this Law, nationalization covers all banks and institutions operating in Iraq. The Law provides for the compensation of share-holders.

Law No. 101 of 1964

This Law provides for the distribution of profits as follows :

a. 75 % to share-holders or to project owners;

b. 25 % to workers and personnel, to be distributed as follows :

1. 10 % shall be distributed to workers and personnel in a way provided for in the said Law.

2. 5 % shall be alloted for social services and housing, according to the decision on these projects by the board of directors or the management, in agreement with the company's workers union.

3. 10 % shall be transferred to the Central Social Services for workers and personnel.

Law No. 102 of 1964

This Law deals with the formation of Boards of Directors at Industrial establishments and projects and provides for the participation of labourers and officials in these Boards of Directors.

Article (1) of the Law stipulates that members of the Board of Directors of any share-holding industrial company should not be more than seven, provided that it includes two members representing the labourers and officials elected by direct ballot under the supervision of the Ministry of Labour and Social Affairs.

Law No. 140 of 1964

In this Law on social security the most recent principles have been introduced calling for the insurance of workers against hazards of life, since they may lose their income because of disablement, old-age, employment accident or occupational disease.

The conditions and circumstances in the country and the experiences gained from the application of the previous social security law (No. 27 of 1956) have been taken into consideration.

The principles introduced in this Law are based on social solidarity and not on compulsory saving as was the case with the previous Law. The insured persons, or their dependants — on their death — in addition to funeral expenses, shall receive disablement benefits or old-age pensions and women shall receive maternity benefits in addition to confinement benefits.

Moreover, the Social Health and Welfare Fund, to be established for the first time, will contribute to the financing of social and health institutions rendering services to workers covered by the provisions of the Law. The Fund will also provide the unemployed with cash assistance.

Law No. 162 of 1964

This Law provides for the establishment of the Labour Educational Institution, attached to the Ministry of Labour and Social Affairs.

Its objectives are to promote the cultural, national and trade unions' educational responsibilities of the workers, particularly to create trade union leaders capable of accomplishing their responsibilities and

[1] Note furnished by the Government of Iraq.

to prepare workers for their task in bringing progress to their country. These objectives ate to be achieved through the execution of necessary schemes and programmes in a training and educational centre, general lectures and seminars, study camps and tours and exchange of visits and studies, and other activities.

In the execution of the said laws, a great variety of legal instruments were issued in the same year.

Regulation No. 36 of 1964 on Civil Social Centres

This Regulation provides for the establishment of Civil Social Centres in the underdeveloped regions of towns. These Centres aim at raising the social, economic, cultural and health standards of the regions through developing local abilities and training inhabitants in certain simple and manual occupations and skills.

A Social Centre shall perform the following functions :

1. Consider social problems.
2. Pay visits to families.
3. Give first aid.
4. Conduct campaigns against illiteracy.
5. Give lessons in sewing and home economics.
6. Give training in some skills and useful manual work.
7. Guide local citizens to use the shortest way in applying for their needs and requirements.
8. Give instruction in the care of motherhood and childhood.

Regulation No. 31 of 1964 on Reformatory Schools

This Regulation repeals the Reformatory School Regulation, No. 23 of 1962.

The new Regulation contains modern principles in the administration of reformatory schools.

According to the Regulation, a Reformatory School is an Institution designated by courts or authorities for the detention of delinquent juveniles. Its administration is conducted by a Board headed by the Director-General of Social Services and having five members, among them a medical doctor and a judge of the juvenile court.

The Regulation provides for necessary measures to be taken by the administration of the school for the guidance, training and education of juveniles, for trying to find an occupation for those who are due to leave the Reformatory and also for advising and helping them.

Regulation No. 38 of 1964 concerning Care and Rehabilitation of the Blind

This Regulation repeals the previous one (No. 3 of 1959). The Regulation provides for the establishment and administration of institutions of the blind in order to provide them with social care and vocational rehabilitation as well as to educate and train them in certain skills and professions by using the appropriate means for the blind, to enable them to earn their own living.

The Ministry of Labour and Social Affairs is responsible for the erection of suitable buildings for these institutions, for securing a sufficient number of officials and for supplying the institutions with the necessary provisions and materials.

IRELAND

NOTE[1]

The Social Welfare (Miscellaneous Provisions) Act, 1964 made provision for increases in the rates of non-contributory old age and blind pensions, widows' pensions and unemployment assistance with effect from 1 August 1964. The Act also made provision for the payment, for the first time, of increases in pension in respect of qualified children to recipients of old age contributory pensions and non-contributory old age and blind pensions. These increases became effective from 1 November 1964.

The Criminal Justice Act, 1964, amended the law as to the imposition of the death penalty and malice in the case of murder. It abolished the death penalty except for :

(*a*) treason,

(*b*) murder of a member of the Garda Síochána (Police Force) or a prison officer acting in the course of his duty,

(*c*) murder done in the course or furtherance of offences under certain provisions of the Offences Against the State Act, 1939,

(*d*) ' political ' murder of a visiting head of State or a representative of a foreign government, and

(*e*) offences for which the death penalty is provided by certain provisions of the Defence Act, 1954.

A person who, but for the Act, would be liable to suffer death is liable to penal servitude for life.

The Act also abolishes the doctrine of constructive malice. Formerly, even an accidental killing by a person while committing a felony, particularly if the felony involved violence, or while resisting an officer of justice or assisting an escape or rescue from legal custody was murder and punishable with death.

The law on the guardianship and custody of infants is consolidated in the Guardianship of Infants Act, 1964, which also gives effect to the principles that, in any proceedings concerning an infant or his property, the welfare of the infant is the paramount consideration and that both parents have equal rights to guardianship and custody. Provision is also made for the guardianship and custody of illegitimate infants.

The Health (Homes for Incapacitated Persons) Act, 1964, provides for the regulation of the standards of accommodation and care in homes for the incapacitated. Detailed requirements may be prescribed in relation to such care and to the numbers and qualifications of the staff of homes and their design, maintenance, repair, ventilation, heating and lighting. The person in charge of a home for the incapacitated is under an obligation to notify the health authority of the existence of the home.

The Patents Act, 1964, re-enacted in substance the pre-existing law relating to patents for inventions. It also made additions and changes designed for the benefit of both inventors and the public and necessary to keep Irish law in line with changes in international arrangements concerned with the protection of inventions. The term — sixteen years — of a patent is not changed but in future it runs in all cases from the date when the applicant for the patent filed his complete specification. Other provisions facilitate applying for a patent and there are important provisions guaranteeing the secrecy of unpublished inventions with the right of audience to the Court and the exclusion from further appeal of various issues which arise before the actual grant of a patent.

The exclusive fishery limits of the State are extended to twelve nautical miles from the coast or straight baselines by the Maritime Jurisdiction (Amendment) Act, 1964. The Government is, however, empowered to specify states the fishing vessels of which may continue to fish in areas between three and twelve miles during the years 1965 and 1966. This is to allow foreign fishermen a certain time to adapt themselves to their exclusion from those areas.

The law relating to the registration of the title to land is consolidated by the Registration of Title Act, 1964, and this Act also provides for the gradual extension of compulsory registration to all land in the State. ' Land ' includes land of any tenure, houses and other buildings, mines, minerals and incorporeal hereditaments. In due course the system of registration of title will completely replace the system of registration of deeds and result in the closing of the Registry of Deeds.

On 3 July 1964 the Supreme Court dismissed the appeal against a decision given by the High Court in July, 1963 dismissing an action challenging the constitutional validity of the Health (Fluoridation of Water Supplies) Act, 1960.

(This matter has already been referred to in the material submitted for inclusion in the yearbook of Human Rights for 1963.)[2]

[1] Note furnished by the Government of Ireland.

[2] See *Yearbook on Human Rights for 1963*, p. 168.

ISRAEL

HUMAN RIGHTS IN 1964[1]

I. LEGISLATION

1. In the field of criminal law, legislation was enacted to replace the provisions of the Criminal Code[2] with respect to lotteries and betting.[3] While in general all games and bettings, the result of which is determined by chance and not by skill, are prohibited, and the organization and conduct thereof are criminal offences,[4] there are specifically exempted from the operation of the law such games and lotteries as are conducted for a limited group of persons, do not exceed in scope and purpose the limits of normal entertainment, and take place in private houses, as distinguished from places where prohibited games are regularly conducted.[5] The Minister of Finance, or a person appointed by him, may grant exemptions from the operation of the law, to any class of lotteries and bettings or to any particular lottery;[6] so far, permits have been given by the Minister only in respect of lotteries for public or charitable purposes.

2. The law, introduced by the British Mandatory Government in Palestine, under which fines could be imposed on, and levied from, all the inhabitants of an area, where an offence has been committed within the area and loss of property has occurred, and the district commissioner had reason to believe that the inhabitants either committed the offence, or connived at or abetted the commission thereof, or failed to render assistance for the purpose of discovering the offender or connived at his escape or concealment, or combined to suppress material evidence of the commission of the offence[7] — has now been formally repealed.[8] Though still on the statute book, no instance is recorded of the Ordinance having ever been applied in Israel.

3. The law relating to release on bail was amended to the effect that in lieu of requiring bail by a third person, the court would now also be authorized to release a prisoner upon his depositing a sum of money in court, or upon depositing in court or with the police his passport or other travel document.[9]

4. The law relating to arrests and searches was amended and restated.[10] A police officer in charge of a police station shall arrest a person, without warrant, where he has reason to believe that the person has committed a crime punishable with 15 years' imprisonment or more, or that he has committed any offence and has no known abode, or that he has escaped from lawful custody; in all other cases where he is suspected of having committed an offence, he may be either detained or released, on bail or without bail; but no detention may take place unless the detainee was first informed of the nature of the suspicion or charge against him.[11] The terms of bail, where the police decides to release a suspect on bail, are determined by the officer in charge of the police station; but an appeal lies to a magistrate on the amount of bail required.[12] Under the old law, which has not been changed, the person so detained must within 48 hours from his arrest be brought before a magistrate, who shall release him, on bail or without bail, unless sworn evidence is adduced to the effect that there is reason to suspect that he has committed a crime and that there are sufficient reasonable grounds to detain him pending further police investigations; where the magistrate is so satisfied, he may issue a warrant of arrest for a period not exceeding 30 days, and, upon expiration thereof, for a further period not exceeding 30 days; any further extension requires an application signed by the Attorney General himself.[13] Any refusal to release a detainee on bail is open to review, first by a judge of the district court, and ultimately by a justice of the Supreme Court. The new Act also contains detailed provisions as to the powers of police to seize documents or pieces of real evidence for eventual production to the court; where proceedings have not been instituted in court within six months from the date of seizure, the seized chattels are to be returned to

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[1] Note furnished by Justice Haim Cohn, Supreme Court of Israel, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Sections 190-192, Criminal Code Ordinance, 1936 (Palestine).

[3] Penal Law Revision (Prohibited Games, Lotteries and Betting) Act, 5724-1964; *Sefer Ha-Hukim* 415 of January 29, 1964, p. 44.

[4] Sections 1-5, *ibid.*

[5] Section 6, *ibid.*

[6] Section 7, *ibid.*

[7] Collective Punishments Ordinance, Cap. 20 of the Laws of Palestine.

[8] Abolition of Collective Punishments Act, 5725-1964; *Sefer Ha-Hukim* 436 of November 26, 1964.

[9] Release on Bail Amendment Act (No. 4), 5724-1964; *Sefer Ha-Hukim* 417 of February 13, 1964, p. 55.

[10] Criminal Procedure Amendment (Arrests and Searches) Act, 5725-1964; *Sefer Ha-Hukim* 438 of December 3, 1964, p. 8.

[11] Section 2, *ibid.*

[12] *Ibid.*

[13] Criminal Procedure (Arrest and Searches) Ordinance, Cap. 33 of the Laws of Palestine.

the person from whom they had been taken, unless a magistrate ordered otherwise; when they are produced in court, the court determines to whom they are to be delivered or what shall be done with them.[14] As to searches, the Act requires for every search the warrant of a magistrate, and no search may be carried out unless two witnesses, who are not members of the police force, are present; this requirement may be waived by the occupier of the premises to be searched, or may in special cases be dispensed with by the magistrate.[15]

5. The Military Jurisdiction Act, 5715-1955,[16] has been extensively amended.[17] The main purpose of the amendments is to bring the criminal process before military tribunals in line with the criminal process of the civil courts; the Act makes detailed provisions for all the recent enactments in the fields of criminal law and procedure to apply, *mutatis mutandis*, in military tribunals. Thus, military tribunals may now make probation orders and impose suspended sentences;[18] refusals of release on bail are subject to review by military appeal judges;[19] investigations into cases of unnatural deaths are made obligatory on the lines provided for in cases of civilians;[20] the law as to criminal responsibility of mentally diseased soldiers, and as to their hospitalization, whether for observation pending trial or in lieu of punishment, is now also brought into conformity with the general law.[21]

Among the new provisions of the Act, one worthy of mention is that except on the field of battle or in a similar emergency — no medical treatment may be given to a soldier without his consent, unless two doctors certified in writing that such treatment is necessary to save his life or prevent irreparable damage to his health.[22]

6. The Uniform Contracts Act, 5724-1964,[23] is intended to alleviate the hardships of, and provide remedies against, oppressive or unfair terms in standard contracts. In many instances, the person signing or accepting such contract (which is usually on a printed form) has no knowledge of the terms involved and no real choice of rejecting them. The Act applies to contracts for the supply of any commodity (including lands and leaseholds) or of any service, where the terms of the contract are fixed in advance by the supplier in order to serve undetermined and not previously identified customers.[24] Where such a contract contains a "restrictive term" as defined in the Act, and the court finds, in any litigation between the supplier and the consumer on the contract, that such restrictive term works hardships on the consumer and gives unfair advantage to the supplier, the court may hold such term, in whole or in part, to be void, and order any benefit derived by the supplier by virtue thereof to be restored to the consumer.[25] A term is restrictive within the meaning of the Act, if it excludes or restricts the liability of the supplier towards the consumer under any law or under any other contractual obligation; if it entitles the supplier unilaterally to cancel or vary the contract, without any fault on the part of the consumer; if it makes the enjoyment of any right of the consumer under the contract dependent on the supplier's consent; if it requires the consumer to contract with any third person or with the supplier in any matter not directly connected with the subject-matter of the contract, or in any other way restricts the consumer's freedom of contract; if it constitutes a waiver on the part of the consumer of any right or claim he may otherwise be entitled to under the contract; if it authorizes the supplier or his nominee to act for the consumer for the purpose of enforcing the consumer's rights as against the supplier, or the supplier's rights as against the consumer; if it renders the suppliers books or documents conclusive evidence against the customer, or in any other way shifts the burden of proof; if it restricts the legal periods of limitation or prescription, or otherwise imposes procedural restrictions, or if it provides for arbitration in a manner giving the supplier any predominance over the customer in regard to the choice of arbitrators or the place and form of arbitration.[26] In order to avoid the risk of having any such restrictive term declared void in the course of any future litigation, a supplier is entitled to lay his uniform contract before the Board established under the Restrictive Trade Practices Act, 5719-1959,[27] for approval; before approving any such contract, the Board must be satisfied that none of the restrictive terms therein contained works undue hardship on consumers generally and confers unfair and unwarranted advantages on the supplier; where the contract is approved by the Board, the court may not declare any of its terms void as aforesaid; where the contract or any term thereof is not approved by the Board, it is void and unenforceable.[28] An appeal lies, at the instance of either the supplier or the Attorney General, from the decision of the Board to the Supreme Court.[29] Where a restrictive term is declared void by the court or by the Board, the validity of all other terms of the contract is not affected.[30] The Act applies to uniform contracts made by or on behalf of the State, but does not apply to international conventions, nor to contracts sanctioned by the

[14] Section 7. These provisions fill the *lacuna* commented on by the Supreme Court in the case of *Berman* v. *District Superintendent of Police*, *Yearbook on Human Rights for 1958*, p. 118.

[15] Section 6.

[16] *Yeatbook on Human Rights for 1955*, p. 141.

[17] Military Jurisdiction Amendment (No. 3) Act, 5724-1964, *Sefer Ha-Hukim* 432 of July 31, 1964, p. 148.

[18] Sects. 9, 10 and 23.

[19] Sect. 43.

[20] Sec. 49. See Criminal Procedure Revision (Inquiries into Crimes and the Causes of Death) Act, 5718-1958, *Yearbook on Human Rights for 1958* at p. 112.

[21] Sects. 65-67. See Mental Patients Treatments Act, 5915-1955, *Yearbook on Human Rights for 1955*, pp. 137-138.

[22] Sect. 5.

[23] *Sefer Ha-Hukim* 418 of 20 February 1964, p. 58.

[24] Sect. 1.

[25] Sect. 14.

[26] Sect. 15.

[27] *Yearbook on Human Rights for 1959*, p. 171.

[28] Sects. 2-6, 10, 11.

[29] Sect. 8.

[30] Sect. 16.

Legislature.[31] Its provisions are in addition to, but not in derogation of, the remedies available under any law to invalidate any contractual stipulation.[32]

7. Under the Law of Torts Revision (Bodily Injuries) Act, 5724-1964,[33] any person who disbursed money or rendered services for the purpose of repairing any bodily damage caused to another person by any wrongful act, may claim reimbursement from the wrongdoer.[34] It is immaterial whether such person rendered help in compliance with a legal duty, or in performance of a contractual obligation, or voluntarily;[35] but he may make his claim either against the person he helped, or against the wrongdoer, or against their respective insurers, but may not recover more than once, nor more than he actually expended.[36] The Act is intended to encourage private initiative in providing medical and other aid to victims of accidents and other wrongful acts, and to make the right of action for expenses incurred thereby independent of the concurrence of the victim.

8. The various laws in force under which land could be expropriated for public purposes (such as town planning, road and railway construction, and others), have, in the wake of sharp criticism from the Supreme Court,[37] been amended to the effect that full compensation is to be paid for all expropriations in respect of any part of the land exceeding one fourth of the original area.[38]

9. In the field of labour law, an Act was passed imposing on every employer the liability to pay a female worker the same wages as those paid for the same work to a male worker.[39]

10. In the field of constitutional law, another Basic Law was passed, relating to the President of the State.[40] The President is the Head of the State,[41] is elected by the Knesset (Parliament) for a five years' term,[42] and may be reelected for one such further term only.[43] Every national of Israel, who resides in Israel, is eligible.[44] The President countersigns every Act of the Legislature, except Acts relating to his own powers; he receives resignations of Governments and entrusts members of Parliament of his choice with the formation of new governments; he receives current reports of the government's activities; he receives the credentials of foreign diplomats and accredits diplomats to foreign states; he appoints judges; and he exercises the power of pardon.[45] His signature on any official document must be countersigned by a member of the cabinet.[46] The President enjoys immunity from suit or prosecution in respect of his official acts even after his tenure has expired; and during tenure he enjoys such immunity also in respect of unofficial acts.[47] The President may be required to give evidence in judicial proceedings, but the time and place of his testimony are fixed by himself.[48] The remuneration of the President is fixed by the Knesset.[49] The President may not leave the country except with the consent of the government.[50] Before expiration of his term of tenure, the President's office may be vacated by his resignation[51] or as a result of impeachment, where the Knesset resolved that he conducted himself in a manner unbecoming a president of the state.[52] Where the President is unable to perform his duties, either because of infirmity or because of absence, the Speaker of the Knesset acts as President.[53] In impeachment proceedings, the President must be given opportunity to be heard and is entitled to be represented by counsel, but counsel may not be a member of Parliament.[54]

11. A further constitutional enactment provides for the continuity of legislation in successive legislatures; a bill tabled in the Knesset will not (as heretofore) automatically lapse with the expiration of that Knesset's term or with its dissolution, but the next Knesset may continue to act thereon as from the stage it arrived at in the preceding Knesset.[55] It is thought that this provision will save much legislative time and free legislative initiative for new subject-matters. The rights of newly elected members are safeguarded by the provision that any such new member may demand the reopening of the consideration of any bill as from its first reading.[56]

12. Certain classes of civil servants are, by a new Act, denied the right to stand for election as members of local authorities.[57] These include police officers, prison wardens and other officers having powers of investigation, search or arrest; officers having power to grant or recommend the granting

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[31] Sects. 18, 19.

[32] Sect. 20.

[33] *Sefer Ha-Hukim* 423 of 2 April 1964, p. 77.

[34] Sect. 2.

[35] Sect. 4.

[36] Sects. 3, 5, 6, 7.

[37] *Biderman* v. *Minister of Communications*, *Yearbook on Human Rights for 1961*, p. 186.

[38] Acquisition for Public Purposes Revision Act, 5724-1964, *Sefer Ha-Hukim* 428 of 25 June 1964, p. 122.

[39] Equal Pay for Female Workers Act, 5724-1964, *Sefer Ha-Hukim* 433 of 5 August 1964, p. 166.

[40] Basic Law: The President of the State; *Sefer Ha-Hukim* 428 of 25 June 1964, p. 118.

[41] Sect. 1.

[42] Sect. 3.

[43] Sect. 4.

[44] *Ibid.*

[45] Sect. 11.

[46] Sect. 12.

[47] Sects. 13 and 14.

[48] Sect. 15.

[49] Sect. 16.

[50] Sect. 18.

[51] Sect. 19.

[52] Sect. 20.

[53] Sects. 21-23.

[54] Sect. 20.

[55] Continuity of Legislative Bills Act, 5725-1964, *Sefer Ha-Hukim* 435 of 19 November 1964, p. 2.

[56] *Ibid.*

[57] Local Authorities (Restriction of Elections) Act, 5724-1964, *Sefer Ha-Hukim* 434 of 7 August 1964, p. 170.

of trade or other licences within the area of the local authority concerned; labour exchange officials; social welfare officers; tax inspectors; and foremen of public works within the area of the local authority. [58]

13. Disputes having arisen between the revenue authorities and the Chamber of Advocates with regard to the immunity from disclosure of professional secrets of advocates' clients, two revenue laws were amended to the effect that, notwithstanding anything contained in the Chamber of Advocates Act, 5721-1961, [59] where the revenue authorities require the inspection or production of any document in the hands of an advocate and the advocate claims immunity from its disclosure, the advocate shall deposit the document in court, and a magistrate or a district judge shall then, within seven days, decide whether or not the document is to be produced to the revenue authorities. The judge may also allow the production or inspection of part of the document only. The decision of the judge is final. A document is privileged under the Acts where the judge finds that it contains matter directly relating to professional services which the advocate has given, or is giving, to his client. [60]

II. JUDICIAL DECISIONS

1. Freedom of Speech — Injury to Religious Feelings

In the Supreme Court sitting as High Court of Justice

Wagenaar v. *Attorney General.* [61] 8 January 1964.

The Attorney General had declined to institute criminal proceedings against a prominent person who had, in a public speech, expressed his regret at the fact that certain discriminations on account of race, reminiscent of Nazi law, still had, as part of ancient Jewish religious law, the force of law in Israel. The petitioner's religious feelings were outraged by this statement. Under sect. 149 of the Criminal Code Ordinance, 1936 (Palestine), a person who utters publicly words " calculating or tending to outrage the religious feeling or belief " of any other person, is guilty of a misdemeanour.

An application for an order *nisi* directed to the Attorney General to show cause why criminal proceedings should not be instituted, was dismissed.

Per *Sussman, J.*: " The Attorney General gave two reasons for upholding the refusal of the prosecuting authority to prosecute in this matter: firstly, he said, the facts in this case do not constitute any criminal offence; and, secondly and more importantly, he said this: " It is a fundamental principle in our system of law that no man is punished for any view he holds or expresses. Section 149 is an exception to this rule, but it relates to the mode of expression rather than to the nature of the view expressed. In every such cause as this, a proper balance is to be struck between two great principles, that of freedom of speech on the one hand, and that of the inviolability of personal feelings on the other hand. I should have thought that these dicta of the Attorney General would commend themselves to everybody, but the petitioner has seen fit to pursue the matter further and bring it before this court ... The participants at a public symposium cannot expect that they will hear only things which are agreeable to them ... In the words of John Stuart Mill: ' If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind '. [62] A matter of a difference of opinions such as that before us, must be fought out in public discussions; the criminal process is not a proper channel for its determination... "

Per *Witkon, J.*: " ... I accept the petitioner's assurance that the words in issue have indeed outraged his religious feelings, and there may be other persons like him. But this is not the only matter to be considered by the Attorney General when dealing with an application to prosecute. The relevant consideration is whether the words, calculated to outrage religious feelings, do not, nevertheless, come within the ambit of the paramount human right to express one's view on a controversial subject of public importance. The Attorney General had this relevant consideration in mind, and therefore I agree that there is no reason for us to interfere with his decision. "

2. Freedom of Speech — Protection of Witness from Attacks on his Character — " Agents Provocateurs "

In the Supreme Court sitting as Court of Criminal Appeals

Spiegel and others v. *Attorney General.* [63] 2 December 1964.

The appellants were convicted of offences of corruption in public office. One of the grounds of appeal against their conviction was that the main witness for the prosecution should not have been accepted by the trial court as trustworthy.

The case is reported here on this point only.

Per *Cohn, J.*: " ... The credibility of this witness was severely attacked by counsel; their main efforts at the trial were directed at slandering the witness and make him appear untrustworthy. The purpose of denying the credibility of a witness is a legitimate one, provided it is not pursued by improper means; but counsel here accused the witness, during cross-examination, with giving bribes on several occasions, falsifying accounts, receiving money on false pretences, and even desertion from the army; and concluding his cross-examination, one of the advocates put to the witness, that in the eyes of all fair and honest men, an *agent provocateur* of the police was a despicable and dangerous type. In their speeches, counsel reiterated that no credence should be given to a man who had agreed to act as *agent provocateur*

[58] Schedule, *ibid.*

[59] *Yearbook on Human Rights for 1961*, at p. 185.

[60] Income Tax Ordinance Amendment (No. 4) Act, 5724-1964, *Sefer Ha-Hukim* 432 of 2 April 1964, p. 86; Estate Tax Amendment (No. 3) Act, 5724-1964, *Sefer Ha-Hukim* 434 of 7 August 1964, p. 179 at p. 186.

[61] Reported 18 *Piskei-Din* I 29.

[62] *On Liberty*, Chap. II.

[63] Reported in 18 *Piskei-Din* IV 7.

for the police. Needless to say that not the least attempt was made to substantiate the very grave criminal charges that were made against the witness in cross-examination.

This witness, who was presented to the trial court as a despicable and dangerous *agent provocateur*, in fact did only an act of good citizenship; instead of giving the bribe demanded from him or of concealing the demand, he did the only thing any law-abiding and responsible citizen would have done; he went to the police, and then acted throughout according to the directions he received from the police with a view to catching the offenders *in flagranti*...

... Not only was the witness — notwithstanding the propriety of his conduct — exposed to endless, insulting, embarrassing, and misleading cross-examination, but — and this is my main complaint — he was accorded no protection whatever by the trial court, whether during his examination or in the judgment which was eventually delivered. In my view, the witness was, in law and in justice, entitled to such protection, as well as to some rehabilitation for the wrong meted out to him by counsel. The moral duty imposed on a judge to say expressly that he is satisfied of the veracity of the witness's evidence, where he has been subjected to cross-examination of this kind, and to do something in order to set the witness's mind at rest and pacify him after all he has gone through — was stressed already 170 years ago by Jeremy Bentham; [64] and it is no consolation for us in Israel today that Bentham did not find in the England of his days a single judge who discharged this duty ... In Israel, this duty is even statutory, [65] and the judge will not have discharged it by only disallowing unfair questions during cross-examination; he has to do everything in his power so that the purpose of the law may be attained, and the clear purpose of the law is, on the one hand, to assure that a citizen who fulfils his civic and legal duty and testifies before the prosecuting authorities and in court, receives from the court all necessary and proper protection from unwarranted smirches on his character and reputation, and, on the other hand, to prevent people from being deterred to come forward and give evidence, thereby aiding the court in the administration of justice, for fear of being ruthlessly attacked and offended by cross-examining counsel. This purpose cannot be attained unless a witness, who has thus been groundlessly attacked and offended, receives at least some moral satisfaction by what the court says about it in the judgment...

There was nothing, either in the conduct or in the evidence of the witness, to warrant this kind of cross-examination, and his credibility was in no way impunged. The regret at the treatment this witness received in court, which should have been expressed by the trial judge in no uncertain terms, we can only express now ... "

[64] *Rationale of Judicial Evidence*, quoted in Wigmore on Evidence, 3rd ed., vol. 3, pp. 142-143.

[65] See *Yearbook on Human Rights for 1957* at p. 148.

3. Warrant of Arrest — Notice to the Person Arrested

In the Supreme Court sitting as Court of Criminal Appeals

Attorney General v. *Ades.* [66] 19 March 1964.

The respondent was acquitted of the offence of assaulting a police officer while on lawful duty. The officer was assaulted by the respondent while arresting him by virtue of a warrant duly signed by a magistrate. Under the law, [67] the officer executing a warrant of arrest must inform the person to be arrested, of " the substance " of the warrant, or, if so requested, must produce the warrant to him. The officer produced the warrant to the respondent, without being requested to do so, and informed him that he was being arrested in order to be brought to court to stand his trial, after having failed to obey a summons served on him. The officer did not inform the respondent that the warrant had been endorsed to the effect that upon depositing the sum of IL.20 in court, the respondent would be released pending trial. In the circumstances, the trial court held that, when the assault took place, the officer was not on " lawful " duty. On appeal by the Attorney General,

Held, reversed.

Per *Halevy, J.* : " ... The substance of the warrant which must be notified to the person to be arrested, is the nature of the offence in respect of which the warrant is issued; the officer executing a warrant is under obligation to inform the person to be arrested, in connection with what charge he is being arrested, and nothing more. If he is requested to produce the warrant, then he need do no more than produce it for inspection. But he is under no obligation to inform him of the terms fixed for his release on bail. The endorsement regarding the terms of such release is irrelevant to the arrest; the officer must execute the warrant of arrest anyway, and it is only at a later stage that the arrested person may claim to be released on the terms endorsed on the warrant. The person to be arrested has a right to know why he is being arrested; but this is not necessarily tantamount to a right to know on what terms he may eventually claim to be released ... "

4. Meaning of « Arrest » — Police Supervision — Pardon

In the Supreme Court sitting as High Court of Justice

Ben Ephraim v. *Minister of Justice.* [68] 2 February 1964.

The petitioner, a convicted prisoner, had petitioned the President of the State for a remission of part of his sentence. He claimed in his petition that the trial court had not taken into consideration that he had been under arrest pending trial, and that the period of that arrest should now be remitted to him. He further raised, as a question of law, whether the period during which he had been released on bail,

[66] Reported in 18 *Piskei-Din* II 60.

[67] Rule 256 of the *Magistrates' Courts Procedure Rules*, 1940 (Palestine).

[68] Reported in 18 *Piskei-Din* I 462.

but was under police supervision and had to present himself to the police twice daily, should not, for the purpose of remission of his sentence, also be taken into account. He requested the Minister of Justice to refer this question of law to the Supreme Court under Sect. 10 of the Courts Act, 5717-1957. [69] When the Minister declined to do so, he applied for an order *nisi* against him.

Held, denied.

Per *Olshan, J.* : " ... There is no merit in this petition. Firstly, the question of law to be referred to the Supreme Court must in the opinion of the Minister deserve to be dealt with by the Court, and in the opinion of the Minister this question before us now does not so deserve. Secondly, in order that the question may qualify as " deserving ", there must be a substantial question of law. It goes almost without saying that police supervision, and the appearance in a police station twice every day, is neither an " arrest " nor a detention within the meaning of the law. Thirdly, if this police supervision could afford the petitioner a cause of reduction of his sentence, he could on this ground have appealed his sentence, and this he had failed to do. And fourthly, the President's prerogative of pardon is an entirely discretionary power, and he may exercise it in favour of the petitioner, or may refuse to exercise it, whatever the legal character of that police supervision may have been ... "

5. Prison Leave — Terms of Leave and Imprisonment

In the Supreme Court sitting as High Court of Justice

Afargan v. *Commissioner of Prisons.* [70] 19 October 1964.

The petitioner, a convicted prisoner, had been granted 36 hours' leave from prison. Under the law, the term of a prisoner's imprisonment may not be extended in respect of the period he spent on leave outside the prison. [71] The petitioner absented himself from prison for several weeks after the expiration of his leave. In calculating the term which the petitioner still had to serve, the respondent did not take into account the 36 hours for which he had been granted leave, but he added the further period of his absence to the term of imprisonment he would still have to serve. On an application for an order *nisi*, the petitioner argued that the term of his imprisonment had to be reckoned as from the day of his sentence, and no leave — whether lawful or unlawful — should be taken into account, the less so as he had already undergone disciplinary punishment for absenting himself without leave.

Held, denied. The " leave " which under the law may not be taken into consideration for the purpose of calculating the term of imprisonment a man has to serve, was the leave granted to him under the law, as distinguished from any leave unlawfully taken by him.

[69] See *Yearbook on Human Rights for 1957*, p. 155.

[70] Reported in 18 *Piskei-Din* IV 506.

[71] Prisons (Amendment) Act, 5717-1957, see *Yearbook on Human Rights for 1957*, p. 148.

6. Criminal Law — " nullum crimen sine lege "

In the Supreme Court sitting as Court of Criminal Appeals

Barenblatt v. *Attorney General.* [72] 22 May 1964.

The appellant was convicted of offences under the Nazis and Nazi Collaborators Punishment Act, 5710-1950. The case is reported here only on a point of construction of Sect. 5 of the Act, which provides that a person who aided or abetted the delivery of a persecuted person into the hands of Nazi authorities, was guilty of a crime.

The appellant who had under the Nazi regime been a member of a Jewish police force, had, in compliance with orders received from Nazi authorities, been on guard duty in a place where large numbers of " persecuted persons " within the meaning of the Act, had been concentrated, thereby preventing their escape. On appeal against his conviction,

Held, reversed.

Per *Cohn J.* : " ... I shall assume ... that there existed at the time and place in question the possibility to escape; and if there existed such a possibility, I have no doubt that any act done in order to prevent or frustrate the taking of the chance, was unjustifiable and wicked. But are we justified in holding that preventing the escape from Nazi custody is tantamount to delivering a person into their hands? I apprehend that, if we were so to hold, we would give the term « delivery » a far wider meaning than would be warranted by the widest possible grammatical construction thereof. The statute to be construed creates very severe criminal offences, and it is a simple and fundamental principle of law that the court may not, by judicial interpretation, give a statute such as this any wider application than the meaning of the specific words used by the legislator warrants. It may well be that, as far as the mischief aimed at by the statute, and the danger to the " persecuted persons ", is concerned, there is no difference in fact between delivering a person into Nazi hands and preventing his escape; but it is the delivering which has been made a criminal offence, not the preventing the escape; and logical comparisons of the one with the other cannot be a basis for criminal charges. Punishment by analogy to, or by *a fortiori* conclusions from, the law as it stands, is the typical reserve of states where there is no rule of law; and we are not to conduct ourselves like any of them. The danger that a man who perpetrates wicked and reprehensible acts, will go unpunished, is negligible as compared with the danger that punishments be meted out by the courts otherwise than in the implementation of express and unequivocal provisions of the law ... "

[72] Reported in 18 *Piskei-Din* II 70.

7. Criminal Law — " nullum crimen sine lege "

In the Supreme Court sitting as Court of Criminal Appeals

Maimon v. *Attorney General.* [73] 31 May 1964.

The appellant had been charged with the offence of statutory rape, on two alternative counts, namely, that he had sexual intercourse with the complainant when she was below the age of 16 years, or, in the alternative, that he had such intercourse with the complainant when she was below the age of 17 years. The law originally provided that any person who had such intercourse with a child under the age of 16 years, was guilty of an offence; [74] it was later amended by the addition thereto of the following sub-section, viz. : " Any person who has sexual intercourse with a girl above the age of 16 and below the age of 17 years, shall be liable to imprisonment for five years, except where the girl was his wife, or where he had reasonable ground to believe that she was above the age of 17 years ". [75]

The trial court found as a fact that the appellant had had sexual intercourse with the complainant when she was below the age of 16 years. Nevertheless, the court convicted him of an offence under the new Act, and acquitted him of the offence with which he had been charged under the original law. On appeal against conviction,

Held, reversed. The acquittal of the offence of intercourse with a child below the age of 16 years was final, as no appeal had been filed against it. The conviction of the offence under the new Act could not stand, as the complainant, though below the age of 17 years, had not, at the time of the intercourse, been above the age of 16 years. Had the Legislature amended the old law by simply substituting " 17 years " for " 16 years ", he would have attained his purpose of raising the statutory age of consent; but the Legislature chose to add a new provision covering only the period from the completion of the 16th year until the completion of the 17th year — which was not the period during which the act complained of had been committed.

Per *Landau, J.*: " ... The language of the Act is unequivocal. No question, therefore, arises as to the manner in which a criminal statute is to be interpreted, where it lends itself to two different constructions, and the intention of the legislator, even though it may be deducible from the purpose and tenor of the Act as a whole, is irrelevant, where the language he employed is clear and unambiguous... "

[73] Reported in 18 *Piskei-Din* II 434.

[74] Section 152(1)(c), Criminal Code Ordinance, 1936 (Palestine).

[75] Criminal Code Ordinance (Amendment) Act, 5712-1962, see *Yearbook on Human Rights for 1962*, p. 120.

8. Criminal Procedure — Plea of Guilty by Unrepresented Defendant — Improper Inducement

In the Supreme Court sitting as Court of Criminal Appeals

Zaatarah v. *Attorney General.* [76] 13 July 1964.

The Appellant had been charged in a magistrate's court with certain traffic offences, and fined. On appeal by the Attorney General, the district court substantially increased the amount of the fine and disqualified the appellant from holding a driving licence for the period of one year. On appeal against conviction and sentence, by special leave,

Held, reversed and remitted for re-trial.

Per *Olshan, J.*: " ... The appellant was not represented either before the magistrate or in the district court. When his case first came up in the magistrate's court in Nazareth, the appellant pleaded not guilty, and the case was adjourned. On the day of the adjourned hearing — so counsel informs us — His Holiness the Pope paid a visit to Nazareth, and the magistrate announced in open court that, in honour of the occasion, anybody pleading guilty would be leniently dealt with by him. Whereupon many defendants, and the appellant among them, pleaded guilty, and the appellant was let off with a ten pound's fine... When the Attorney General's appeal came before the district court, the appellant could have asked for leave to retract his plea of guilty which had been made on the assumption that no appeal would be lodged against the sentence, however lenient it might be; but the appellant was, as I said, unrepresented, and the district court proceeded on the assumption that his plea of guilty was regular and final. It is only at this late stage that the appellant asserts that in fact he was not guilty of the offences with which he had been charged, and that he would never have pleaded guilty, were it not for the announcement of the magistrate which I have described. As a matter of procedure, there are several reasons why the appellant ought not to be allowed to retract his plea of guilty now; nevertheless we have come to the conclusion that the safer way to proceed will be to allow the appeal and order a re-trial, at which the appellant will be at liberty to plead not guilty. In taking this course, our purpose is to eliminate any possible apprehension lest the appellant may have been improperly induced to enter his plea of guilty and, on the strength of that plea, a miscarriage of justice may have occurred... "

9. Freedom to Marry — Bigamous Marriage — Violation of Vested Rights — Equality of Spouses

In the Supreme Court sitting as High Court of Justice

Streit v. *Chief Rabbis of Israel* et al.[77] 10 July 1964.

By the Penal Law Revision (Polygamous Marriages) Act, 5719-1959, [78] it is a defence to a charge of bigamy that the second marriage had been

[76] Reported in 18 *Piskei-Din* III 133.

[77] Reported in 18 *Piskei-Din* I 598.

[78] See *Yearbook on Human Rights for 1959*, p. 172.

authorized by a competent rabbinical court in a judgment approved by the two Chief Rabbis of Israel. A rabbinical court had given judgment authorizing the petitioner's husband to enter into a second marriage. The reason given in the judgment for that authorization was that the marriage between the petitioner and her husband had been celebrated abroad in civil form only, and was therefore not a valid marriage according to rabbinical law. On the return to an order *nisi* calling upon the Chief Rabbis to show cause why they should not abstain from approving that judgment,

Held, order made absolute.

Per *Cohn, J.*: " ... *Prima facie*, the discretion of the Chief Rabbis, under this Act, to grant or withhold the approval of a judgment authorizing a second marriage, is quite unfettered... But it is now well established law that even " absolute " discretion vested in an authority, must be exercised consistently with the purpose of the law by which it is so vested... The purpose of the Act prohibiting bigamy is, in the words of the 10th century scholar who first introduced that prohibition into Jewish law, to prevent strife between the spouses, protect the peace of matrimony, and safeguard the rights of the wife... The " rights of the wife " do not only include her right to maintenance and the performance of the other duties incumbent on her husband by virtue of the marriage; in the eyes of the modern legislator (as is demonstrated in the Equal Rights for Women Act, 5710-1950), marriage is a kind of partnership for life between two equals, with equal rights and liabilities to each of them, the most important of which being that that partnership may not be dissolved except by mutual consent, or by the judgment of a competent court based upon the fact that a marriage has been contracted... Both husband and wife are entitled to the protection of the law against the violation, or frustration, of the marriage between them by another supervening marriage on the part of either of them ..., and the power to authorize such a supervening marriage cannot have been conferred in order to enable the very purpose of the law, and the protection it affords, to be set at nought ... It follows that the power may be exercised in exceptional cases only; and in a system (like that of Jewish law) in which a marriage can be dissolved only by mutual consent, the power to authorize a second marriage, though bigamous, is necessary in those cases only in which the wife cannot, by reason of insanity, give a legally valid consent, or in which either of the spouses has been absent for many years and his whereabouts can no longer be traced ... "

Per *Sussman, J.*: " ... Matters of marriage and divorce of Jews, nationals or residents of Israel, are under our law [79] governed by rabbinical law. I can see therefore no reason for interference with the determination by the rabbinical court, or by the Chief Rabbis, of the rabbinical law in a matter of marriage like the present. ... But while the proceedings of the rabbinical authorities may have been quite regular, the conduct of the husband was most reprehensible and in fact amounted to fraud. He chose to marry the petitioner in their country of origin in civil form, ... and after living with her in normal marriage for thirty years, he applies to the rabbinical court for a declaration that his marriage is invalid under rabbinical law and that he is at liberty to remarry. It does not matter to him that he thereby bastardizes his children and makes of his lawful wife a common mistress. Conduct such as this is contrary to public order and morals and will not be suffered. The fact that he succeeded in obtaining the judgment of a court of law, is quite irrelevant. Even now will this court interfere to prevent him from making any use of the judgment in his hands. As was said in England more than three hundred years ago, " the office of the Chancellor is to correct men's consciences for frauds, breach of trusts, wrongs and oppressions of what nature soever they be ... it appeareth that if a judgment is obtained by oppression, wrong and a hard conscience, the Chancellor will frustrate and set it aside, not for any error or defect in the judgment, but for the hard conscience of the party ". [80] So in the present case, the judgment of the rabbinical court will not be questioned at all, but this court, as a court of equity, will probe into the conduct of the party who obtained that judgment and will prevent him from reaping its fruits because of his " hard conscience " ... In my view, therefore, the order against the Chief Rabbis ought to be discharged, but an order should issue to the marriage registrars prohibiting them from registering a second marriage of the petitioner's husband, and to the husband prohibiting him from entering into any such marriage ... "

10. Freedom of Association — Co-operative Societies — Rights of Members' Wives

In the Supreme Court sitting as Court of Civil Appeals

Beit Hanania Co-op. Soc. Ltd. v. *Friedman.* 30 July 1964 [81]

At an annual general meeting of the appellant society, a co-operative agricultural settlement, certain resolutions were passed by majority. The respondent, a member of the society, maintained that those resolutions were not carried and passed by a lawful majority, as that majority was composed not only of members of the society, but also of their wives who were not members and had no voting rights. He obtained a declaratory judgment to that effect in the district court. On appeal by the society,

Held, reversed.

Per *Berinson, J.*: " ... The rules of the society provide that the management committee may accept any person as a member of the society, and that the decision of that committee is subject to approval by the general meeting. It is true that normally a person cannot become a member of a society unless he was admitted as such in accordance with the rules ... The court below thought, therefore, that there could never be an admission of members

[79] Rabbinical Courts Jurisdiction (Marriage and Divorce) Act, 5713-1953.

[80] The Earl of Oxford's Case (1615) 21 *English Reports*, 485-7.

[81] Reported in 98 *Piskei-Din* III 20.

by conduct or by implication. But it was not argued before us that this was a case of admission by conduct or implication only. It is not disputed that the wives signed, together with their husbands, the application forms for membership; and in considering whether or not to accept them, the management committee either accepted or rejected both husband and wife. The question as to the membership of the wives arises only in view of the fact that in the resolution of the general meeting, the husband only was named as the new member. It is a question of intention: did the general meeting intend to admit the husband and reject the wife, or did it intend to admit both, although the formal resolution was in respect of the husband only? .... It is a fact that the society did not, except in rare cases, admit unmarried persons as new members. It is also a fact that whenever a new family joined the society, everybody regarded the wives as members with equal rights and obligations. They took part in all the society's activities, voted in all meetings, were elected to committees, and represented the society externally. Even in the account books of the society, members' accounts were kept in the joint names of husband and wife. In the circumstances, the only possible conclusion is that by the resolution of the general meeting, though naming the husband only, the wife became a member too ... But assuming that the wives had not originally validly been admitted as members, the fact that in the course of many years they had been recognized as such, that they were allowed to enjoy all the rights, and required to fulfil all the obligations, of members, is sufficient to create a *de facto* membership which the society, and its individual members, are estopped from denying *de iure* ... It is argued that this conclusion would have the result of giving the husband two votes, and that would be contrary to law.[82] But the vote of the wife is not identical with that of the husband. She is entitled to exercise her voting right quite independently from her husband and in any manner she thinks fit. She votes in her own right, just as her husband votes in his: each of them is entitled to one vote, and neither of them to two ... A finding that the wives are not members in their own right, would be likely to shatter the fundaments on which co-operative settlements are built; they are founded on the principle of full equality of all adult inhabitants, male and female alike. From the ideological point of view, the denial of membership rights to wives would be a heavy blow to every concept for which the co-operative movement in this country has always firmly stood; and from the practical point of view, such denial would result in the invalidity of all resolutions passed and all acts done by, or with the concurrence of, the wives in their purported capacity as members — in fact, an invalidation of everything done in all the co-operative settlements throughout the years. The court will do everything in its power to avoid a result as disastrous as this, if that is possible in accordance with the law, and, as I have shown, there are several reasons in law why that disastrous result can be avoided ... "

[82] Sec. 16(1), Co-operative Societies Ordinance, Cap. 24 of the Laws of Palestine.

11. Freedom of Association — Freedom of Dissociation — Powers of Court

In the Supreme Court sitting as Court of Civil Appeals

Atzmon v. *Hapo'el Sports Association.*[83] 11 August 1964.

The appellant was the member of a soccer team in Jerusalem. He moved to Haifa, and applied to the respondent society to release him from membership in Jerusalem and admit him to membership in the society's Haifa team. Under the rules of the respondent society and all other soccer organizations in the country, a member of a team may not leave his team except with the previous consent in writing of his society, and may not, without such consent, be admitted as member of a team in any other society. Under the Ottoman Law of Societies, 1909, which is still in force in Israel, a rule under which a person may not cease to be a member of a society if he so wishes, is unlawful. On appeal from the dismissal of the appellant's action for a declaratory judgment to the effect that the respondent society's rules were unlawful and invalid,

Held, confirmed. The rule requiring the consent of the society to a member leaving the society, is to be construed in the light of the corresponding rules of the other soccer societies (and those of the roof organization of which all the societies are organized), under which a person may belong only to one soccer team at a time. The consent required in the present case was, therefore, not so much a condition of leaving the Jerusalem team, as a condition of joining another team. There was nothing in the rules to prevent a member from ceasing to be a member, if he so wished; but he had no right to compel the society to give him its consent, which would open the door for him to join another society. If that was what soccer societies thought fit to agree and lay down for the conduct of their members, the court would not interfere; it was not the function of the court to re-write the rules for these societies.

12. Freedom to Work — Refusal to Grant Licence — Relevant Considerations

In the Supreme Court sitting as Court of Civil Appeals

Horr v. *Minister of Health.*[84] 19 March 1964.

The appellant was a dental practitioner who had completed a course of studies in, and obtained a diploma from, a school of dentistry in his country of origin. The respondent refused to grant him the licence required under the Dentists Ordinance, 1945 (Palestine), to practice dentistry, for the reason that he was not properly qualified. On appeal,

Held, confirmed. The respondent had guided himself by the fact that the school at which the appellant had graduated, was not recognized by the World Health Organization; and this was a proper consideration in the premises.

[83] Reported in 18 *Piskei-Din* III 323.

[84] Reported in 18 *Piskei-Din* I 554.

13. Conditions of Work — Leave Without Pay — Breach of Conditions

In the Supreme Court sitting as Court of Civil Appeals

Howardy v. *Mayor of Kfar Saba.* [85] 24 February 1964.

The appellant was employed as a schoolmaster. He obtained leave of absence, without pay, for the period of one year. Before expiration of that year, he notified his employer that he was going to prolong his leave for another year; and the employer received the notification, but did not respond. Upon expiration of the second year, the appellant presented himself for continuing his work, but his employer informed him that his absence from work during the second year amounted to a resignation which had brought his employment to an end. The appellant regarded this attitude as dismissal from work, and claimed severance pay. On appeal from the dismissal of the action,

Held, confirmed.

Per *Berinson, J.*: " ... There can be no doubt that it had not been the appellant's intention to abandon his employment (as the district court had held), for if it had been, he would have resigned and not prolonged his leave. But absenting himself from work may, in certain circumstances, amount to a breach of contract which entitled the employer to rescind the contract and dismiss the employee, without severance pay. The first and foremost duty of the employee is to serve the employer faithfully. The substance of this duty is not always easily defined, but clearly any act or omission incompatible with the relationship between employer and employee or with the terms of the contract of employment, will amount to a breach of that duty. Absenting himself from work may well come into this category, albeit not in all circumstances. For instance, absences for reason of sickness or accident, and the like, will be regarded as justified and can never be a cause for dismissal without severance pay. The same may apply where an employee is delayed, for reasons beyond his control, from returning to work after leave of absence. Intentionally absenting himself, however, without previous permission, and thereby causing potential disturbance in the normal course of work or necessitating the employment of somebody else, and injuring the interests of the employer — is a breach which goes to the roots of the contract of employment and justifies dismissal without severance pay ... Leave of absence without pay is not one of the rights of the employee, but is a privilege which the employer may give him for the purposes he sees fit and on such conditions as he sees fit; there can be no such leave of absence without the employer's express concurrence. The appellant has not discharged the burden of proving that he obtained his employer's express consent to the desired prolongation of his leave of absence; hence his absenting himself amounted to a breach of his obligations towards his employer, and he cannot be heard to claim compensation for his own wrongful act ... "

[85] Reported in 18 *Piskei-Din* II 345.

14. Conditions of Work — Wages — Waiver of Benefits

In the Supreme Court sitting as Court of Civil Appeals

Agricultural Engineering Co. Ltd. v. *Nagi.* [86] 21 May 1964.

The respondent had been employed by the appellant company as a watchman. Not aware of the legal restriction of working days to 8 hours and of working weeks to 47 hours, and of the special benefits provided by law for night work and for work on holidays, [87] he had, during the period of his employment, worked excess hours which entitled him — according to the finding of the court below — to payments exceeding IL.6,000. The appellant argued that by his conduct, the respondent had waived these benefits. On appeal from a judgment in favour of the respondent for the amount claimed,

Held, confirmed.

Per *Berinson, J.* : " ... The respondent was unaware of the existence of these benefits and his rights thereto; how could he have waived them? In order that a waiver be effective, the first prerequisite is that the person renouncing his rights should be aware of their existence, their nature and their scope; only if and when he knows his rights full well, can he voluntarily relinquish them. But the particular benefits under the Act, [88] with which we are concerned here, cannot be waived in advance at all; this is an Act of which you cannot contract out. It is an Act which protects the workman, irrespective of whether he needs or desires the protection or not; and the provisions of the Act will be binding on the employer even where he succeeded to obtain a discharge or release from the workman in advance. It is different with payments already accrued to the workman under the Act; these are in the nature of debts, or choses in action, and from a strictly legal point of view may be lawfully waived. But the court will never infer such a waiver from the conduct of the workman, unless the court is satisfied that the workman knew of the benefits accrued to him and chose, for some manifest or intelligible reason, to renounce them. The fact that the workman did not actually and expressly claim them from the employer, may indicate that he was unaware of his rights, but does not in itself indicate that he waived his rights ... "

Per *Halevy J.* : " ... Waiver is a sort of estoppel which can be set up against the creditor, where the debtor has, on the strength of the creditor's representation or conduct, changed his situation to his prejudice ... In the case before us, not only has the workman not done or said anything to the prejudice of the employer, but the employer, fully aware of his obligations under the Act, deliberately disregarded them and deprived the workman of the benefits due to him ... "

[86] Reported in 18 *Piskei-Din* III 290.

[87] Hours of Work and Rest Act, 5711-1951.

[88] *Ibid.*

15. RIGHT TO LEAVE THE COUNTRY — JUDGMENT DEBTOR — PURPOSE OF INJUNCTION

In the Supreme Court sitting as Court of Civil Appeals

Rosoff v. *Dora.* [89] 11 August 1964

The respondent, a judgment debtor of the appellant, desired to leave the country and proceed to the country of his permanent residence. The appellant obtained an order from the Chief Execution Officer, prohibiting the respondent from leaving the country until and unless the judgment debt was satisfied. On application to the district court to have that order set aside, it transpired that the respondent was seventeen years of age and had no property of his own in this country. The district court set the order aside. On appeal,

Held, confirmed.

Per *Manny, J.* : " ... The only relevant question is to what extent will the detention of the respondent in this country contribute to the execution of the judgment. The power to prevent a judgment debtor from leaving the country is a discretionary one, and this court will not interfere with the exercise of that discretion unless it is shown to have been unreasonable. The appellant argues that if the respondent is detained here, his parents or friends abroad will come to his rescue by paying the judgment debt for him; but there is nothing in the evidence to warrant any such expectation. The detention of the respondent for the reason only that the judgment against him remained unsatisfied, is unreasonable and cannot be justified. The power to prevent a judgment debtor from leaving the country, is vested in the Execution Officer for purposes of execution only. It may not be exercised except where there is reason to believe that in order to be able to leave the country, the debtor will satisfy the judgment first. As the judgment cannot be executed against the parents of friends of the debtor, the debtor cannot be prevented from leaving the country in order that his parents or friends may pay his debt ... "

[89] Reported in 18 *Piskei-Din* III 412.

ITALY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS (1964)[1]

I. Under Enabling Act No. 1860 of 31 December 1962, the Italian Government issued a comprehensive set of regulations covering, in minute detail, the protection of workers and of the general population against the hazards of ionizing radiations. The regulations extend to this very complex field the principle of protection of the worker and the principle of social security, which are embodied in articles 23 and 22 respectively of the Universal Declaration.

Presidential Decree No. 185 of 13 February 1964 (*Gazzetta Ufficiale* No. 95 of 16 April 1964, regular supplement on industrial safety and the *protection of workers and the general population against the health hazards of ionizing radiations deriving from the peaceful uses of nuclear energy* contains 152 articles, comprising twelve chapters.

Chapter I defines the scope of the law. It covers " activities entailing the possession, storage, production, use, handling, treatment and disposal of natural or artificial radioactive substances " (article 1); radiation-producing apparatus the use of which may entail exposure to ionizing radiations (article 2) and the construction and operation of nuclear installations (article 3). Chapter II (articles 4 to 9) contains " definitions " of the technical terms used in the law. Chapter III (articles 10 to 14) deals with the agencies responsible for the application of the law : an Inter-ministerial Council for Co-ordination and Consultation, established as a subsidiary organ of the Ministry of Industry and Commerce, and a Technical Commission on Nuclear Safety and Protection against Ionizing Radiations, established as a subsidiary organ of the National Committee on Nuclear Energy, which will exercise, through its inspectors, the inspection functions required in application of the law.

Chapter IV (articles 15 to 29) contains " mining regulations " applicable to mining operations involving radioactive substances and, in general, to operations carried out in the area of prospecting and extraction and curtailing exposure to the hazards of radiation (the regulations relate to evaluations, medical examinations, decontamination, personal health documents, maximum permissible doses and concentrations, the responsibilities of the manager of the mine and those of the workers, etc.).

Chapter V (articles 30 and 31) lays down rules governing the possession of special fissionable materials, raw materials, minerals and radioactive materials, while chapter VI (articles 32 to 36) deals with trade in minerals, raw materials and radioactive materials.

Chapter VII (articles 37 to 58) establishes detailed regulations for nuclear safety and health safeguards in connexion with the planning, construction, acceptance and operation of nuclear installations and special circumstances connected with them. Detailed regulations concerning the various aspects of health protection for workers engaged in activities involving radioactive materials (excluding mining) are given in chapter VIII (articles 59 to 87); these relate to the responsibilities of employers and managers, including the obligation to inform workers of the specific hazards to which they are exposed; the responsibilities of workers; the limitation of exposures and of the number of workers exposed; the limitation of doses and concentrations; planned special exposures; the use of qualified experts to oversee the health aspects of the application of protective measures; the frequency of evaluations; the medical surveillance of workers and the holding of periodic and special medical examinations; special decontamination and medical surveillance; personal health documents; the reporting of nuclear accidents and occupational diseases, etc. Special precautions are provided for in the case of, *inter alia*, persons under eighteen years of age and pregnant women (article 65).

Chapter IX (articles 88 to 111) provides safeguards for the general population against the health hazards arising from ionizing radiations. The chapter provides, *inter alia*, for the establishment in each province of a special Provincial Commission, composed of doctors and physicists, to apply the protective measures. The regulations deal with the prohibition of the production, import, distribution, use or possession of products or articles emitting ionizing radiations and of television sets or cathode ray tubes emitting ionizing radiations at a dosage above specified levels; the possession of radioactive substances and apparatus generating ionizing radiations; cases in which radioactive substances are mislaid, lost or found; protective measures to be adopted by anyone producing, treating, handling, using, trading in, possessing or storing natural or artificial radioactive substances; the use of natural or artificial radioactive substances in institutions, doctors' offices, clinics, etc., for therapeutic and diagnostic purposes; the professional use of X-ray diagnosis; the administration of radioactive sub-

[1] Note prepared by Dr. Maria Vismara, Director of Studies and Publications of the Italian Association for the United Nations, chief editor of *La Comunità internazionale*, a publication of that Association, and government-appointed correspondent of the *Yearbook on Human Rights*.

stances, contamination of the environment, radioactive waste and its disposal; special situations; the control of environmental radioactivity; the determination of maximum permissible doses and concentrations and of levels of relative biological effectiveness for the population as a whole and for particular segments of the population.

Chapter X (articles 112 to 122) provides for the external emergency plan to be carried out in the event of a state of nuclear emergency. The penalties for persons violating the provisions of the law are set out in chapter XI (articles 123 to 147). The law concludes with certain transitional and final provisions (chapter XII).

Two other legislative enactments in the field of social welfare may also be mentioned. One gives effect to the principle of protection against unemployment and the other to the principle of safeguarding the individual in the event of loss of livelihood in circumstances beyond his control; these principles are embodied in articles 23 (1) and 25 (1) respectively of the Universal Declaration.

Under Act No. 1359 of 18 December 1964 (*G.U.* No. 319 of 24 December 1964), containing *Provisions for the benefit of workers employed by construction and similar enterprises in the matter of wage supplements*, the allowance paid to these workers in the event of lay-offs due to causes beyond the control of the employer or the worker is increased from 66.66 per cent to 80 per cent of total pay.

Act No. 1266 of 25 November 1964 (*G.U.* No. 303 of 7 December 1964), concerning *New war pension benefits*, substantially improves the economic status of persons suffering from severe disabilities or infirmities as a result of the war.

II. The decision handed down by the Milan Court of Appeals on 27 November 1964 (*Il Foro Italiano*, 1965, II, 122 *et seq.*) on the subject of the *right of asylum* is of particular importance not only for purposes of the application of article 14 of the Universal Declaration of Human Rights but also because of the value and effectiveness attributed, from a legal standpoint, to the Declaration itself. It would therefore seem both useful and interesting to give a fuller and more detailed account than usual of this decision.

The incident giving rise to the decision was as follows : four young Yugoslav citizens secretly crossed the frontier at Trieste on 23 October 1963 and hitch-hiked to Milan, where they stole a Fiat 600 after breaking open the door, in order to reach the French frontier as quickly as possible. They were apprehended en route by the highway police and taken to the prison at San Remo. When questioned by the *Pubblico Ministero*, they stated that they had fled Yugoslavia for political reasons and did not wish to return there, and asked for political asylum in Italy or any other Western country. Two of them added that they had once before escaped to Italy in 1961 and had been interned in refugee camps and then repatriated to Yugoslavia, where they had been tried and sentenced for leaving the country illegally.

The dossier was referred, because of territorial jurisdiction, to the *Procura* of Milan, where the four young men were charged (*a*) with having conspired to enter Italy illegally and (*b*) with compound larceny. After being acquitted on the first charge (because the act did not constitute a criminal offence), they were each sentenced, making due allowance for the general extenuating circumstances, to two years' imprisonment and ordered to pay some tens of thousands of lire in fines for the second charge and for violation (disputed during the proceedings) of article 142 of the Consolidated Public Security Act, which requires aliens to report, within three days of entering Italy, to the local public security authority. During the proceedings, the defendants expressed the hope that they would not be returned to Yugoslavia, since they would prefer death to that fate.

The defendants appealed the decision.

At the appeal stage, it was ascertained from the Aliens Office of the Trieste *Questura* that, in 1961, two of the defendants had been ruled " ineligible " by the Joint Commission of the refugee camp where they had sought political asylum, and had consequently been repatriated, and that none of the four had a criminal record. In their defence the accused stated that, in appropriating the Fiat 600, they had acted under necessity to avoid the possibility of being turned over to the Yugoslav police by the Italian police.

The Procurator General denied that the alleged necessity had been absolute and that there had been imminent danger of serious personal harm and asked the court to uphold the decision.

The court examined the grounds on which the defendants requested (*a*) that the violation of article 142 of the Public Security Act should be declared non-punishable since it had been committed under necessity and (*b*) that the extenuating circumstances provided for in the Penal Code [article 62 (1)] should apply to the theft of the car, since the accused " had acted for reasons of special moral and social import ". Finding the two grounds inseparable, the court considered them jointly with a view to establishing whether or not the accused had acted under necessity and, consequently, whether they were entitled to claim the status of victims of political persecution.

The court found it significant, first of all, that the Political and Aliens Office of the Trieste *Questura*, when expressly requested to state the reasons for the repatriation of two of the accused, had given the general reason that they had been ruled « ineligible » by the " Joint Commission ", without specifying the particulars of the action or furnishing the necessary explanations to the judicial authority. This reticence, the court held, lent credibility to the allegations made by the two defendants, N. and G., concerning their delivery to the Yugoslav authorities.

The manner in which the action had been taken was severely criticized by the court.

The " ineligibility ruling " had been made by the Joint Commission in exercise of the advisory function conferred on it by article 2 (*a*) of the Agreement of 2 April 1952 between the Italian Government and the United Nations High Commissioner for Refugees in application of the Convention of 28 July 1951 on the status of refugees — that is, the function of co-operating at the request of the Italian Government

in the identification of refugees and the verification of their eligibility. However, the court went on to say, the Italian authorities were bound by the provisions of the third paragraph of article 10 of the Constitution, whereby " any alien debarred in his own country from the effective exercise of the democratic liberties guaranteed by the Italian Constitution shall have the right of asylum in the territory of the Republic on conditions laid down by law ". This provision, it was noted, is subject to immediate application.

In seeking to demonstrate the binding nature of this constitutional provision, the court cited the fact that Italy is a Member of the United Nations, which it joined " in full awareness of the obligations it was assuming and with the firm intention of fulfilling them ". Drawing attention to article 14 of the Universal Declaration, the court stated: " The value of the Declaration has been debated in the literature on this subject and its legal force has been disputed, but the development of human rights since their universal acceptance nearly sixteen years ago has been such that effective recognition and observance of them at the juridical level is also required under the provisions of the first paragraph of article 10 of the Constitution, whereby *Italian legal order conforms to the generally acknowledged rules of international law*. This principle ensures that domestic law conforms to the rules of international law, that is, to the obligations which they impose on the State, in the sense that any domestic rules which conflict with generally acknowledged international rules are set aside. "

The binding quality of this provision, the court held, also derives from the fact that Italy is a party both to the Geneva Convention of July 1951 on the status of refugees and to the European Convention for the protection of human rights and fundamental freedoms, article 5 of which implicitly guarantees the right of political asylum (" everyone has the right to liberty and security of person ").

The court also made it clear that " the personal status of a refugee, as defined in articles 1 and 2 of the Geneva Convention, coincides only partially with the status of an alien entitled to political asylum in the territory of the Republic under the aforesaid provision of the Constitution ". It accordingly deplored the fact that in Italian administrative practice " the two categories have become merged, with the result that the organs of our Republic have abdicated their sovereign powers in matters relating to the protection of aliens who take refuge in our territory in search of political asylum, since the public security authorities have deferred to the opinion of international officials, which they consider binding, whereas the third paragraph of article 10 of the Constitution requires them to ascertain whether certain specific requirements have been met in ruling on requests for political asylum, such verification being a fundamental duty ".

The court also found that the established practice of denying refugee status to persons considered to have left their country for economic reasons was contrary to the letter and the spirit of the Geneva Convention and to the Constitutional provision regarding political asylum. It drew attention to article 35 of the Constitution, which gives effect to a principle laid down in article 13 of the Universal Declaration.

The decision continued as follows : " It should be particularly emphasized that persons claiming the right of political asylum should not be compelled to provide documentary evidence of political persecution, which would be extremely difficult for them. The only consideration that need be taken into account in granting asylum is whether the individual concerned has been debarred from the effective exercise of the democratic liberties guaranteed by our Constitution. "

The court then went on briefly to compare the provisions of the Constitutions in force in Yugoslavia and Italy and concluded that " the effective exercise " of the liberties guaranteed by the Italian Constitution was not possible in Yugoslavia. The Italian legal system, it noted, " recognizes that the individual has an inalienable right, as a free being, to take his own decisions in an autonomous sphere and provides adequate judicial guarantees to safeguard the right to freedom of the personality. The concept underlying the Yugoslav Constitution is fundamentally different, since it makes human rights and freedoms dependent on the socio-economic relations deriving from the system of ' socialist democracy ', whose view of human rights does not recognize the human person as taking precedence in a fundamental sense over the State, the labour community or socio-political organizations ".

On the basis of the foregoing, " the court considers the defendants' statements regarding their persecution at the hands of the Yugoslav authorities to be reliable ". Since it had been established that the defendants had not left their country to evade prosecution for an offence under ordinary law, the court felt that there was no reason to doubt the veracity of their statements concerning the persecution they had suffered for political reasons. Their assertions were supported by the fact that a steady stream of Yugoslav citizens took refuge in Italy and requested political asylum there.

Going on to discuss other elements and circumstances which helped to confirm the reliability of the statements made by the accused, the court declared itself of the opinion that the latter's fears of being repatriated by the Italian police were well founded. Two of them, N. and G., had been the victims of an " unlawful proceeding " whereby, without being advised of any order to that effect, they were deported notwithstanding the fact that they satisfied the requirements for political asylum in Italy. The court emphasized that, under the Italian legal system, the right of asylum is a genuine right *in rem* which can be legally claimed before the judicial authorities, the only ones competent to decide in such matters, and that the administration authorities have no discretional power to take measures without a statement of grounds.

Even in a country in which political asylum is granted at the discretion of the executive, the court asserted, the exercise of such discretion can be reviewed by the judicial authority. (The court cited as an example a ruling made in 1958 by a United States Federal court against an order for the expulsion of a Hungarian refugee — 260 F2d 610.)

The court also ruled that the provisions of articles 150 *et seq.* of the Consolidated Public Security Act (regarding aliens to be expelled or turned back) were inapplicable to aliens who qualified for asylum in the territory of the Italian Republic. " There is no question ", the court held, " that refusal of the right of asylum must be accompanied by a written statement of the reasons for denial of the request, so as to permit the applicant to exercise his right of defence and enable the judicial authority, in the event of an appeal, to ascertain whether or not the action was justified. "

After rebutting the arguments of the *Pubblico Ministero*, the court concluded its decision as follows: " The defendants must therefore be believed when they allege that they were faced with the alarming alternatives of either reporting to the public security authorities, with all the consequences to be anticipated from the unfortunate experience undergone by N. and G., or else proceeding as rapidly as possible to the French frontier by motor vehicle in order to avoid repatriation by the Italian police. In view of what has been stated, there is no denying that the elements of a state of necessity were present, since there was a real and substantial danger of their being returned to the Yugoslav authorities. "

Amending the contested decision, the court accordingly acquitted the defendants of the offences with which they were charged, " because they are not punishable, having acted under necessity ".

* * *

The legal and moral equality of the spouses in marriage, proclaimed by article 16 of the Universal Declaration, was upheld by the Constitutional Court in two decisions, one of which considered this principle of equality in so far as relates to the question of family support and the other in connexion with a specific case of exercise of parental authority.

The court handed down a single decision (No. 107) on 11 December 1964 concerning two orders issued by two magistrates *(pretori)* in connexion with criminal proceedings against two married women. The orders had held that article 570 of the Penal Code, which provides penalties for " any person who, deserting the home, ... evades the obligation to provide support inherent in his parental authority or status as a spouse ", was unconstitutional because it was simply designed to implement another provision, contained in article 144 of the Civil Code, whereby a wife is required to accompany her husband wherever he sees fit to establish his residence.

The court found no grounds for questioning the constitutionality of the first paragraph of article 570 of the Penal Code, basing its decision on an interpretation of the article which upheld the principle of the moral and legal equality of spouses, laid down in the second paragraph of article 29 of the Constitution as the basis of marriage.

The disputed provision, said the court, penalizes not the wife who refuses to follow her husband to the residence established by him, or who deserts the home, but the spouse (either husband or wife) who, by such refusal or desertion, fails to discharge the basic obligation of conjugal life, which is to provide mutual material and moral support. It is therefore not desertion of the home which alone constitutes the offence but desertion as a means of evading the support which both spouses are required to provide. The same considerations make it clear that the purpose of the provision cannot be to prescribe penalties in connexion with the duty of cohabitation specified in article 143 of the Civil Code *per se*.

It follows, the decision concluded, that article 570 of the Penal Code, being applicable to " any person " who deserts the home, etc., does not conflict with the second paragraph of article 29 of the Constitution. [2]

The other decision (No. 9), handed down by the Constitutional Court on 22 February 1964, had to do with an order by the Rome magistrate challenging the constitutionality of article 574 of the Penal Code on the ground that it lays down a rule which, in cases involving the offence of removal of a person under a disability, limits the right to institute proceedings to the spouse exercising parental authority and is therefore in conflict with article 29 of the Constitution (see above, decision No. 107).

The court based its decision on the legal rules governing the right to institute proceedings, which, as a general principle, place both parents on the same footing, regardless of which exercises parental authority, giving them both the authority to institute proceedings, whether the right is to be exercised on behalf of persons under a disability or on behalf of persons who are entitled to institute proceedings themselves but in whose case the possible intervention of the parents is also considered desirable (article 120 of the Penal Code). It held that those provisions, corresponding to similar provisions in other bodies of legislation, implied that, even before the present strong emphasis on the moral and legal equality of spouses, family unity and the authority of the parent exercising parental authority were not considered to be impaired by possible disagreement between the parents over the institution of proceedings.

On the basis of those considerations, the court stated that there was no reason for applying a different criterion in the specific instance of article 574. The two rules, it continued, " unquestionably refer to different situations. One establishes the right to institute proceedings on behalf of or in place of other persons, while the other establishes the right to institute proceedings *iure proprio*, which is conferred on the parent exercising parental authority, he being viewed as the only injured party since the offence is conceived as consisting precisely in the removal of a minor from the parent exercising parental authority. However, it is this delimitation of the injury and, consequently, of its object which, in the court's opinion, does not correspond to the nature and actual effects of the injury itself or to the nature of the offence ". The court held that the removal of a minor " constitutes an injury which is not confined to the person exercising parental

[2] Constitution, article 29 : " Marriage is based on the moral and legal equality of both spouses, within the limits prescribed by the law for safeguarding family unity. "

authority but affects the entire family and all its social, moral and emotional interests. The inclusion of the removal of minors in the section on offences against the family ... is ... justified by the nature and extent of the injury. If the injury is thus to be regarded as affecting more than the limited interest inherent in the exercise of parental authority, this necessarily requires a parallel extension of the range of injured parties to include the other spouse, who, *possessing parental authority even though not actually exercising it*,[3] cannot in this case be excluded from representation of the family and the protection of its interests. If the offence referred to in article 574 of the Penal Code and its injurious content are stated in these terms, the provision limiting the right to institute proceedings to the parent exercising parental authority loses its specific basis, so that the limitation itself violates the principle of the equality of spouses, to which no exception can be made in the present instance ".

The court accordingly ruled article 574 of the Penal Code unconstitutional in the light of the second paragraph of article 29 of the Constitution.

In the same decision, the court held that article 573 of the Penal Code, which deals with the removal of minors with their consent, imposed the same unwarranted restriction on the right to institute proceedings; it therefore ruled that that article, in so far as it restricted the right to institute proceedings, was also unconstitutional in the light of the second paragraph of article 29 of the Constitution.

* * *

In two separate decisions, the Constitutional Court found two provisions of Act No. 75 of 20 February 1958 on the Abolition of regulated prostitution and suppression of the exploitation of the exploitation of the prostitution of others[4] to be fully in keeping with the requirements of the Constitution, thus giving further support to the principle embodied in article 4 of the Universal Declaration, which calls for the abolition of slavery and servitude in all their forms.

Decision No. 44 of 16 June 1964 had to do with an order by the court of Florence challenging the constitutionality of article 3 (8) of the Act of 20 February 1958 in the light of articles 13 and 27 of the Constitution. According to the order, the offence referred to in article 3 (8) (" Any person who in any way promotes or exploits the prostitution of others ... ") was not defined in sufficiently precise terms and therefore violated articles 13 and 27 of the Constitution, which require, as a basic safeguard for the citizen, that an act constituting a criminal offence should be explicitly defined by law.

The Constitutional Court stated, to begin with, that the reference to the principles of the personal freedom of citizens and of the personal nature of criminal responsibility, embodied in articles 13 and 27 of the Constitution, was quite inappropriate. Instead, it held, the provision which establishes the legal basis for punitive authority and expressly stipulates the non-retroactivity of the law is article 25 of the Constitution, which states that " No one may be punished save in pursuance of a law that came into force before the offence was committed ". The Court therefore ruled that the question raised in the order could be considered only in connexion with article 25.

The court noted the finding of the Florence court — that the challenged provision was stated in general terms and devoid of content, did not provide an explicit, precise definition of the act constituting a criminal offence, and was thus at variance with the Constitutional requirement of article 25 — and held that that view was not justified.

Particular considerations arising from the need to safeguard human dignity prompted the legislature to abolish regulated prostitution, the registration of women who engage in prostitution, the issuance of identity cards to them and all other degrading procedures for their classification and supervision. The legislature did not, however, confine itself to instituting a new system but, being concerned with the latter's possible harmful consequences, took further action, which is reflected in the title of the law under consideration (suppression of the exploitation of prostitution). It issued a new set of regulations, designed to check the spread of this social evil, which — in article 3 of the Act in question — define various criminal offences with a view to punishing activities which could in any way be detrimental to the interests which it was seeking to safeguard.

The notions of facilitating and exploiting the prostitution of others, the decision continued, have a precise meaning, which does not lend itself to ambiguous interpretations. To broaden the scope of the law's application so as to include activities which formerly went unpunished is not to divest the provision of its content but to extend and reinforce it. Furthermore, the use of phraseology which, while broader in content, is expressed in general terms does not lessen the effect of the provision; it is normal practice in criminal law. Indeed, all legal rules are, by their very nature, general and abstract, and, in indicating typical acts constituting an offence, the law often gives only a general characterization of the act, without entering into details concerning its execution. As the court had already stated in another decision (No. 27 of 23 May 1961), the rules of criminal law are often confined to a brief description, merely providing guidelines which indicate as well as possible the type of act constituting the offence.

The court concluded that " these new categories of crime, having been scrutinized in the relevant literature and decisions, have been effectively defined as regards their nature and scope ". It accordingly ruled that there were no grounds for questioning the constitutionality of article 3 (8) of Act No. 75 of 20 February 1958.

In the other decision (No. 108), handed down on 11 December 1964, the court passed on an order issued by the court of Ascoli Piceno, which challenged the constitutionality of article 3 (3) of the Act of 20 February 1958 in the light of article 3 of the Constitution.

The Constitutional Court held that the provisions of article 3 (3) of the Act — prescribing penalties, *inter alia*, for a manager or operator of a hotel who

[3] Author's italics.

[4] See *Yearbook on Human Rights for 1958*, pp. 122-123.

" habitually tolerates the presence of one or more persons engaging in prostitution on the premises " — were not incompatible with the principle of equality of citizens laid down in article 3 of the Constitution.

" The Act in question — after providing for the closing of houses of prostitution and prohibiting their operation — safeguards this prohibition against any possibility of circumvention. The challenged provision is, in fact, designed to ensure the proper management of public premises within the context of the campaign against prostitution and prescribes penalties only for a proprietor, manager or operator who habitually tolerates the practice of prostitution on the actual premises. It does not in any way restrict the rights of persons in need of lodging, nor does it prevent anyone from staying at a hotel. However, it does not permit premises open to the public to be used for activities very different from those for which they were authorized when opened, and it therefore forbids premises designed for use as a hotel to be used for prostitution. The regulation of public premises and all it entails ... can also — to safeguard interests guaranteed by the Constitution or for other valid reasons — impose restrictions on the activities of individuals. However, these are restrictions which affect, indiscriminately, all persons wishing to use the premises for unlawful purposes. " Hence, the court held, there is no inequality as between citizens.

The court accordingly ruled that there were no grounds for challenging the constitutionality of article 3 (3) of Act No. 75 of 20 February 1958.

IVORY COAST

ACT No. 64-290 OF 1 AUGUST 1964 TO ESTABLISH A LABOUR CODE[1]

Part I

GENERAL

1. This Act shall apply to all workers whose contract of employment, irrespective of its form, is executed in the Ivory Coast.

In this Act " worker " means any person, irrespective of sex or nationality, who has undertaken to place his gainful activity in return for remuneration, under the direction and control of another person (including a public or private corporation).

For the purpose of determining whether or not a person is to be regarded as a worker, no account shall be taken of the legal position of the employer or of the employee.

Permanent established officials of any branch of the public administration shall be excluded from the application of this Act.

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

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

...

[1] Text of Act published in the *Journal officiel de la République de Côte d'Ivoire*, No. 44, Special number, of 17 August 1964 and furnished by the Government of the Republic of the Ivory Coast. The text of the Code in French and a translation thereof into English have been published by the International Labour Office as *Legislative Series* 1964 - I.C.1.

DECREE No. 64-209 OF 23 MAY 1964[2]

This Decree makes applicable in the Ivory Coast the Agreement concerning the Establishment of an African and Malagasy Industrial Property Office done at Libreville on 13 September 1962.[3]

[2] *Journal officiel de la République de Côte d'Ivoire*, No. 31, Special Number, of 21 May 1964.

[3] For extracts from the Agreement, see *Yearbook on Human Rights for 1963*, pp. 427-428.

JAMAICA

The Prime Minister and Minister of External Affairs of Jamaica has informed the Secretary-General that during 1964 there was no legislation effected in Jamaica and no important court decisions taken by local tribunals relating to human rights as defined in the Universal Declaration of Human Rights and that with respect to the case of *R.* v. *Patrick Nasrala* mentioned in Jamaica's contribution to the *Yearbook on Human Rights for 1963*,[1] the appeal mentioned therein has not yet been disposed of.

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[1] See *Yearbook on Human Rights for 1963*, p. 185.

JAPAN

NOTE[1]

I. LEGISLATION

1. *Law on the Welfare of Mothers with Children (Law No. 129, 1 July 1964)*

A mother with children (under twenty years of age and still in need of support), whose husband died through a traffic accident, a disease or any other cause constitutes a family which socially and economically is in a weak position. It is therefore necessary that special protection and aid be afforded to such a family in order to provide for its independence and rehabilitation.

Measures concerning the welfare of mothers with children, until recently, were carried out mainly through loan funds and where it concerned counselling and guidance through the Mothers' Welfare Consultants, provided for in the Mothers' Welfare Fund Law (Law No. 350 of 1952), the Child Welfare Law (Law No. 164 of 1947) and other laws and ordinances.

However, since the problem of welfare of mothers with children is related to various fields and since administrative measures in respect of those mothers used to be taken in diverse and independent ways according to the branches of government concerned, it became necessary to co-ordinate such measures. Accordingly, the Mothers' Welfare Fund Law, which had been legislated with stress laid on financial aid to war-widows and their families and which proved to be no longer in keeping with later developments of the measures for the welfare of mothers with children, was dissolved into the Law for the Welfare of Mothers with Children. The new law was legislated to provide for an over-all improvement of measures for the welfare of mothers with children.

While this Law aims at clarifying the principle concerning the welfare of fatherless families, it also provides for measures necessary for the stabilization and improvement of the living conditions of fatherless families and makes it a basic principle " to guarantee that children in all fatherless families, in spite of the unfavourable environment wherein they are placed, be brought up under conditions enabling them to be mentally and physically healthy, and also enabling mothers to enjoy a healthy cultural life. "

The welfare measures provided for in the present Law are as follows :

(*a*) Establishment of the system of Mothers' Welfare Consultants.

Mothers' Welfare Consultants are stationed in Tokyo-to, Hokkaido and other prefectures. They prepare mothers of fatherless families for an independent living by giving them the necessary counsel and guidance.

(*b*) Welfare fund loans.

Tokyo-to, Hokkaido and the other prefectures may lend welfare funds (funds which mothers of fatherless families need for starting some work or for continuing their work and funds which are necessary for their children's education) to mothers of fatherless families. A family is excused from repaying the loan in case there are any prescribed reasons, such as the death of the person who got the loan.

(*c*) Permission to set up stalls.

The manager of a public service establishment must do all that is possible to permit the setting up of a stall, etc., within the precincts of such establishment when the mother of a fatherless family or an organization for the welfare of mothers with children applies for permission for the setting up of a stall.

(*d*) Permission to sell monopoly goods.

When the mother of a fatherless family applies to the Japan Monopoly Corporation to be designated as a retailer of tobacco products, the said Corporation must do all that is possible to designate her as such retailer.

(*e*) Special consideration in allotting dwelling houses under the public housing programme.

When the local public body makes allotment of dwelling houses under the Public Housing Law it must give special consideration with a view to promoting the welfare of fatherless families.

(*f*) Co-operation in the employment of mothers and children.

Mothers' Welfare Consultants, organs for giving protection and aid to mothers and children, and Employment Security Offices must co-operate with one another in order to promote the employment of mothers and children who desire to secure employment.

Besides the above, the Law provides for the establishment of welfare institutions, such as the Fatherless Family Welfare Centre which furnishes fatherless families with over-all welfare facilities such as giving them, free of charge or on payment of small fees, counsel and guidance concerning their living and employment and the Fatherless Family Recreation Home which furnishes families, free of charge or on payment of small fees, with facilities for recreation and rest.

[1] Note furnished by Mr. Shinjiro Suzuki, Director, Civil Liberties Bureau, government-appointed correspondent of the *Yearbook on Human Rights.*

2. *Law on Allowance for the Support of Children Suffering from Severe Mental Retardation (Law No. 134, 2 July 1964).*

The main welfare measures now being taken in respect of persons who are afflicted with severe mental or physical handicaps are protective in nature, such as by accommodating them in institutions under the Child Welfare Law (Law No. 164 of 1947), the Law for Welfare of Physically Handicapped Persons (Law No. 283 of 1949) and the Law for the Welfare of Mentally Retarded Persons (Law No. 37 of 1960) and by granting them a pension for handicapped persons under the various systems of public pension, which are designed to guarantee handicapped persons a minimum income. The said protection by accommodation in institutions is a welfare measure affording handicapped persons the necessary protection and giving them guidance, training, medical treatment, etc., preparatory for their future independent living and rehabilitation. Depending on the kind of handicap they have, these persons are accommodated in the Home for Children Handicapped in Limb or Body, the Home for Mentally Retarded Children and other various kinds of institutions for accommodating children in accordance with the provisions of the Child Welfare Law in cases of children under 18 years of age, and in the Rehabilitation Centre for the Handicapped in Limb or Body and the Centre for Aid to Mentally Retarded Persons, etc., in accordance with the Law for the Welfare of the Physically Handicapped and the Law for the Welfare of Mentally Retarded Persons in cases of persons of 18 years of age or over. However, since the number of these institutions is not sufficient, they are devoted to the accommodation of only those whose handicaps are not so severe and who can be expected to become independent and rehabilitated in the future by means of guidance, training and therapy. Generally speaking, those who are so severely handicapped that they need constant care in their daily life or those who cannot be expected to become independent and rehabilitated in the future are not to be accommodated in the said institutions.

The granting of handicap pensions is based on the insurance system and the recipients of the pensions are, therefore, in principle those who have been disabled by an accident after the acquisition of the insured person's qualification. As an exceptional case to the above may be mentioned the system of the handicapped person's welfare pension under the National Pension Law (Law No. 141 of 1959), which has extended the disabilities to be covered by this pension system to those caused by injuries sustained before the acquisition of the insured person's qualification. However, the pension is paid when the recipient has become twenty years of age.

Accordingly, it can be said that many of the seriously handicapped children under twenty years of age are not benefited by any public guarantee in particular and are cared for by their families as a heavy burden.

Since the protection afforded in institutions as a welfare measure for persons who are so severely disabled that they cannot take care of themselves in daily life is most appropriate and thorough going, the increase of such institutions is strongly desired and indeed efforts are being made for the realization of this desire but it is anticipated that it will take many years to build a sufficient number of institutions for such purposes and to ensure the full functioning of the work of institutional protection. On the other hand, some families prefer taking care of members of the family at home on account of their incurable handicaps.

Under these circumstances, the Law on Allowance for the Support of Children Suffering from Severe Mental Retardation was legislated as a link in the chain of welfare measures for the seriously handicapped persons who are not accommodated in welfare institutions or guaranteed a minimum income under the public pensions system.

This Law aims at promoting the welfare of children suffering from severe mental retardation (children under 20 years of age, afflicted with mental retardation of such severity that they must always be cared for in their daily life) by state measures strengthening the home guidance in respect of such children cared for by their families at home and at the same time providing allowances (1,000 yen per month per child) to parents or guardians of such children. As to be seen from the above, the coverage of such aid is limited and the amount of the allowance is small and, therefore, it cannot be said that the present welfare measures in respect of seriously handicapped children are sufficient. However, they are, at any rate, a step forward in a field which hitherto has not been taken into much consideration.

3. *Law concerning Workmen's Accident Prevention Organizations and Others.*

In view of the present stage of development of technical reform, rationalization of industries, expansion of scales of industries, etc., resulting in the frequent occurrence of accidents victimizing many workmen, this Law was legislated with the purpose of contributing to the prevention of workmen's accidents by establishing plans for preventing workmen's accidents; by taking measures for promoting the positive activities of enterprisers' organizations formed with a view to preventing workmen's accidents; and by pushing forward the planned and all-round measures for preventing workmen's accidents, thereby taking into consideration the provisions of the Labour Standard Law and other laws and ordinances concerning the security and health of workers. The substance of the Law is as follows :

(1) *Establishment of plans for the prevention of workmen's accidents*

Under this Law, the Minister of Labour must hear the opinion of the Central Labour Standards Council, prepare a basic plan for the prevention of workmen's accidents and make it public. The plan includes a long term as well as a yearly programme for enforcing the measures concerning the prevention of workmen's accidents. The Minister of Labour may give the necessary advice and, when necessary, may make a request to the propietor of a business or other persons concerned for the strict and smooth enforcement of these programmes.

(2) *Workmen's accident prevention organizations*

(*a*) In order to facilitate the systematic expansion, intensification and development of voluntary activities for the prevention of workmen's accidents by business proprietors, who are primarily responsible for the prevention or workmen's accidents, this Law provides for the establishment of nation-wide organizations of business proprietors, i.e. the Central Workmen's Accident Prevention Association and the Workmen's Accident Prevention Associations which must be organized respectively for the different categories of industry specified in the Law, such as construction, mining, etc.

(*b*) Under this Law, the Central Workmen's Accident Prevention Association performs the duties of a federation; serves as the national headquarters for industries in connexion with their activities in preventing workmen's accidents; and functions as the education and techniques centre for security and health, etc. The Workmen's Accident Prevention Association issues autonomous regulations concerning the security and health of workers, such as the Workmen's Accident Prevention Regulation (to be mentioned later) and renders various sorts of service, such as technical aid and guidance, quality tests of machines and tools, technical schooling of workers and other kinds of service to business circles.

(*c*) The Workmen's Accident Prevention Regulation is an autonomous regulation prescribing matters to be observed by members of the Association in respect of the measures to be taken for preventing workmen's accidents. The essential part of the substance of the regulation consists of matters concerning concrete measures for the prevention of workmen's accidents to be taken by business proprietors with respect to machines, tools and other equipment, practical methods of work, etc. As this is, so to speak, a work regulation multilaterally agreed upon, it takes precedence over the shop regulations of individual workshops but as it is established by business proprietors only, it is weaker than the trade agreement of labour and management and in case it conflicts with such agreement, its application is excluded.

(*d*) The Workmen's Accident Prevention Organizations must have security administrators and health administrators having prescribed qualifications and performing technical duties.

(*e*) State subsidies are supplied to support the autonomous activities of business proprietors for the prevention of workmen's accidents.

(3) *Special regulation concerning the prevention of workmen's accidents*

Workmen's accidents arising from causes attributable to employers have hitherto been under general regulation of the Labour Standard Law. However, in construction and shipbuilding it often happens that many business proprietors carry on work under contracts at one and the same place and on this account it is not infrequent that workmen become victims of accidents arising from causes attributable not to their own but to other business proprietors.

Under these circumstances, the Law requires that a business proprietor should take the necessary steps to prevent " workmen's accidents arising from causes attributable to a situation under which his own workers and those of different contractors or sub-contractors work at the same place ", such as appointing a supervising administrator, establishing a joint consultative body, setting up liaison and co-ordination among works, inspecting the site of work, etc. In case work is split into several portions and ordered from different contractors and in case the contractor's workmen are made to use buildings, equipment and raw as well as processed materials belonging to the person who gives the work order, certain obligations for preventing workmen's accidents are imposed also on the orderer.

The Law also provides that where there is impending danger of a workman's accident and when it is urgently necessary, the chief, etc., of the Labour Standards Office of Tokyo-to, Hokkaido or any other prefecture may order, to the necessary extent, the stoppage of the work or take other urgent measures.

II. JUDICIAL DECISIONS

Decision of the Supreme Court concerning the payment of the costs of textbooks of public primary schools by parents or guardians of school children. (Decision of the Grand Bench of the Supreme Court of 26 February 1964.)

The decision reads as follows : " While Article 26 of the Constitution of Japan [2] guarantees to all people the right to equal opportunity to receive education, it provides for the system of free compulsory education under which all people are obligated to have all boys and girls under their protection receive minimum ordinary education. However, because ordinary education is compulsory it does not necessarily follow that parents (guardians) of school boys and girls should be relieved of the burden of all the expenses which may be incurred in such education, and even though guardians are made to bear the cost of textbooks, it is a matter of legislative policy and does not contravene the Constitution. "

NOTE : It needs to be added that the Law for the Free Distribution of Textbooks in Compulsory Schools (Law No. 60 of 31 March 1962), an explanation of which has been included in the *Yearbook on Human Rights for 1962*, p. 159, provides that the State should bear the whole cost of supplying textbooks for schools of compulsory education, such as primary and middle schools and under this law, in 1964, the children of the first to the third year grade of primary schools were supplied with textbooks free of charge.

Reason for Decision (Outline).

The provision of the latter part of Paragraph 2 of Article 26 of the Constitution reading : " Such compulsory education shall be free " is intended to provide that the State makes people receive compulsory education free of charge or in other words, the

[2] Article 26 of the Constitution of Japan :
" All people shall have the right to receive an equal education corresponding to their ability, as provided by law.
" All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided by law. Such compulsory education shall be free. "

State does not collect any compensation for ordinary education from guardians who make their children receive such education, and it should be interpreted that by " the State does not collect any compensation for education " it is meant that the State collects no tuition fees and this conforms to the history of our compulsory education.

It cannot be interpreted that the said provision of the Constitution provides that guardians of children must be free not only from tuition fees, but also from the entire expenses for education, such as expenses for textbooks, stationery and so forth.

As the Constitution obligates all people to have boys and girls under their protection receive ordinary education, it is of course desirable that the State should arrange and endeavour to reduce to the minimum the guardians' burden of expenses for textbooks, etc. However, this is a matter to be solved as a problem of legislative policy in consideration of financial circumstances, etc., of the State but it is not what the Constitution provides for.

III. OTHER EVENTS

1. *Present Condition of the System of the Civil Liberties Commissioners*

The number of Civil Liberties Commissioners was 9,219 as of 31 December 1964, showing an increase of 249 over the number as of the corresponding day of the previous year. Of that number, 979 are women commissioners or 10.6 per cent of the total number.

The Civil Liberties Commissioners are assigned to cities, towns and villages all over the country and they are making endeavours to carry out their appointed task of protecting human rights in the communities of the regions where they have been posted. The average number of Civil Liberties Commissioners assigned to a city, town and village are 5.6, 2.2 and 1.5 respectively.

The main activities of the Civil Liberties Commissioners in 1964 were the reporting and investigation of 1,280 cases of violation of human rights and the handling of 82,597 cases of legal counselling relating to human rights.

The General Meeting of All Japan Federation of Consultative Assemblies of Civil Liberties Commissioners for 1964 was held on 4 September 1964 in the City of Nagoya where various discussions were carried on.

2. *Human Rights Week*

During " the 16th Human Rights Week " from 4 to 10 December 1964, various functions for the dissemination of the thought of respect for human rights were performed.

3. *System of Legal Aid*

The service of legal aid is showing an upward curve in its actual results from year to year. The number of cases of application for aid in 1964 was 3,311 (including cases pending from the previous year). Of the said number, legal aid was rendered in 1,187 cases. During the fiscal year 1964, the State subsidy was raised from 10,000,000 to 50,000,000 yen. Because of this raise in subsidy, an intensification and expansion of legal aid service is expected.

The records of the legal aid service for the period covering the fiscal years 1960-1964 show a total of 8,250 cases of application for aid and 2,936 cases of decision on aid, the ratio of the cases of decision to those of application being 35.6 per cent.

The cases of decision on aid during the fiscal year 1964 may be broken down into cases relating to money maters, approximately 53.7 per cent; cases relating to immovable properties, approximately 17.4 per cent; cases relating to personal status (family), approximately 24.9 per cent; and others, approximately 4.0 per cent. A classification of the aided persons according to income shows that those whose income is 20,000 yen or less a month amount to 76.8 per cent.

4. *Trends of Human Rights Problems*

Until 1963, cases of infringement on human rights received by human rights authorities had been showing from year to year a tendency to decrease but in 1964 there was an increase of approximately 25 per cent as compared with the previous year, the total number of cases amounting to more than 6,900. However, this should not be interpreted as though cases of violation have really increased but rather this should be regarded as an indication that cases of violation of human rights, thus far hidden amongst cases of legal counselling relating to human rights (these cases amounting to over 100,000 annually), have actually been taken up by authorities as a result of the fact that cases of legal counselling are being handled more carefully.

Of the cases of violation of human rights, those of violation by public officials were approximately 600, this number showing a slight increase over that of the previous year. As for cases of violation of human rights by private persons, those arising from every day strifes were more than half of the total number of violation cases, herein included " cases of violation of the security of residence " and " cases of compulsion and oppression ", both amounting to over 1,000; " cases of impairment of reputation and credit "; and " cases of abuse and cruel treatment ".

It is noticeable that the cases of violation of human rights are assuming extremely complicated aspects.

KENYA[1]

THE CONSTITUTION OF KENYA

Made on 4 December 1963 and entered into force on 12 December 1963 [2]

CHAPTER I

CITIZENSHIP

1. (1) Every person who, having been born in Kenya, is on 11th December 1963 a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of Kenya on 12th December 1963:

Provided that a person shall not become a citizen of Kenya by virtue of this subsection if neither of his parents was born in Kenya.

(2) Every person who, having been born outside Kenya, is on 11th December 1963 a citizen of the United Kingdom and Colonies or a British protected person shall, if his father becomes, or would but for his death have become, a citizen of Kenya by virtue of subsection (1) of this section, become a citizen of Kenya on 12th December 1963.

...

8. (1) The Minister may, by order published in the Kenya Gazette and after such procedure as may be prescribed by or under an Act of Parliament, deprive of his citizenship of Kenya any person who is a citizen by registration or naturalization if the Minister is satisfied:

(*a*) that that citizen has shown himself by act or speech to be disloyal or disaffected towards Kenya; or

(*b*) that that citizen has, during any war in which Kenya was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or

(*c*) that, within the period of five years commencing with the date of the registration or naturalization, a sentence of imprisonment of or exceeding twelve months has been imposed on that citizen by a court in any country or has been substituted by competent authority for some other sentence imposed on him by such a court; or

(*d*) that that citizen has, since becoming a citizen of Kenya, been ordinarily resident in countries other than Kenya for a continuous period of seven years and during that period has neither:

(i) been at any time in the service of Kenya or of an international organization of which Kenya was a member; nor

(ii) registered annually at a Kenya consulate his intention to retain his citizenship of Kenya; or

(*e*) that the registration or naturalization was obtained by means of fraud, false representation or the concealment of any material fact.

(2) For the purposes of subsection (1) (*c*) of this section:

(*a*) a person shall not be regarded as having had imposed on him a sentence of imprisonment of or exceeding twelve months if he has been granted a free pardon in respect of the offence for which he was so sentenced or if his conviction for that offence has been set aside or if his sentence has been reduced to a term of imprisonment of less than twelve months or if a sentence other than imprisonment has been substituted therefor;

(*b*) two or more sentences that are required to be served consecutively shall be regarded as separate sentences if none of them amounts to or exceeds twelve months; and

(*c*) no account shall be taken of a sentence of imprisonment imposed as an alternative to, or in default of, the payment of a fine.

...

11. (1) Parliament may make provision for the acquisition of citizenship of Kenya (whether by registration or by naturalization) by persons who are not eligible or who are no longer eligible to become citizens of Kenya under the provisions of this Chapter.

(2) Parliament may make provision for the renunciation by any person of his citizenship of Kenya.

...

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[1] Texts furnished by the Government of Kenya.

[2] Text of Constitution appears in Schedule 2 of the Kenya Independence Order in Council 1963 and published as Legal Notice No. 718 in the *Kenya Gazette*, Extraordinary Issue, Supplement No. 105, Legislative Supplement No. 69, of 10 December 1963. The Kenya Independence Order in Council revokes the Kenya Order in Council 1963, Schedule 2 of which contains the Constitution of Kenya of April 1963. Extracts from this Constitution have been published in the *Yearbook on Human Rights for 1963*, pp. 188-193.

CHAPTER II

Protection of Fundamental Rights and Freedoms of the Individual

14. 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.

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 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.

16. (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 176 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, 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 connexion with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in subsection (3) (*b*) 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.

17. (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*) any 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 Kenya is at war or a declaration of emergency under section 29 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 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.

18. (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 on 11th December 1963.

19. (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 utilization of any property in such manner as to promote the public benefit; and

(*b*) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(*c*) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full 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 Supreme 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 Parliament 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 right or interest in the property) from a tribunal or authority, other than the Supreme Court, having jurisdiction under any law to determine that matter.

(3) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court or any other tribunal or authority in relation to the jurisdiction conferred on the Supreme Court by subsection (2) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which applications or appeals to the Supreme Court or applications to the other tribunal or authority may be brought).

(4) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any payment of that compensation, the whole of that payment (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Kenya.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (4) of this section to the extent that the law in question authorizes:

(*a*) the attachment, by order of a court, of any payment or part of any payment 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 payment of compensation is to be remitted.

(6) 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 Kenya;
(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.

(7) Nothing contained in or done under the authority of any Act of Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the Act 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; and nothing contained in or done under the authority of any law made by a Regional Assembly 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 any property where the 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 that Regional Assembly.

20. (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 utilization of mineral resources, or the development or utilization 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 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 authorizes, 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.

21. (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 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 dit 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 omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

(9) Any court or other adjudicating authority 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 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) (*d*) of this section to the extent that the law in question prohibits legal representation before an African court in proceedings for an offence against African customary law, being proceedings against any person who, under that law, is subject to that law;

(*c*) 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

(*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 diciplinary 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 dicipline 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 Kenya.

(16) Subsection (8) of this section shall come into effect on 1st June 1966.

22. (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 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.

(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.

23. (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 moral 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.

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) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout 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.

. . .

26. (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 or residence or other local connection, 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.

. . .

27. (1) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 16 or section 26 of this Constitution to the

extent that the Act authorizes the taking during any period when Kenya is at war or when a declaration of emergency under section 29 of this Constitution is in force of measures that are reasonably justifiable for dealing with the situation that exists in Kenya during that period.

(2) Where a person is detained by virtue of such a law as is referred to in subsection (1) of this section 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 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.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(4) Nothing contained in subsection (2) (*d*) or subsection 2 (*e*) of this section shall be construed as entitling a person to legal representation at public expense.

28. (1) Subject to the provisions of subsection (6) of this section if any person alleges that any of the provisions of section 14 to 27 (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 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 14 to 27 (inclusive) of this Constitution.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 14 to 27 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

...

29. (1) The Governor-General 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 65 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 votes of 65 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 Parliament 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 65 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 Parliament 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 65 per cent of all the Senators.

...

30. ...

(2) In relation to any person who is a member of a disciplined force raised under any law in force in Kenya, 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 Chapter other than sections 15, 17 and 18 of this Constitution.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Kenya, 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 Chapter.

CHAPTER III

THE GOVERNOR-GENERAL

31. There shall be a Governor-General and Commander-in-Chief, who shall be appointed by Her Majesty and shall hold office during Her Majesty's pleasure and who shall be Her Majesty's representative in Kenya.

...

CHAPTER IV

PARLIAMENT

Part 1

Composition of Parliament

34. (1) There shall be a Parliament 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.

35. The Senate shall consist of 41 Senators, elected in accordance with the provisions of section 36 of this Constitution.

36. (1) Kenya shall be divided into 40 Districts and the Nairobi Area; and each District and the Nairobi Area shall elect one Senator in such manner as, subject to the provisions of this Constitution, may be prescribed by or under any law.

(2) The boundaries of the Nairobi Area shall be those that are specified in Part III of Schedule 11 of this Constitution, and, subject to the provisions of section 240 of this Constitution, the Districts shall be those that are specified in Part I of that Schedule and that have the respective boundaries that are there specified.

(3) The qualifications and disqualifications for registration as a voter in elections to the Senate shall be as set out in Part I of Schedule 5 of this Constitution.

(4) Every person who is registered in any District or in the Nairobi Area as a voter in elections to the Senate shall, unless he is disqualified by Parliament from voting in such elections on the grounds of his having been convicted of an offence connected with elections or on the grounds of his having been reported guilty of such an offence by the court trying an election petition, be entitled so to vote in that District or, as the case may be, in the Nairobi Area in accordance with the provisions of any law in that behalf; and no other person may so vote.

(5) The registration of voters in elections to the Senate and the conduct of such elections shall be subject to the direction and supervision of the Electoral Commission.

37. The House of Representatives shall consist of Elected Members elected in accordance with the provisions of section 38 of this Constitution and specially Elected Members elected in accordance with the provisions of section 39 of this Constitution.

38. (1) Kenya shall, in accordance with the provisions of section 49 of this Constitution, be divided into constituencies and each constituency shall elect one Elected Member to the House of Representatives in such manner as, subject to the provisions of this Constitution, may be prescribed by or under any law.

(2) The qualifications and disqualifications for registration as a voter in elections of Elected Members to the House of Representatives shall be as set out in Part II of Schedule 5 of this Constitution.

(3) Every person who is registered in any constituency as a voter in elections of Elected Members to the House of Representatives shall, unless he is disqualified by Parliament from voting in such elections on the grounds of his having been convicted of an offence connected with elections or on the grounds of his having been reported guilty of such an offence by the court trying an election petition, be entitled so to vote in that constituency in accordance with the provisions of any law in that behalf; and no other person may so vote.

(4) The registration of voters in elections of Elected Members to the House of Representatives and the conduct of such elections shall be subject to the direction and supervision of the Electoral Commission.

39. (1) The number of Specially Elected Members of the House of Representatives shall be the number which results from dividing the number of seats of Elected Members of that House by ten or, if that result is not a whole number, the whole number next greater than that result.

(2) The Specially Elected Members of the House of Representatives shall be elected by the Elected Members of that House in accordance with the provisions of Schedule 6 of this Constitution.

40 (1) Subject to the provisions of subsection (2) of this section and of section 41 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 citizen of Kenya 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 a voter in elections of Elected Members to the House of Representatives.

41. (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 acknowledgment 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 Parliament, has any such interest in any such government contract as may be so prescribed; or

(*f*) is a public officer; or

(*g*) holds or is acting in any office on the staff of a local government authority.

...

Part 4

Legislative powers

66. (1) Subject to the provisions of this Constitution, Parliament shall have power to make laws for the peace, order and good government of Kenya or of any part thereof.

...

68. (1) Subject to the provisions of subsection (2) of this section, Parliament may, for the purpose of implementing any treaty, convention or agreement between the Government of Kenya and some country other than Kenya or any arrangement with or decision of any international organization of which the Government of Kenya is a member, make laws for Kenya or any part thereof with respect to any matter specified in Part I of Schedule 1 of this Constitution.

(2) A Bill for an Act of Parliament under this section shall not be introduced into the National Assembly unless a draft of that Bill has, not less than 21 days before such introduction, been transmitted by the Prime Minister to the President of the Regional Assembly of every Region concerned and unless the Bill, when introduced, is in the terms of that draft or in such amended form as may have been agreed to by notice in writing under the hand of the President of the Regional Assembly of every Region concerned.

69. (1) Parliament may at any time make such laws for Kenya or any part thereof with respect to any matter specified in Part I of Schedule 1 of this Constitution as may appear to Parliament to be necessary or expedient for the purpose of maintaining or securing peace, order and good government during any period of emergency.

...

CHAPTER VI

REGIONS

...

Part 2

Composition of Regional Assemblies

92. There shall be for each Region a Regional Assembly consisting of Elected Members and Specially Elected Members.

...

94. (1) The number of Specially Elected Members of a Regional Assembly shall be the number which results from dividing the number of seats of Elected Members of that Regional Assembly by eight or, if that result is not a whole number, the whole number next greater than that result.

(2) The Specially Elected Members of a Regional Assembly shall be elected by the Elected Members of that Regional Assembly in accordance with the provisions of Schedule 7 of this Constitution.

95. Subject to the provisions of section 96 of this Constitution, a person shall be qualified to be elected as a member of a Regional Assembly if, and shall not be so qualified unless, at the date of his nomination for election, he:

(*a*) is a citizen of Kenya who has attained the age of twenty-one years; and

(*b*) is registered in that Region as a voter in elections to the Regional Assembly.

96. (1) No person shall be qualified to be elected as a member of a Regional 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 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 a law made by that Regional Assembly, has any interest in any such government contract as may be so prescribed; or

(*f*) is a public officer; or

(*g*) holds or is acting in any office on the staff of a local government authority.

...

CHAPTER XII

LAND

Part 1

Central Land Board

197. (1) There shall be a Central Land Board ...

198. (1) It shall be the duty of the Board:

(*a*) to select, for the purposes of land settlement schemes, agricultural land within the areas to which this section applies;

(*b*) to assess the fair purchase price for such land;

(*c*) to purchase such land by agreement with the owners thereof; and

(*d*) to convey to such persons as may, after consultation with the Minister for the time being responsible for land settlement, be nominated in that behalf by the President of the Regional Assembly of the Region in which the land is situated such estates, rights or interests in or over the land as may be necessary to give effect to a settlement scheme relating to the land.

...

THE REFERENDUM (AMENDMENT OF THE CONSTITUTION) ACT, 1964

Act No. 26 of 1964, assented to on 23 November 1964 and entered into force on 24 November 1964 [3]

...

2 (1) Where under the provisions of section 71 of the Constitution, proposals for amending the Constitution are to be submitted to a referendum of all persons who are registered as voters in elections to the Senate or to the House of Representatives the Prime Minister shall, by notice in the *Gazette*:

(*a*) specify the proposals for amending the Constitution which are to be submitted to a referendum; and

(*b*) specify the day or days on which the referendum is to be held:

Provided that he may specify different days for different areas of Kenya.

(2) The conduct of any such referendum, hereinafter called the referendum, shall be in accordance with the provisions of this Act or any rules made thereunder.

...

5. The register of electors prepared under the provisions of the National Assembly (Registration of Voters) Regulations, 1964, for the election of members to the National Assembly, as revised from time to time, shall be the register of electors for the purposes of the referendum, and every person entitled in accordance with such register to vote in elections for the Senate or the House of Representatives, and who produces an elector's card issued to him in respect of that registration, shall be entitled to vote in the referendum.

...

7. (1) The Supreme Court shall have jurisdiction to hear any petitions arising out of the referendum, for which provision is made in rules made under this Act, and to determine whether or not there have been any irregularities in the holding or the conduct of the referendum such as to:

(*a*) invalidate the declared result of the referendum; or

(*b*) invalidate the declared result of the polling in any polling area or areas, which would be likely to affect the declared result of the referendum.

(2) The Chief Justice may make rules with regard to the time and manner of submitting petitions and the practice and procedure to be followed in the determination of such petitions.

(3) The determination by the Supreme Court of any petition made under this Act or any rules made thereunder shall be final and shall not be subject to appeal.

...

[3] *Kenya Gazette*, Supplement No. 155 (Acts No. 10), of 24 November 1964.

THE CONSTITUTION OF KENYA (AMENDMENT) ACT, 1964

Act No. 28 of 1964, assented to on 23 November 1964 and entered into force: the whole Act, except Part III on 12 December 1964 and Part III by Notice [4]

...

Part II

CONSTITUTIONAL CHANGES

4. On 12th December 1964 Kenya shall become a sovereign Republic, and accordingly shall cease to form part of Her Majesty's Dominions.

5. The provisions of the Constitution specified in the first column of the First Schedule to this Act shall be amended in the manner specified in relation thereto in the second column of that Schedule.

...

[4] *Ibid.*

FIRST SCHEDULE

AMENDMENTS TO THE CONSTITUTION

Provision	*Amendment*
Chapter III.	Substitute for the title " THE GOVERNOR-GENERAL " the following: THE REPUBLIC AND THE PRESIDENT
	Part 1 *The Republic of Kenya*
Section 31.	Delete whole section and substitute the following: 31. Kenya is a sovereign Republic.
...	
	Part 2 *The President*
Section 33.	Delete whole section and substitute the following: 33. There shall be a President of Kenya who shall be the Head of State and Commander-in-Chief of the armed forces of the Republic. 33A. (1) The President shall be elected in accordance with the provisions of this Constitution and, subject thereto, with the provisions of any Act of Parliament regulating the election of a President. ... (4) A person shall be qualified for election or re-election as President if, and shall not be so qualified unless, he: (*a*) is a citizen of Kenya who has attained the age of thirty-five years; and (*b*) is registered in some constituency as a voter in elections to the House of Representatives. ...

THE CONSTITUTION OF KENYA (AMENDMENT) (No. 2) ACT, 1964

Act No. 38 of 1964, assented to on 11 December 1964 and entered into force on 12 December 1964 [5]

...

Part II

CONSTITUTIONAL AMENDMENTS

3. The provisions of the Constitution specified in the first column of the First Schedule to this Act shall be amended in the manner specified in relation thereto in the second column of that Schedule.

...

FIRST SCHEDULE

AMENDMENTS TO THE CONSTITUTION

Provision	*Amendment*
Chapter I.	
...	
Section 19 (7).	Delete the words " .; and nothing contained in or done under the authority of any law made by a Regional Assembly 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 any property where the 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 that Regional Assembly ".
Chapter II.	
...	
Section 29.	Substitute for the words " Governor-General " wherever they appear, the word " President ".
...	

[5] *Ibid.*

THE FOREIGN INVESTMENTS PROTECTION ACT, 1964

Act No. 35 of 1964, assented to on 11 December 1964 and entered into force on 15 December 1964 [6]

...

3. (1) A foreign national who proposes to invest foreign assets in Kenya may apply to the Minister for a certificate that the enterprise in which the assets are proposed to be invested is an approved enterprise for the purposes of this Act.

(2) The Minister shall consider every application made under subsection (1) of this section and in any case in which he is satisfied that the enterprise would further the economic development of, or would be of benefit to, Kenya, he may in his discretion issue a certificate to the applicant.

(3) Foreign nationals who have already invested foreign assets in Kenya shall be entitled to the grant of a certificate on application provided that a certificate may be withheld if the Minister is not satisfied that the enterprise is of benefit to Kenya.

...

7. Notwithstanding the provisions of any other law for the time being in force, the holder of a certificate may, in respect of the approved enterprise to which such certificate relates, transfer out of Kenya in the approved foreign currency and at the prevailing official rate of exchange :

(*a*) the profits, after taxation, of his investment of foreign assets;

(*b*) the approved proportion of the net proceeds of sale of all or any part of the approved enterprise, either in liquidation or as a going concern; and

(*c*) the principal and interest of any loan specified in the certificate.

8. No approved enterprise or any property belonging thereto shall be compulsorily taken possession of, and no interest in or right over such enterprise or property shall be compulsorily acquired, except in accordance with the provisions concerning compulsory taking of possession and acquisition and the payment of full and prompt payment of compensation contained in section 19 of the Constitution of Kenya and reproduced in the Schedule to this Act. [7]

...

[6] *Kenya Gazette*, Special Issue, Supplement No. 170 (Acts No. 11), of 17 December 1964.

[7] For the text of section 19 of the Constitution of Kenya, see p. 173.

KUWAIT

NOTE[1]

HUMAN RIGHTS AS GUARANTEED BY LAWS OF THE STATE OF KUWAIT

In its incessant endeavours to guarantee a dignified living to each member of its society, and through enlightened and sagacious planning to husband the resources and channel revenues to maximize the benefits of its people, the State of Kuwait draws inspiration from the staunch belief in the birthrights of man to free and decent living, and from its rulers' congenital impulse to realize within their country's boundary, an era of egalitarianism and sufficiency.

Guided by these principles the legislators, in framing the first Constitution for Kuwait, did not only confine themselves to the basic or minimum requirements as defined by the Universal Declaration of Human Rights. The concessions granted by the laws and regulations of Kuwait, in many instances, actually surpass the provisions contained in the articles of the Declaration.

Nor was the Government complacent after attaining the best legislation to uphold man's rights and to safeguard him against abuse and exploitation. The belief that there is always something better to be looked for and that the optimum is yet to be reached, underlies the Government's constant work for amelioration. Hence the following additions and amendments to the existing statutory laws and regulations :

I. Conditions of Work and the Free Formation of Unions

Four years after putting into practice the private sector's labour law (issued in 1959), the legislators felt that they were in a position to effect the necessary alterations to meet the changing conditions of a rapidly developing Kuwaiti community. The legislators, in this respect, preferred to follow the steps of the Unified Labour Law. The new law (Law No. 38/1964), comprising ninety-eight articles under fifteen parts, was published on 1 August 1964.

The explanatory note of the said law stresses that the provisions of the law represent only the minimum reasonable conditions of work in the private sector of Kuwait, without prejudice to the more suitable and beneficial conditions which may have been offered or may be offered by employers (such as oil companies). Inspired by the provision of article 23 of the Universal Declaration of Human Rights, Part 3 of Law No. 38/1964 establishes the rights of all unemployed persons to register their names with the Ministry of Social Affairs and Labour or any of its offices located in their residential areas. The Ministry, in turn, will take the necessary steps to find them jobs commensurate with their qualifications and capabilities. Preference is given to Kuwaiti candidates. Other Arab candidates in possession of work permits or registered with the Ministry come next, and all other persons holding work permits come third.

The Law, under its Part II, limits the regular daily working hours to eight, and the work week to forty-eight hours, excluding the time for rest. Working for a period in excess of five successive hours, without at least an hour's rest to follow, is forbidden by law, while a full day's rest a week and a regular, paid vacation are guaranteed in harmony with the letter and spirit of the contents of Article 24 of the Universal Declaration of Human Rights.

Part IX of Law No. 38/1964, relating to the conditions of work, stipulates the guarantee of good working conditions as one of the basic rights of man provided for by the Universal Declaration of Human Rights. Certain conditions at the place of work are made obligatory and provisions concerning medical care, living facilities, potable water, catering and transportation services for workers on sites away from the populated areas are stipulated.

In adherence to the principle of giving every person the right to form or join any association to serve his interests, as recognized by the Universal Declaration of Human Rights, the new private sector's law gives special attention to free unionism.

The previous private sector's law, which was promulgated on 2 March 1959, dealt with this subject in one short article (Article 7), which stated : " The right of workers to labour organization is guaranteed in accordance with this law and the Social Welfare Department's decisions. The provisions concerned and the decisions of putting them into force apply to Government employees. "

Part III of Law No. 38 1964 is wholly directed to " workers' organizations and employers ". The law derives from the rules and principles coinciding with international agreements, which organize unionism for the sake of handling labour affairs and raising the workers' intellectual, vocational and moral standards. The said law makes it possible for labour organizations, formed in accordance with its principles, to develop into craft guilds or unions engaged in the same trade or representing industries participating in the production of a good or similar goods. The law further permits the formation by

[1] Note furnished by the Government of Kuwait.

the guilds and unions of a general workers' union of the State and permits also these unions or the general workers' union to join any Arab or international federation, the association with which is considered to be in their interests.

Every non-Kuwaiti worker legally admitted into the country and in possession of a work permit issued by the Ministry of Social Affairs and Labour, may join a guild provided he is over eighteen years of age and provided that five years have elapsed of his stay in the country computed as of the date of the law's promulgation in the *Official Gazette*, i.e. 1 August 1964.

While the above-mentioned law, for domestic considerations, makes the right to be elected for membership of the boards of directors of guilds and unions the exclusive right of Kuwaiti workers, it simultaneously allows non-Kuwaiti workers to appoint representatives to carry their views to those boards of directors.

II. Establishment of Training Institutes

The Emiri Speech of October 1964, opening the current parliamentary session, announced the determination of the Government to establish special training institutes to train Kuwaitis desirous of work on jobs, fitting their ability and proclivities, in both the public and private sectors. In addition to the necessary training, these candidates would be allowed monthly salaries.

To put this into effect, a committee to undertake a detailed study of the problem of unemployed persons, was appointed by the Council of Ministers. The result of this study has been the establishment of a general training schedule to train all unemployed candidates on the various jobs for which they are most fitted. A fixed salary of KD. 45 *per mensem* to each of the candidates throughout the training period has also been decided upon.

The estimated expenses of the project will be in the amount of KD. 41,625 per month for the period from February 1965 through 31 March 1965. This calculation is based on 925 Kuwaiti prospective candidates, and does not include training expenditure.

For the two last months of the 1964/65 fiscal year (February and March), an additional sum of KD. 100,000 has been appropriated to enable the Ministry of Social Affairs and Labour to meet the training expenses this programme enfolds. The Government has decided to include in the 1965/66 budget, adequate amounts ensuring the continuity of implementation and the gradual expansion of the project.

III. Social Assistance

In an effort to assure each person and member of his family of adequate means of subsistence and decent living conditions, as set forth in Article 25 of the Universal Declaration of Human Rights, the Government has promoted a bill for passage by the National Assembly in its session beginning in October 1964, providing for amendments to the Public Social Assistance Law No. 19/1962, with a view to widen its coverage so as to include all needy persons, and to raise the values of the various categories of this assistance.

One of the proposed amendments is that affecting Kuwaiti wives married to non-Kuwaitis, a case overlooked by the current laws. Experience has shown that, whilst putting the current laws into practice, Kuwaiti wives married to foreigners had been proscribed from the privileges authorized to them and their children by the social assistance laws. And this, despite their strong need for such aid. The reasons for denying them such rights have been attributed to their being deserted — against their wishes — by their husbands without leaving them enough to live on. It has been decided, therefore, to amend the Public Social Assistance Law so as to make it applicable to these wives. Cases also occur when because of old age, sickness or a completely disabling injury, a husband is rendered incapable of earning his means of livelihood. This throws the Kuwaiti wife and her children into the yawning gulf of need. The Ministry of Social Affairs and Labour in such circumstances is now allowed to step in and to afford the necessary aid which enables the family to meet living demands, provided that the wife still retained her Kuwaiti citizenship unless this is obstructed by such nationality laws of her husband, as may be demanding loss of her nationality immediately upon getting married to a foreigner.

The amendments aim at raising the maximum number of members of the family, under the original law made eligible for assistance, from four to twelve and also at increasing every family member's share of help in the following order.

Head of family being the first member:

from KD. 11.000 to	KD. 15.000 each	*per mensem*
Second member	KD. 5.000 each	
Third and fourth	KD. 3.750 each	
Fifth and sixth	KD. 3.000 each	
Seventh, eighth, ninth and tenth	KD. 2.000 each	
Eleventh and twelfth	KD. 1.000 each	

The maximum limit should not exceed KD.43.500 *per mensem* (equivalent to 43 pounds sterling and 10 shillings) if the recipient lives in a family-owned house. If the recipient is to pay house rent, additional allowance is allowed. A new amendment to the Public Social Assistance Law No. 19/1962 also proposes the allotment of five hundred fils (half of one pound sterling) for each of the family members regardless of the number of persons of the family (i.e. even if it exceeds twelve persons), for water and electricity charges.

The new draft bill presented to the National Assembly, also raises the assistance allotted to the expectant mother from KD. 11 to KD. 15 *per mensem*, and that of the nurse from KD. 15 to KD. 20. The amendment also raises the upper limit of the students aid from KD. 26.250 to KD. 48.750 and the upper limit of the number of the eligible members of the family to twelve in lieu of four, as it is now the case.

IV. The Limited Income Group Houses

In its attempts at providing suitable living conditions to each individual or family at the earliest possible period, the Government has announced to

the National Assembly at its 1964/65 session, its intention to expand the building programme of limited income group houses, and to improve their quality. Houses are distributed to households in the following preference :

(*a*) Number of dependants.

(*b*) Condition of the household's living premises.

(*c*) Date of application on the waiting list of applicants for ready-built houses.

(*d*) Degree of the household income's participation in living expenses.

V. Education

The best educational opportunities in the three stages of education, namely primary, intermediate and secondary, are guaranteed by Kuwait laws and regulations to Kuwaiti citizens and non-Kuwaitis alike. Clothing, food, textbooks, and transportation are provided free of charge to all pupils. The Government encourages successful students to complete their academic and higher studies at the universities abroad at the State's expense.

Compulsory Education Law No. 11/1965 published in the *Official Gazette* No. 522 of 4 April 1965, ordains compulsory education in the primary and intermediate stages to Kuwaiti children of both sexes. All expenses are to be borne by the State. Such compulsory education, as has been defined by law, applies to all children at the age of 6 and remains valid throughout the periods specified by the regulations and administrative orders. As it now stands, the compulsory education begins with the elementary stage and ends with the completion of the intermediate stage. It has been left to the discretion of the Ministry of Education to increase or decrease the number of the scholastic years fixed for both stages (primary and intermediate). By the implementation of this scheme, Kuwait will have fulfilled the requirements of article 26 of the Universal Declaration of Human Rights which stresses that the basic and preliminary stages of education must at least be compulsory and free of charge to all children.

VI. International Agreements

Kuwait has in the past year committed itself to the following conventions and recommendations :

(A) *The Labour Inspection Convention, 1947 (No. 81) relating to inspection in the fields of industry and commerce. Law No. 64, article (2)*

This concerns the measures ensuring the implementation by the commercial and industrial houses and firms, of the Labour Laws and regulations. It also deals with the contraventions of this law as registered by the Ministry's officials entrusted with judicial control.

(B) *The Guarding of Machinery Convention, 1963 (No. 119) relating to protection from machinery. Law No. 40/1964, article (3)*

This agreement affects protection of workers from the dangers of engines and their safeguard against the dangers of work on engines without adequate protection around the most salient parts of the engine, or without proper fencing.

(C) *Recommendation No. 118 — Pertinent to protection from machinery — 2 May 1964*

This recommendation outlines the necessary measures and safety precautions for manpower. It discusses this aspect in a more detailed manner than the convention.

(D) *Recommendation No. 119 — Regarding termination of services by the employer — 28 September 1964*

This recommendation aims to prevent the unreasonable termination of the worker's services for reasons attributed to his political, unionist, religious, or cultural involvement. The recommendation, however, authorizes the termination on grounds relating to the worker's conduct or for an action causing loss to the employer.

MADAGASCAR

DECREE No. 64-495 OF 18 NOVEMBER 1964 TO ESTABLISH AN EMPLOYMENT SERVICE[1]

Chapter I

THE EMPLOYMENT SERVICE

1. An Employment Service, attached to the Labour and Social Legislation Services, is hereby established. It shall comprise a central service attached to the Directorate of Labour and a provincial office in each provincial inspectorate of labour.

2. The Employment Service shall:

Gather in a central file all information concerning the manpower situation and manpower trends;

Carry out studies of all kinds on employment and manpower problems;

Organize on the basis of information received the selection, guidance and placement of manpower and find alternative employment for workers;

Co-ordinate, in liaison with the other services concerned, the organization of adult vocational training and outside vocational training courses;

Study problems related to the guidance towards and integration in the national economic activity of young persons who have fulfilled their national service obligations and particularly their civic service;

Estimate the civil and military requirements of the nation in peace-time and in the case of a possible mobilization;

Make arrangements, in liaison with the immigration services, concerning the recruitment of alien manpower;

Attest the contracts of alien workers.

...

Chapter II

RECRUITMENT OF WORKERS

7. For the purpose of the effective centralization of offers of and applications for employment:

(*a*) every employer, public or private, who intends to recruit specialized or skilled staff shall first of all notify his offer of employment to the provincial employment office or, failing this, to the sub-prefect whose jurisdiction covers the area concerned;

(*b*) every worker seeking employment shall register with the provincial employment office or, failing this, with the sub-prefect whose jurisdiction covers the area concerned.

...

9. Advertisements concerning offers of or applications for employment in the press shall be authorized on condition that they bear the attestation of the provincial employment office given beforehand.

10. The above formalities shall be optional in the case of domestic employees. They shall be compulsory for the recruitment of labourers where the recruitment involves not less than ten workers.

...

Chapter III

DISMISSAL OF WORKERS

13. Every employer, public or private, who intends to retrench by laying off not less than ten workers shall give notice to this effect to the provincial employment office, or failing this, to the sub-prefect whose jurisdiction covers the area concerned.

...

[1] *Journal officiel de la République malgache*, No. 388, of 28 November 1964. The text of the Decree in French and translations into English and Spanish have been published by the International Labour Office as *Legislative Series* 1964 — Mad. 1.

MALAWI

NOTE[1]

The only legislative and administrative development in the field of human rights in Malawi during 1964 was the express recognition of human rights set out in the Malawi Independence Constitution.

The Constitution of Malawi is contained in the Malawi Independence Order, 1964, and it is regretted that the local publication of the Constitution (in Malawi Government Notice No. 215 of 1964) is temporarily out of print but a copy of the original Order, in United Kingdom Statutory Instrument No. 916 of 1964, is enclosed, the attention of the Secretary-General being invited in particular to Chapter II thereof with particular reference to Section 23 which contains detailed provisions for protection from discrimination on the grounds of race, colour, political creed, etc.

A number of amendments to the Constitution of Malawi have been made by the Malawi Government since this Constitution was first enacted by the Government of the United Kingdom, but these do not concern human rights and details of these amendments are not therefore being provided.

[1] Note and text of Constitution furnished by the Government of Malawi, formerly Nyasaland, which became the independent State of Malawi on 6 July 1964.

THE CONSTITUTION OF MALAWI

Made on 23 June 1964 and entered into force on 6 July 1964[2]

Chapter I

CITIZENSHIP

1. (1) Every person who, having been born in the former Nyasaland Protectorate, is on 5th July 1964 a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of Malawi on 6th July 1964:

Provided that a person shall not become a citizen of Malawi by virtue of this subsection if neither of his parents was born in the former Nyasaland Protectorate.

(2) Every person who, having been born outside Malawi, is on 5th July 1964 a citizen of the United Kingdom and Colonies or a British protected person shall, if his father becomes, or would but for his death have become, a citizen of Malawi in accordance with the provisions of subsection (1) of this section, become a citizen of Malawi on 6th July 1964.

...

4. Every person born in Malawi after 5th July 1964 shall become a citizen of Malawi at the date of his birth:

Provided that a person shall not become a citizen of Malawi by virtue of this section if at the time of his birth:

(*a*) neither of his parents is a citizen of Malawi and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Malawi; or

(*b*) his father is a citizen of a country with which Malawi is at war and the birth occurs in a place then under occupation by the enemy.

5. A person born outside Malawi after 5th July 1964 shall become a citizen of Malawi at the date of his birth if at that date his father is a citizen of Malawi otherwise than by virtue of this section or section 1(2) of this Constitution.

6. Any woman who has been married to a citizen of Malawi shall be entitled, upon making application in such manner as may be prescribed by Parliament, to be registered as a citizen of Malawi.

...

9. (1) Parliament may make provision for the acquisition of citizenship of Malawi by persons who are not eligible or who are no longer eligible to become citizens of Malawi under the provisions of this Chapter.

(2) Parliament may make provision for depriving of his citizenship of Malawi any person who is a citizen of Malawi otherwise than by virtue of section 1(1) or section 4 of this Constitution.

(3) Parliament may make provision for the renunciation by any person of his citizenship of Malawi.

...

[2] Text appears in Schedule 1 of the Malawi Independence Order 1964 and published as Statutory Instrument No. 916 of 1964 by Her Majesty's Stationery Office.

Chapter II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

11. Whereas every person in Malawi is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

(*a*) life, liberty, security of the person and the protection of the law;

(*b*) freedom of conscience, of expression and of assembly and association; and

(*c*) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

12. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Malawi of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case:

(*a*) for the defence of any person from violence or for the defence of property;

(*b*) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*c*) for the purpose of suppressing a riot, insurrection or mutiny; or

(*d*) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

13. (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say:

(*a*) in execution of the sentence or order of a court, whether established for Malawi 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 of record punishing him for contempt of that court or of a court inferior to it;

(*c*) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(*d*) for the purpose of bringing him before a court in execution of the order of a court;

(*e*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Malawi;

(*f*) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;

(*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 Malawi, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Malawi or for the purpose of restricting that person while he is being conveyed through Malawi 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 Malawi 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 Malawi in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained:

(*a*) for the purpose of bringing him before a court in execution of the order of a court; or

(*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Malawi,

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (*b*) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

14. (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 Malawi is at war or a declaration of emergency under section 26 of this Constitution is in force or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(*e*) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

15. (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 the former Nyasaland Protectorate on 5th July 1964.

16. (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 or expedient:

(i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement; or

(ii) in order to secure the development or utilization of that, or other, property for a purpose beneficial to the community; and

(*b*) provision is made by a law applicable to that taking of possession or acquisition:

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right over the property a right of access to a court or other authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) 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 Malawi.

...

17. (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 utilization of mineral resources, or in order to secure the development or utilization of any property for a purpose beneficial to the community;

(*b*) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(*c*) that authorizes an officer or agent of the Government of Malawi, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be;

(*d*) that authorizes, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

18. (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 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 therefor is prescribed in a written law:

Provided that nothing in this subsection shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

(9) Any court or other adjudicating authority 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 the last foregoing subsection shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority:

(*a*) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings; or

(*b*) may be empowered by law, to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of:

(*a*) 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)(*d*) or 2(*e*) of this section to the extent that the law in question prohibits legal representation in a local court;

(*c*) subsection (2)(*e*) of this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(*d*) subsection (5) of this section to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention, the provisions of subsection (1), subsection (2)(*d*) and (*e*) 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 Malawi.

19. (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 that is not 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.

20. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, including 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, regulating educational institutions in the interests of persons receiving instruction therein, or regulating the technical administration or 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.

21. (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.

22. (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 Malawi, the right to reside in any part of Malawi, the right to enter Malawi and immunity from expulsion from Malawi.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision :

(*a*) for the imposition of restrictions on the movement or residence within Malawi of any person that are reasonably required in the interests of defence, public safety, public order, public morality, or public health or the imposition of restrictions on the acquisition or use by any person of land or other property in Malawi, 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 imposition of restrictions on the freedom of movement of any person who is not a citizen of Malawi;

(*c*) for the imposition of restrictions upon the movement or residence within Malawi of public officers; or

(*d*) for the removal of a person from Malawi to be tried outside Malawi for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of Malawi 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 subsection (3)(*a*) of this section so requests at any time during the period of that restriction not earlier than six months after the order was made or six months after the last made such request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person, qualified to be enrolled as an advocate in Malawi, appointed by the Chief Justice :

Provided that a person whose freedom of movement has been restricted by virtue of a restriction which is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the High Court.

(5) On any review by a tribunal in pursuance of this section of the case of a person whose freedom of movement has been restricted, the tribunal may make recommendations, concerning the necessity or expediency of continuing the restriction, 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.

23. (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any

provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision :

(*a*) for the appropriation of public revenues or other public funds;

(*b*) with respect to persons who are not citizens of Malawi;

(*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; or

(*e*) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage 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 reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 17, 19, 20, 21 and 22 of this Constitution, being such a restriction as is authorized by section 17(2), 19(5), 20(2), 21(2) or 22(3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

24. (1) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 13 or 23 of this Constitution to the extent that the Act authorizes the taking, during any period when Malawi is at war or any period when a declaration of a state of public emergency under section 26 of this Constitution is in force, of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period.

(2) Where a person is detained by virtue of such an authorization as is referred to in subsection (1) of this section and as is inconsistent with section 13 of this Constitution the following provisions shall apply :

(*a*) he shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(*b*) not more than fourteen days after the commencement of his detention, a notification shall be published in the *Gazette* stating that he has been detained and giving particulars of the provision of law under which his detention is 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;

(*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;

(*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.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations, concerning the necessity or expediency of continuing his detention, to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(4) Nothing contained in subsection (2)(*d*) or (2)(*e*) of this section shall be construed as entitling a person to legal representation at public expense.

25. (1) Subject to the provisions of subsection (7) of this section, if any person alleges that any of the provisions of sections 11 to 24 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the 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;

(*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 11 to 24 (inclusive) of this Constitution :

Provided that the High Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 11 to 24 (inclusive) of this Constitution, 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) Where any question is referred to the High Court in pursuance of subsection (3) of this section, the High Court shall give its decision upon the question and the subordinate 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 under this Constitution to the Supreme Court of Appeal or to the Judicial Committee, in accordance with the decision of the Supreme Court of Appeal or, as the case may be, of the Judicial Committee.

(5) Where any provision of any law is held by a competent court to be inconsistent with any of the provisions of sections 11 to 24 (inclusive) of this Constitution any person detained in custody under that provision may, as of right, make application to a competent superior court for the purpose of questioning the validity of his further detention, notwithstanding that he may previously have appealed against his conviction or sentence or that any time prescribed for the filing of such an appeal may have expired.

(6) Parliament may confer upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(7) Rules of court making provision with respect to the practice and procedure of the High Court for the purpose of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of that court generally.

26. (1) The Governor-General may at any time, by Proclamation published in the *Gazette*, declare that a state of public emergency exists for the purpose of the provisions of this Chapter.

(2) A declaration of a state of public emergency under this section, if not sooner revoked, shall cease to have effect :

(*a*) in the case of a declaration made when Parliament is sitting or has been summoned to meet within five days, at the expiration of a period of five days beginning with the date of publication of the declaration;

(*b*) in any other case, at the expiration of a period of twenty-one 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 the National Assembly.

...

(2) In relation to any person who is a member of a disciplined force raised under a law in force in Malawi, 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 Chapter other than sections 12, 14 and 15.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Malawi, 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 Chapter.

...

MALAYSIA

COURTS OF JUDICATURE ACT

Assented to on 20 January 1964[1]

Part B

General

...

15. (1) The place in which any Court is held for the purpose of trying any cause or matter, civil or criminal, shall be deemed an open and public Court to which the public generally may have access:

Provided that the Court shall have power to hear any matter or proceeding or any part thereof *in camera* if the Court is satisfied that it is expedient in the interests of justice, public safety, public security or propriety, or for other sufficient reason so to do.

(2) A Court may at any time order that no person shall publish the name, address or photograph of any witness in any matter or proceeding or any part thereof tried or held or to be tried or held before it, or any evidence or any other thing likely to lead to the identification of any such witness; and any person who acts in contravention of any such order shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding five thousand dollars, or to both such imprisonment and fine.

...

Chapter II

THE HIGH COURTS

Part A

General

18. Every proceeding in every High Court and all business arising thereout shall, save as provided by any written law, be heard and disposed of before a single Judge.

...

Part B

Original Jurisdiction

22. (1) Every High Court shall have jurisdiction to try all offences committed:

(*a*) within its local jurisdiction;

(*b*) on the high seas on board any ship or aircraft registered at any place in Malaysia;

(*c*) by any person who is a Federal Citizen or a citizen of any State in Malaysia or a subject of the Ruler of any State in Malaysia on the high seas or on any aircraft;

(*d*) by any person on the high seas where the offence is piracy by the law of nations.

(2) Every High Court may pass any sentence allowed by law.

23. (1) Subject to the limitations contained in Article 128 of the Constitution every High Court shall have jurisdiction to try all civil proceedings where:

(*a*) the cause of action arose, or

(*b*) the defendant or one of several defendants resides or has his place of business, or

(*c*) the facts on which the proceedings are based exist or are alleged to have occurred, or

(*d*) any land the ownership of which is disputed is situated,

within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of any other High Court.

...

Part C

Appellate Jurisdiction

26. The appellate criminal jurisdiction of every High Court shall consist of the hearing of appeals from Subordinate Courts according to the provisions of any law for the time being in force within the territorial jurisdiction of such High Court.

...

Part D

Revision

31. Every High Court may exercise powers of revision in respect of criminal proceedings and matters in Subordinate Courts in accordance with the provisions of any law for the time being in force relating to criminal procedure.

32. Every High Court may call for and examine the record of any civil proceedings before any Subordinate Court for the purpose of satisfying itself as to the correctness, legality or propriety of any decision recorded or passed, and as to the regularity of any proceedings of any such Subordinate Court.

33. In the case of any civil proceedings in a Subordinate Court the record of which has been called for, or which otherwise comes to its knowledge, every High Court may give such orders thereon, either by directing a new trial or otherwise, as seems necessary to secure that substantial justice is done.

...

[1] *His Majesty's Government Gazette*, vol. VIII, No. 3, of 30 January 1964.

36. Subject to the provisions of any written law for the time being in force no party shall have any right to be heard before any High Court when exercising its powers of revision and supervision:

Provided that no final order shall be made to the prejudice of any person unless such person has had an opportunity of being so heard.

...

Chapter III

THE FEDERAL COURT

Part A

General

38 (1) Subject as hereinafter provided, every proceeding in the Federal Court shall be heard and disposed of by three Judges or such greater uneven number of Judges as the Lord President may in any particular case order.

(2) In the absence of the Lord President the senior member of the Court shall preside.

...

41. Proceedings shall be decided in accordance with the opinion of the majority of the Judges composing the Court.

...

Part B

Original Jurisdiction

45. Save as hereinafter in this Act provided the Federal Court for the purposes of its jurisdiction under sub-Articles (1) and (2) of Article 128 of the Constitution (herein called the "original jurisdiction") shall have the same jurisdiction and may exercise the same powers as are had and may be exercised by any High Court.

46. The Federal Court in the exercise of its original jurisdiction under Article 128 (1) (*b*) of the Constitution in respect of a dispute between States or between the Federation and any State shall not pronounce any judgment other than a declaratory judgment.

...

48. (1) Where in any proceedings in any High Court a question arises as to the effect of any provision of the Constitution the Judge hearing such proceedings shall stay the same on such terms as may be just to await the decision of such question by the Federal Court.

...

Part C

Appellate Jurisdiction Criminal Appeals

50. (1) The Federal Court shall have jurisdiction to hear and determine any appeal by a person convicted by any High Court in the exercise of its original criminal jurisdiction, subject nevertheless to the provisions of this or any other written law regulating the terms and conditions upon which such appeals may be brought.

...

Civil Appeals

67. The Federal Court shall have jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil matter, whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to the provisions of this or any other written law regulating the terms and conditions upon which such appeals shall be brought.

...

69. (1) Appeals to the Federal Court shall be by way of re-hearing, and in relation to such appeals the Federal Court shall have all the powers and duties, as to amendment or otherwise, of a High Court, together with full discretionary power to receive further evidence by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner.

...

71. (1) Except as hereinafter provided the Federal Court shall have power to order that a new trial be had of any cause or matter tried by any High Court in the exercise of its original or appellate jurisdiction.

...

Chapter IV

APPEALS TO THE YANG DI-PERTUAN AGONG

74. (1) Subject to any enactments or rules regulating the proceedings of the Judicial Committee in respect of appeals from the Federal Court, an appeal shall lie from the Federal Court to the Yang di-Pertuan Agong ...

EMERGENCY (ESSENTIAL POWERS) ACT, 1964

Assented to on 17 September 1964 [2]

...

2. (1) Subject to the provisions of this section, the Yang di-Pertuan Agong may make any regulations whatsoever (in this Act referred to as "Essential Regulations") which he considers desirable or expedient for securing the public safety, the defence of the Federation, the maintenance of public order and of supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by the preceding sub-section, Essential Regulations may, so far as appear to the Yang di-Pertuan Agong to be necessary or expedient for any of the purposes mentioned in that sub-section:

(*a*) make provision for the apprehension, trial and punishment of persons offending against the regulations, and for detention of persons whose detention appears to the Minister for Home Affairs to be expedient in the interests of the public safety or the defence of the Federation;

(*b*) create offences and prescribe prenalties (including the death penalty) which may be imposed for any offence against any written law (including regulations made under this Act);

[2] Published as Act Supplement No. 4 in *His Majesty's Government Gazette*, No. 22, of 18 September 1964.

(*c*) provide for the trial by such Courts as may be specified in such regulations, of persons guilty of any offence against the regulations;

(*d*) make special provisions in respect of procedure (including the hearing of proceedings *in camera*) in civil or criminal cases and of the law regulating evidence, proof and civil and criminal liability;

(*e*) make provision for directing and regulating the performance of services by any persons;

(*f*) authorize:

(i) the taking of possession or control, on behalf of the Government of the Federation, of any property or undertaking;

(ii) the acquisition, on behalf of the Government of the Federation, of any property other than land;

(*g*) authorize the entering and search of any premises;

(*h*) prescribe fees or other payments;

(*i*) provide for amending any written law, for suspending the operation of any written law and for applying any written law with or without modification; and

(*j*) provide for any other matter in respect of which it is in the opinion of the Yang di-Pertuan Agong desirable in the public interest that regulations should be made.

(3) Essential Regulations may provide for empowering such authorities, persons or classes of persons as may be specified in the regulations to make orders, rules and by-laws 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 Yang di-Pertuan Agong to be necessary or expedient for the purposes of the regulations.

(4) An Essential Regulation, and any order, rule, or by-law duly made in pursuance of such a regulation, shall have effect notwithstanding anything inconsistent therewith contained in any written law other than this Act or in any instrument having effect by virtue of any written law other than this Act.

...

MALI

ACT No. 63 — 73 A.N. — R.M. OF 26 DECEMBER 1963 ESTABLISHING THE ELECTORAL CODE[1]

Title I

COMMON PROVISIONS FOR THE ELECTION OF THE MEMBERS OF THE NATIONAL ASSEMBLY, THE REGIONAL ASSEMBLIES AND THE MUNICIPAL COUNCILS

Chapter I

General

Art. 1. The suffrage shall be universal, direct, equal and secret.

Elections shall take place in each electoral district by single ballot list system; no splitting of votes, preferential voting or incomplete lists shall be permitted.

The list which obtains the greatest number of votes by relative majority shall be declared elected.

The voters shall be summoned and the date of the ballot shall be fixed by a decree of the Council of Ministers published in the *Journal officiel* not less than forty days before the date of the elections.

Chapter II

Qualifications for Voting

Art. 2. All Malian citizens of either sex who have attained the age of twenty-one years, are in possession of their civil and political rights and are not under statutory or judicial interdiction shall be entitled to vote.

Nevertheless, nationals of African States who have their residence in Mali and who are registered in the electoral roll shall be entitled to vote if they possess the general qualifications required of voters.

Other nationals of African States who are not registered in the electoral roll, whose place of habitual residence is Mali and who hold the status of Malians may be entitled to vote if they possess the general qualifications required of voters.

Art. 3. The following persons may not be registered in an electoral roll during the period of limitation applicable to their sentence :

(1) Persons convicted of a serious offence [crime];

(2) Persons under sentence or suspended sentence of imprisonment for a term of more than one month for theft, fraud or fraudulent conversion, misappropriation of public funds, forgery or uttering forged instruments, corruption, influence-peddling, or sex offences;

(3) Persons under sentence or suspended sentence of imprisonment for a term of more than three months for an offence [*délit*] other than those enumerated in paragraph 2 above;

(4) Persons in contempt of court;

(5) Discharged bankrupts.

The following persons may similarly not be registered in an electoral roll :

(1) Persons under interdiction and persons placed under committee;

(2) Aliens who have been naturalized for less than five years, except by special dispensation under the terms of article 37 of the Nationality Code.

Art. 4. The following persons may not be registered in an electoral roll for a period of five years after the date on which their sentence became final :

Persons under sentence or suspended sentence of imprisonment for a term of more than one month but not more than three months for an offence [*délit*] other than those enumerated in article 3, paragraph 2.

Persons sentenced without suspension to a fine of more than 200,000 francs for any offence [*délit*].

Art. 5. Persons deprived of the right to vote by order of a court according to the law may not be registered in any electoral roll during the period specified in the order.

Art. 6. Notwithstanding the provisions of articles 3, 4, and 5, a conviction for an offence [*délit*] committed through negligence shall not constitute an impediment to registration in an electoral roll, unless the offence was accompanied by that of absconding.

Chapter III

Electoral Rolls

Section 1 : *Conditions for Registration on an Electoral Roll*

Art. 7. An electoral roll shall be kept in each electoral district and in each commune.

Art. 8. The electoral roll shall include the names of voters who have been resident in the electoral district or commune for not less than six months on 31 December of the current year.

The administrative authorities concerned shall notify one another of any deletions from or entries in the rolls made in connexion with changes of residence.

[1] *Journal officiel de la République du Mali*, No. 163, of 15 February 1964.

In the absence of such notification, the authorities shall require any person who applies for registration in an electoral roll on the ground of change of residence to produce a certificate attesting that his name has been removed from the previous roll.

Art. 9. Where a court, acting in accordance with the law, orders a person's name to be entered in or deleted from an electoral roll, the entry or deletion may be made even after the closure of the electoral roll, at any time up to and including the day of the ballot.

Art. 10. A civil servant or public or private employee who has been transferred shall also be entitled, on production of his notice of transfer and of a certificate issued by the authorities of his previous place of residence attesting that his name has been deleted from the electoral roll, to be registered in the electoral roll of his new place of residence after the closure of the roll, at any time up to and including the day of the ballot.

Art. 11. Persons performing their statutory service in the armed forces, regular military personnel and personnel of equivalent status retained on active service beyond the statutory period shall be registered in the electoral roll of the commune or electoral district in which they are stationed.

Art. 12. The names of Malian citizens resident outside the national territory shall be retained on the electoral rolls of their last place of residence in Mali.

Art. 13. No person may be registered in more than one electoral roll. Where a voter is registered in several electoral rolls, he shall be invited without delay to opt for one of them.

If he fails to do so, his name shall be retained on the electoral roll of his last place of residence and deleted from all the others.

...

Chapter IV

Qualifications for election; disqualifications; incompatibilities

Art. 37. Any citizens of either sex who is a national of the Republic of Mali, who is registered in the electoral roll or is able to show proof that he is entitled to be so registered, who has attained the age of twenty-five years, who has been domiciled for not less than one year in the territory and who can speak and write French shall have the right to be elected.

The last-mentioned qualification shall not apply in the case of the village and unit councils.

Nevertheless, nationals of African States who have their place of habitual residence in Mali and who are registered in an electoral roll shall have the right to be elected if they possess the general qualifications for election.

Art. 38. Persons who have been deprived of the right to vote shall not have the right to be elected. Persons temporarily deprived of the right to vote shall remain disqualified for election for a period as long again as that for which they may not be registered in an electoral roll.

Art. 39. The following persons shall also be disqualified for election :

(1) Persons deprived by judicial order of their right to be elected;

(2) Persons convicted of corrupt electioneering practices, for a period of two years;

(3) Aliens who have been naturalized for less than ten years, except by special dispensation under article 37 of the Nationality Code.

Art. 40. The registration of a list of candidates one of whom is disqualified for election shall be unlawful. Public notices of the rejection of such lists shall be displayed at all polling stations.

Any ballot paper containing a vote for a list not accepted for registration shall be considered a spoiled ballot.

Art. 41. Any elected candidate who becomes disqualified for election during his term of office shall automatically or on the application of any voter be declared to have resigned.

Art. 42. The following persons shall not be entitled to stand as candidates for election while they are exercising their functions and for six months following the termination of their functions :

The Governor of the Bank of the Republic;

Inspectors of administrative affairs;

State controllers and financial controllers;

Regional governors and deputy governors;

Members of the judiciary, *greffiers en chef* and *greffiers* exercising the functions of *greffiers en chef*;

Members of administrative tribunals, with the exception of the President of the *Cour d'Etat*;

General managers, deputy general managers and accountants of public industrial and commercial enterprises;

The paymaster, senior Treasury officers, inland revenue officers and senior Customs officers;

Regional military commanders and deputy commanders; district military commanders;

Departmental heads and senior civil servants appointed by decree of the Council of Ministers;

Inspectors of fundamental education;

Police commissioners and inspectors and officers of equivalent status;

Personnel of the Army, the Gendarmerie and the Republican Guard on active service.

Art. 43. The elective offices of deputy, regional councillor and municipal councillor shall be incompatible with the exercise of the functions enumerated in the preceding article.

Any elected person who, as a result of circumstances arising after his election, finds himself exercising functions incompatible with his elective office must choose within a period of thirty days between his functions and his office. After the expiry of that period, the assembly of which he is a member shall automatically or on the application of any voter declare him to have resigned.

Chapter V

Propaganda

Art. 44. The electoral campaign shall open on the thirtieth day before the date of the election in the case of elections of deputies and regional coun-

cillors, and on the sixteenth day before the date of the election in the case of elections of municipal councillors.

Art. 45. The conditions for holding electoral meetings shall be those laid down by the legislation in force relating to freedom of assembly.

The conditions for the use of radio broadcasting and public-address systems for electoral propaganda shall be laid down by order of the Minister of the Interior.

Art. 46. Ballot papers, which must bear the names of the candidates, the title of the list, and, where necessary, a symbol shall not be subject to the statutory requirements regarding the deposit of copies.

Art. 47. The distribution of leaflets, circulars and other documents on election day shall be prohibited.

Art. 48. Throughout the electoral period, special sites shall be set aside in each commune, *cercle* and district capital and at the approaches to each polling station for the display of electoral posters.

At each such site an identical area shall be allocated to each list of candidates.

No election material may be displayed, even by stamped poster, outside the said sites.

...

MALTA

THE CONSTITUTION OF MALTA[1]

Chapter I

THE STATE

...

Religion

2. (1) The religion of Malta is the Roman Catholic Apostolic Religion.

(2) The State guarantees to the Roman Catholic Apostolic Church the right freely to exercise her proper spiritual and ecclesiastical functions and duties and to manage her own affairs.

...

Language

5. (1) The national language of Malta is the Maltese language.

(2) The Maltese and the English languages and such other language as may be prescribed by Parliament (by a law passed by not less than two-thirds of all the members of the House of Representatives) shall be the official languages of Malta and the Administration may for all official purposes use any of such languages :

Provided that any person may address the Administration in any of the official languages and the reply of the Administration thereto shall be in such language.

(3) The language of the Courts shall be the Maltese language :

Provided that Parliament may make such provision for the use of the English language in such cases and under such conditions as it may prescribe.

(4) The House of Representatives may, in regulating its own procedure, determine the language or languages that shall be used in parliamentary proceedings and records.

Constitution to be Supreme Law

6. Subject to the provisions of sections 48(7) and (9) and 67 of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

Chapter II

DECLARATION OF PRINCIPLES

Right to Work

7. The State recognises the right of all citizens to work and shall promote such conditions as will make this right effective.

Promotion of Culture, etc.

8. The State shall promote the development of culture and scientific and technical research.

Safeguarding of Landscape and Historical and Artistic Patrimony

9. The State shall safeguard the landscape and the historical and artistic patrimony of the Nation.

Religious Teaching in State Schools

10. Religious teaching of the Roman Catholic Apostolic faith shall be provided in all State schools.

Compulsory and Free Primary Education

11. Primary education shall be compulsory and in State schools shall be free of charge.

Educational Interests

12. (1) Capable and deserving students, even if without financial resources, are entitled to attain the highest grades of education.

(2) The State shall give effect to this principle by means of scholarships, of contributions to the families of students and other provisions on the basis of competitive examinations.

Protection of Work

13. (1) The State shall protect work.

(2) It shall provide for the professional or vocational training and advancement of workers.

Hours of Work

14. (1) The maximum number of hours of work per day shall be fixed by law.

(2) The worker is entitled to a weekly day of rest and to annual holidays with pay; he cannot renounce this right.

Rights of Women Workers

15. The State shall aim at ensuring that women workers enjoy equal rights and the same wages for the same work as males.

Minimum Age for Paid Labour

16. The minimum age for paid labour shall be prescribed by law.

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[1] Text appears in the Schedule to the Malta Independence Order 1964, published as Statutory Instrument No. 1398 of 1964 by Her Majesty's Stationery Office, Londen. Malta became an independent State on 21 September 1964.

Safeguarding Labour of Minors

17. The State shall provide for safeguarding the labour of minors and assure to them the right to equal pay for equal work.

Social Assistance and Insurance

16. (1) Every citizen incapable of work and unprovided with the resources necessary for subsistence is entitled to maintenance and social assistance.

(2) Workers are entitled to reasonable insurance on a contributory basis for their requirements in case of accident, illness, disability, old-age and involuntary unemployment.

(3) Disabled persons and persons incapable of work are entitled to education and vocational training.

Encouragement of Private Economic Enterprise

19. The State shall encourage private economic enterprise.

Protection of Artisan Trades

20. The State shall provide for the protection and development of artisan trades.

Encouragement of Co-operatives

21. The State recognises the social function of co-operatives and shall encourage their development.

Application of the Principles contained in this Chapter

22. The provisions of this Chapter shall not be enforceable in any court, but the principles therein contained are nevertheless fundamental to the governance of the country and it shall be the aim of the State to apply these principles in making laws.

Chapter III

CITIZENSHIP

Persons who become Citizens on Appointed Day

23. (1) Every person who, having been born in Malta, is on the day before the appointed day a citizen of the United Kingdom and Colonies shall become a citizen of Malta on the appointed day :

Provided that a person shall not become a citizen of Malta by virtue of this subsection if neither of his parents was born in Malta.

(2) Every person who, having been born outside Malta, is on the day before the appointed day a citizen of the United Kingdom and Colonies shall, if his father becomes, or would but for his death have become, a citizen of Malta in accordance with the provisions of subsection (1) of this section, become a citizen of Malta on the appointed day.

Persons entitled to be registered as Citizens

24. (1) Any person who, but for the proviso to subsection (1) of section 23 of this Constitution, would be a citizen of Malta by virtue of that subsection shall be entitled, upon making application before the expiration of two years from the appointed day in such manner as may be prescribed, to be registered as a citizen of Malta;

Provided that a person who has not attained the age of eighteen years (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by the person who according to law has authority over him.

(2) Any woman who on the day before the appointed day is or has been married to a person :

(*a*) who becomes a citizen of Malta by virtue of section 23 of this Constitution; or

(*b*) who having died before the appointed day would, but for his death, have become a citizen of Malta by virtue of that section,

shall be entitled, upon making application in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Malta.

(3) Any woman who on the day before the appointed day is or has been married to a person who becomes a citizen of Malta by registration under subsection (1) of this section shall be entitled, upon making application within such time and in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Malta.

(4) Any woman who on the day before the appointed day has been married to a person who becomes, or would, but for his death, have become entitled to be registered as a citizen of Malta under subsection (1) of this section, but whose marriage has been terminated by death or by such dissolution as is valid under the law of Malta shall be entitled, upon making application before the expiration of two years from the appointed day and in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Malta.

(5) The provisions of subsections (2), (3) and (4) of this section shall be without prejudice to the provisions of section 23 of this Constitution.

Persons naturalized or registered as Resident before Appointed Day

25. (1) Any person who on the day before the appointed day was a citizen of the United Kingdom and Colonies :

(*a*) having become such a citizen under the British Nationality Act 1948 by virtue of his having been naturalized in Malta as a British subject before that Act came into force; or

(*b*) having become such a citizen by virtue of his having been naturalised or registered in Malta under that Act;

shall be entitled, upon making application before the expiration of two years from the appointed day in such manner as may be prescribed, to be registered as a citizen of Malta :

Provided that a person who has not attained the age of eighteen years (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by the person who according to law has authority over him.

(2) Any person who on the day before the appointed day :

(*a*) was a Commonwealth citizen or a citizen of the Republic of Ireland; and

(*b*) is descended in the male line from a person born in Malta,

and was on the day before the appointed day ordinarily resident in Malta and had been so resident throughout the period of five years immediately preceding that day shall be entitled, upon making application before the expiration of two years from the appointed day in such manner as may be prescribed, to be registered as a citizen of Malta :

Provided that a person who has not attained the age of eighteen uears (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by the person who according to law has authority over him.

Acquisition of Citizenship by Birth or Descent by Persons born on or after Appointed Day

26. (1) Every person born in Malta on or after the appointed day shall become a citizen of Malta at the date of his birth :

Provided that a person shall not become a citizen of Malta by virtue of this subsection if at the time of his birth :

(*a*) neither of his parents was a citizen of Malta and his father possessed such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Malta; or

(*b*) his father was an enemy alien and the birth occurred in a place then under occupation by the enemy.

(2) A person born outside Malta on or after the appointed day shall become a citizen of Malta at the date of his birth if at that date his father is a citizen of Malta otherwise than by virtue of this subsection or subsection (2) of section 23 of this Constitution.

Marriage to Citizen of Malta

27. Any woman who on or after the appointed day marries a person who is or becomes a citizen of Malta shall be entitled, upon making application in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Malta.

...

Powers of Parliament

31. (1) Parliament may make provision :

(*a*) for the acquisition of citizenship of Malta by persons who do not become citizens of Malta by virtue of the provisions of this Chapter;

(*b*) for depriving of his citizenship of Malta any person who is a citizen of Malta otherwise than by virtue of :

(i) section 23 or subsection (1) of section 26 of this Constitution; or

(ii) subsection (2) of section 26 of this Constitution in relation to a person born outside Malta whose father at the date of that person's birth is a citizen of Malta by virtue of subsection (1) of section 23 or subsection (1) of section 26 of this Constitution;

(*c*) for the renunciation by any person of his citizenship of Malta.

(2) Provision may be made by or under an Act of Parliament for extending the period in which any person may make an application for registration as a citizen of Malta, make a renunciation of citizenship, take an oath or make or register a declaration for the purposes of the provisions of this Chapter.

Interpretation

...

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the father of a person shall, in relation to a person born out of wedlock and not legitimated, be construed as a reference to the mother of that person and, in relation to an adopted child whose adoption has been registered under any law in force in Malta, be construed as a reference to the adopter or, in the case of a joint adoption, the male adopter, and references to the parent of such person shall be construed accordingly.

(4) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before the appointed day and the birth occurred on or after the appointed day, the national status that the father would have had if he had died on the appointed day shall be deemed to be his national status at the time of his death.

Chapter IV

FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental Rights and Freedoms of the Individual

33. Whereas every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely :

(*a*) life, liberty, security of the person, the enjoyment of property and the protection of the law;

(*b*) freedom of conscience, of expression and of peaceful assembly and association; and

(*c*) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection of Right to Life

34. (1) No person shall intentionally be deprived of his life save in execution of the sentence of a court in respect of a criminal offence under the law of Malta 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.

Protection from Arbitrary Arrest or Detention

35. (1) No person shall be deprived of his personal liberty save as may be authorised by law in the following cases, that is to say:

(*a*) in consequence of his unfitness to plead to a criminal charge;

(*b*) in execution of the sentence or order of a court, whether in Malta or elsewhere, in respect of a criminal offence of which he has been convicted;

(*c*) in execution of the order of a court punishing him for contempt of that court or of another court or tribunal or in execution of the order of the House of Representatives punishing him for contempt of itself or of its members or for breach of privilege;

(*d*) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(*e*) for the purpose of bringing him before a court in execution of the order of a court or before the House of Representatives in execution of the order of that House;

(*f*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;

(*g*) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

(*h*) for the purpose of preventing the spread of an infectious or contagious disease;

(*i*) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; or

(*j*) for the purpose of preventing the unlawful entry of that person into Malta, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Malta or the taking of proceedings relating thereto or for the purpose of restraining that person while he is being conveyed through Malta in the course of his extradition or removal as a convicted prisoner from one country to another.

(2) Any person who is arrested or detained shall be informed, at the time of his arrest or detention, in a language that he understands, of the reasons for his arrest or detention:

Provided that if an interpreter is necessary and is not readily available or if it is otherwise impracticable to comply with the provisions of this subsection at the time of the person's arrest or detention, such provisions shall be complied with as soon as practicable.

(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 not later than forty-eight hours before a court; and if any person arrested or detained in such a case as is mentioned in paragraph (*b*) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that person.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the taking during such a period of public emergency as is referred to in paragraph (*a*) or (*c*) of subsection (2) of section 48 of this Constitution of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency.

(6) If any person who is lawfully detained by virtue only of such a law as is referred to in the last foregoing subsection so requests at any time during the period of that detention not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and composed of a person or persons each of whom holds or has held judicial office or is qualified to be appointed to such office in Malta.

(7) On any review by a tribunal in pursuance of the last foregoing subsection of the case of any detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by whom it was ordered, but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

Protection from Forced Labour

36. (1) No person shall be 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 by sentence or order of a court that, though not required in consequence of such sentence or order, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained or, if he is detained for the purpose of his care, treatment, education or welfare, is reasonably required for that purpose;

(*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.

Protection from Inhuman Treatment

37. (1) No person shall be subjected to inhuman or degrading punishment or treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment which was lawful in Malta immediately before the appointed day.

(3) (*a*) No law shall provide for the imposition of collective punishments.

(*b*) Nothing in this subsection shall preclude the imposition of collective punishments upon the members of a disciplined force in accordance with the law in regulating the discipline of that force.

Protection from Deprivation of Property without Compensation

38. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition:

(*a*) for the payment of adequate compensation;

(*b*) securing to any person claiming such compensation a right of access to an independent and impartial court or tribunal established by law for the purpose of determining his interest in or right over the property and the amount of any compensation to which he may be entitled, and for the purpose of obtaining payment of that compensation; and

(*c*) securing to any party to proceedings in that court or tribunal relating to such a claim a right of appeal from its determination to the Court of Appeal in Malta.

...

Protection for Privacy of Home or Other Property

39. (1) Except with his own consent or by way of parental discipline, 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 interest of defence, public safety, public order, public morality or decency, public health, town and country planning, the development and utilisation of mineral resources, or the development and utilisation of any 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 a department of the Government of Malta, or a local government authority, or a body corporate established by law for a public purpose, to enter on the premises of any person in order to 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 or installation which is lawfully on those premises and which belongs to that Government, that authority, or that body corporate, as the case may be; or

(*d*) that authorises, for the purpose of enforcing a judgment or order of a court, the search of any person or property by order of a court or entry upon any premises by such order, or that is necessary for the purpose of preventing or detecting criminal offences.

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.

Provisions to Secure Protection of Law

40. (1) Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Any court or other adjudicating authority prescribed by law for the determination of the existence or the extent of civil rights or obligations shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(3) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(4) Nothing in subsection (3) of this section shall prevent any court or any authority such as is mentioned in that subsection from excluding from the proceedings persons other than the parties thereto and their legal representatives:

(*a*) in proceedings before a court of voluntary jurisdiction and other proceedings which, in the practice of the Courts in Malta are, or are of the

same nature as those which are, disposed of in chambers;

(*b*) in proceedings under any law relating to income tax; or

(*c*) to such extent as the court or other authority:

(i) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice; or

(ii) may be empowered or required by law to do so in the interests of defence, public safety, public order, public morality or decency, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question imposes upon any person charged as aforesaid the burden of proving particular facts.

(6) Every person who is charged with a criminal offence:

(*a*) shall be informed in writing, in a language which he understands and in detail, of the nature of the offence charged;

(*b*) shall be given adequate time and facilities for the preparation of his defence;

(*c*) shall be permitted to defend himself in person or by a legal representative and a person who cannot afford to pay for such legal representation as is reasonably required by the circumstances of his case shall be entitled to have such representation at the public expense;

(*d*) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court and to obtain the attendance of witnesses subject to the payment of their reasonable expenses, and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(*e*) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge, 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.

(7) 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.

(8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.

(9) 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 or review proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence:

Provided that nothing in any law shall be held to be inconsistent with or in contravention of this section by reason only that it authorises any 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.

(10) No person who is tried for a criminal offence shall be compelled to give evidence at his trial.

(11) In this section " legal representative " means a person entitled to practise in Malta as an advocate or, except in relation to proceedings before a court where a legal procurator has no right of audience, a legal procurator.

Protection of Freedom of Conscience

41. (1) All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1), to the extent that the law in question makes provision that is reasonably required in the interests of public safety, public order, public morality or decency, public health, or the protection of the rights and freedoms of others, 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.

Protection of Freedom of Expression

42. (1) Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, including 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 subsection (1) of this section to the extent that the law in question makes provision:

(*a*) that is reasonably required:

(i) in the interests of defence, public safety, public order, public morality or decency, or public health; or

(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of Parliament, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or

(*b*) that imposes restrictions upon public officers, and excepts 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.

(3) Anyone who is resident in Malta may edit or print a newspaper or journal published daily or periodically :

Provided that provision may be made by law :

(*a*) prohibiting or restricting the editing or printing of any such newspaper or journal by persons under twenty-one years of age; and

(*b*) requiring any person who is the editor or printer of any such newspaper or journal to inform the prescribed authority to that effect and of his age and to keep the prescribed authority informed of his place of residence.

(4) Where the police seize any edition of a newspaper as being the means whereby a criminal offence has been committed they shall within twenty-four hours of the seizure bring the seizure to the notice of the competent court and if the court is not satisfied that there is a *prima facie* case of such offence, that edition shall be returned to the person from whom is was seized.

(5) No person shall be deprived of his citizenship under any provisions made under section 31(1) (*b*) of this Constitution or of his juridical capacity by reason only of his political opinions.

Protection of freedom of assembly and association

43. (1) Except with his own consent or by way of parental discipline no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully to assemble freely and associate with other persons and in particular to form or belong to trade or other unions or associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision :

(*a*) that is reasonably required :

(i) in the interests of defence, public safety, public order, public morality or decency, or public health; or

(ii) for the purpose of protecting the rights or freedoms of other persons; or

(*b*) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Prohibition of Deportation

44. (1) Extradition is only permitted in pursuance of arrangements made by treaty and under the authority of a law.

(2) No person shall be extradited for an offence of a political character.

(3) No citizen of Malta shall be removed from Malta except as a result of extradition proceedings or under any such law as is referred to in section 45(3)(*b*) of this Constitution.

. . .

Protection of Freedom of Movement

45. (1) No citizen of Malta shall be deprived of his freedom of movement, and for the purpose of this section the said freedom means the right to move freely throughout Malta, the right to reside in any part of Malta, the right to leave and the right to enter Malta.

(2) Any restriction on a citizen'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.

. . .

Protection from Discrimination on the Grounds of Race, etc.

46. (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

. . .

(9) Notwithstanding any other provision of this Constitution , no person not professing the Roman Catholic Apostolic Religion shall hold any office entailing the teaching of that religion.

Enforcement of Protective Provisions

47. (1) Subject to the provisions of subsections (6) and (7) of this section, any person who alleges that any of the provisions of sections 34 to 46 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, or such other person as the Civil Court, First Hall, in Malta may appoint at the instance of any person who so alleges, may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the Civil Court, First Hall, for redress.

(2) The Civil Court, First Hall, shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section, and may make such orders, issue such writs and give such directions as it may consider

appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 34 to 46 (inclusive) to the protection of which the person concerned is entitled :

Provided that the Court may, if it considers it desirable so to do, decline to exercise its powers under this subsection in any case where it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the provisions of the said sections 34 to 46 (inclusive), that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious; and that court shall give its decision on any question referred to it under this subsection and, subject to the provisions of subsection (4) of this section, and of section 103(2) of this Constitution, the Court in which the question arose shall dispose of the question in accordance with that decision.

(4) Any party to proceedings brought in the Civil Court, First Hall, in pursuance of this section shall have a right of appeal to the Constitutional Court.

(5) No appeal shall lie from any determination under this section that any application or the raising of any question is merely frivolous or vexatious.

(6) Provision may be made by or under an Act of Parliament for conferring upon the Civil Court, First Hall, such powers in addition to those conferred by this section as are necessary or desirable for the purpose of enabling the Court more effectively to exercise the jusrisdiction conferred upon it by this section.

(7) Rules of court making provision with respect to the practice and procedure of the Courts of Malta for the purposes of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of those Courts, and shall be designed to secure that the procedure shall be by application and that the hearing shall be as expeditious as possible.

...

Chapter VI

PARLIAMENT

Part 1

COMPOSITION OF PARLIAMENT

Establishment of Parliament

52. There shall be a Parliament of Malta which shall consist of Her Majesty and a House of Representatives.

Composition of the House of Representatives

53. (1) Subject to the provisions of this Chapter, the House of Representatives shall consist of fifty members who shall be elected in the manner provided by or under any law for the time being in force in Malta in equal proportions from the electoral divisions referred to in section 57 of this Constitution and who shall be known as " Members of Parliament ".

(2) If any person who is not a member of the House of Representatives is elected to be Speaker of the House he shall, be virtue of holding the office of Speaker, be a member of the House in addition to the said fifty members.

Qualifications for Membership of House of Representatives

54. Subject to the provisions of section 55 of this Constitution, a person shall be qualified to be elected as a member of the House of Representatives if, and shall not be qualified to be so elected unless, he has the qualifications for registration as a voter for the election of members of the House of Representatives mentioned in section 58 of this Constitution.

Disqualifications for Membership of House of Representatives

55. (1) No person shall be qualified to be elected as a member of the House of Representatives :

(*a*) if he is a citizen of a country other than Malta having become such a citizen voluntarily or is under a declaration of allegiance to such a country;

(*b*) save as otherwise provided by Parliament, if he holds or is acting in any public office or is a member of the armed forces of the Crown;

(*c*) if he is a party to, or is a partner with unlimited liability in a partnership or a director or manager of a company which is a party to, any contract with the Government of Malta for or on account of the public service and has not, within one month before the date of election, published in the Gazette a notice setting out the nature of any such contract, and his interests, or the interest of any such partnership or company, therein;

(*d*) if he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Malta;

(*e*) if he is interdicted or incapacitated for any mental infirmity or for prodigality by a court in Malta, or is otherwise determined in Malta to be of unsound mind;

(*f*) if he is under sentence of death imposed on him by any court in Malta 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;

(*g*) if he holds or is acting in any office the functions of which involve any responsibility for, or in connection with, the conduct of any election of members of the House of Representatives or the compilation or revision of any electoral register;

(*h*) if he is disqualified for membership of the House of Representatives by or under any law for the time being in force in Malta by reason of his having been convicted of any offence connected with the election of members of the House of Representatives.

...

Qualification of Voters

58. Subject to the provisions of section 59 of this Constitution, a person shall be qualified to be registered as a voter for the election of members of the House of Representatives if, and shall not be qualified to be so registered unless :

(*a*) he is a citizen of Malta;

(*b*) he has attained the age of twenty-one years; and

(*c*) he is resident in Malta and has during the two years immediately preceding his registration been so resident for a continuous period of one year or for periods amounting in the aggregate to one year.

Disqualification of Voters

59. No person shall be qualified to be registered as a voter for the election of members of the House of Representatives if :

(*a*) he is interdicted or incapacitated for any mental infirmity by a court in Malta or is otherwise determined in Malta to be of unsound mind;

(*b*) he is under sentence of death imposed on him by any court in Malta 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

(*c*) he is disqualified for registration as a voter by or under any law for the time being in force in Malta by reason of his having been convicted of any offence connected with the election of members of the House of Representatives.

...

Establishment of Electoral Commission

61. (1) There shall be an Electoral Commission for Malta.

...

(9) In the exercise of its functions under this Constitution the Electoral Commission shall not be subject to the direction or control of any other person or authority.

...

Crown Advocate-General

92. (1) There shall be a Crown Advocate-General whose office shall be a public office and who shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister.

(2) A person shall not be qualified to hold office as Crown Advocate-General unless he is qualified for appointment as a judge of the Superior Courts.

(3) In the exercise of his powers to institute, undertake and discontinue criminal proceedings and of any other powers conferred on him by any law in terms which authorise him to exercise that power in his individual judgment the Crown Advocate-General shall not be subject to the direction or control of any other person or authority.

...

Tenure of Office of Judges

98. (1) Subject to the provisions of this section, a judge of the Superior Courts shall vacate his office when he attains the age of sixty-five years.

(2) A judge of the Superior Courts shall not be removed from his office except by the Governor-General upon an address by the House of Representatives supported by the votes of not less than two-thirds of all the members thereof and praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

(3) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the inability or misbehaviour of a judge of the Superior Courts under the provisions of the last preceding subsection.

...

Magistrates

...

(4) The provisions of subsections (2) and (3) of section 98 of this Constitution shall apply to magistrates of the inferior courts.

Prohibition of Certain Associations

120. (1) It shall be unlawful to establish, maintain or belong to any association of persons who are organised and trained or organised and equipped for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object.

(2) The provisions of this section shall be enforced in such manner as may be provided by Parliament.

Broadcasting Authority

121. (1) There shall be a Broadcasting Authority for Malta which shall consist of a chairman and such number of other members not being less than four as may be prescribed by any law for the time being in force in Malta.

...

(8) In the exercise of its functions under section 122 (1) of this Constitution the Broadcasting Authority shall not be subject to the direction or control of any other person or authority.

Function of the Broadcasting Authority

122. (1) It shall be the function of the Broadcasting Authority to ensure that, so far as possible, in such sound and television broadcasting services as may be provided in Malta, due impartiality is preserved in respect of matters of political or industrial controversy or relating to current public policy and that broadcasting facilities and time are fairly apportioned between persons belonging to different political parties.

(2) The function of the Broadcasting Authority referred to in subsection (1) of this section shall be without prejudice to such other functions and duties as may be conferred upon it by any law for the time being in force in Malta.

...

MEXICO

NOTE [1]

1. Agreement providing for the establishment of a Committee to promote the use of audio-visual aids in education. (Published in *Diario Oficial de la Federación* of 16 January 1964.)

2. Regulations governing the classification of enterprises and degrees of risk for insurance against industrial accidents and occupational diseases. (Published in *Diario Oficial de la Federación* of 29 January 1964.)

3. Decree providing for the construction of social welfare centres, homes for children and old people, hospitals, educational and training centres for the handicapped, and buildings, roads, parks, gardens and other public works with a similar purpose. (Published in *Diario Oficial de la Federación* of 2 April 1964.)

[1] Note furnished by the Government of Mexico.

MOROCCO

NOTE

Article 1 of Decree No. 2-64-036 of 19 Dhu'l-qadah 1383 (2 April 1964)[1] concerning the calculation of annuities for victims of employment accidents or occupational diseases and their assigns and the calculation of increments in such annuities, provides as follows:

"*Art. 1.* If the minimum wage of workers in industry, commerce or the liberal professions is raised through the enactment of laws or regulations, the annual wage taken as the basis for calculating annuities awarded to victims of employment accidents or occupational diseases who suffer at least 10 per cent disability, or to the assigns of such victims, shall be equal, whatever the age, sex, nationality or occupation of the victim, to 2.496 times the new hourly wage of the above-mentioned workers at the lowest wage level.

"The provisions of the foregoing paragraph shall apply notwithstanding any less favourable terms contained in an insurance contract, even if they are in a 'joint' policy, and notwithstanding any provisions of the contract to the contrary."

[1] Text promulgated in *Bulletin Officiel*, No. 2865, of 15 April 1964.

NEPAL

NOTE[1]

Attention is drawn, in the Nepalese contribution, to articles 10, 11, 13, 15 and 16 of the Constitution of Nepal of 16 December 1962[2] dealing, respectively, with the right to equality, the right to freedom, the right against exploitation, the right to property and the right to constitutional remedies. In connexion with article 16 of the Constitution, mention is made of article 71 of the Constitution which reads:

"*Art. 71.* Extraordinary jurisdiction of the Supreme Court — The Supreme Court shall have the power to issue directions, orders or writs including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* for the enforcement of rights conferred by part 3 of this Constitution or for the enforcement, in cases where no other remedy is provided for, of rights conferred by other laws for the time being in force, provided that nothing in this article shall apply in relation to matters falling within the jurisdiction of a Court Martial ..."

The contribution further summarizes articles 1 and 3 of the Mulki Ain (Code of Nepalese Laws) as follows:

"Article 1 relates to culpable homicide and provides that no one is allowed by the law of the land to commit murder or to abet as well as to incite others to commit the offence except under circumstances authorized by law.

"Article 3 specifies that no one is allowed to enslave any person and to trade on any person as such. The punishment for the violation of this clause shall be rigorous imprisonment ranging from five to seven years."

[1] Note based upon text furnished by the Government of Nepal.

[2] For text of these articles of the Constitution, see *Yearbook on Human Rights for 1962*, pp. 206-207.

NETHERLANDS

NOTE[1]

A. LEGISLATION

1. *Nationality*

The Act of 14 November 1963 amending the Act on Netherlands nationality and residential status (see the Netherlands contribution to the 1963 *Yearbook*)[2] entered into force on 1 March 1964 pursuant to the royal decree of 27 January 1964 (*Staatsblad van het Koninkrijk der Nederlanden*, 1964, 22).

2. *Social Security*

By Act of 10 December 1964 (*Staatsblad van het Koninkrijk der Nederlanden*, 1964, 486), pending subsequent amendment of the General Old-Age Act and the General Widows and Orphans Act, the allowances paid under the statutory old-age and widows' and orphans' insurance schemes were increased so as to bring the payments up to the level of a social minimum.

3. *Public Health*

A new Sickness Act (*Staatsblad van het Koninkrijk der Nederlanden*, 1964, 392), embodying a new medical scheme designed to benefit the 75 per cent of the population of the Netherlands which is deemed to be unable to pay its medical expenses out of its own income, was promulgated on 15 October 1964.

4. *Conditions of Work*

The Act of 22 January 1964 (*Staatsblad van het Koninkrijk der Nederlanden*, 1964, 30) amending the Labour Act of 1919 and the Stonemasons Act of 1921 prohibits the employment of 14-year-old boys.

B. ADMINISTRATIVE MEASURES

Conditions of Work

(*a*) The royal decree of 10 January 1964 (*Staatsblad van het Koninkrijk der Nederlanden*, 1964, 16) amends the 1936 decree on homework so as to add a number of activities to those falling within the scope of the 1933 Homework Act. The newly specified activities include the working, transformation and conditioning of liquids containing benzene, radioactive materials, inflammable film and materials containing lead.

(*b*) The royal decree of 14 February 1964 (*Staatsblad van het Koninkrijk der Nederlanden*, 1964, 61) amending the decree of 1960 regulating the hours of work of drivers of motor vehicles reduces the average weekly hours of work of persons driving such vehicles.

(*c*) The royal decree of 9 July 1964 (*Staatsblad van het Koninkrijk der Nederlanden*, 1964, 335) establishes new regulations governing the hours of work of pharmacies.

(*d*) The royal decree of 25 July 1964 (*Staatsblad van het Koninkrijk der Nederlanden*, 1964, 338) establishes regulations designed to provide protection against the dangers arising from the use of preventive agents in agriculture.

(*e*) The royal decree of 21 September 1964 (*Staatsblad van het Koninkrijk der Nederlanden*, 1964, 369) reduces the maximum hours of work of café and hotel staff from 53 to 51 per week and from 101 to 96 for any two successive weeks.

C. INTERNATIONAL INSTRUMENTS

1. *European Convention on Human Rights*

In declarations made on 27 August 1964, recognition of the competence of the European Commission of Human Rights to receive petitions in accordance with article 25 of the Convention (right of individual petition) is extended in respect of the Netherlands and Surinam for a period of five years as from 31 August 1964, and, on condition of reciprocity in accordance with article 46 of the Convention, recognition of the jurisdiction of the European Court of Human Rights is extended in respect of the Netherlands and Surinam for a period of five years as from the same date (*Treaty Series*, 1964, 163).

2. *Free Legal Aid*

On 16 November 1964, the Kingdom of the Netherlands and the United States of Brazil exchanged letters extending to Surinam and the Netherlands Antilles the Convention concerning free legal aid signed by the two countries on 16 March 1959 (*Treaty Series*, 1965, 20).

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[1] Note furnished by the Government of the Netherlands.

[2] See *Yearbook on Human Rights for 1963*, p. 215.

NEW ZEALAND

NOTE[1]

I. ACTS OF PARLIAMENT

1. *Family Benefits (Home Ownership) Act 1964*

This Act enables applicants to use capitalized family benefits for housing purposes. Advances are made to those applicants whose children are one year old, who have no other means of securing finance, and would not suffer undue hardship in the redirection of family-benefit payments. The important feature of the Act is that advances are made only in respect of housing or land owned exclusively by the applicant or jointly by the applicant and his spouse.

2. *Workers' Compensation Amendment Act 1964*

This Act extends the application of the principal Act in respect of minors and apprentices and contains other administrative provisions.

3. *The Maori Purposes Act 1964*

This Act contains miscellaneous amendments to the law relating to Maoris and Maori Land.

4. *Burial and Cremation Act 1964*

This Act makes provision for the establishment, maintenance and regulation of cemeteries and burial grounds. In addition, provision is made for regulations relating to cremating and crematoria.

5. *Education Act 1964*

This Act is intended to replace the present Education Act 1914 and its Amendments as well as other Acts relevant to the field of education.

6. *Social Security Act 1964*

This Act replaces the Social Security Act 1938 and its amendments. Like the Education Act 1964, it is a comprehensive enactment embodying all existing law relating to this sphere of government activity.

II. ORDERS IN COUNCIL

1. *The Copyright (International Conventions) Order 1964*

The Order applies the relevant provisions of the Copyright Act 1962 to all members of the Berne Copyright Union and all countries of the Universal Copyright Convention, thereby extending copyright protection to the authors of all these countries and providing reciprocal protection in these countries for New Zealand authors (including makers of films and, in some countries, manufacturers of records).

2. *The Copyright (International Organisations) Order 1964*

The Order grants copyright protection to original literary, dramatic, musical and artistic works, and to cinematograph films originating from any of the following organisations — United Nations, specialized agencies of the United Nations, and Organisation of American States.

3. *The Criminal Injuries Compensation Order 1964*

The Order increases the maximum amounts that may be awarded under the Criminal Injuries Compensation Act 1963 in accordance with the increases made by a general wage order of the Arbitration Court.

[1] Note furnished by the Government of New Zealand.

NIGERIA

NIGERIAN LEGION ACT, No. 18, OF 1964[1]

SUMMARY

This Act makes provisions with respect to the welfare of ex-servicemen and for purposes connected therewith.

Article 1 of the Act establishes, as the successor of the Nigerian Ex-Servicemen's Welfare Association, an association to be known as the Nigerian Legion, which shall be a body corporate by the name aforesaid and of which every ex-serviceman shall be entitled to be a member. Article 1 further states that the Legion shall be charged with the general function of promoting the welfare of and the comradeship among ex-servicemen and that for the purpose of performing that general function it shall in particular be the duty of the Legion to take specific steps as it considers to be appropriate and within its resources.

Other provisions of the Act deal with the management of the affairs of the Legion; the membership of the Legion; and the establishment and maintenance of a fund from which there shall be defrayed all expenditures incurred by the Legion.

[1] *Supplement to the Official Gazette*, Extraordinary, No. 53, vol. 51, of 17 June 1964, Part A.

NORWAY

NOTE[1]

A. LEGISLATION

1. *Constitutional Provision of 4 May 1964, amending Section 2 of the Constitution*

This provision states that all inhabitants of the realm have the right to freedom of religion. The provision contains only what has also previously been regarded to be the position in law in this respect.

It follows from the preparatory work that the provision protects also the right to maintain any non-religious belief.

2. *Law of 15 May 1964, concerning Changes in the Law on Annual Vacation of 14 November 1947*

This law extends the period of annual vacation for employees from eighteen to twenty-four working days, whereof eighteen consecutive days (previously twelve) in the period between 16 May and 30 September.

Employees who have been employed for at least six days have the right to a special holiday allowance corresponding to 9 per cent (from 1 May 1966, 9,5 per cent) of their total earnings in the period from 1 May to 30 April preceding their vacation.

Employees who are paid yearly, monthly or weekly wages can, if they so prefer, get ordinary pay during their vacation. If they have been working only part of the year, this holiday pay is reduced accordingly. Previously, employees with yearly, monthly or weekly wages were entitled to paid holidays only, as the system of a holiday allowance consisting of a certain percentage of total earnings applied only to other employees (the percentage was then 6,5).

3. *Law of 29 May 1964, on Names*

This law replaces the previous law on names of 1923. It states, *inter alia*, that children born out of wedlock get the family name of their mother, whereas they previously had the right to choose between the mother's and the father's family name. It will, however, as a rule, not be difficult to obtain the father's name upon application.

A woman will, as before, acquire her husband's name by marriage. She can, however, keep her maiden name by informing the solemnizer of the marriage in advance that she wishes to do so. Previously, she would have to obtain a licence in order to keep her maiden name.

According to the new law, a woman can in special cases obtain a licence to use a family name acquired by a previous marriage.

This law is the result of Nordic co-operation.

4. *Law of 5 June 1964, on Social Assistance*

This law replaces a previous law of 1900. It obliges the municipalities to give social assistance to those who are without means of existence or incapable of providing for themselves. Assistance can be provided in the form of a loan, a guarantee or a cash amount to the persons in question in order to make them self-sufficient or to get them started in a profession, or in the form of paid employment in a public work home, accomodation in a home of attendance or financial assistance according to need.

In every municipality there shall be a social board which shall give information and advice to those who need it in order to become self-sufficient or to overcome or adjust themselves to misfortunes. The board shall co-ordinate all social work in the municipality. A separate office shall carry out the day-to-day work of the board.

5. *Law of 20 June 1964, on Social Assistance to Widows and Mothers*

Not only widows and unmarried mothers benefit from this law, but also unmarried women who have remained at home for a longer period of time in order to look after their parents or other close relatives. The assistance can be given partly as a regular allowance and partly as a gratuity, for instance for the purpose of education.

Widows who have been married at least five years and widows who have children with the deceased or have the care of the deceased's children are entitled to a widow's pension. The amount of the pension is graduated according to the widow's ability to work, the maximum being N.kr. 4,200 a year for the time being.

Contributors under this scheme are employees, employers, the State and the municipalities.

6. *Law of 5 November 1964, concerning Changes in the Law relating to Marriage*

The purpose of this law is to make mediation in separation and divorce cases more important than hitherto. Under the new law, mediation is obligatory also in cases where a divorce is asked for on the grounds of infidelity. The law contains more precise provisions regarding the duty of the parties to meet before the mediator and the tasks of the mediator

[1] Note furnished by the Government of Norway.

have been laid down in detail. The parties can still choose between church and civic mediation.

B. INTERNATIONAL AGREEMENTS

1. *United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, of 19 December 1962*

Norway acceded to this Convention in 1964.

2. *European Convention on Human Rights*

The jurisdiction of the European Court of Human Rights was recognized by Norway in 1964.

C. JUDICIAL DECISIONS

There were no judicial decisions in 1964 which had a bearing on human rights.

PAKISTAN

THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN[1]

PREAMBLE

Whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority exercisable by the people[2] [within the limits prescribed by Him] is a sacred trust :

...

And whereas it is the will of the people of Pakistan that :

...

(*c*) the Muslims of Pakistan should be enabled, individually and collectively, to order their lives in accordance with the teachings and requirements of Islam[3] [as set out in the Holy Quran and Sunnah];

...

PART I

The Republic of Pakistan

1. (1) The State of Pakistan shall be a Republic under the name of the[4] [Islamic Republic of Pakistan].

...

PART II

Fundamental Rights and Principles of Policy[5]

Chapter 1[6]

FUNDAMENTAL RIGHTS

THE RIGHTS

I. SECURITY OF PERSON AND FREEDOM OF MOVEMENT

1. *Security of person*

No person shall be deprived of life or liberty save in accordance with law.

2. *Safeguards as to arrest and detention*

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in sub-paragraphs (1) and (2) shall apply to any person :

(*a*) who for the time being is an enemy alien; or

(*b*) who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorize the detention of a person for a period exceeding three months unless the appropriate Advisory Board has reported before the expiration of the said period of three months that there is, in its opinion, sufficient cause for such detention.

Explanation. — In this sub-paragraph, « the appropriate Advisory Board » means :

(i) in the case of a person detained under a Central Law, a Board consisting of a Judge of the Supreme Court, who shall be nominated by the Chief Justice of that Court, and a senior officer in the service of Pakistan, who shall be nominated by the President; and

(ii) in the case of a person detained under a Provincial Law, a Board consisting of a Judge of the High Court of the Province concerned, who shall be nominated by the Chief Justice of that Court, and a senior officer in the service of Pakistan, who shall be nominated by the Governor of that Province.

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order ;

Provided that the authority making any such order may refuse to disclose facts which such authority considers it to be against the public interest to disclose.

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[1] Text printed by the Manager, Government of Pakistan Press, Karachi, published by the Manager of Publications, Karachi, 1965 and furnished by the Government of Pakistan. In this text have been incorporated the amendments pertaining to human rights made to the Constitution of the Republic of Pakistan of 1962 by the Constitution (First Amendment) Act, 1963 (1 of 1964). For extracts from the Constitution of 1962, see *Yearbook on Human Rights for 1962*, pp. 225-231.

[2] Inserted by the Constitution (First Amendment) Act, 1963 (1 of 1964), section 2.

[3] Added *ibid.*

[4] Substituted by the Constitution (First Amendment) Act, 1963 (1 of 1964), section 3, for " Republic of Pakistan ".

[5] Substituted by the Constitution (First Amendment) Act, 1963 (1 of 1964), section 4, for " Principles of Law-making and of Policy ".

[6] Substituted *ibid.*, for the original Chapter 1.

3. *Slavery and forced labour prohibited*

(1) No person shall be held in slavery, and no law shall permit or in any way facilitate the introduction into Pakistan of slavery in any form.

(2) All forms of forced labour are prohibited.

(3) Nothing in this paragraph shall be deemed to affect compulsory service :

(*a*) by persons undergoing punishment for offences against any law; or

(*b*) required by any law for public purposes.

4. *Protection against retrospective punishment*

No law shall authorize the punishment of a person:

(*a*) for an act or omission that was not punishable by law at the time of the act or omission; or

(*b*) for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.

5. *Freedom of movement*

Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to move freely throughout Pakistan and to reside and settle in any part thereof.

II. Freedom of Assembly, Association and Vocation

6. *Freedom of assembly*

Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order.

7. *Freedom of association*

Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of morality or public order.

8. *Freedom of trade, business or profession*

Every citizen, possessing such qualifications, if any, as may be prescribed by law in relation to his profession or occupation, shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business :

Provided that nothing in this paragraph shall prevent :

(*a*) the regulation of any trade or profession by a licensing system; or

(*b*) the regulation of trade, commerce or industry in the interest of free competition therein; or

(*c*) the carrying on, by the Central or a Provincial Government or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.

III. Freedom of Speech

9. *Freedom of speech*

Every citizen shall have the right to freedom of speech and expression, subject to any reasonable restrictions imposed by law in the interest of the security of Pakistan, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

IV. Freedom of Religion

10. *Freedom to profess religion and to manage religious institutions*

Subject to law, public order and morality :

(*a*) every citizen has the right to profess, practice and propagate any religion; and

(*b*) every religious denomination and every sect thereof has the right to establish, maintain and manage its religious institutions.

11. *Safeguard against taxation for purposes of any particular religion*

No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.

12. *Safeguards as to educational institutions in respect of religion, etc.*

(1) No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own.

(2) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination.

(3) No citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste, or place of birth.

(4) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation.

(5) Every religious community or denomination shall have the right to establish and maintain educational institutions of its own choice, and the State shall not deny recognition to any such institution on the ground only that the management of such institution vests in that community or denomination.

(6) Nothing in his paragraph shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.

V. Property Rights

13. *Provision as to property*

Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to acquire, hold and dispose of property.

14. *Protection of property rights*

(1) No person shall be deprived of his property save in accordance with law.

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose,

and save by the authority of law which provides for compensation therefor and either fixes the amount of compensation or specifies the principles on which and the manner in which compensation is to be determined and given.

(3) Nothing in this paragraph shall affect the validity of :

(*a*) any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or

(*b*) any law relating to the acquisition, administration, or disposal of any property which is or is deemed to be evacuee property under any law; or

(*c*) any law providing for the taking over by the State for a limited period of the management of any property for the benefit of its owner; or

(*d*) any law in force immediately before the coming into force of the Constitution (First Amendment) Act, 1963.

Explanation. — In sub-paragraphs (2) and (3), " property " shall mean immovable property, or any commercial or industrial undertaking, or any interest in any such undertaking.

VI. Equality of Citizens

15. *Equality of citizens*

All citizens are equal before law and are entitled to equal protection of law.

VII. Access to Public Places

16. *Non-discrimination in respect of access to public places*

In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex or place of birth, but nothing herein shall be deemed to prevent the making of any special provision for women.

VII. Discrimination in Services

17. *Safeguard against discrimination in services*

(1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth :

Provided that for a period of fifteen years from the coming into force of the Constitution (First Amendment) Act, 1963, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan :

Provided further that in the interest of the said service, specified posts or services may be reserved for members of either sex.

(2) Nothing in this paragraph shall prevent any Provincial Government or any local or other authority in a Province from prescribing, in relation to any class of service under that Government or authority, conditions as to residence in the Province prior to appointment under that Government or authority.

IX. Culture, Script and Language

18. *Preservation of culture, script and language*

Any section of citizens having a distinct language, script or culture shall have the right to preserve the same.

X. Untouchability

19. *Abolition of untouchability*

Untouchability is abolished, and its practice in any form is forbidden and shall be declared by law to be an offence.

Chapter 2

PRINCIPLES OF POLICY

...

[(3)[7] The National Assembly, a Provincial Assembly, the President or a Governor, may refer to the Advisory Council of Islamic Ideology for advice any question as to whether a proposed law is or is not repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah.]

PRINCIPLES OF POLICY

[1.[8] *Islam*

No law shall be repugnant to the teachings and requirements of Islams as set out in the Holy Quran and Sunnah and all existing laws shall be brought in conformity with the Holy Quran and Sunnah.

Explanation. — In the application of this principle to the personal law of any Muslim sect, the expression " Quran and Sunnah " shall mean the Quran and Sunnah as interpreted by that sect.]

[1A].[9] *Islamic Way of Life*

...

PART III

The Centre

...

Chapter 2

THE CENTRAL LEGISLATURE

...

30. (1) If the President is satisfied that a grave emergency exists :

(*a*) in which Pakistan, or any part of Pakistan, is (or is in imminent danger of being) threatened by war or external aggression; or

(*b*) in which the security or economic life of Pakistan is threatened by internal disturbances beyond the power of a Provincial Government to control,

the President may issue a Proclamation of Emergency.

(2) A Proclamation of Emergency shall, as soon as is practicable, be laid before the National Assembly.

...

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[7] Clause (3) added by the Constitution (First Amendment) Act, 1963 (1 of 1964), section 4.

[8] Principle 1, inserted *ibid.*

[9] The original Principle 1, re-numbered as Principle 1A, *ibid.*

[(9) [10] While a Proclamation of Emergency is in force, the President may, by Order, declare that the right to move a High Court for the enforcement of such of the fundamental rights conferred by Chapter 1 of Part II of this Constitution as may be specified in the Order, and all proceedings pending in Courts for the enforcement of the rights so specified, shall remain suspended for the period during which the Proclamation is in force.]

...

[10] Clause (9) added by the Constitution (First Amendment) Act, 1963 (1 of 1964), section 5.

ORDINANCE No. 10 OF 1964

An Ordinance further to amend the Security of Pakistan Act, 1952 [11]

2. Amendment of section 3, Act XXXV of 1952. — In the Security of Pakistan Act, 1952 (XXXV of 1952), hereinafter referred to as the said Act, in section 3, for subsection (7A) the following shall be substituted, namely:

" (7A) A person shall not be detained under an order made under clause (*b*) of subsection (1) for a period exceeding three months unless a Board consisting of a Judge of the Supreme Court, who shall be nominated by the Chief Justice of that Court, and a senior officer in the service of Pakistan, who shall be nominated by the President, has reported before the expiration of the said period of three months that there is, in its opinion, sufficient cause for such detention. "

3. Amendment of section 6A, Act XXXV of 1952. — In the said Act, in section 6A, in subsection (2), for the words " longer than two months " the words " exceeding three months " shall be substituted.

[11] Text furnished by the Government of Pakistan. For the text of the Security of Pakistan Act, 1952, see *Yearbook on Human Rights for 1952*, pp. 212-216.

PERU

NOTE[1]

AGRARIAN REFORM AND LAND SETTLEMENT INSTITUTE

Legislative Decree No. 14238, which was enacted on 16 November 1962 by a Military Junta and which laid down principles for the agrarian reform in the country, was superseded by Land Reform Act No. 15037, promulgated by the present Constitutional Government on 21 May 1964. In article 1, this Act defines land reform as a complete, peaceful and democratic process designed to transform the agrarian structure of the country and facilitate the economic and social development of the nation through the implementation of the various measures described in detail in the Act, which has 248 articles, two special provisions and four transitional provisions.

The general principles underlying Legislative Decree No. 14238 are reflected in the spirit and letter of Act No. 15037, which lays down in the first two articles that: land reform legislation shall guarantee and regulate the right to the private ownership of land so that it is used in accordance with the social interest; extend and consolidate small and medium-sized properties worked directly by their owners; guarantee the integrity of the right of ownership of the indigenous communities to their lands; promote co-operative organization and standardized community systems of land exploitation; ensure the proper conservation, use and recovery of natural resources and in particular irrigation waters; regulate agrarian contracts for the progressive abolition of indirect forms of land working so that the land should be the property of the person working it; progressively standardized rural labour conditions and social security; promote crop and stock breeding development; and organize rural credit, to put it within the reach of the rural inhabitants.

[1] Note furnished by the Government of Peru.

POLAND

PROTECTION OF HUMAN RIGHTS IN LEGISLATION AND JURISDICTION, 1964[1]

I. LEGISLATION

1. Criminal Law

A decree on amnesty was issued on 20 July 1964 (*Journal of Laws*, No. 27, item 174). The general pardon proclaimed on the 20th anniversary of the Polish People's Republic enables persons having committed for the first time relatively minor offences to return to a normal honest life. In principle it provides for complete reprieve of sentences up to one year and cuts by half sentences up to two years.

Remitted also are fines independently adjudicated and amounting up to 5 000 Złotys, and if the fine was an additional penalty to the punishment of imprisonment, up to 1 000 Złotys.

For humanitarian reasons, in a general sense, the amnesty embraces certain groups of persons deserving special treatment, viz:

(1) women charged with the upbringing of children up to fourteen years of age;

(2) elder people: men over sixty years, women over fifty-five years; and

(3) juveniles who at the time of breaking the law were under eighteen years of age. For that category of persons the amnesty is broader. Sentences up to two years are completely remitted, and those from two to three years are cut by half. More leniently, in addition, are treated certain offenses committed by persons who, as a rule, are not aware of the serious consequences of their wrong-doing. This group of offenses includes primarily road accidents and the so-called clerical service offenses, and they are listed in the decree as follows:

(1) clerical service offenses consisting in the negligence of incumbent duties or in the abuse of rights, if the purpose of the offense was not personal profit (art. 286, para. 1 of the Criminal Code), and if the ensuing damage does not exceed 100 000 Złotys;

(2) road accidents, unless they are caused in a state of drunkenness and unless they result in death or serious injury;

(3) offences done unwittingly.

As regards these offences, sentences from two to five years are cut by half.

Excluded from the amnesty are several crimes affecting society so gravely that neither the present state of delinquency in our country nor present penal policies justify a remission or mitigation of punishment. They are: (1) ruffianly crimes, hooliganism; (2) robbery; (3) bribery and paid favours; (4) arson, sabotage or intentional destruction of public property, if the damages caused exceed 3 000 Złotys; (5) offences of currency regulations committed in particularly aggravating circumstances which are carefully defined in the criminal-and-fiscal law of 13 April 1960 (*Journal of Laws*, No. 21, item 123).

Excluded from the amnesty altogether are all habitual criminals (recidivists); the law defines recidivism as relapse into crime of the same kind or due to the same motives within the period of five years after full consumption of the sentence to imprisonment or at least of one-third of it, but not less than three months. The amnesty does not apply to crimes against property committed within five years from a binding sentence for previous theft of public or private property, even if the delinquent has not served his sentence at all.

Characteristic of the decree on amnesty is the provision contained in article 8 which opens the gate to normal honest life to persons who have entered the road to crime and are involved in some undetected racket or gang but wish to abandon it, disclose the circumstances of the committed crime and avail themselves of the amnesty. Thus the provision on disclosure gives a great chance to persons desiring to break with their criminal past and help restore the inflicted wrong. It enables them to return to an honest life by removing or largely mitigating the punishment threatening them.

2. Work, Pay and Social Insurance

No major changes have taken place in statutory law. In 1964 attention was focused on the application of the pertinent fundamental laws in existence and on the effective provision of employment for persons applying for jobs. For this purpose, public needs permitting, the following endeavours were made:

(*a*) to secure vacancies for persons graduating from primary and secondary vocational schools in 1964. All of these graduates acually obtained employment in that year.

(*b*) To employ persons who were released from prisons and other penal institutions according to the decree on amnesty of 20 July 1964. Ministers, heads of central offices and chairmen of the praesidia of people's councils, of cities exempt from the authority and of *voievodship* people's councils, were directed to provide employment for persons par-

[1] Note furnished by the Government of Poland.

doned by the amnesty law, and moreover managements of work establishments and enterprises were recommended to extend to these persons help and to create for them the proper atmosphere in office or factory, so as to enable them to join the community.

(*c*) A law on the structure of the bar was issued on 19 December 1963 (*Journal of Laws*, No. 57, item 309) binding as of 1 January 1964. This law extends social insurance to barristers and advocates, being thus a further step towards the application of articles 22 and 25 of the Universal Declaration of Human Rights.

(*d*) As regards the sphere envisaged by article 23, point 3 of the Universal Declaration of Human Rights, attention may be drawn to the provisions contained in the Code of Civil Procedure (*Journal of Laws*, No. 43, item 296) which facilitate the settlement of labour claims and provide for the proper protection of workers' rights.

In 1964 the average real pay increased by 2.8 per cent in comparison with 1963. Apart from raising remuneration, efforts are made to improve the methods by which the wages and salaries fund is distributed among the employed, tending in particular to:

— make the amount of remuneration more closely dependent on the productive effects of labour;

— increase the part occupied by the constant wages or salary within the entire amount of the worker's earnings, so that his basic remuneration becomes decisive for the standard of his earnings and balances his budget.

3. Health Protection

The following legal rules were issued:

(*a*) Order of the Minister of Health and Social Welfare of 10 February, 1964, on reporting incidents, suspected incidents, and cases of death because of contagious diseases (*Journal of Laws*, No. 7, item 46). This order makes it incumbent upon certain persons to report such incidents of contagious diseases, real or suspected, and of cases of death caused by such sickness, in order to prevent the spread of contagious diseases.

(*b*) Order of the Minister of Health and Social Welfare of 30 October 1964, regarding obligatory inoculation for contagious diseases (*Journal of Laws*, No. 40, item 273). That order makes it binding upon every person staying on the territory of Poland to undergo inoculation for contagious diseases. It unifies and codifies the hitherto existing provisions on particular contagious diseases and introduces obligatory inoculation for certain new diseases.

(*c*) Order of the Minister of Health and Social Welfare of 2 September 1964, on medical examination for the purpose of detecting venereal diseases (*Journal of Laws*, No. 34, item 223). These examinations make it possible to subject to obligatory treatment persons suffering from venereal diseases and to prevent thereby the further spread of this social ill.

4. Family and Guardianship Law, as well as Civil Law

In 1964 two major acts were adopted:

Family and Guardianship Code (*Journal of Laws*, No. 9, item 59), and

Civil Code (*Journal of Laws*, No. 16, item 93).

As regards the rights of family, women and children, the following major changes were introduced:

Marriage

(1) The Code raises the marriageable age of men to twenty-one years, with the provision, however, that the guardianship court may issue permission to a man of eighteen to enter into marriage. The limit of marriageable age for women (18 years) has not been moved. Nor has the provision been repealed under which the guardianship court may allow a woman of sixteen to marry.

(2) In order to secure the stability of matrimony, an interdiction has been introduced prohibiting incapacitated persons from contracting marriage.

(3) The Code contains an additional requirement ordering that a marriage shall not be contracted prior to the expiry of one month from the date on which the persons intending to enter into marriage submit to the civil registrar a written statement that they are not aware of any legal impediments to the marriage. That monthly term is not binding if one of the future spouses is in imminent danger of his life. Moreover, the supervisory authority over the registry office may grant permission for an earlier marriage.

(4) The Code sets down also a new rule under which either spouse may keep his or her former surname. In that event the spouses, upon contracting marriage, may establish which of their surnames would be borne by their future children.

(5) The matrimonial property régime (community of earnings as legal community) has been retained as a principle. Nevertheless, there have been introduced several substantial changes tending to broaden the scope of the legal community. The most significant consists in including into the legal community remuneration for work or other services. That change is of special importance to married couples whose work is actually so distributed that one of the spouses is gainfully employed and the other attends to the household and brings up the children. It is intended to factually balance both functions and consequently to lead to full equality of the spouses.

(6) The area of marital property agreements has also been broadened. The Code allows for a contractual extension, limitation, or complete exclusion of the legal community and acceptance of a régime of separate property under which each of the spouses keeps also that part of property which he acquires during matrimony, manages it and decides upon it independently.

(7) Regulations governing the division of common property after the discontinuance of legal community have been considerably changed. At present it is possible to depart much further from the principle of equal shares and, consequently, to evaluate the

extent to which each of the spouses has contributed to the common property.

(8) Concerning divorce there are only slight modifications. The fundamental reason for divorce, consisting in complete and permanent dissolution of conjugal life, has been kept intact. Retained has been also the negative reason prohibiting grant of divorce if it might adversely affect the interests of minor children. Under a new negative rule divorce is also exluded in cases where, on additional grounds, it would be contrary to the principles of community life.

The Code upholds the principle that divorce is inadmissible if requested by the spouse exclusively guilty of the decomposition of conjugal life. Divorce may, however, be granted, if the other spouse agrees or if the refusal of consent by the other spouse is under the circumstances of the case contrary to the principles of community life.

(9) The obligation to provide alimony carried by the spouse who is exclusively guilty of the divorce has been extended. The innocent spouse will be able to demand of the spouse exclusively guilty of the divorce to provide alimony designed to satisfy justified needs, if the divorce has substantially worsened his financial situation. Adjudication of such a claim, however, depends on the satisfaction of the court.

Admissibility of a maintenance allowance exceeding the limits of sheer want is mainly aimed at securing a decent standard of life to the spouse who during the marriage devoted himself entirely to the household and upbringing of children, did not acquire the necessary occupational abilities and, in consequence of the divorce, has found himself through no fault of his own in strained circumstances.

(10) The Code preserves the rule that the duty of providing alimony falling upon the spouse not guilty of the divorce is binding only within five years after the pronouncement of the divorce. In exceptional circumstances, however, the court may, upon the request of the entitled person, extend that period by another five years.

Relationship

(1) Several minor changes may be found in the provisions respecting the origin of the child. They are intended to adjust more accurately certain particular questions where such regulations are vital for social reasons. Changes of substance concerning relationship are less numerous.

One of the significant modifications consists in facilitating the acknowledgement of a child in case of imminent danger to the father's life. In such case acknowledgement may be made not only before the guardianship court or head of the registry office but also before any member of the praesidium of the local people's council, or before a notary.

(2) The possibility to give a child the surname of the stepfather has been extended. According to the new rules, the stepfather's surname may be conferred upon the child not only in the event of the father being unknown but also if he is known, but the child bears the surname of his mother or if the surname of the father has been given the child upon judicial determination of paternity.

(3) The Code preserves the legal structure of parental authority.

Major changes relate to the exercise of parental authority over a minor child if divorce has been pronounced, or if the marriage has been anulled, or if the parents of the minor child are not married, or if they are spouses but live in separation. A new provision enables the authorities to entrust, in such cases, the exercise of parental authority to one of the parents only, limiting the authority of the other parent to certain particular rights and obligations.

(4) The Code establishes two forms of adoption: full and non-full. Full adoption (*adoptio plena*) consists in the complete inclusion of the adoptee into the new family. The consequence of such adoption is the acquisition by the adoptee of rights and obligations resulting from the relationship with respect to the blood relatives of the adopter and the extinction of rights and obligations of the adoptee towards his own blood relatives. These consequences include also inheritance.

The results of non-full adoption (*adoptio minus plena*) are confined only to the mutual relationship between the adopter on one side, and the adoptee and his descendants on the other. Non-full adoption has no consequences as to relations between the adoptee and the relatives of the adopter. Relations of the adoptee and his natural family, however, undergo certain changes. Thus the obligation to provide subsistence for the adoptee falling upon his relatives of the ascending line, as well as on his brothers and sisters, is preserved, but only in second turn after the duty of the adopter. And again, the obligation of the adoptee to provide subsistence for his relatives of the ascending line, as well as for his brothers and sisters, is upheld, but comes last.

Also the rights of relatives to inherit from the adoptee have been modified.

(5) The Code establishes the institution of so-called anonymous adoption. It means that the parents may express their consent to adoption without indicating the person of the adopter. This is to serve as a means to specialized centres to apply a more effective adoption policy, and, moreover, as a preventive step against possible future disclosure that the child was adopted.

(6) Consent to adoption may be expressed by the parents only upon expiry of a month after the birth of the child. The purpose of this rule is to prevent hasty and immature decisions taken by parents immediately after the birth of the child.

(7) The Code carries an extremely necessary new regulation permitting to change the first name of the child in the pronouncement of adoption.

(8) The Code removes the possibility of extinguishing the adoption by notarial agreement. It emphasizes at the same time that dissolution of the adoption may take place only for important reasons, and prohibits dissolution if it were to infringe the interests of a minor child.

(9) The question of providing maintenance has been regulated in the Code in more detail. The foremost substantive change is contained in the provision by virtue of which a mutual maintenance

obligation is established as between the stepchild and the stepfather or stepmother. The rule on that obligation has been framed in a specific fashion: it operates only in so far as it corresponds to the principles of community life, and, moreover, upon the condition that the entitled stepfather or stepmother, contributed in the past to the upbringing and maintenance of the stepchild.

Guardianship

The Code provides for a new, i.e. institutional, form of guardianship. It empowers the Minister of Justice to determine the principles and procedure by which guardianship may be entrusted to educational institutions or community organizations, and also to define the manner of exercizing that guardianship. Under the former Family Code, guardianship was always individual.

Participation of the Procurator

Rules on participation of the procurator in civil proceedings are based on the principle that in non-property cases of family law the procurator may sue a person in court only in circumstances defined by law. The right of the procurator to sue in such cases is to be of an independent character, so that such complaints will not be ruled by the general provisions of the Code on Civil Procedure determining the place occupied by the procurator in the lawsuit.

The rights of the procurator have been broadly outlined in the Code. He will be able to enter suit for annulment of marriage, for establishment or denial of the origin of a child, for annulment of the acknowledgement of a child, and for dissolution of adoption. It will be inadmissible for the procurator to enter suit for divorce.

Inheritance Law

The Civil Code introduces provisions improving the situation of the surviving spouse. In collision with descendants he is to inherit on an equal footing with them, but he obtains always at least one-fourth of the entire inheritance. The share of inheriting parents is also bigger.

Since the Family and Guardianship Code creates full and non-full adoption, the inheritance law is appropriately changed as to legal inheritance concerning the relationship of adoption.

II. COURT JURISDICTION

In its pronouncement of 10 March 1964 (Ref. No. I K.295/63) the Supreme Court determined that each defendant has the constitutional right to protection; he has the right to use the assistance of counsel and may have even three counsels, and the court has the absolute obligation to notify each counsel of the date of the trial.

In its sentence passed on 26 May 1964 (Ref. No. III Cr.105/63) the Supreme Court stated that the appealing party was correct in his objection charging both lower courts with neglect to consider — while assigning indemnity to the plaintiff — whether payment of such a big sum of money was not an excessive burden to the defendants, who would not be able to meet it without infringing their means of subsistence.

In its sentence of 27 January 1964 (Ref. No. II Cr.760/64) the Supreme Court maintained that the damage suffered by the plaintiff consisted not only in forfeiture of the difference between the obtained and expected earnings but primarily in greater needs resulting from the necessity to avail herself of the care of another person. The Supreme Court deemed also the defendant's view incorrect, i.e. that plaintiff could have asked for the above equivalent only if she had proved that the respective sums had been actually expended to cover the charges of care. The circumstance that plaintiff was attended to by members of her household did not deprive her of the right to demand pension as provided for by chap. 2 of art. 161 of the Civil Code, similarly as plaintiff may not be deprived of damage pension for the past term because of the fact that she had been supported by her family during that time.

In its sentence of 14 May 1963 (Ref. No. II P.R.220/64) the Supreme Court considered that if an employed person, contrary to his employer's wish, had not started using his holiday, that circumstance did not mean for the employer remission of his duties ensuing from the legal provisions on the protection of life and health of the employed. Rules of the law on holidays, while charging the employer merely with duties, concede to the employed person subjective rights, and it is one of the distinguishing marks of subjective rights that the entitled person has no duty but the possibility to use these rights.

In its sentence of 5 February 1964 (Ref. No. II P.R.72/63) the Supreme Court maintained that a member of the Enterprise Council excused from his professional or vocational duties should receive the same remuneration which he would obtain if he were not dispensed from the duties of his former job or post.

In its sentence of 6 February 1964 (Ref. No. II PR.237/63) the Supreme Court stated the following :

The party entitled to issue or change references designed for an employed person is exclusively the employing legal person, that legal person being designated as work establishment in the Order No. 284 of the President of the Council of Ministers, dated 13 October 1956 (*Monitor Polski*, No. 86, item 998). Consequently, since plaintiff received his references from the work establishment but, nevertheless, continues to demand issuance, his claim may be understood only as a demand for issuance of references in the manner formally corresponding to the requirements described in the above-cited Order No. 284 of the President of the Council of Ministers, in other words of references drawn up with the participation of a representative of the enterprise (local) council, or after due consultation of contents of the references with the enterprise (local) council.

Should it transpire that within four days as of the receipt of references the plaintiff turned to the supervisory authority over the work establishment with the request to have these references corrected, or should it appear that he has not been informed of the manner and procedure of appeal (art. 99,

para. 1, of the Code of Civil Procedure), then the Voisevodship Court may suspend proceedings in the case (art. 191, para. 3, of Code of Civil Procedure) until proceedings regarding issuance of the references are concluded. If it turns out, however, that the plaintiff was given his references correctly agreed upon by trade union representatives, then the complaint is dismissed. Contrariwise, if the references were issued without the understanding of the trade union local, the plaintiff's claim should be regarded as justified in the light of the above explanation. Order No. 384 of the President of the Council of Ministers confers upon the employed the subjective right consisting in the obligation of the employing legal person to issue and deliver, upon request of the employed, references in writing and into his own hands. The references, of course, should be drawn up in the manner prescribed by the Order as quoted above.

III. INTERNATIONAL AGREEMENTS

1. Convention Against Discrimination in Education adopted in Paris on 14 December 1960, at the General Conference of UNESCO, ratified by the Polish People's Republic on 13 July 1964, and published in *Journal of Laws*, of 1964, No. 40, item 268.

2. Convention No. 115 Concerning the Protection of Workers Against Ionizing Radiations adopted in Geneva on 22 June 1960, at the General Conference of ILO, ratified by the Polish People's Republic on 19 October 1964, and published in *Journal of Laws*, of 1965, No. 8, item 45.

3. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, open to signature as of 10 December 1962, in New York, ratified by the Polish People's Republic on 18 December 1964, and published in *Journal of Laws*, of 1965, No. 9, item 53.

PORTUGAL

NOTE[1]

I. LEGISLATION

During the year 1964, no constitutional diploma or amendment to the constitution was enacted relating to human rights. However, the legislation listed below, published during the year under consideration, was more or less connected with that subject. The respective texts are available in the corresponding official publication.

1. *Decree No. 45,523 of 2 January* alters various provisions of Decree No. 43,712, which reorganizes the Mission for the Fight of Trypanosomiasis in Mozambique.

2. *Decree No. 45,540 of 22 January* establishes the Student's Hostel of Sá da Bandeira, in Angola, destined for male students frequenting higher, middle and secondary courses of education.

3. *Decree No. 45,541 of 23 January* promulgates the Rules for the Overseas Health and Assistance Services.

4. *Decree No. 45,542 of 25 January* establishes in the overseas provinces of Angola and Mozambique free sholarships for the training of therapeutical technicians to serve with the Health and Assistance Services.

5. *Notice published in the Government Gazette (Diário do Governo) of 8 February* makes public the signature in Lisbon, in the name of the Governments of Portugal and France, of an agreement relating to migration, recruitment and settlement of Portuguese labourers in France.

6. *Notification No. 20,380 of 19 February* orders the publication in the overseas provinces of Legislative Decree No. 42,994 concerning the programmes of primary education and the taking into account of the alterations and additions set out in the said notification.

7. *Legislative Decree No. 41,591 of 3 March* sets up the Health and Assistance Centre for Mothers and Children " Doctor Bissaia Barreto ", to function in the building annexed to the Maternal Institute and in the quarters which make up the complex of assistance of the " Quinta da Rainha " of Coimbra.

8. *Legislative Decree No. 45,610 of 12 March* gives a new wording to various articles of Legislative Decree No. 26,643, which promulgated the reorganization of prison services.

9. *Notification No. 20,471* of *24 March* re-adjusts the amounts of the lowest pensions for disablement and old age to be paid by the provident trust funds of syndicates and by the retirement or provident trust funds to which employer entities contribute.

10. *Notification No. 20,473 of 25 March* revises the rules for the granting of free sholarships to students from overseas provinces.

11. *Decree No. 45,623 of 27 March* permits individuals who were serving in the province of the State of India, at the date of events which occurred there, as temporary, daily-wage or eventual workers, to apply for being posted in another overseas province.

12. *Legislative Decree No. 45,636 of 31 March* sets up various establishments of secondary (lyceum) education with male, female or mixed attendance, fixes the teaching cadres for the said establishments and also enlarges the cadre of school doctors and lady-visitors to be found in the annex to Legislative Decree No. 37,869.

13. *Notification No. 20,486 of 2 April* approves the rules for the granting of free sholarships and of exemptions or reductions of tuition fees for students of the Institute for Social Studies.

14. *Notice published in the Government Gazette (Diário do Governo) of 9 April* makes public the signing of an Agreement relating to the migration, recruitment and settlement of Portuguese labourers in the Netherlands.

15. *Decree No. 45,653 of 11 April* regulates the granting of expenses for first passages, passages for enjoying holidays, and return passages in respect of students from overseas provinces.

16. *Legislative Decree No. 45,682 of 25 April* lays down that the money collected by the " Comissão Administrativa do Livro Unico " created by Legislative Decree No. 30,660 be allocated for assistance to needy students frequenting the primary education establishments.

17. *Notification No. 20,536 of 25 April* regulates the granting of subsidies for movement to and from or transportation of students frequenting the 4th grade of primary education course in government schools and desirous of coming to register themselves in any government establishment dispensing secondary education.

18. *Legislative Decree No. 45,684 of 27 April* brings up to date the rules for the granting of retirement or disablement pensions to those serving with the three branches of the armed forces.

19. *Legislative Decree No. 45,688 of 27 April* promulgates the rules of assistance during illness to civilian employees of the Government.

20. *Notification No. 20,587 of 14 May* sets up a temporary study mission of the Institute of Tropical

[1] Note furnished by the Government of Portugal.

Medicine, which will proceed to the overseas province of Timor for the purpose of studying the local aspects of a number of endemic diseases.

21. *Decree No. 45,722 of 19 May* fixes the periods for the election of members of administrative bodies in all the overseas provinces and for the district boards in the provinces of Angola and Mozambique.

22. *Decree No. 45,734 of 27 May* sets up in the Ministry a commission which will have as its objective the study of the development and general application of social protection of rural workers and their families to be known as the Commission of Rural Social Politics (Comissão da Política Social Rural).

23. *Legislative Decree No. 45,744 of 1 June* authorizes the Ministry of Public Works to promote, through the agency of the Municipal Corporation of Almeida, either by contract or by any other system adequate in the circumstances, to construct twenty-five houses destined for low-income families which will be displaced during the work of restoration and re-evaluation of the said town, both the work of restoration and that of re-evaluation to be undertaken at the expense of the State.

24. *Legislative Decree No. 45,758 of 12 June* approves, for ratification, the Convention of the International Labour Organization No. 98, concerning the right of organization and collective bargaining, of 1949.

25. *Notice published in the Government Gazette (Diário do Governo) of 24 June* makes public that the Portuguese Government has deposited the letter of confirmation and ratification of Convention No. 89 of the International Labour Organization, regarding night work by women in industrial establishments (revised in 1948).

26. *Decree No. 45,785 of 30 June* promulgates the Constitution of the Permanent Mission for the Study and Fight against Sleeping Sickness and Other Endemic Diseases of Guinea, which is to be called " Mission for the Fight against the Trypanosomiasis of Guinea ".

21. *Legislative Decree No. 45,810 of 9 July* extends the period of compulsory education.

28. *Decree No. 45,818 of 15 July* promulgates the General Regulations for the Technical Schools, of the Health and Assistance Services in the Overseas Provinces.

29. *Legislative Decree No. 45,822 of 18 July* authorizes the Directorate-General of the Public Revenue Office to grant, on a permanent basis, to the Central Board of the " Casa dos Pescadores " (Fishermen's Guild) the building belonging to the State and situated at Povoa do Varzim, where the lyceum of the town formerly functioned, so that a new construction may be raised there for the purpose of housing the centre of social assistance to the fishermen of that town.

30. *Notification No. 20,696 of 25 July* approves and orders the application of the Rules for Alloting Low Rent Houses to the Social Services of the Public Security Police.

31. *Decree No. 45,832 of 25 July* alters the designation of the course for the training of teachers and other agents for the teaching of abnormal children, established in the António Aurelio da Costa Ferreira Institute, and regulates the registration and functioning of the same.

32. *Legislative Decree No. 45,888 of 24 August* regulates the participation in the plenary sessions of the Overseas Council by members elected by the overseas provinces in terms of article 1 of Legislative Decree No. 45,184.

33. *Legislative Decree No. 45,908 of 10 September* promulgates the revision of the elementary primary education courses to be administered in the overseas provinces.

34. *Decree No. 45,928 of 16 September* regulates the functioning and distribution of the Social Action Fund for Labour to be set up in the overseas provinces.

35. *Decree No. 45,955 of 10 October* authorizes the administrative council of the Social Services of the National Republican Guard to sign a contract for the execution of the contract for building forty-eight hearths on lots Nos. 114 to 119 in Olivais Norte, for the lodging of corporals and privates of the National Republican Guard.

36. *Legislative Decree No. 45,970 of 17 October* makes applicable to all persons mutilated, injured or in any manner incapacitated while on State service, the provisions of Legislative Decree No. 44,356 which lays down that their children should be admitted, educated or lodged in all State educational institutions without having to pay any fees or at reduced fees.

37. *Legislative Decree No. 46,027 of 13 November* regulates the exercise of the right to repossess properties or interests expropriated at the instance of public authorities, whatever may be the basis invoked for the action.

38. *Notification No. 20,918 of 17 November* orders the application of various provisions of the regulations for the Middle Agricultural Education Course, approved by Decree No. 38,026, as altered, in the overseas province of Angola.

39. *Decree No. 46,094 of 23 December* authorizes the Directorate-General of National Building and Monuments to sign a contract for the planning of a building for poor cancer patients (internment pavilion) in the Portuguese Institute of Oncology and for providing the respective technical assistance.

40. *Legislative Decree No. 46,097 of 23 December* extends to the suburban zones of Lisbon and Oporto, for the purpose of utilizing the amounts mentioned in Legislative Decree No. 36,606, the application of that diploma in so far as it refers to the construction of low-rent houses in those cities and permits the Directorate-General of National Buildings and Monuments to proceed to acquire directly the lands required for the said construction and for development.

41. *Legislative Decree No. 46,102 of 23 December* permits the creation of the mental health centres provided for in basis VIII of Law No. 2,118, by notifications issued by the Ministry of Health and Assistance.

42. *Legislative Decree No. 46,104 of 24 December* inserts dispositions relating to the inclusion in the census of voters of members of military forces dis-

located from the metropolis for service in the overseas provinces. Permits governors of the provinces to authorize, on a proposal made by the commanders of military regions, that members of armed forces carrying certificates qualifying them as voters to take part in the election of Deputies to the National Assembly, in the case of units stationed outside the county seats or other administrative posts in those provinces.

43. *Legislative Decree No. 46,106 of 26 December* authorizes the Minister for the Navy to take measures with a view to ensure assistance during illness to the personnel employed in the National Rope Factory (Cordoaria) as well as to organize the protection and assistance to the female workers during pregnancy and during the time they have to rear children up to the age of four years.

44. *Legislative Decree No. 46,133 of 31 December* sets up, in the Ministry of National Education, the Institute of Audio-Visual Methods of Education, and defines its objectives and faculties.

45. *Legislative Decree No. 46,136 of 31 December* sets up a school for teaching courses in radio-broadcasting and television in schools, situated in a dependency of the Institute of Audio-Visual Methods of Education, in the Ministry of National Education.

II. JUDICIAL DECISIONS

As for judicial decisions, the following judgements of the Supreme Court of Justice, are listed as having special interest for the subject in question:

1. *Judgement dated 25 February 1964* (*Bulletin of the Ministry of Justice*, No. 135, p. 420) that an accusation for a crime provided for in law, when made negligently, can become an unlawful act capable of giving rise to civil responsibility.

2. *Judgement of 10 July 1964* (*Bulletin of the Ministry of Justice*, No. 139, p. 243) that the exploitation of a stone quarry is not a work that is capable of being demolished, destroyed or undone, this being rather a case of right to mere enjoyment, of which the respective holder can only be deprived by means of expropriation.

3. *Judgement of 21 July 1964* (*Bulletin of the Ministry of Justice*, No. 139, p. 298) that the deflouration of a virgin female, over eighteen years of age, through false promises of marriage, involves its author in civil responsibility for moral losses suffered.

4. *Judgement of 6 November 1964* (*Bulletin of the Ministry of Justice*, No. 141, p. 344) that a maintenance allowance of 2.000 escudos be paid by a household (husband and wife) for the property enjoyed to the mother of one of the married couple, when it is proved that the mother because of advanced age and ill-health cannot obtain means of sustenance by work, that her husband was a good landowner, living modestly in a plentiful home, and the couple, owing the maintenance instalment, has a net monthly income not inferior to 10.000 escudos.

REPUBLIC OF VIET-NAM

NOTE[1]

During the year 1964, the following legislation on the press was promulgated:

1. *Legislative decree No. 2/64 of 19 February 1964*

This legislative decree deals with freedom of opinion and the penalties of press offences.

Article 1 expressly recognizes freedom of opinion and freedom of the press.

Article 2 permits nationalist political parties recognized by the Ministry of the Interior to publish their own newspapers without prior authorization.

2. *Order No. 90 bis — BTT/ND of 19 February 1964*

As the statutes of the political parties have not yet been promulgated, the Ministry of Information, in the application of article 2 of legislative decree No. 2/64 of 19 February 1964, has issued this order laying down the following provisional arrangements for the publication of political party organs:

(*a*) A prior declaration to the Ministry on the administrative situation and organization of the party is required.

(*b*) The authorization to publish is granted within forty-eight hours from the time these declarations are received by the Ministry of Information.

3. *Legislative decree No. 10/64 of 30 April 1964*

This legislative decree lays down regulations for the publication of privately-owned newspapers and on the organization of the press. It distinguishes between the general case of Viet-namese citizens and the special case of Viet-namese citizens exercising the profession of journalist. The legislative decree has simplified the formalities required in both cases; on the other hand, it specifies certain professional qualifications which the editor-in-chief of a newspaper must possess.

Article 15 provides that any capital subscribed to by third persons must be declared within five days following the signing of the contract, which must have the prior approval of the Ministry of Information.

Article 16 stipulates that the Ministry of Information may at any time demand proof of the source of the newspaper's capital.

Article 17 stipulates that the editor-in-chief of a newspaper must be present in Viet-Nam. If he is away for more than one month, in the case of daily newspapers, and one and a half months, in the case of periodicals, he must, with the approval of the Ministry of Information, appoint a deputy who shall be held responsible for the newspaper. In any case, the editor-in-chief should in no instance absent himself from Viet-Nam for more than three months in the case of daily newspapers and for more than six months in the case of periodicals.

Article 18 stipulates that the permit to publish is considered to have lapsed if the first issue of the newspaper does not appear within one month and that the permit is also cancelled if publication is suspended for more than one month (in the case of daily newspapers) and for more than two months (in the case of periodicals).

The legislative decree also establishes the Press Council. This body is set up by the journalists themselves and exercises an autonomous activity with a view to helping the Government to regulate various matters concerning the press. The Press Council comprises nine members, including five journalists and four editors-in-chief of newspapers. Its functions may be summarized in three essential points: (*a*) to safeguard public policy and the security of the State; (*b*) to safeguard the honour of the press and to raise professional standards; and (*c*) to maintain close liaison with the Ministry of Information with a view to exchanging views on all questions concerning the press.

[1] Note based on the contribution of the Government of the Republic of Viet-Nam to the Secretary-General's *Annual Report on Freedom of Information, 1963-1964.*

ROMANIA

LEGISLATION AND JUDICIAL PRACTICE CONCERNING HUMAN RIGHTS[1]

I. LEGISLATION

1. The State budget of Romania for 1964, adopted under Act No. 1/1963 (published in the *Official Bulletin of the Grand National Assembly*, No. 24, 30 December 1963) reflects the continuing growth of the national income and of the social and cultural activities undertaken to satisfy the growing material and cultural needs of the entire population.

The budget of the Republic, which includes the State social insurance budget, provides for revenue of 77,294.6 million lei and expenditure of 76,394.6 million lei; 14,837.7 million lei should be added to revenue and an equivalent amount to expenditure for the budget of the people's councils — the local organs of State power.

Income from taxes paid by the population accounts for only some 5.4 per cent of total revenue under the 1964 budget (as against about 6.5 per cent in 1963). The remaining 94.6 per cent of budget revenue is derived from State enterprises and economic organizations, and from co-operatives.

Of the expenditures provided for in the budget, 58,481.9 million lei (more than 63 per cent of the total expenditure under the budget of the Republic and the budget of the people's councils) are allocated for financing the national economy; 20,635 million lei (more than 22 per cent of total expenditure) for social and cultural activities (health, recreation and sports, social welfare, State social insurance, education, science and culture, family allowances and State children's allowances); 2,097.4 million lei for maintaining the executive and administrative machinery of the State, the judicial system and the State prosecutor's offices; and 4,110 million lei for national defence.

The sum allocated in 1964 for social and cultural activities exceeds the allocations under the previous budget by 1,513 million lei. In view of the steady development of the national economy and the consequent rise in the national income, it was decided (Decision No. 348 of the Central Committee of the Romanian Communist Party and the Council *of* Ministers, published in the *Collected Decisions of the Council of Ministers*, No. 31, 26 June 1964) to increase the salaries of all categories of employees by approximately 10 per cent. For primary-school teachers and intermediate-level health workers the increase was fixed at an average of 13 per cent; it is higher for employees with longer service in these sectors.

The increase in salary for all categories of employees is to be effected in stages in the different branches of activity, beginning on 1 August 1964 and ending in the fourth quarter of 1965.

In the case of salaries of 800 to 1,700 lei a month, the increase is accompanied by a lowering of the tax on salaries. Moreover, salary ceilings for entitlement to State children's allowances have been raised, so that the number of employees receiving such allowances will rise appreciably. (Besides their salaries, employees with children receive a cash allowance which varies according to the number of children and the amount of the salary.)

The total increase in the income of employees resulting from these measures amounts to 6,800 million lei a year; this is in addition to the 5,000 million lei a year rise in employees' salaries resulting from the measures taken between 1960 and 1962.

2. Decisions Nos. 965 and 966 of the Council of Ministers of the Socialist Republic of Romania (published in the *Collected Decisions of the Council of Ministers*, No. 56, 4 December 1964) institute new regulations for the organization of labour protection, hygiene and prevention of epidemics in Romania.

The regulations are based on the following principles:

In Romania, labour protection, hygiene and prevention of epidemics are a problem dealt with by the State.

Labour protection includes all technical labour safety and hygiene measures. The object is to ensure optimum working conditions, prevent industrial accidents and occupational diseases, reduce physical effort and provide special conditions for arduous and highly arduous work and for work performed by young people and women.

Labour protection measures apply to the employees of all State organizations, co-operative organizations and other public organizations, the members of craftsmen's co-operatives, apprentices, school children and students during their practice period in production.

Hygiene includes all measures to eliminate from the environment any factors that are harmful to health, and to introduce practices conducive to the harmonious physical and mental development of the human person.

Anti-epidemic activity includes all measures to prevent and combat communicable diseases with a view to their control or eradication.

[1] Note furnished by the Government of the Socialist Republic of Romania.

The Ministry of Health and Social Welfare is responsible for setting obligatory national standards for labour protection, hygiene and prevention of epidemics. The national labour protection standards comprise the sum total of safety techniques and hygiene rules designed to ensure the best possible working conditions in all sectors of activity. On the basis of the national labour protection standards, ministries and other central organs formulate departmental safety rules which are compulsory for all units within their jurisdiction.

Labour protection, hygiene and epidemic prevention measures are taken by all socialist organizations, with the active participation of the people.

Responsibility for the full application of labour protection measures lies with those whose duty it is to conduct, organize and supervise production.

With a view to their uniform application, labour protection, hygiene and epidemic control measures are supervised by the Ministry of Health and Social Welfare through the State Inspectorate of Labour Hygiene and Protection.

The trade unions, for their part, engage in general supervision of the application and observance of labour safety and hygiene standards. They see to it that the standards are brought to the knowledge of the workers promptly and appropriately. They investigate the causes of occupational diseases and industrial accidents, with the assistance of technical, administrative and health authorities, in order to ascertain in each case and in the particular circumstances of each enterprise or institution the measures needed to prevent such accidents and diseases.

Scientific research into problems of labour hygiene and protection is carried out by the Institutes of Labour Hygiene and Protection of the Ministry of Health and Social Welfare.

Under the new regulations and the legal provisions in force (Decree No. 246 of 2 June 1958 and Decree No. 292/1959 republished on 17 December 1962), persons who suffer industrial accidents or contract occupational diseases receive free medical care; in the event of partial or total disability they are entitled to an invalidity pension; in the event of death resulting from an industrial accident or occupational disease, dependants of the deceased are entitled to a pension or to social assistance.

The new regulations on the organization of labour protection, hygiene and epidemics control represent an important advance over the previous regulations, thanks to the modern methods of production made possible by present-day science and technology and to the definition, classification, declaration and registration of industrial accidents and occupational diseases, the establishment of responsibility for such accidents and diseases and the allocation and utilization of funds appropriated for labour protection.

3. Decision No. 119 of the Council of Ministers (published in the *Collected Decisions of the Council of Ministers*, No. 7, 6 March 1964) establishes substantial material benefits for students at agricultural, horticultural, veterinary and agricultural accounting schools through the provision of scholarships and other forms of assistance.

Thus, under this provision students at such technical schools receive instruction completely free of charge; they also receive textbooks and equipment without charge. Scholarship students are lodged in school dormitories where they are given meals and are issued with toilet articles. Scholarships are awarded to children whose parents work in the agricultural sector.

Boarders without scholarships pay the modest sum of 66 lei a month for their board and lodging.

The new regulations thus open up broad training possibilities for young people interested in a technical career in agriculture.

4. To give Romanians access to the culture of other countries and peoples and to promote the exchange of ideas and the formation of ties with those countries, the Minister of Education was authorized by Decision No. 375 of the Council of Ministers (published in the *Collected Decisions of the Council of Ministers*, No. 30, 24 July 1964), to establish general culture schools at which courses in certain subjects are given in the major modern languages.

Decision No. 354 of the Council of Ministers (published in the *Collected Decisions of the Council of Ministers, No. 26*, 6 June 1964) extended to foreign tourists substantial benefits with respect to rates of exchange of freely convertible currencies into lei and reduced prices on a number of handicraft articles.

II. EXTRACT FROM THE REPORT OF THE CENTRAL STATISTICAL BOARD

The most striking aspects of Romania's economic development and of the continuing rise in the level of living of its people in 1964 are illustrated by the information furnished in the report of the Central Statistical Board on the fulfilment of the State plan for 1964.

1. *Industrial production*

In 1964 aggregate industrial production was double that of 1959. During the period 1960-1964 the average rate of growth was 14.8 per cent, compared with the 13 per cent rate forecast for 1960-1965.

2. *Agricultural production*

In 1964 significant results were achieved in the intensive and diversified development of agriculture. At the end of the year there were 683 State farms with a farming area of 2 million hectares, 4,716 agricultural production co-operatives with nearly 9 million hectares and 260 machine and tractor stations. Counting the new tractors and farming machinery acquired by those stations and by the State farms, by the end of 1964 there was a total of 75,400 tractors, 64,300 sowing machines, 35,400 combines for straw cereals, and many other farming machines.

During 1960-1964 the average total annual cereal production of 10.3 million tons (grain) was achieved, as against the annual average of 9.2 million tons in 1955-1959.

3. *Goods turnover*

The volume of goods sold through the socialist trade system in 1964 amounted to 62,800 million lei. This figure is 8 per cent higher than the previous year's as regards foodstuffs (including public catering).

4. *Achievements in the improvement of living conditions*

According to preliminary figures, the national income rose in 1964 by approximately 10 per cent over the figure for the previous year.

The number of persons employed in the national economy was over 4,100,000 (an increase of 184,000 over 1963).

Pursuant to the decision of June 1964 of the Central Committee of the Romanian Communist Party and the Council of Ministers concerning salary increases for all categories of employees, the reduction of certain salary taxes and the raising of the salary ceiling for the award of the State children's allowance, by the end of 1964 salaries rose in the food industry, light industry, the building materials and wood-working industries, forestry, local administration and telecommunications, and also for military personnel, primary-schools teachers and teachers in auxiliary and pre-school education, junior, intermediate and auxiliary health staff and the Press. By the end of 1965, salary increases will be in effect for employees in other branches of the national economy.

In 1964 real wages increased by about 2 per cent as compared with 1963, and exceeded the 1959 level by 28 per cent.

The State budget assigned 20,500 million lei to social and cultural activities, a figure 8 per cent higher than in 1963. These funds were allocated as follows :

Education : 6,000 million (9.9 per cent more than in 1963);

Cultural and scientific activities : 1,600 million (4.3 per cent more than in 1963);

Health and social welfare : 5,300 million (8.4 per cent more than in 1963);

Social insurance : 4,800 million (7.6 per cent more than in 1963);

State children's allowances and family assistance : 2,600 million (7.1 per cent more than in 1963).

Some 1,300 million lei in State funds were invested in social and cultural facilities, including 789 million for education and culture and 490 million for health protection, recreation and sports.

Over the period 1960-1964 some 214,000 standard apartments were made available to the population, 51,500 of them in 1964.

The expansion of the educational, cultural and public health infrastructure continued.

Construction of general education facilities between 1960 and 1964 included 20,500 classrooms, halls of residence for more than 24,400 students, cafetarias with serving capacity for 7,100 at one sitting, laboratories and shops.

Education at all levels was provided during the school year 1964/1965 for 3,700,000 pupils and students (8 per cent more than the previous year). The introduction of universal compulsory eight-year education was completed. At the start of the 1964/1965 school year enrolment in pre-university general education was 3,321,000, in vocational training 181,000 and in technical education and foreman's schools 67,000.

The number of students enrolled in universities during the 1964/1965 school year was 123,000 (10 per cent more than in 1963/1964). Of that total, 41 per cent were following technical or agricultural courses.

Eleven cinema halls with a seating capacity of 5,200 were opened in towns in 1964, while the number of cinema installations in rural areas was increased by over 600.

State publishing houses published 3,200 titles (books and pamphlets) in 1964, with a total printing of 58 million copies. The annual circulation of newspapers was 1,064 million copies and that of periodicals was 97 million copies.

Medical services continued to improve. The number of hospital beds rose to 141,800 and the number of medical districts to 3,882, including 2,889 in rural areas.

General and infant mortality declined. The number of deaths per 1,000 inhabitants fell to 8.1 (as against 8.3 in 1963). The infant mortality rate was 4.8 per 100 live births (as against 5.5 in 1963).

In 1964 there was on the average one doctor for every 696 inhabitants. More than 754,000 persons during the year rested and received treatment at spas, holiday camps and children's camps.

III. JUDICIAL PRACTICE

1. The civil chamber of the Supreme Court (Judgment No. 737, 5 June 1964) ruled that in case of unauthorized debarment from work without termination of the work contract, the unit concerned is obliged to pay in damages a sum equal to the wages payable for the period during which work was interrupted through the fault of the employer.

2. *Guarantee of the right to defence counsel*

The military chamber of the Supreme Court (Judgment No. 21, 31 January 1964) ruled that where the accused person was convicted of a minor offence in the lower court and the regional court, seized of an appeal lodged by the prosecutor, granted the appeal on grounds of improper classification of the facts, and replaced the classification of minor offence by that of serious offence without the accused having been assisted by defence counsel, the decision of the regional tribunal is to be regarded as illegal under article 76, final paragraph, of the Code of Criminal Procedure. That provision lays down that the accused person in a criminal case must always be assisted by defence counsel chosen by him or appointed by the bureau of legal aid (bureau of attorneys) at the request of the court.

IV. INTERNATIONAL AGREEMENTS

1. *By Decree No. 149* (published in the *Official Bulletin of the Grand National Assembly*, No. 5, 30 April 1964) the Council of State ratified the

Convention against discrimination in education, adopted at Paris on 14 December 1960.

2. *By Decree No. 205* (published in the *Official Bulletin of the Grand National Assembly*, No. 8, 25 June 1964) the Council of State ratified the following international postal agreements concluded at Ottawa on 3 October 1957 :

Universal Postal Convention, including the provisions concerning air-mail correspondence;

Agreement concerning insured letters and boxes;

Agreement concerning postal parcels.

In article 2 of the ratification Decree, the Council of State declares that the provisions of article 4 of the Universal Postal Convention do not correspond to the actual situation, and that the provisions of article 5 do not concord with General Assembly resolution 1514 (XV) of 14 December 1960, which proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations.

3. *By Decree No. 722* (published in the *Official Bulletin of the Grand National Assembly*, No. 19, 12 December 1964) the Council of State ratified Convention 116 concerning the partial revision of the Conventions adopted by the General Conference of the International Labour Organisation at its first thirty-two sessions for the purpose of standardizing the provisions regarding the preparation of reports by the Governing Body of the International Labour Office on the working of Conventions.

4. *By Decree No. 721* (published in the *Official Bulletin of the Grand National Assembly*, No. 21, 22 December 1964), Romania acceded to the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, concluded at Guadalajara, Mexico, on 18 September 1961.

5. *By Decree No. 720* (published in the *Official Bulletin of the Grand National Assembly*, No. 23, 28 December 1964) Romania acceded to the Declaration on the construction of main international traffic arteries, adopted at Geneva on 16 September 1950.

6. *By Decree No. 131* (published in the *Official Bulletin of the Grand National Assembly*, No. 3, 6 April 1964) the Council of State ratified the Treaty of trade and navigation concluded between the Socialist Republic of Romania and the Czechoslovak Socialist Republic on 16 December 1963.

The Treaty contains a number of provisions designed to strengthen and develop co-operation between the two friendly States and to expand their economic and trade ralations in the interest of the continuing improvement of living standards in the two countries.

7. *By Decision No. 122* (published in the *Collected Decisions of the Council of Ministers*, No. 8, 7 March 1964) the Council of Ministers approved the Agreement between the Government of the Socialist Republic of Romania and the Government of the Socialist Federal Republic of Yugoslavia concerning international road transport, concluded at Bucharest on 25 December 1963.

The Agreement contains a number of provisions on passenger and goods transport between the two countries by road vehicles and transit through their territories. The purpose is to facilitate such transport between the two contracting parties.

8. *By Decree No. 135* (published in the *Official Bulletin of the Grand National Assembly*, No. 3, 6 June 1964) the Council of State ratified the Agreement on cultural and scientific co-operation between the Socialist Republic of Romania and the Republic of Mali, signed on 26 September 1963.

9. *By Decree No. 133* (published in the *Official Bulletin of the Grand National Assembly*, No. 4, 11 April 1964) the Council of State ratified the Agreement concerning cultural co-operation between the Socialist Republic of Romania and the Kingdom of Belgium, signed at Brussels on 13 November 1963.

10. *By Decree No. 271* (published in the *Official Bulletin of the Grand National Assembly*, No. 8, 25 June 1964) the Council of State ratified the Agreement concerning cultural co-operation between the Social Republic of Romania and the Republic of Dahomey, concluded at Cotonou on 19 December 1963.

11. *By Decree No. 834* (published in the *Official Bulletin of the Grand National Assembly*, No. 22, 24 December 1964) the Council of State ratified the Agreement concerning cultural co-operation between the Socialist Republic of Romania and the Democratic and Popular Republic of Algeria, signed at Algiers on 7 July 1964.

The agreements listed in items 8 to 11 above contain articles the purpose of which is to develop cultural co-operation between the contracting parties in the spheres and by the means specified in each agreement.

SAN MARINO

NOTE[1]

The main legislative texts promulgated in San Marino during 1964 which may be relevant to the Universal Declaration of Human Rights are as follows :

1. *With regard to article 13 (2) of the Universal Declaration*

(*a*) Renewal of passport free of charge for San Marino nationals residing abroad or travelling abroad for reasons connected with their work (Act No. 36 of 30 June 1964);

(*b*) Recognition of the identity card of San Marino nationals as a valid document for entering and sojourning in Swiss territory for purposes of tourism (exchange of notes of 30 July 1964 between Switzerland and the Republic of San Marino).

2. *With regard to article 21 (1) of the Universal Declaration*

In the elections of 13 September 1964, San Marino women for the first time exercised the right to vote granted to them by the Act of 23 December 1958;

3. *With regard to article 25 (1) of the Universal Declaration*

(*a*) The institution of a system of social insurance, to be co-ordinated with the existing Social Security system (Act No. 37 of 30 June 1964), which provides for compulsory old age or disability insurance for all workers who are not self-employed, for the owners and co-owners of artisan shops and members of their families, for farmers, tenant farmers, sharecroppers and members of their families, with effect from 1 January 1965;

(*b*) Increase in family allowances (Act No. 24 of 30 April 1964).

In addition, by order of the Government of the Republic of San Marino arrangements were made for the sixteenth anniversary of the Universal Declaration of Human Rights to be commemorated by a public lecture by Professor Marino Arzilli, Professor of History and Philosophy at the Liceo Classico of San Marino, which was given on 10 December 1964 in the Palazzo degli Studi.

According to information supplied by the judicial authorities, no judgement concerned with human rights was pronounced by a San Marino court of any rank or category.

[1] Note furnished by the Government of the Republic of San Marino.

SAUDI ARABIA

THE NATIONAL PRESS AGENCY CODE

Approved by Royal Decree No. 62 of 24-8-1383 Hijrah[1]

Chapter I

ESTABLISHMENT OF THE AGENCY

Art. I. Press organizations cited as " National Agencies for the Press " shall be established in accordance with the provisions of this Code and each agency shall be given a special name to distinguish it from others.

Art. II. The national agency for the press is a private enterprise set up by a group of Saudi citizens granted a franchise by the State to issue one or more publications in accordance with the provisions of this Code.

Art. III. The agency is formed under a decision in which the President of the Council of Ministers agrees to an application submitted by a number of citizens through the Ministry of Information for the establishment of the said agency and for a licence to issue one or more newspapers.

The number of member partners of each agency shall be determined separately according to its status and potentialities on condition that such a number shall not be less than 15 in any agency. The Ministry of Information shall have the right to reject any of the member partners applying for the establishment of an agency.

Art. IV. The authorized capital of any agency shall in no case go below 100,000 Saudi riyals at the initiation of the establishment of the enterprise.

Art. V. The agency shall assume a moral personality and a good-will status enjoying and undertaking rights and responsibilities with its own independent liabilities not bounding on member partners as individuals. The responsibilities of member partners towards the obligations of the agency shall be consolidated collectively in the paid share contributions. The agency shall be permitted to bring about reasonable profits divided among members in a manner that does not prejudice the main objective of its existence by securing the necessary funds for the development of newspapers awarded licences under the charter of the agency concerned.

Art. VI. The headquarters of any agency shall be located in the town or city where its newspapers awarded licences are edited and printed. If the agency has two newspapers published in two different places, the location of its seat shall be determined by mutual agreement between the agency concerned and the Ministry of Information. Such headquarters shall not be moved to another place without the prior notification and consent of the Ministry of Information.

Art. VII. The transfer of the franchise of newspapers currently issued in the Kingdom to respective agencies shall not necessitate the change of names of such publications.

Art. VIII. The agency shall cease to exist and shall eventually lose its right to publish newspapers granted franchise for any of the following causes :

(*a*) If two-thirds of the member partners of the agency concerned submit a written application requesting the termination of the charter authorizing the issue of publications granted franchise.

(*b*) If the agency concerned failed to fulfil its financial commitments and a judgement passed by a court announcing the bankruptcy of such an agency.

(*c*) If in the opinion of the Ministry of Information the interest of the country demands the dissolution of the agency and the withdrawal of the licence issued to the respective newspapers, an authority to this end shall be obtained from the Prime Minister.

Chapter II

MEMBERS OF THE AGENCY

Art. IX. A member of the agency shall have the following qualifications :

(*a*) He must be a Saudi Arabian citizen.

(*b*) His age must not be less than 25 years.

(*c*) He must be of good conduct with no legal proceedings or disciplinary action taken against him by a judicial body or an administrative board.

(*d*) He must have a permanent income derived from civil service or any free enterprise.

Art. X. The main task of every member of the agency is the effective participation together with other members in guiding the editorial staff and formulating the policy of the newspaper concerned in a manner that accords with public interest. A member of the agency shall exercise the right of performing his duty with all legal means.

Art. XI. A member of the agency shall not take any personal advantage of his membership by

[1] Text of Code published in *Omm al-Kura* of 17 January 1964 and translations thereof into English and French appear in the Secretary-General's *Annual Report on Freedom of Information, 1963-1964.*

influencing the chief editor or any member of the editorial staff for the purpose of achieving a moral or material gain.

Art. XII. Members of the agency are the proprietors of the franchise awarded to them; therefore they shall enjoy equal rights and share equal responsibilities in exercising their duty and in handling the affairs of membership unless provided otherwise under this code.

Art. XIII. A member of the agency shall not be allowed to interfere in the affairs of the chief editor, editors or other members of the administrative staff.

Art. XIV. A member of the press agency shall not be allowed to transfer his membership rights to anybody else, no matter what the causes, without the prior consent of the Ministry of Information. Similarly, membership rights shall not be transferred to respective inheritors since the qualifications for membership are subject to special personal consideration.

Art. XV. The agency is not responsible for any press contravention in editing committed by the newspaper concerned unless an evidence is available proving its participation in committing the contravention together with the chief editor.

Chapter III

Administration and Editing

Art. XVI. The agency shall nominate three of its members acceptable to the Ministry of Information to elect one of them for the post of general manager of the agency. The election shall take place by a secret ballot with an overwhelming majority of all members of the agency.

Art. XVII. The competence of the general manager of the agency shall include the following:

(*a*) Notification of the decisions and special directions of the agency concerning the policy of the respective newspaper to the chief editor, editors and members of the committee supervising the editorial affairs.

(*b*) Supervision of administrative organization of the agency.

(*c*) Invitation of members to attend emergency meetings.

(*d*) Representation of the agency financially and administratively at different organizations and in all fields.

Art. XVIII. The assignment of the general manager of the agency shall be terminated for any of the following reason:

(*a*) In the event of his departure from the agency on his own free will.

(*b*) In the event of his request to be relieved of his responsibility as general manager of the agency.

(*c*) If half of the members of the agency submit a letter to the Ministry of Information requesting his replacement by another general manager.

(*d*) If the Ministry of Information has any reasons to believe that his continued capacity as general manager would cause a harm to public interest.

Art. XIX. Members of the agency shall elect by a two-third majority vote a deputy to exercise the powers of the general manager during his absence and period of sickness. The assignment of the deputy shall be terminated on the foregoing grounds which end the designation of the general manager of the agency.

Art. XX. In the event of absence of any member he shall ask in writing any other member to represent him and give him an authority to express views on his behalf on any matter or matters prescribed in the authorization note. A member shall not be allowed to represent more than one other member at a time.

Art. XXI. Resolutions of the agency regarding the guidance of newspaper editing shall be adopted by a two-third majority vote of all members. Other resolutions shall be adopted by a two-third majority vote of the members attending the meeting unless prescribed otherwise by this code.

Art. XXII. The agency shall draw a by-law compatible with the provisions of this code and forward it to the Ministry of Information for ratification before bringing it into force.

Art. XXIII. The agency shall be permitted to allocate monthly rewards to the general manager and members of the committee supervising the editing process in return for their services to the agency. The amount of rewards shall be defined with the consent of two-thirds of all the members.

Art. XXIV. Members of the agency shall elect one of them to act as chief editor for every newspaper awarded franchise in the same way the general manager of the agency is elected.

Art. XXV. The chief editor shall be held directly responsible before the Ministry of Information for all press contraventions committed by the newspaper, the editorial staff of which he heads, contrary to the instructions notified to him by the general manager of the agency in accordance with Article XVII.

Art. XXVI. The chief editor, subject to the approval of the general manager of the agency, shall choose a deputy from members of the editorial staff to act as chief editor of the newspaper during the absence or period of illness of the original chief editor, provided that the Ministry of Information is notified of such a temporary change.

Art. XVII. The agency shall pay monthly rewards to the chief editor and editors which suit the responsibilities they hold in discharging their duties.

Art. XXVIII. The member of the agency holding the post of newspaper chief editor shall forfeit his designation on any of the following grounds:

(*a*) If he asks to be relieved of his assignment as chief editor.

(*b*) If a decision is taken by a two-third majority vote of the members of the agency regarding the termination of his assignment as a chief editor.

(*c*) If the Ministry of Information has reasons to believe that he is incapable of holding the responsibilities of his duty in the interest of the public.

Art. XXIX. Members of the agency shall elect a five-man committee to supervise editing affairs, to guide newspapers awarded franchise, and to watch the degree of the adherence by chief editor and editors to standing orders and instructions issued by the agency.

Art. XXX. The committee supervising editing affairs shall submit periodical reports on the progress of the work of the newspaper in editing and guiding spheres to the general-manager and members of the agency.

Art. XXXI. For the development of newspaper or newspapers awarded franchise, the agency shall secure at least the following members of the editorial staff:

Firstly — With regards to daily newspapers:
(*a*) A full-time chief editor
(*b*) Four full-time editors
(*c*) Two foreign language translators
(*d*) One photographer
(*e*) Three qualified correspondents residing in three major capitals.

Second — With regards to weekly publications:
(*a*) A full-time chief editor
(*b*) Two full-time editors
(*c*) One photographer

The Ministry of Information shall have the right of satisfying itself that the agency concerned is fully abiding by the provisions of this Article through the examination of contracts concluded between the agency and the members of the editorial staff prescribed by this article.

Art. XXXII. A meeting of the agency shall not be considered legal unless attended by a quorum of two-thirds of the members.

Art. XXXIII. Standing press ordinances currently in force shall continue to be effective, provided that they do not conflict with the provisions of this code.

Art. XXXIV. This code shall be enforced with effect from the day of its promulgation.

SIERRA LEONE

THE POLICE ACT, 1964

Assented to on 3 June 1964 and entered into force on 4 June 1964[1]

Part II

CONSTITUTION AND EMPLOYMENT OF THE FORCE AND THE ESTABLISHMENT AND FUNCTIONS OF THE COUNCIL

3. There shall be established in Sierra Leone a Police Force to be known as the Sierra Leone Police Force.

4. The Police shall be employed for the detection of crime and the apprehension of offenders, the preservation of law and order, the protection of property and the due enforcement of all laws and regulations with which they are directly charged.

...

6. (1) There shall be established a Sierra Leone Police Council

...

7. (1) The organisation and administration of the Force and all other matters relating thereto (not being matters relating to the use and operational control of the Force or the appointment, disciplinary control and dismissal of members of the Force) shall be under the general supervision of the Council.

(2) The Prime Minister shall cause the Council to be kept fully informed concerning the matters under its supervision and shall cause the Council to be furnished with such information as the Council may reasonably require with respect to any particular matter under its supervision.

(3) The Council may make recommendations to the Government with respect to any matter under its supervision and, if in any case the Government acts otherwise than in accordance with any recommendation, it shall cause a statement containing that recommendation and its reasons for acting otherwise than in accordance with that recommendation to be laid before the House of Representatives.

...

Part IV

POWERS OF POLICE OFFICERS

...

25. Any warrant lawfully issued by a court for apprehending any person charged with any offence may be executed by any police officer at any time notwithstanding that the warrant is not in his possession at that time, but the warrant shall, on the demand of the person apprehended, be shown and read to him as soon as practicable after his arrest.

26. Any criminal summons lawfully issued by a court may be served by any police officer at any time during the hours of daylight:

Provided that in cases where a police officer has reasonable cause to believe that a person is evading service, such summons may be served at any time.

...

Part VI

OFFENCES

36. (1) Any police officer who begins, raises, abets, countenances or incites mutiny shall be liable on conviction to imprisonment for a period not exceeding five years.

(2) Any police officer who:

(*a*) causes or joins in any disturbance whatsoever;

(*b*) being at any assemblage tending to riot does not use his utmost endeavour to suppress such assemblage;

(*c*) coming to the knowledge of any mutiny, or intended mutiny, does not without delay give information thereof to his superior officer;

(*d*) strikes or offers any violence to his superior officer, such officer being in the execution of his duty; or

(*e*) deserts or aids or abets the desertion of any police officer from the Force,

shall be liable on summary conviction to imprisonment for a period not exceeding two years.

...

39. Every person who assaults, obstructs or resists any police officer in the execution of his duty, or aids or incites any other person so to assault, obstruct or resist any police officer or any person aiding or assisting such police officer in the execution of his duty, shall be guilty of an offence, and on summary conviction shall be liable to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding one year.

40. Any person who causes, or attempts to cause, or does any act calculated to cause disaffection amongst police officers or induces or attempts to induce, or does any act calculated to induce any police officer to withhold his service or to commit breaches of discipline, shall be guilty of an offence and liable on summary conviction to imprisonment for a period not exceeding two years or a fine not exceeding one hundred pounds or both such fine and such imprisonment.

[1] *Supplement to the Sierra Leone Gazette*, Vol. XCV, No. 45, of 4 June 1964.

41. (1) Every person who knowingly harbours or entertains, or either directly or indirectly sells or gives any intoxicating liquor to any police officer, or permits any such police officer to abide or remain in his house (except in case of extreme urgency) when on duty, shall be guilty of an offence, and liable on summary conviction to imprisonment for a period not exceeding three months, or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

(2) Any person who, by threats or by offer of money, gift, intoxicating liquor or any other thing induces or endeavours to induce any police officer to commit a breach of his duty as a police officer or to omit any part of such duty, shall be guilty of an offence, and liable on summary conviction to imprisonment for a period not exceeding one year or to a fine not exceeding one hundred pounds or to both such imprisonment and fine, and in addition the money, gift, intoxicating liquor or thing shall be forfeited to the Crown.

...

43. Nothing in this Act shall be construed as exempting any police officer from being proceeded against in the ordinary course of law when accused of any offence punishable under any other Act or law.

44. (1) No person who has been acquitted by a court of any offence shall be tried on the same charge or suffer any punishment on account thereof under this Act.

(2) If any police officer has been convicted by a court of any offence, he shall not be liable to be punished for the same offence under this Act otherwise than by reduction in rank or grade or by dismissal from the Force.

...

46. Every Superior Police Officer empowered to enquire into offences by police officers, created by Rules made under this Act, and any member of a Court of Enquiry appointed thereunder to enquire into any matter affecting the order and discipline of the Force shall, in any matter touching such enquiries, be vested with all the powers of a Magistrate of summoning and enforcing the attendance and examination of witnesses and calling for documents in any matter before him. In every such enquiry where witnesses are examined on oath or affirmation, the proceedings and evidence shall be recorded in writing.

...

52. (1) Police officers shall not, except with the express approval of the Minister, be members of, or have any connection whatsoever with, any political society, organisation, or movement, or with any trade union, or any union (Civil Service or otherwise), either within or without Sierra Leone:

Provided that no such express approval shall be necessary in relation to membership of a Police Federation established under such conditions as the Minister may, by Rules made under this Act, prescribe.

(2) Any breach of the provisions of this section may entail immediate dismissal from the Force.

...

SPAIN

THE STATUTE OF THE PROFESSION OF JOURNALISM

APPROVED BY DECREE No. 1408 OF 6 MAY 1964[1]

Section I

THE PROFESSION OF JOURNALISM IN GENERAL

Art. 1. For all legal purposes, a journalist is a person who holds the professional diploma and is listed in the State Register of Journalists.

Art. 2. A person shall be regarded as a practising journalist and shall have the right to obtain a Press book accrediting him as such, provided that he satisfies the requirements set forth in the preceding article and, in general, those laid down in the Press and Publications laws, and that he is professionally engaged in information activities of a literary or graphic nature, whether through the Press, radio, television or the cinema, or in remunerated employment as an information officer or Press adviser in a public organization or agency.

Art. 3. The Directorate-General of the Press shall keep an Official Register in which every person holding the official title of journalist shall be required to register.

...

Art. 10. The practice of the profession of journalism is incompatible with activity as a publicity agent or manager and with any other activity directly or indirectly involving interests which might impair the journalist's objectivity and exclusive dedication to the public interest in his information work. In addition, the exercise of the function of critic is incompatible with any direct or indirect interest in the activities to which that function is applied. The Professional Ethics Council shall decide on all matters arising in connexion with the foregoing provisions.

Art. 11. The categories of the profession of journalism in the various media of information are : Editor-in-Chief, Assistant Editor, News Editor, Chief of Section and Reporter.

Art. 12. No person may be employed in any of the categories specified in the preceding article on the staff of a periodical, daily newspaper, news magazine or news agency or of a radio or television news service or cinema newsreel unless his name is listed in the Official Register of Journalists. The same requirement shall apply to persons to be employed as permanent or special correspondents abroad, or as permanent or special correspondents in Spain, in cities possessing a daily newspaper. Enterprises operating information media of the aforementioned types shall be required to fill all the above-mentioned posts with journalists listed in the Official Register.

Art. 13. The various information media shall be free to enter into contracts with persons not listed in the Official Register of Journalism for regular or occasional contributions on specialized subjects, but such contracts shall in no case confer upon the persons concerned the status of professional journalists for the purposes of this Statute.

...

Art. 16. The organ which represents, co-ordinates and administers the profession of journalism in Spain is the National Federation of Press Associations of Spain, a member of the Trade Union Organization, and, at the local level, the respective Press Association.

Art. 17. All practising journalists must be members of the National Federation of Press Associations of Spain through the several federated Associations.

The membership of non-practising journalists in professional organizations of journalists shall be governed by the Statutes of the National Federation of Press Associations of Spain and the Rules of the several federated Associations.

Art. 18. The Governing Council of the National Federation of Press Associations, or, where appropriate, the General Assembly, shall represent journalists and shall serve as their organ of professional discipline.

In such cases as they deem appropriate, the aforesaid bodies may delegate their functions to the federated Associations.

Art. 19. Any breach of the rules set forth in article 10 or of the rules of professional ethics enumerated in the General Principles of the Profession of Journalism annexed to this Decree shall be adjudicated by a Professional Ethics Council appointed by the Minister of Information and Tourism, which shall be composed as follows : Chairman — a member of the judiciary having the rank of *magistrado*, nominated by the Minister of Justice, and Members — two members of the Federation of Press Associations, nominated by the Governing Council of the Federation, and two representatives of the Ministry of Information and Tourism, who shall be officials of that Ministry.

[1] *Boletín Oficial del Estado*, No. 117, of 15 May 1964. Text of Decree communicated by the Government of Spain and published in the Secretary-General's *Annual Report on Freedom of Information, 1963-1964.*

Art. 20. Appeal from decisions of the Council referred to in the preceding article shall lie only to an Appeals Board appointed by the Minister of Information and Tourism and composed as follows : Chairman — a *magistrado* of the Supreme Court of Justice nominated by the Minister of Justice; and Members — a member of the Federation of Press Associations holding the title of Journalist of Honour, nominated by the Federation, and a representative of the Ministry of Information and Tourism, who shall be an official of that Ministry with a minimum of ten years of service.

Both organs shall have sole jurisdiction for the entire national territory and shall have their seat in Madrid.

Art. 21. The rules of procedure for the Council and the Board shall be laid down by regulation. They shall guarantee the right of hearing and provide full safeguards for the defence of the person concerned. The Ministry of Information and Tourism and the Federation of Press Associations shall have the right to prefer charges, thereby initiating proceedings before the Council, without prejudice to the right of any entity, individual or body corporate to report to the Ministry or the Federation any facts regarded as contrary to the rules referred to in article 19. Resolutions adopted must in all cases be accompanied by a statement of reasons.

Art. 22. The penalties which may be imposed by the Professional Ethics Council, according to the gravity of the offence committed and having due regard to all pertinent circumstances, shall be the following :

(*a*) Private or public reprimand;

(*b*) Temporary suspension of the right to practise journalism;

(*c*) Permanent disqualification for the profession of journalism.

...

ANNEX

GENERAL PRINCIPLES OF THE PROFESSION OF JOURNALISM

I. In the discharge of his task, the journalist shall abide by the rules of Christian morality and be loyal to the Principles of the National Movement and the Fundamental Laws of the State.

The basic principles governing the practice of the profession of journalism shall be the service of the truth, respect for justice and integrity of purpose.

The journalist shall direct his efforts towards fulfilling the function of informing, shaping and serving national public opinion.

II. In the discharge of his task, the professional journalist shall have due regard for the exigencies of national security and harmony, public policy and the public welfare.

The journalist shall have the duty to avoid any presentation or treatment of news which may directly or indirectly imply an apology for or sensationalist slanting of facts or ways of life which are unlawful or prejudicial to decency and morality.

Professional news reporters shall have the duty to avoid any distortion of the news which alters the objective reality of the facts or may in any way mislead the public as to their scope, intention or content.

The journalist shall reject any pressure or persuasion aimed at impairing the accuracy of the news or the impartiality of his sincerely expressed views or judgement.

III. The journalist shall exercise special care in features or publications intended for children and young people, and shall adapt his work to the basic educational principles by which they should be guided.

IV. It shall be the inescapable duty of every journalist to show the strictest respect for the dignity, private life, honour, good name and reputation of individuals. The right to receive and the duty to disseminate accurate news shall be justly limited in this respect.

V. The journalist shall have the duty to maintain professional confidence, except where he may be obliged to co-operate with the officers of justice in the common interest.

VI. The journalist shall owe loyalty to the enterprise in which he serves, within the framework of the essential principles by which his activity must be governed, provided that such loyalty is not incompatible with his professional conscience, public morality, the Fundamental Laws and Principles of the State and the provisions of the Press and Publications laws.

ACT 191/1964, OF 24 DECEMBER 1964, ON ASSOCIATIONS [2]

Art. 1. Freedom of Association

1. The freedom of association recognized in article 16, first paragraph, of the Charter of the Spanish People [3] shall be exercised in accordance with the provisions of this Act, for lawful and defined purposes.

2. The purposes of the association are deemed to be defined when, as may be deduced from its statutes and its founding agreement, no doubt exists concerning the activities which are actually to be carried out.

3. Unlawful purposes are deemed to be those contrary to the fundamental principles of the Movement and other basic laws, those punishable under the penal law, those which threaten morals and public order and any others which endanger the political and social unity of Spain.

[2] Text published in *Boletín Oficial del Estado*, No. 311, of 28 December 1964.

[3] Text of Charter appears in *Yearbook on Human Rights for 1947*, pp. 286-288.

Art. 2. Scope

Bodies subject to the legal provisions governing the formation of companies and established in accordance with civil or commercial law, are excluded from the scope of this Act, as are the following associations, without prejudice to the provisions of this Act in each case :

1. Associations established in accordance with canon law, referred to in article 4 of the Concordat now in force, and those of the Spanish Catholic Action, in so far as their religious activities are concerned, their other activities, undertaken in accordance with article 34 of the said Concordat, remaining within the scope of this Act.

2. Associations established in accordance with article 16, second paragraph, of the Charter of the Spanish People, associations regulated by the trade union laws and associations subject to the legal code of the Movement.

3. Associations of civil and military officials and associations of civilian personnel employed in establishments of the armed forces shall be governed, as necessary, by special legislation.

4. Any other Associations regulated by special legislation.

Art. 3. Establishment of Associations

1. Freedom of association shall be exercised juridically through an instrument stating that a number of individuals, having the capacity to perform legal acts, voluntary agree to pursue a defined and lawful purpose in accordance with their statutes.

2. The statutes, in addition to establishing the conditions required by law, must specify the following :

(i) The name of the association, which cannot be the same as that of any other association already registered, or so similar as to cause confusion;
(ii) Its defined purposes;
(iii) Its main address, and, if necessary, its other addresses;
(iv) The proposed territorial scope of its activities;
(v) Its governing bodies and administrative structure;
(vi) Its procedure for admission and loss of membership;
(vii) The rights and duties of its members;
(viii) Its assets at the time of its establishment, its proposed financial resources and the size of its annual budget;
(ix) The manner in which its assets are to be disposed of in the case of dissolution.

3. Within five days of the date of the founding agreement, the founding members shall submit to the Civil Government of the province three copies of the agreement, signed by them, and of the statutes.

4. If the assets of the association do not exceed one million pesetas, if the initial level of the annual budget does not exceed one hundred thousand pesetas, and if its proposed activities do not extend beyond the borders of the province, the Governor shall, on receipt of the information required in each case, according to the nature of the association, issue a written decision, with a statement of reasons, as to whether the purposes referred to in paragraph 1 of this article are lawful and clearly defined. He shall approve the statutes or, if necessary, request any amendments that may be required in accordance with the provisions of paragraph 1 of this article. However, when there are any doubts as to the particulars mentioned above, or when the nature and characteristics of the association warrant it, the Civil Governors may transmit the relevant documents to the Ministry of Government, in accordance with the procedure and for the purposes set forth in the following paragraph.

5. If the assets exceed one million pesetas, if the initial level of the budget exceeds one hundred thousand pesetas a year, or if its proposed activities extend beyond the borders of the province, the Governor shall, within thirty days, transmit to the Ministry of Government, which shall be informed in good time, the documents relating to the definition of the purposes of the association. On receipt of the information required in each case according to the nature of the association, the Minister of Government shall himself issue or submit to the Council of Ministers the appropriate decision as to whether the purposes of the association are lawful and clearly defined, and, if necessary, shall also approve the statutes. The Minister of Government shall have the same power with regard to appeals against the acts and decisions of the Civil Governors.

6. When the association complies with the provisions of the preceding paragraphs, and its purposes cannot be considered unlawful or undefined according to the provisions of article 1, paragraphs 2 and 3, of this Act, the State authorities cannot refuse to recognize the association.

Art. 4. Associations declared to be "Serving the Public Interest"

1. Associations established for purposes relating to assistance, education, culture, sport or for any other purpose tending to promote the common good may be recognized as "serving the public interest".

2. Associations recognized as "serving the public interest" shall have the right to use this term in all their documents and shall enjoy the exemptions and subsidies and other economic, fiscal and administrative privileges granted in such cases.

3. An association shall be declared to be "serving the public interest" by the Council of Ministers upon the proposal of the Ministry of Government, on the basis of a report by the department or agencies concerned and in accordance with the requirements and procedures laid down in the regulations.

4. The Council of Ministers may, on its own initiative or at the request of an interested party, approve the establishment and statutes of federations of associations "serving the public interest" which

have similar purposes. The Decree granting approval shall specify whether adherence to the appropriate federation shall be a prerequisite for the subsequent recognition of associations " serving the public interest " which have similar purposes.

Art. 5. Register of Associations

1. The Civil Governments shall keep a provincial register of associations, in which all the associations domiciled in each province shall be entered, for the purposes applicable in each case.

2. The Ministry of Government shall keep a national register of associations, in which all associations, irrespective of their rules, the territorial scope of their activities, their assets or their budget, shall be entered, for the purposes applicable in each case.

3. In the case of associations subject to this Act, entry in the national and provincial registers shall be officially verified within one month of the date of the decisions referred to in article 3, paragraphs 4 and 5, and in the case of associations excluded from its scope by decision of the competent authority, within one month of their legal establishment.

The national register and the provincial registers shall be public.

Art. 6. Administration of Associations

1. The administration of associations subject to the provisions of this Act shall be determined by their statutes and the agreements adopted in proper form by their general meetings and governing bodies within their respective spheres of competence. Matters no so provided for shall be regulated in accordance with the provisions of this Act and the regulations issued for its application.

2. The highest organ of an association shall be the general meeting, composed of the members, who shall adopt its decisions in accordance with the majority principle. The general meeting must be convened on a regular basis at least once a year to adopt the accounts and the budget, and on special occasions as required by the statutes and in accordance with the procedures laid down therein.

3. Without prejudice to the provisions of the preceding paragraph, associations shall be governed by an executive committee, which shall inform the Governor of the province of the membership of the governing bodies within five days of the date of their complete or partial election, and of the annual budget, within five days of its adoption.

4. Any change in the statutes must be approved at a special general meeting and subsequently shall be subject to the procedure laid down in articles 3 and 5 of this Act.

5. Every association shall keep a card-index and a register showing the full names, occupations and domiciles of its members. Other questions such as books, the publication of printed matter and circulars, and all organizational aspects of associations subject tot his Act shall be determined by the regulations.

6. Without prejudice to the provisions of article 10, the agreements and proceedings of associations which are contrary to their statutes may be suspended or annulled by the judicial authority, at the request of an interested party or the *Ministerio Fiscal.*

7. Associations shall be dissolved by decision of the members, for the reasons laid down in article 39 of the Civil Code, and by a court order.

Art. 7. Meetings

1. Once an association has been registered, it may use its registered address as its headquarters, subject to the laws and regulations.

2. Associations governed by this Act shall inform the Civil Governor of the province, seventy-two hours in advance, of the date and hour at which the general meetings are to be held.

Art. 8. Access by Representatives of the Authorities

Without prejudice to the general provisions of the Public Order Act, the State authorities shall have access, through specially designated representatives, to the premises in which associations subject to this Act hold their meetings and to their books and documents.

Art. 9. Donations to Associations

1. Without prejudice to the amendments to their statutes required by a change in their budget or assets, associations subject to this Act may freely accept donations in amounts not exceeding fifty thousand pesetas a year. The express authorization of the Civil Governor shall be required for amounts between fifty thousand and two hundred and fifty thousand pesetas and the express authorization of the Ministry of Government for amounts exceeding two hundred and fifty thousand pesetas in any one year.

2. Grants from the general budget of the State and its autonomous agencies, from local corporations, from agencies of the Movement, and in general, all donations to associations recognized as " serving the public interest " shall be exempt from the requirements laid down in the preceding paragraph.

Art. 10. Discipline of Associations

1. The State authorities shall, on their own initiative or at the request of an interested party, suspend the activities of those associations subject to this Act which have not been established in accordance with its provisions.

2. The same authorities may order the suspension of associations subject to this Act for a period not exceeding three months, when they do not conduct their operations in accordance with its provisions.

3. The acts or agreements of those associations which, under the terms of the preceding paragraph,

fail to conduct their operations in accordance with this Act, or which are unlawful according to the provisions of article 1, paragraph 3 of this Act, may also be suspended.

4. Without prejudice to the general provisions of the Public Order Act now in force, the competent authorities may also suspend associations of any type if they commit unlawful acts as defined in article 1, paragraph 3, of this Act.

5. It shall be the responsibility of the courts to confirm or revoke governmental decisions and to rule whether the association shall be dissolved. To that end, suspension orders shall be communicated to the competent judicial authority within three days.

6. In the circumstances set forth in the preceding paragraphs, and without prejudice to the provisions of article 19 of the above-mentioned Public Order Act, the Civil Governors may impose fines of up to twenty-five thousand pesetas, and the Ministry of Government fines of up to five hundred thousand pesetas.

Art. 11. Procedure

1. The Administrative Procedure Act, and, if necessary, the Administrative Disputes Act, shall apply to all administrative questions relating to the administration of associations.

2. All other questions to which the Administration is not a party shall be subject to the jurisdiction of the regular courts.

...

SUDAN

NOTE[1]

1. S.4 of the Constitution of 1964 maintains the human rights. It reads:

S.4 (1) All persons in the Republic of the Sudan are free and are equal before the law.

(2) No disability shall attach to any Sudanese by reason of birth, religion, race or sex in regard to public or private employment or in the admission to or in the exercise of any occupation, trade business or profession.

2. No judicial decisions of significance in the field.

3. The Sudan had enacted:

(1) The Parliamentary Elections Act, 1957 (Act No. 23) and

(2) The Parliamentary Elections Amendment Act, 1957 (P.O. No. 8),

both of which did not grant rights that were not granted by previous legislation, but reorganized the election machinery and procedures and the division of constituencies.

4. The Sudan had during 1957, ratified the following conventions:

(1) Forced Labour Convention, 1930,

(2) Right to Organize and Collective Bargaining Convention, 1949,

(3) Equality of Treatment (Accident Compensation) Convention, 1925,

(4) Supplementary Convention on the Abolition of Slavery, the Slavery, Trade, and Institutions and Practices Similar to Slavery, 1956,

(5) The Geneva Conventions, 1949.

[1] Note furnished by the Government of the Republic of the Sudan.

SWEDEN

SOME FEATURES OF THE LEGISLATION IN SWEDEN IN 1964 RELATING TO HUMAN RIGHTS[1]

I. When Sweden ratified the Convention on the Prevention and Punishment of the Crime of Genocide (9 May 1952), the Swedish Penal Code did not in all respects comply with the requirements of the said Convention. This has now been remedied by a special Act on Punishment of the Crime of Genocide, that came into force on 1 January 1965.

II. A new Penal Code came into force on 1 January 1965. A guiding principle of the new Code is that institutional treatment will be replaced to an increased extent by non-institutional treatment of offenders. In order to realize this principle, the organization for such a treatment of offenders has been substantially strengthened. For the regional administration of the treatment of criminals, special supervisory boards have been established with judges as chairmen. In their activities the boards are assisted by full-time protective supervisors. A great number of lay volunteers are also utilised for the supervisory work. There are three central boards above the regional boards, viz. the board of corrections (for the normal clientele), the youth imprisonment board and the internment board. It is also the task of the boards — regional and central — to decide on the transition from institutional to non-institutional treatment (parole, etc.).

In connection with the new Penal Code a new Act on treatment in correctional institutions has been passed. This Act is mainly based on the same principles as the old Act on the subject. When serving a sentence in an institution, the inmate retains his civil rights, such as the right to vote or the right to marry. Concerning the treatment of the inmates, the Act contains the following basic rule: "An inmate shall be treated with firmness and determination and with respect for his dignity as a human being. He shall be employed at suitable work and, besides, receive treatment which furthers his adaption to society. Injurious effects of the loss of freedom shall be prevented as far as possible." A number of special regulations are attached to this fundamental provision. Open treatment in institutions is used to a great extent. One-third of all places in the institutions are open. Home leaves are granted as a normal element of the treatment. Besides, the inmates may be allowed to leave the institution for a long period as a preparation for the open treatment. To further the same end, unsupervised work outside the institution (without warders) is arranged for the inmates as well as special transition homes. The inmates are to a great extent free to communicate by mail with their relatives, who are also allowed to visit the institution. They have an unlimited right to send written complaints to various supervisory organs. On the supervisory boards falls the task of visiting the institutions and giving the inmates opportunity to talk to them. The state of health of the inmates is supervised by physicians.

III. On 1 January 1965, the Vagrancy Act of 1885 was replaced by a new Act, dated 4 June 1964. The Act of 1885, dating from before the industrial revolution and adapted to a society having quite different economic and social conditions from the present, has for a long time been out of date. The unemployment of times gone by has lost its earlier significance. Vagrancy is no longer a social problem. The most serious anti-social activities are nowadays mainly concentrated in the big cities, where they are difficult to cope with. As a basis of the new Act serves the view that a special legislation against anti-social activity is needed to cover cases which cannot be dealt with either through the social welfare organs or through ordinary criminal proceedings.

The principal aim of the Act is to ensure *social defence*, i.e. to constitute a means in the battle against criminality and other asociality. As an ultimate means, the Act is to be applied to those asocial individuals who cannot be proved to need treatment and who cannot be sued for a crime. This means that this Act is subsidiary and that its applicability may be diminished as the resources of social welfare increase. The most far-reaching measure according to the Act is commitment to a work institution.

The Act is applicable to persons who are at least twenty-one years old. The Child Welfare Law is applied to asocial persons below that age.

IV. The provisions of *the Social Assistance and the Child Welfare Acts* regarding judgements by courts of law ordering negligent family providers to work have been repealed on 1 July 1964.

V. A new Act regarding advance payments of maintenance allowances came into force on 1 July 1964. It replaces the former Act in the same matter and the Act on completion of certain allowances. This new Act provides considerably improved protection of the children of divorced persons and children of unmarried mothers. These children are — irrespective of whether allowances have been

[1] Note furnished by the Government of Sweden.

determined or not and without limitation as to the amount of a determined allowance — guaranteed a general allowance, which as a rule corresponds to 25 per cent of the basic amount defined in the National Insurance Act (at present Sw.Kr. 1,250 a year, index-based). If a person with maintenance obligation pays the allowance determined, and this is less than the general allowance, then the child is ensured the difference. For children born out of wedlock by an unknown father, the stipulation that an advance maintenance allowance is not paid until the child is three years old has been repealed.

VI. By amendments to *the National Insurance Act* a special allowance for the care of disabled children has been introduced. This allowance is paid to children who are less than 16 years old and who because of illness, mental retardation, disability or any other defect for a considerable time and to a considerable extent need special attendance and care. This care allowance amounts to 50 per cent of the basic amount, defined in the National Insurance Act (at present Sw.Kr. 2,500 a year, index-based).

On 1 July 1964, the National Basic Pensions were increased. The annual pension for a single pensioner, living alone, was increased to Sw.Kr. 3,775, and for husband and wife, who both receive pension, to Sw.Kr. 5,900 in all.

VII. To *the Vacation Act* such amendments have been made that a vacation should not coincide with sick-leave or any other vacation-qualifying absence from work such as e.g. the Defence Forces' refresher training. An employee, who is ill or called up for refresher training during his vacation, thus has the right to have the sick-leave or the period of service deducted from his vacation. Vacation that remains after such deduction may be assigned to a special period. This period should be continuous, if the employee does not agree otherwise.

VIII. By amendments to *the Act on Prohibition of Discharge of Employees because of military service, etc.*, employment protection has been extended to anyone, who — according to a voluntary undertaking — has assumed duties in the Military Defence Services as well as to anybody who by agreement has undertaken to serve in a military unit to be placed at the disposal of the United Nations.

IX. During 1964 Sweden has ratified the United Nations Convention on the Status of Stateless Persons of 28 September 1954.

SWITZERLAND

NOTE[1]

I. CONFEDERATION

A. Legislation

1. *Social Security and Insurance*

The following legislation was enacted:

(*a*) The Federal Act of 19 December 1963 amending the Act respecting old-age and survivors' insurance of 20 December 1946;

(*b*) The Federal Act of 13 March 1964 amending title I of the Sickness and Accident Insurance Act of 13 June 1911;

(*c*) The Federal Council order of 3 April 1964 amending the regulations giving effect to the Federal Act respecting old-age and survivors' insurance of 31 October 1947.

2. *Economic Rights*

(*a*) The Federal Act of 20 December 1962, which was promulgated on 10 January 1963 and entered into force on 15 February 1964, dealt with cartels and similar organizations;

(*b*) The Federal Council order to 30 May 1964 laid down a standard work contract for privately employed gardeners;

(*c*) The Federal Council order of 14 December 1964 concerning the Swiss Manual of Food Products recognized in article 1, the *Manuel suisse des denrées alimentaires* (Swiss Manual of Food Products), fifth edition, as the official Swiss handbook of methods for the analysis of foodstuffs and food products and of standards of grading.

3. *Education*

The Federal Order of 21 February 1964 concerning the results of the popular vote of 8 December 1963 on the Federal Order for the insertion in the Constitution of an article 27 *quater* on scholarships and other forms of financial assistance to education. Articles 1 and 2 of this order read as follows:

"*Art. 1.* The insertion in the Constitution of an article 27 *quater* on scholarships and other forms of financial assistance to education, which was ordered by the legislative councils on 21 June 1963, was approved by a majority of the participants in the vote as well as by all cantons. This article shall enter into force immediately.

"*Art. 2.* The new article 27 *quater* shall read as follows:

" The Confederation may grant subsidies to the cantons to cover their expenditure on scholarships and other forms of financial assistance to education.

" It may also, by way of supplementing cantonal regulations, either itself adopt or support measures designed to promote education by means of scholarships or other forms of financial assistance.

" In all cases, the autonomy of the cantons in the field of education shall be respected.

" Measures of implementation shall be enacted in the form of Federal acts or Federal orders of general application. The cantons shall be consulted beforehand. "

B. International Agreements

1. The Federal Order of 1 October 1964 approved the Hague international conventions of 24 October 1956 and 15 April 1958 relating to maintenance obligations towards children. The Convention extending the competence of the authorities qualified to register the recognition of illegitimate children, concluded at Rome on 14 September 1961, entered into force in respect of Switzerland on 29 May 1964.

2. The Federal Order of 18 December 1963 approved the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water, concluded at Moscow on 5 August 1963.

II. CANTONS

The following legislation was enacted in the canton of Vaud:

1. The order of 13 October 1964 further extending the scope of the collective agreement on work in private education in the canton of Vaud;

2. The order of 27 November 1964 extending the scope of the collective agreement on agricultural work in the canton of Vaud.

[1] This note is based upon texts communicated by the Permanent Observer of Switzerland to the United Nations.

SYRIA

NOTE[1]

Constitutional Provisions:

(Provisional Constitution promulgated by Decree No. 991 of 25 April 1964).

Art. 9. Personal freedom shall be guaranteed.

1. Everyone shall be presumed innocent until proved guilty by a judicial decision.

2. No one may be investigated or kept in custody except in accordance with the law.

3. The right of defence shall be guaranteed by law.

Art. 10. There is neither crime nor penalty except as defined by law.

Art. 11. Laws shall have effect only from the date of their enactment and shall not have retroactive effect. Nevertheless, a law may provide to the contrary in all but criminal matters.

Art. 12. Dwellings shall be inviolable and may not be entered or searched except in the cases and in the manner specified by law.

Art. 13. Public freedoms shall be guaranteed, and the manner of their exercise shall be regulated by law.

Art. 14. 1. Citizens shall not be deported from their national territory.

2. Every citizen shall have the right to reside and move within the territory of Syria, unless forbidden to do so as a result of a judicial order or in execution of laws related to health and public safety.

Art. 15. Political refugees shall not be extradited because of their political principles or because of their defence of freedom.

Legal Texts:

Art. 72 (of the Code of Criminal Procedure) reads as follows:

1. The examining magistrate may prohibit for a period not exceeding ten days, which may be renewed once, communication with an accused person in custody.

2. The said prohibition shall not apply to the legal representative of the accused, who may communicate with him at any time in the absence of a guard.

Art. 69. 1. The examing magistrate before whom the accused appears shall establish the identity of the accused and shall inform him of the allegations against him and shall call upon him to reply thereto, and shall warn him that he need not reply unless his legal representative is present.

Art. 274 (applying to the Criminal Court)

1. The presiding judge or his deputy shall ask the accused whether he has selected a legal representative to defend him. If he has not, the presiding judge or his deputy shall appoint one immediately; otherwise all subsequent proceedings shall be considered null and void, even if the court should appoint a legal representative for the accused in the course of the trial.

Regulations:

(Prison regulations promulgated in Ordinance No. 1222 of 20 June 1929)

1. Art. 65 of the Regulations provides that visits shall take place with the permission of the administrative or judicial authority, according to the circumstances, and that such permission shall be granted to any person, whether or not he is related to the prisoner.

2. Art. 66 provides that visits shall take place in the reception room in the presence of a guard, unless the visitor is a legal representative appointed by the prisoner, in which case the visit shall take place in the absence of a guard.

3. Art. 67 deals with the number of visits and provides that visits to persons detained on criminal charges shall be limited to one a week. Legal representatives, however, may visit such prisoners daily (art. 68).

4. With regard to postal correspondence, art. 69 permits the prisoner to write once a week to whomsoever he wishes.

[1] Note furnished by the Government of Syria.

LEGISLATIVE DECREE No. 31 OF 29 FEBRUARY 1964 RESPECTING THE ORGANIZATION OF TRADE UNIONS

SUMMARY

Article 2 of the Legislative Decree reads as follows:

"(1) Workers engaged in the same occupation may join together to form a trade union having the following aims and objects:

"(*a*) the fulfilment of the aspirations of the Arabic people in unity, freedom and socialism;

"(*b*) the protection of labour and production considered as forming part of the national patrimony, in order to encourage their promotion and develop-

ment and raise them to a sufficiently high level to meet the requirements of the home market and cope with world competition;

" (*c*) participation in the training of specialised manpower from the occupational and technical point of view, rendering such skilled manpower capable of assuming its national responsibilities in the struggle for work and production;

" (*d*) the protection of the material, moral, health and cultural interests of the workers and the defence of their rights, while ensuring that they discharge their obligations, and raising of the level of their national and occupational outlook.

" (2) State-employed workers and salaried employees and all those who work in private, public and nationalised establishments and in administrative units having legal personality may join together to form trade unions or join unions already constituted by virtue of this Legislative Decree : Provided that the above provisions shall not apply to workers in the employ of the Ministry of Defence and the directorates, administrations and establishments depending thereon.

" (3) The Minister shall prescribe by order the trades and occupations in which the workers may join together to form trade unions ".

Under article 5, a trade union may be constituted by not less than twenty-five workers all exercising the occupation to be represented. The founding members of a trade union, as stipulated in article 6, shall be nationals of the Syrian Arab Republic or one of the Arab States; be actively engaged in the occupation to be represented by the trade union at the time when such trade union is constituted; and be eighteen years of age or over.

Article 12 provides for the membership of a trade union as follows :

" (1) Any worker shall be free to join the trade union for the occupation he is engaged in if he is 15 years of age or over; he shall not be a member of more than one trade union.

" (2) Apprentices and retired workers shall be entitled to be members of a trade union. Unemployed workers may remain members of a trade union.

" (3) Alien workers working in Syria for more than a year shall also be entitled to join trade unions, subject to reciprocity ".

Other provisions of the Legislative Decree deal with trade union income and property; the winding up of trade unions; the general meeting; the trade union managing committee; the works union committees; the central trade union; the general federation; and penalties.

Translations of the Legislative Decree into English and French have been published by the International Labour Office as *Legislative Series*, 1964 — Syr. 1.

LEGISLATIVE DECREE No. 55 OF 16 APRIL 1964 TO DEFINE AND PROVIDE FOR THE CO-MANAGEMENT OF UNDERTAKINGS

SUMMARY

The text of the Legislative Decree was published in *Al-Jarida al-Rasmiya*, No. 17, of 30 April 1964.

Article 1 of the Legislative Decree reads as follows :

" The co-management of an undertaking shall mean the collective appropriation of the same, the workers being subrogated for the owner in the ownership of the undertaking and managing his affairs under State control ".

The management of an undertaking under the co-management system, as stipulated in article 2, shall be the responsibility of a board of directors, whose term of office shall be of two years' duration and which shall be composed of seven members representing the workers, the Government, the workers' trade union and the Arab Socialist Resurgence Party (*Baas*).

Under article 5, the workers shall be represented on the board of directors by four members elected by the workers' committee of the undertaking.

Other provisions of the Legislative Decree deal with the establishment in every undertaking of a workers' committee which shall have the same powers as the general staff assembly; with the drawing up by the board of directors of the employment rules of the undertaking stipulating the sanctions, wage supplements and conditions of work, subject to the approval of the Minister of Labour and Social Affairs; and with the sharing of net profits as follows : 30 per cent for the State and general reserves, 30 per cent to be spent by the State for industrial expension for the absorption of available manpower, 25 per cent for the workers of the undertaking, 5 per cent for the social services of the undertaking and 10 per cent for the provision of housing for the workers of the undertaking.

Translations of the Legislative Decree into English and French have been published by the International Labour Office as *Legislative Series*, 1964 — Syr. 2.

THAILAND

NOTE[1]

I. LEGISLATION

A. Military Court Jurisdiction

1. *Amendment of the Revolutionary Party's Proclamation No. 16 Act (No. 2), B.E. 2507 (1964)*

The Revolutionary Party's Proclamation No. 16, as amended by the Amendment of the Revolutionary Party's Proclamation No. 16 Act of B.E. 2504 (1961), has given the Military Court jurisdiction over :

(1) offences against the person of the King, the Queen, the Heir Apparent, and the Regent;

(2) offences against the external and internal security of the state;

(3) offences against friendly relations with foreign states;

(4) offences relating to public peace;

(5) offences relating to public security;

(6) offences relating to sexuality;

(7) offences against life;

(8) offences against person; and

(9) offences against property by snatching, extortion, blackmail, robbery and gang-robbery.

The present Act now restores to the Civil Court jurisdiction over offences mentioned under 4, 6, 7, 8 and 9 committed after the date of its promulgation, i.e. 25 February B.E. 2507 (1964) (Sections 3, 4 and 5).

2. *Amendment of the Military Penal Code Act (No. 8), B.E. 2507 (1964)*

This Act amends the Military Penal Code by giving power to the Military Court to pass sentence of punishment upon persons who, according to the Law on the Constitution of the Military Court, fall within its jurisdiction for committing outside the Kingdom criminal or disciplinary offences punishable under the Military Penal Code or other laws (Section 3).

B. Education and Research

1. *University of Medical Sciences Act (No. 9), B.E. 2507 (1964)*

This Act empowers the University of Medical Sciences to establish a graduate school or Institute of Higher Learning for the purpose of medical education and research within the University of Medical Sciences, and also to confer a degree, diploma or certificate (Section 3).

2. *Royal Decree Establishing the Graduate School of the University of Medical Sciences, B.E. 2507 (1964)*

Issued under the University of Medical Sciences Act (No. 9), B.E. 2507 (1964), this Royal Decree establishes the Graduate School of the University of Medical Sciences, for the purpose of supplying qualified doctors and promoting efficiency among doctors, pharmacists and dentists as well as research in medical sciences and public health.

Section 4 of this Royal Decree provides that for the purpose of the administration of the Graduate School of the University of Medical Sciences, there shall be a committee called the Committee of the Graduate School, University of Medical Sciences, consisting of the Rector of the University of Medical Sciences as its President, the Dean of the Graduate School as its Vice President, the Chief of each branch of studies of the Graduate School and not more than ten other qualified persons appointed by the Rector of the University of Medical Sciences as its members, and the Secretary of the Graduate School, the University of Medical Sciences as its member and secretary. This Committee shall be responsible for education above the Bachelor's degree and shall have the power as well as the duty to decide on the policy of that education, such as setting down of curricula, determining qualifications, selecting candidates to study in the Graduate Schools of the University of the Medical Sciences, supervising programmes of education, research and examination according to the curricula of the Graduate Schools as approved by the University Council, and submitting to the University lists of candidates who have completed their studies according to the curricula for the Master's Degree, Doctor's Degree or Higher Certificates.

3. *Chiengmai University Act, B.E. 2507 (1964)*

This Act establishes the University of Chiengmai in the Province of Chiengmai, as a juristic person with the purpose of providing and promoting higher technical and professional education and research and preserving the Thai culture.

Section 8 of this Act provides that education and research may be undertaken in this university in Humanities, Education, Fine Arts, Social Science, Science, Engineering, Medical Science and Agriculture.

The University Council comprises the Prime Minister as its President *ex officio*, the Secretary-General of the Council of Education of Thailand, the Rector, the Deputy Rector, Deans and Directors

[1] Note furnished by the Government of Thailand.

of Institutes within the University as its members *ex officio*, and four to six other members appointed by His Majesty the King. The Deputy Rector shall act as its secretary (Section 12). The University Council's power and duty with regard to the administration of the University in particular relate to the following :

(1) to set down the University orders and regulations;

(2) to determine the curricula for the approval of the Council of Education of Thailand;

(3) to find methods for the promotion of education and research in the University;

(4) to confer degrees, higher diplomas and certificates;

(5) to propose the establishment, merger and dissolution of colleges, faculties, institutes and branches of study;

(6) to propose the appointment and removal of Rectors, Deputy Rectors, Deans, Directors of Institutes, Chiefs of Branches of Study, Professors, Deputy Professors and Assistant Professors; and

(7) to control the University's finance and property (Section 14).

4. *Boy Scout Act, B.E. 2507 (1964)*

This Act provides for the promotion of efficiency within the Boy Scout Organization of Thailand, which is composed of all boy scouts, boy scout commanders, boy scout inspectors, Boy Scout Committee members and boy scout officials (Section 5). The objectives of the Boy Scout Organization of Thailand, which is a juristic person (Section 6), are to develop the character of boy scouts to become good citizens according to the national customs and ideals, by training each boy scout :

(1) to have the habit of using his observation and memory, to be obedient and self-reliant;

(2) to be honest and well-disciplined and to have sympathy for others;

(3) to conduct himself for the public benefit;

(4) to be acquainted with handicraft work; and

(5) to develop himself physically, spiritually and morally.

This Organization has nothing to do with any political doctrine (Section 7).

The Council of the Boy Scout Organization of Thailand is vested with policy-making power necessary for the security and progress of the Organization. It shall examine the annual report of the Organization and advise the Organization's Administrative Committee on the performance of its work (Section 12).

The Administrative Committee of the Boy Scout Organization of Thailand shall have the power and the duty :

(1) to materialize the objectives of the Boy Scout Organization in accordance with the policy of that Organization's Council;

(2) to promote the Organization's relationship with international boy scout organizations;

(3) to train boy scouts, boy scout commanders, boy scout inspectors and boy scout officials;

(4) to arrange rallies of boy scouts, boy scout commanders and boy scout officials;

(5) to administer the property of the Boy Scout Organization;

(6) to make investments for the benefit of the Boy Scout Organization;

(7) to lay down regulations of the Boy Scout Organization and publish them in the *Government Gazette*;

(8) to set out orders and patterns for the Boy Scout Organization;

(9) to submit to the Council of the Boy Scout Organization of Thailand annual reports, together with the Organization's balance of the year;

(10) to appoint a sub-committee for the purpose of examining or acting on any matters; and

(11) to set up honorary or other positions not mentioned in this Act (Section 18).

5. *National Research Council Act (No. 2), B.E. 2507 (1964)*

This Act amends the National Research Council Act, B.E. 2507 by extending the duty of the National Research Council to include the conduct of research in any subject matter as may be assigned to it by the Cabinet; the examination of proposals submitted to it by the Office of the National Research Council; the submission to the Cabinet of its opinion concerning such proposals; and the submission of its opinion concerning any research matter to the Prime Minister, if the latter so requests (Section 4).

6. *Royal Decree on Teacher and School Census, B.E. 2507 (1964)*

Issued under the Statistics Act, B.E. 2495 (1952), this Royal Decree was enacted for the purpose of planning the national education and that of manpower in education, both of which required that a census be taken among teachers and schools throughout the kingdom between 15 July B.E. 2507 (1964) and 31 August, B.E. 2507 (1964).

C. Child Welfare

1. *Establishment of the Children's and Juveniles' Court of Nakorn Rajsima Province Act, B.E. 2507 (1964)*

This Act establishes a Children's and Juveniles' Court having territorial jurisdiction over Nakorn Rajsima Province.

2. *Royal Decree Establishing the Children's Observation and Protection Centre of Nakorn Rajsima Province, B.E. 2507 (1964)*

Issued under the Children's and Juveniles' Procedure Act, B.E. 2494 (1951) as amended by the Children's and Juveniles' Procedure Act (No. 2), B.E. 2506 (1963), this Royal Decree establishes the Children's Observation and Protection Centre of Nakorn Rajsima Province having territorial jurisdiction over Nakorn Rajsima Province and to begin functioning as from 8 July B.E. 2507 (1964).

3. *Student Hostel Act, B.E. 2507 (1964)*

This Act was passed to prevent any commercial exploitation by the management of private student hostels, which take in youths pursuing their studies in localities away from home. It provides for the

safeguard of the welfare and good morality of students and for the protection against disturbances of peace.

Under this Act, there shall be two kinds of hostels: (1) hostels for male residents; (2) hostels for female residents (Section 6). A person may not establish a hostel unless he is its owner and has obtained licence for that from the Registration Officer (Section 7). Where the Registration Officer refuses to issue or to renew a hostel licence, applicant is entitled to appeal in writing to the Minister of the Interior within thirty days after he has been served with the notice of refusal. The Minister's decision shall be final (Section 23).

Where it appears or where there is cause to suspect that a resident is being or may be in danger on account of illness or otherwise, the hostel manager must forthwith inform the latter's parents or guardian (Section 29). The hostel manager shall take care that no females reside in male hostels and vice versa (Section 30).

The Registration Officer or any other official under this Act shall have the power to enter a hostel during the hours between sunrise and sunset to supervise and control compliance of this Act. Persons in such premises must be given reasonable facilities (Section 31).

D. Public Health

1. *Control on the Quality of Food Act, B.E. 2507 (1964)*

This Act repeals the two earlier Control on the Quality of Food Acts, and, for the purposes of public safety and welfare, provides for more efficient control of the standard and quality of food produced or offered for sale to the public.

For the purposes of controlling the quality of food, the Minister of Public Health is empowered to publish in the *Government Gazette* the following:

(1) a specification of controlled food;

(2) a specification of the quality of food under control according to name, category, kind, nature or standard of food produced or sold as well as rule and method of production and sale;

(3) a specification of the proportion of mixture in the production of controlled food according to name, category, kind or nature of the food produced or sold, and that of the colouring and seasoning;

(4) specification of food not allowed to be brought or ordered into the kingdom;

(5) a specification of the methods of using preservatives, of preserving colours, of using other substances in food and of using containers;

(6) a specification of the methods of examination, storage, seizure, attachment and technical analysis of food; and

(7) a specification of the groups and kinds of food produced and sold which must be labelled, of the words used on labels, and of the conditions as well as the exhibition of labels (Section 5).

The Minister of Public Health shall have the power to appoint officials, who in performing their duty shall have the following powers:

(1) to enter premises producing or selling food, for the purpose of examining the quality of food and containers or otherwise for the purpose of controlling the quality of food during the usual working hours;

(2) to retain food suspected to be contaminated, adulterated or imitated to a reasonable quantity as specimen for examination; and

(3) to seize or attach bad containers or food which do not meet the standards of control of quality of food, are contaminated, adulterated or imitated (Section 21).

Persons who produce, import, order or sell contaminated, adulterated or imitated food in contravention of this Act shall be punished with imprisonment not exceeding ten years, or a fine not exceeding twenty thousand baht, or both (Section 31).

2. *Royal Decree on the Establishment of the Sports Promotion Organization of Thailand, B.E. 2507 (1964)*

Issued under the Establishment of Governmental Organization Act B.E. 2496 (1953), this Royal Decree establishes the Sports Organization of Thailand (Section 4), with the following objectives:

(1) to promote sports;

(2) to give assistance, advice and co-operation in non-professional sports;

(3) to survey, build and repair places for non-professional sports;

(4) to co-operate with non-professional sports organizations or clubs within and outside the kingdom;

(5) to direct other business in relation to or for the benefit of non-professional sports;

(6) to make recommendations to governmental departments or organizations in order to promote the interests and popularity in sports; and

(7) to collect and compile records from governmental departments, organizations or private sources, for the purpose of keeping statistics on non-professional sports (Section 6).

E. Officials' Status

1. *Act on the Organization of Universities' Officials, B.E. 2507 (1964)*

This Act provides that the determination of rates of salary, recruitment, appointment, promotion in grade, promotion in salary, transfer, enquiry, observation of disciplinary measures and retirement from service of officials and employees of universities shall be in accordance with the rules and modes prescribed in Ministerial Regulations. The reason for enacting this Act is to have rules and modes on the rates of salary, recruitment, appointment, etc., specially applicable to those working in all universities in Thailand. It, therefore, makes the provisions of the laws on civil service, in so far as they are provided in this Act, inapplicable to universities' officials. According to the Ministerial Regulations issued under this Act, a Committee shall be set up comprising the Prime Minister as chairman, the Deputy Prime Minister as vice chairman, the President of the Executive Board of the National Education, the Assistant to the Prime Minister, the Under-

Secretary of the Office of the Prime Minister, the Rectors of all universities, the Director of the Bureau of Budget, the Comptroller-General, the Secretary-General of the Civil Service Commission and the Secretary-General of the National Education Council, as its members, and the Secretary-General of the National Education Council as its secretary. This Committee's powers and duties mostly resemble those of the Civil Service Commission under the law on civil service. As for the qualifications required for persons to be recruited and appointed as officials in universities as well as those in relation to rates of salary, enquiry, observation of disciplinary measures and retirement from service are very much similar to those provided for civil servants under the laws on civil service.

2. *The Public Prosecutors Act (No. 4), B.E. 2507 (1964)*

This Act establishes two more public prosecutor positions in addition to those already provided by the law, bringing the number of positions of public prosecutors to twelve altogether (Section 3). It also empowers the Director-General of the Public Prosecutor's Office in case there is any vacant position other than that of Director-General, and the Minister in case of vacancy of the position of Director-General, to appoint any public prosecutor to be temporarily in charge of the vacant position. This Act has been passed with a view to making the performance of the duties of the public prosecutors more efficient.

3. *Act on the Organization of Public Prosecution Officials (No. 3), B.E. 2507 (1964)*

As the Public Prosecutors Act (No. 4), B.E. 2507 (1964) has been put into operation it, therefore, requires the Assembly to pass this Act to amend the existing law on the organization of public prosecution officials. The Act provides for the appointment, selective examination, retirement and salaries of public prosecutors, in conformity with the law on public prosecutors.

4. *Royal Decree on Survey of Population Change, B.E. 2507 (1964)*

This Royal Decree empowers the National Statistical Office to make a survey of the population change by sampling methods throughout the Thai Kingdom. It has been made with the purpose of getting information concerning the living conditions of the people, such as names, family relations, sex, date of birth, place of birth, marital status, etc., which are beneficial to the carrying out of the statistical plan on certain changes of the number of families.

F. Economic, Social and other Matters

1. *Prevention of Market Dumping Act, B.E. 2507 (1964)*

This Act provides for the protection of home industries against foreign practices of market dumping, in order to encourage and consolidate home industries for the benefit of the economy of the kingdom.

There shall be a Committee on the Prevention of Market Dumping, consisting of the Under-Secretary of State for Finance as its President, the Under-Secretary of State for Industry as its Vice-President, the Director-General of the Revenue Department, the Director-General of the Industrial Promotion Department, the representative of the Ministry of Economic Affairs, the representative of the Office of Economic Finance, the representative of the Board of Promotion of Industrial Investment, and not more than four other members appointed by the Cabinet (Section 5). The said Committee shall have the power and duty: (1) to make investigations and decisions as to whether there is market dumping. For this purpose the Committee may require any person to produce facts and to express his opinion; (2) to report its decision and submit its opinion to the Minister as to measures to be taken; and (3) to perform any other duty assigned to it by the Minister (Section 8).

If the Minister, upon receipt of the report of the Committee's decision, is of the opinion that any goods are imported for the purpose of market dumping, he shall have the power, upon approval of the Cabinet, to impose taxes, for the purpose of preventing market dumping, upon such goods, at appropriate rates but not exceeding the normal price of the same (Section 11).

Members of the Committee on the Prevention of Market Dumping and officials under this Act, in performing their duty, shall have the power: (1) to enter any premises during working hours to make enquiries or to examine any document or object; (2) to attach any document or object; and (3) to summon any person to testify, surrender documents or objects for the purpose of investigation (Section 12).

Any person, not rendering facilities to the said Committee or officials while performing their duty under Section 12 of this Act, shall be punished with imprisonment not exceeding one month or a fine not exceeding one thousand baht, or both (Section 15).

2. *The State Irrigation Act (No. 3), B.E. 2507 (1964)*

This Act amends the law on State irrigation by revising some provisions concerning the implementation of construction work, the maintenance and control of State irrigation as well as the enlargement of the official's power in carrying out this Act and the readjustment of the scale of penalties to be inflicted upon violators in order to make the execution of this law and the suppression of violators more efficient and suitable to the present circumstances. Under this Act, the meaning of the word "irrigation" is expanded to include not only any work constructed by the Irrigation Department to supply water for cultivation but also the work constructed to supply water for power or public utility, as well as the prevention of damage with regard to water and navigation within the irrigation areas (Section 3). It also gives the Director-General of the Irrigation Department the power to appoint any person, not being an official of the Irrigation Department, to be an official with the duty of collecting irrigation waterway maintenance fees or of taking care of the

irrigation waterway, berm, dam, flood embankment, demarkation post or stake, or any structure used for irrigation purposes (Section 5). The official so appointed is charged with the power to stop any boat or craft passing through the irrigation waterway when there is a reasonable ground to suspect that a violation of the Act has been done, to check the passage of boats travelling in the irrigation waterway and to arrest any person committing an offence under this Act (Section 6). The official, in performing his duty, has to produce, upon request, his identification card. Furthermore, no motor boat or steamer is allowed to travel in the waterway used for supplying, draining, conserving or retaining water for irrigation purposes unless permission has been obtained occasionally according to necessity from the official; and no motor boat or steamer used for transporting passengers or goods or for tugging boat can travel in the water used for navigation in common with irrigation, unless permission has been obtained from the official (Section 8). Under this Act, the irrigation engineer is empowered, in case of emergency, to prevent the irrigation work from natural disaster, to take a proper proceedings in order to get rid of any encroachments on the irrigation waterway, embankment, berm or flood embankment (Section 13). Those who fail to pay irrigation charge or irrigation waterway maintenance fee are liable to a fine 2 to 10 times the irrigation charge or irrigation waterway maintenance fee, as the case may be, which is due to them. But if the violators pay to the competent official the irrigation charge or the irrigation waterway maintenance fee together with an additional sum 10 to 50 times the irrigation charge or the irrigation waterway maintenance fee, respectively within a period of time determined by the said official, they shall be excused for such failure (Sections 15 and 16).

3. *The Plant Quarantine Act, B.E. 2507 (1964)*

This Act repeals the earlier law on plant diseases and plant pests prevention, and for the purpose of more efficient control and prevention of plant diseases and plant pests, gives the plant quarantine officers more power in performing their functions. It also extends the scope of controlling pests on plants imported or brought in transit into the Kingdom by land, sea or air. This is to bring about the fulfilment of the objective of prevention of plant pests and to fulfil Thailand's obligations as a party to the international convention on the matter. Under this Act, the Minister of Agriculture shall, for the purpose of preventing the spread of any kind of plant pest into the Kingdom, have the power to specify the plants, plant pests or carriers to be regarded as prohibited or restricted materials and to specify also the lands of their origin as well as any exception or conditions, if any (Section 6). The Minister shall also have the power to determine any port, airport or place with certain limits as plant quarantine station or post-entry quarantine station (Section 7). The Act further forbids the importation or bringing in transit of any prohibited or restricted materials unless permission has been obtained from the Director-General of the Department of Agriculture and such materials shall be accompanied by a phytosanitary certificate or other reliable document issued by the competent authority of the exporting country. The permission for importation of prohibited materials may be granted by the Director-General only for the purpose of experimentation or research (Sections 8 and 9). The importation or the bringing in transit of prohibited or restricted materials shall be made via the plant quarantine station for inspection by the plant quarantine officer and all conditions and stipulations prescribed by the Minister have to be complied with (Section 10). In performing their functions, the plant quarantine officers are empowered to search any warehouses, conveyance, packages as well as any person within the limit of a plant quarantine station or plant pests control area where there is reasonable ground to suspect that prohibited or restricted materials have been imported or brought in transit in violation of this Act (Section 12). It also empowers the plant quarantine officers, for the purpose of preventing the spread of plant pests into the Kingdom, to have plants, prohibited or restricted materials fumigated or treated with chemical, to seize or hold the same at the plant quarantine station or at any other place for a necessary period of time, and to destroy them, if necessary, when there is reasonable ground to believe that plant pests exist (Section 13). The Director-General shall, in the event of an outbreak of plant pests which might bring about serious damages, or where there is proper reason to place control in respect of plant pests in any locality, have the power to determine such locality as plant pests control area. He also has to notify the names and species of plant, plant pests, and carriers under control and determine the local checking station. No person shall take out of or bring into a plant pests control area any plants, plant pests or carriers prior to permission of the plant quarantine officers. In case of necessity for preventing serious damage that requires the immediate destruction of plant pests, the plant quarantine officer may order the owner to destroy the plant, plant pests or may destroy them by himself. Those who fail to comply with the provisions of this Act, or resist or obstruct the plant quarantine officer's performance of function are liable to an imprisonment not exceeding six months, or a fine of fifty to two thousand baht, and the materials which are objects of offences in connection with the plant pests control area shall be forfeited without regard to whether any person is convicted.

4. *Reserved Forest Act, B.E. 2507 (1964)*

This Act provides for the safeguard against destruction of valuable timber resources of the Kingdom in order to protect the agriculture and economy of the Kingdom from being affected by the purposeless destruction thereof.

The Minister of Agriculture shall have the power to specify, where the thinks fit, any forest as a reserved forest of the Kingdom, in order to retain the existence of forest timber or other natural resources by issuing a Ministerial Regulation with a map showing the boundaries of the reserved forest attached thereto (Section 6). Where any person claims to have a right or a benefit in a reserved forest prior to the enforcement of a Ministerial Regulation specifying that forest as reserved, he may make a petition in writing to the district

officer of the locality where the forest in question is located within ninety days after the enforcement of the Ministerial Regulation. The district officer shall forward the petition without delay to the Reserved Forest Committee (Section 12), which comprises the representative of the Forestry Department, the representative of the Administrative Affairs Department, the representative of the Land Department and two other members appointed by the Minister of Agriculture (Section 10).

Upon receipt of such petition the Reserved Forest Committee shall conduct an investigation. If it appears that the petitioner loses his right or benefit thereby, the committee shall award appropriate compensation. If the petitioner is not satisfied with the compensation, he shall have the right to appeal to the Minister of Agriculture within thirty days from the date of the notification of the decision of the Committee. The Minister's decision shall be final (Section 13).

5. *Bar Association Act, B.E. 2507 (1964)*

This Act recognizes the already existing Bar Association of Thailand as a juristic person (Section 3). The objectives of the Bar Association of Thailand, according to this Act, are as follows: (1) to promote the legal education and profession, including the provision of scholarships for the said purpose; (2) to supervise the professional conduct of lawyers; and (3) to promote the unity as well as to uphold the honour of its members (Section 4).

The Bar Council, consisting of the Lord Chief-Justice of the Supreme Court as its President, the Chief-Judge of the Appeal Court and the Director-General of the Public Prosecution Department as its Vice-Presidents, and not less than sixteen other members elected from ordinary members of the Bar Association, shall have the power and the duty to administer the Bar Association in accordance with the law, and the regulations of the Bar Association (Section 7).

6. *The Deportation Act (No. 2), B.E. 2507 (1964)*

This Act was passed with the purpose of inflicting punishment upon persons who, having been ordered for deportation, escape from the police custody pending deportation. The punishment will be severer if the escape has been made by breaking the place of custody, by using or threatening to use any act of violence, or by a group of three or more persons (Section 3). It also inflicts punishment upon those who rescue any person in custody pending deportation, or those who harbour, hide or assist the person who escaped, provided however that the Court may not inflict punishment if the offender has committed such offence with a view to helping a father, mother, child, husband or wife of his or her own (Section 9 *ter* and 9 *quater*).

II. JUDICIAL DECISIONS

1. *Right of Access to the Court of Justice* (Supreme Court Judgement No. 341 to 350/2507 (1964))

The provincial governor issued an order, under the Revolutionary Party's Proclamation No. 44, requiring the plaintiff to remove his building from public land. The said governor did so in his official capacity. The Province as a juristic person was held liable for the governor's act and the plaintiff brought action against the province.

Even though the Revolutionary Party's Proclamation No. 44 does not provide for a procedure of action or an appeal by an injured party, the plaintiff was of the opinion that the Governor's order was not in accordance with the law, for he built on his own land without encroaching upon public land. The plaintiff was held to have the right of action against the defendant, under Section 55 of the Civil Procedure which calls for the revocation of such order.

2. *Nationality* (Supreme Court Judgement No. 315/2507 (1964))

The plaintiff, a Thai national by birth, travelled to China for the purpose of education, but without holding a passport in accordance with the law. Subsequently, he wished to return to Thailand, but the Thai Consul refused to issue him a passport. He then became a naturalized Portuguese. Upon his arrival in Thailand, he was immediately requested to prove his Thai nationality. It was held that the plaintiff had not wished to surrender voluntarily his Thai nationality by birth and therefore still retained same.

3. *Detention under Warrant of the Military Court* (Supreme Court Judgement No. 321/2507 (1964))

The petitioners were accused of communist activity and offence against the security of the State, and so charged in the Military Court in time of emergency. The said Court accepted the charge and issued warrants to detain the petitioners in a temporary place of confinement. The petitioners, it was held, had no right to petition to the ordinary Criminal Court, in order to be released under section 90 of the Criminal Procedure Code.

III. INTERNATIONAL AGREEMENTS

1. The Treaty Banning Nuclear Weapon Tests in the Atmosphere, in the Outer Space and Under Water, to which the Government of the Kingdom of Thailand has given its ratification, became effective for Thailand as from 15 November B.E. 2507 (1964) pursuant to the Government Notification of 7 February B.E. 2507 (1964) published in the *Government Gazette* Vol. 81, No. 20, p. 127.

2. The Agreement between the Government of the Federal Republic of Germany and the Government of the Kingdom of Thailand Regarding Economic and Technical Co-operation became effective for Thailand as from 2 April B.E. 2507 (1964), i.e. on the date of signature of the Agreement, pursuant to the Government Notification of 12 May B.E. 2507 (1964), published in the *Government Gazette*, Vol. 81, No. 47, p. 1.

TOGO

NOTE

1. Act No. 64-10 of 22 June 1964 (*Journal officiel de la République togolaise*, No. 259 of 16 July 1964) extended for one year the provisions of Act No. 61-17 of 16 August 1961 [1], which authorizes the Government to deport or expel persons endangering public order and the security of the State.

2. Act No. 64-90 of 16 July 1964 (*Ibid.*, No. 261 of 1 August 1964), in its article 1, established the contribution rate under the scheme for the prevention of, and compensation for, industrial accidents and occupational diseases as follows:

"*Art. 1.* The uniform contribution rate to be paid by employers under the scheme for the prevention of, and compensation for, industrial accidents and occupational diseases shall be established in all sectors of activity, at 2.5 per cent of the total payroll, including various allowances and other cash benefits but excluding payments in respect of out-of-pocket expenses."

[1] For extracts from Act No. 61-17 of 16 August 1961, see *Yearbook of Human Rights for 1961*, pp. 370-371.

TRINIDAD AND TOBAGO

NOTE

The Government of Trinidad and Tobago has informed the Secretary-General that during 1964 no important court decision has been handed down relating to human rights and that sections 1-2, 3 (sub-section 1), 4-15, 17-18, 22, 24-25, 29 (sub-section 1), 30-31, 34 and 38 of the 1962 Constitution of Trinidad and Tobago may be reproduced in the *Yearbook on Human Rights for 1964*.[1]

[1] For the sections concerned of the 1962 Constitution, see *Yearbook on Human Rights for 1962*, pp. 294-299.

TUNISIA

LEGISLATIVE DECREE No. 64-1 OF 20 FEBRUARY 1964 (7 SHAWWAL 1383) AMENDING CERTAIN ARTICLES OF THE CODE OF PERSONAL STATUS[1]

Art. 1. Article 5 of the Code of Personal Status is amended as follows:

" *Art. 5* (new). The two prospective spouses must not be barred from marriage by any of the impediments established by law. In addition, men under twenty years of age and women under seventeen years of age may not marry. A person below the prescribed age may not be married except by special licence of a magistrate, who shall grant such licence only for valid reasons and where it is clearly in the best interests of both prospective spouses to do so. "

...

[1] *Journal officiel de la République tunisienne*, No. 9, of 21 February 1964 (8 Shawwal 1383). For extracts from the Code of Personal Status, see the *Yearbook on Human Rights for 1956*, pp. 219-220.

ACT No. 64-34 OF 2 JULY 1964 (22 SAFAR 1384) AMENDING THE PENAL CODE[2]

Art. 1. Article 5 of the Penal Code is hereby abrogated and replaced by the following provisions:

Art. 5 (new). " The penalties shall be:

(*a*) *Principal penalties :*

1. Death;
2. Hard labour for life;
3. A term of hard labour;
4. Imprisonment;
5. A fine.

(*b*) *Accessory penalties :*

1. Forced residence;
2. Remand to administrative supervision;
3. Confiscation of property in the cases prescribed by law;
4. Special confiscation;
5. Transportation in the cases prescribed by law;
6. Deprivation of the following rights and privileges:

(*a*) To hold public office; to practise certain professions such as that of advocate, law officer, juryman, doctor, veterinary surgeon, midwife, director or staff member in any capacity of an educational institution, *mokadem*, expert, notary, bailiff; or to be a witness making other than a simple deposition;

(*b*) To bear arms or wear official decorations;

(*c*) To vote, stand for election and be elected;

7. Publication of extracts from certain decisions of the court. "

Art. 2. Articles 12, 53 (paragraphs 2 and 5) and 152 of the Penal Code are hereby abrogated.

Art. 3. Article 27 of the Penal Code is hereby abrogated and replaced by the following provisions:

Art. 27 (new). " Confiscation of property means transfer of the convicted person's property to the State. Confiscation shall be ordered in the cases prescribed by law. Confiscation may be total or partial. "

Art. 4. Article 28 of the Penal Code is hereby abrogated and replaced by the following provisions:

Art. 28 (new). " Special confiscation means transfer to the State of the product of an offence or the instruments which were used or might have been used in committing the crime.

" When a sentence is pronounced, the judge may order the confiscation of objects which were used or which were intended for use in committing the offence and of the product of the offence, irrespective of ownership.

" The confiscation of objects, the manufacture, use, carrying, possession and sale of which constitute an offence, shall be ordered in all cases. "

Art. 5. Article 218 of the Penal Code is hereby abrogated and replaced by the following provisions:

Art. 218 (new). " Any person who deliberately inflicts bodily injury by wounding or beating or commits any other act of violence or assault not provided for in article 319 shall be sentenced to one year's imprisonment and a fine of 100 dinars.

" Where there was premeditation, the penalty shall be three years' imprisonment and a fine of 500 dinars.

" If the guilty person is a descendant of the victim, the penalty shall be five years' imprisonment.

" If the victim of the attack does not wish to press charges against his descendant no further

[2] *Journal officiel de la République tunisienne*, 3-7 July 1964.

action shall be taken against the assailant and the sentence shall be rendered inoperative.

" A person who attempts assault shall be liable to punishment. "

Art. 6. Article 219 of the Penal Code is hereby abrogated and replaced by the following provisions:

Art. 219 (new). " When the above-mentioned acts of violence have resulted in mutilation, loss of the use of a limb, disfigurement, infirmity or permanent disability not exceeding 20 per cent, the penalty shall be five years' imprisonment.

" If the said acts of violence resulted in disability exceeding 20 per cent, the penalty shall be five years' hard labour.

" If the guilty person is a descendant of the victim, the penalty shall be raised to ten years, irrespective of disability and even if the victim does not wish to press charges. "

Art. 7. Article 220 of the Penal Code is hereby abrogated and replaced by the following provisions:

Art. 220 (new). " Persons who participate in a fight during which blows are dealt, resulting in injuries such as those referred to in articles 218 and 219, shall thereby be liable to six months' imprisonment without prejudice to the penalties prescribed in those articles for the punishment of acts of violence. "

Art. 8. Articles 231 to 235 of the Penal Code, which were abrogated by the Decree of 26 May 1949 (28 Rejeb 1368), concerning the campaign against soliciting and procuring, are hereby restored as follows:

Art. 231 (new). " Except for the cases specified in the regulations in force, any woman who by gestures or words solicits passers-by or engages in prostitution, even occasionally, shall be sentenced to imprisonment for six months to two years and to a fine of 20 to 200 dinars. "

Art. 232 (new). " The following persons shall be deemed guilty of procuring and liable to one to three years' imprisonment and a fine of 100 to 500 dinars:

1. Any person who aids or protects in any way or knowingly assists the prostitution of another person or soliciting for the purpose of prostitution;

2. Any person who shares in any way the proceeds of the prostitution of another person or receives payment from a person habitually engaged in prostitution;

3. Any person who knowingly lives with a person habitually engaged in prostitution and who fails to show that he or she has sufficient means to be self-supporting;

4. Any person who recruits, trains or maintains a person even of legal age, and even with that person's consent, for the purpose of prostitution or who delivers a person to prostitution or debauchery;

5. Any person who acts in any way as an intermediary between persons engaged in prostitution or debauchery and persons who exploit or offer remuneration for the prostitution or debauchery of another person;

Any person who attempts to do any of the above shall likewise be liable to punishment. "

Art. 233 (new). " The penalty shall be three to five years' imprisonment and a fine of 500 to 1,000 dinars in those cases where:

1. The offence was committed against a minor;

2. The offence was accompanied by constraint, abuse of authority or fraud;

3. The offender was carrying a weapon whether openly or in concealment;

4. The offender is the spouse, ascendant or guardian of the victim or exercised authority over the victim, or is the hired servant of the victim or a teacher, official or minister of religion, or was aided and abetted by one or more persons. "

Art. 234 (new). " Subject to the heavier penalties provided for in the preceding article, a sentence of one to three years' imprisonment and a fine of 100 to 500 dinars shall be imposed on any person who commits an immoral offence by encouraging, promoting or facilitating the debauchery or corruption of minors of either sex. "

Art. 235 (new). " The penalties prescribed in articles 232, 233 and 234 above shall be imposed even when the various acts constituting the offences were performed in different countries.

" Persons found guilty of the offences specified in the preceding articles shall be sentenced to restricted residence for not more than ten years. "

DECREE No. 64-409 OF 16 DECEMBER 1964 (12 SHABAN 1384) AMENDING DECREE No. 64-125 OF 29 APRIL 1964 (17 ZU'LHIJJAH 1383) GOVERNING THE COMPOSITION, ROLE AND FUNCTIONS OF THE CINEMATOGRAPHIC FILM CONTROL BOARD[3]

In view of Decree No. 64-125 of 29 April 1964 (17 Zu'lhijjah 1383), governing the composition, role and functions of the Cinematographic Film Control Board;

...

Art. 1. Article 1 of the above-mentioned decree No. 64-125 of 29 April 1964 (17 Zu'lhijjah 1383) is hereby repealed and replaced by the following provisions:

Art. 1 (new). " A 'Cinematographic Film Control Board' is hereby established for the purpose of advising on the merit of cinematographic films and entering an objection, where necessary, to anything it considers reprehensible or undesirable in them. "

Art. 2. Article 2 of the above-mentioned decree No. 64-125 of 29 April 1964 (17 Zu'lhijjah 1383) is

[3] *Ibid.*, of 18 December 1964.

hereby repealed and replaced by the following provisions:

Art. 2 (new). " The Cinematographic Film Control Board shall consist of:

A chairman appointed by the Secretary of State for Cultural Affairs from among senior officials of his department;

A representative of the Secretary of State for the Presidency;

A representative of the Secretary of State for Justice;

A representative of the Secretary of State for the Interior;

A representative of the Secretary of State for National Education;

A representative of the Secretary of State for Youth, Sports and Social Affairs;

A representative of the Secretary of State for Information and Guidance;

Eleven members appointed by the Secretary of State for Cultural Affairs from lists, each of four names submitted by the following national organizations, cultural associations and professional bodies; the *Parti Socialiste Destourien*, the General Union of Tunisian Workers (UGTT), the Tunisian Union of Industry, Trade and Craft Workers (UTICA), the National Farmers' Union (UNAT), the National Union of Tunisian Women (UNFT), the National Union of Tunisian Students (UGET), the Tunisian Federation of Film Clubs (FTCC), the Union of Authors (Artists and Men of Letters), film producers, film distributors and exhibitors. "

Art. 3. Article 9 of the above-mentioned decree No. 64-125 of 29 April 1964 (17 Zu'lhijjah 1383) is hereby repealed and replaced by the following provisions:

Art. 9 (new). " In principle, authorization for the commercial exhibition of a film shall not be subject to any restriction, quantitative (cuts) or qualitative (prohibition on exhibition to a particular category of spectators), a film being accepted or rejected in its entirety and without discrimination as regards the members of the public to be permitted to see it.

" Nevertheless, where such restrictions are proposed by a majority of not less than two-thirds of the members of the Board, the Secretary of State for Cultural Affairs may by way of exception make his grant of authorization for the commercial exhibition of the film in question subject to those restrictions. "

...

ACT No. 64-51 OF 28 DECEMBER 1964 (24 SHABAN 1384) TO ESTABLISH A NATIONAL VOCATIONAL TRAINING AND EMPLOYMENT COUNCIL[4]

Art. 1. A National Vocational Training and Employment Council is hereby established to co-ordinate activities of the different administrations and to advise the Government on such matters as the following:

Study of the labour market in the light of economic trends;

Control of employment, with particular reference to recruitment and termination;

Measures to increase employment capacity;

Factors conducive to the achievement of the full employment of human resources;

Questions relating to vocational training as defined in article 2 of the Decree of 12 January 1956 (28 Jumada I 1375) concerning vocational training.

Art. 2. At the regional level, the activities of the National Vocational Training and Employment Council shall be delegated to Regional Vocational Training and Employment Councils.

...

[4] Text promulgated in the *Journal officiel de la République tunisienne*, No. 65, of 29 December 1964 (25 Shaban 1384).

TURKEY

NOTE [1]

(A) New constitutional provisions: none.

(B) Laws:

1. Act No. 361 ratifying the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;

2. The Turkish Nationality Act (Act No. 403);

3. Act No. 461 ratifying the Convention Extending the Competence of the Authorities Empowered to Register Acknowledgement of Natural Children [2];

4. Act No. 466 concerning the payment of compensation to persons unlawfully arrested or detained;

5. The Social Insurance Act (Act No. 506).

(C) Regulations of the Turkish Society for the Protection of Children.

(D) Order of the Council of Ministers concerning the ratification of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (to the effect that the Convention shall enter into force on the date of the deposit of the instruments of ratification with the Secretary-General of the United Nations).

(E) Regulation No. 403 concerning the application of the Turkish Nationality Act.

(F) Decisions of the Constitutional Court:

1. Decision No. 172/-244, revoking as unconstitutional the provision in the Labour Act (Act No. 3008), article 38, paragraph 1, that one extra hour of work is covered by a day's wages;

2. Decision No. 136/285, revoking as unconstitutional article 66 of the National Defence Act (Act No. 3780), as amended by Act No. 6731, making arrest mandatory;

3. Decision No. 128/64-8, declaring article 143 of the Turkish Criminal Code unconstitutional;

4. Decision No. 202/64-32, declaring article 401, paragraph 2, of the Turkish Criminal Code unconstitutional;

5. Decision No. 330/64-15, revoking as unconstitutional articles 1 and 2 of Act No. 3236 applicable in respect of relatives of persons who commit or attempt to commit murder because of a blood feud.

[1] Note furnished by the Government of Turkey.

[2] Convention adopted on 14 September 1961 by the International Commission on Civil Status. English text in *Journal du droit international*, vol. 89, p. 1149, under the title "Convention Extending the Competence of Authorities Entitled to Receive the Recognition of Natural Children".

NATIONALITY ACT (No. 403) OF 11 FEBRUARY 1964

Part One

Acquisition of Turkish Nationality

I. ACQUISITION THROUGH THE OPERATION OF LAW

1. By Reason of Filiation

(A) *Birth :*

Art. 1. A child born in or outside Turkey:

(*a*) of a Turkish father;

(*b*) of a Turkish mother, such child not being entitled to acquire his father's nationality at birth;

(*c*) out of wedlock, of a Turkish mother,

shall be a Turkish national from birth.

(B) *Change of status :*

Art. 2. A child born out of wedlock of an alien mother shall be a Turkish national from birth if filiation with respect to a Turkish national is established by one of the following means:

(*a*) legitimation;

(*b*) establishment of paternity by a legal judgement;

(*c*) acknowledgment.

(C) *Adoption :*

Art. 3. Adoption shall not affect the nationality of the adopted person. However, if an adopted minor is stateless or he has no parents or their whereabouts is unknown, he shall become a Turkish national upon adoption by a Turkish national.

2. By Reason of Place of Birth

Art. 4. A child born in Turkey who is not entitled to acquire nationality from his parents at birth shall be a Turkish national from birth.

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

3. By Reason of Marriage

Art. 5. An alien woman who marries a Turkish national shall automatically acquire Turkish nationality if she expresses the wish to become a Turkish

national in the manner prescribed in article 42, if she is stateless or if she loses her former nationality in consequence of the marriage.

If the marriage is ruled invalid, the woman shall retain Turkish nationality provided that she has entered into the marriage in good faith.

A child born of a marriage which has been ruled invalid shall retain Turkish nationality even if his mother or father entered into the marriage in bad faith.

II. ACQUISITION BY DECISION OF A COMPETENT AUTHORITY

1. Kinds of Naturalization: Residence

(A) *General :*

Art. 6. Aliens who fulfil the conditions stipulated below may acquire Turkish nationality by decision of the Council of Ministers.

A person who wishes to be naturalized must:

(*a*) be of full age under his national law, or, if he is stateless, under Turkish law;

(*b*) have resided in Turkey for five years prior to the date of his application;

(*c*) confirm by his conduct that he has decided to settle in Turkey;

(*d*) be of good moral character;

(*e*) be free from any disease constituting a danger to public health;

(*f*) have an adequate knowledge of Turkish;

(*g*) have an income or occupation which will provide him in Turkey with a means of support for himself and for any persons who are dependent on him for their livelihood.

(B) *Exceptional :*

Art. 7. In the following circumstances aliens may, upon request, acquire Turkish nationality, at the proposal of the Ministry of the Interior and by decision of the Council of Ministers, without fulfilling the conditions set forth in article 6 (*b*) and (*c*);

(*a*) a person of full age whose parents lost Turkish nationality for any reason prior to his birth;

(*b*) an alien who is married to a Turkish national, and the children of such alien who have attained their majority;

(*c*) an alien of Turkish descent and his spouse and children who have attained their majority;

(*d*) an alien who has settled in Turkey with the intention of marrying a Turkish national;

(*e*) an alien who brings industrial enterprises to Turkey or who has rendered or is expected to render outstanding services to Turkey in the social or economic field or in science, technology or the arts;

(*f*) an alien whose acquisition of Turkish nationality is deemed essential by the Council of Ministers.

(C) *Recovery of nationality :*

Art. 8. The Council of Ministers may restore Turkish nationality to a person who has lost it under the provisions of this Act without requiring fulfilment of the condition in respect of residence. The provisions of article 35 are reserved.

(D) *Resident aliens :*

Art. 9. Under Turkish law a resident alien is an alien who lives in Turkey. Absence from Turkey for a period not exceeding six months shall not invalidate an alien's residence period. However, the time spent outside Turkey shall not be reckoned as part of the residence period.

If an alien who has his domicile in Turkey as provided in the Turkish Civil Code leaves Turkey for medical treatment, study or any reason of *force majeure*, or remains abroad for such reason, the time spent abroad shall not invalidate his period of residence even if it exceeds six months.

2. Naturalization Procedure

(A) *Authority to whom application shall be made :*

Art. 10. The application for naturalization shall be submitted to the highest civil authority in the locality where the applicant resides, if he is eligible under article 6, or where he is sojourning, if he is eligible under articles 7 and 8, and to a Turkish Consulate, if he is in a foreign country. The documents prepared by these authorities shall be transmitted to the Ministry of the Interior for the necessary action.

(B) *Investigation :*

Art. 11. The Ministry of the Interior shall make an investigation concerning the applicant for naturalization, in accordance with the principles to be laid down in the regulation by which this Act shall be implemented, to ascertain whether he meets the requisite conditions.

III. ACQUISITION THROUGH EXERCISE OF THE RIGHT OF CHOICE

1. Persons who have lost Turkish Nationality as Minors

Art. 12. The following persons may opt for Turkish nationality within one year from the time when they attain their majority as defined in the Turkish Civil Code:

(*a*) a person who was born of a Turkish mother but has not been entitled to Turkish nationality;

(*b*) a person who, under articles 30 and 37, lost as a minor the Turkish nationality which he possessed by reason of his relationship to his mother;

(*c*) a person who, under articles 32 and 36, lost as a minor the Turkish nationality which he possessed by reason of his relationship to his father or mother.

2. Women who lose Turkish Nationality through Marriage

Art. 13. A woman who relinquishes Turkish nationality by reason of marriage in accordance with the provisions of article 19 may recover Turkish nationality within three years from the date on which such marriage is dissolved.

IV. EFFECTS OF ACQUISITION OF NATIONALITY

1. Effects on Children of Acquisition through Marriage

Art. 14. A minor child of a woman who acquires Turkish nationality through marriage, born to her prior to such marriage, shall be a Turkish national by reason of his relationship to her in the following cases:

(*a*) if the father is deceased;
(*b*) if the father is unknown;
(*c*) if the father is stateless;
(*d*) if the child is stateless;
(*e*) if the mother has custody of the child.

However, in the case of sub-paragraphs (*a*) and (*e*) the requirements of article 16 must be fulfilled.

2. Effects of Acquisition through Naturalization

(A) *Spouse :*

Art. 15. Naturalization shall not affect the nationality of the spouse; however, a stateless woman shall become a Turkish national by reason of her relationship to her husband.

(B) *Children :*

Art. 16. A minor child whose father is a naturalized Turkish national shall be a Turkish national by reason of his relationship to him.

A minor child of a women who is a naturalized Turkish national shall be a Turkish national by reason of his relationship to her in the following circumstances, provided that the child's national law does not constitute an impediment thereto:

(*a*) if the father is deceased;
(*b*) if the father is unknown;
(*c*) if the father is stateless;
(*d*) if the child is stateless;
(*e*) if the mother has custody of the child.

3. Effects of Acquisition through Exercise of the Right of Choice

(A) *Spouse and children of a person who chooses Turkish nationality :*

Art. 17. Articles 15 and 16 of this Act, concerning the effects of acquisition of nationality, shall also apply to the spouse and minor children of persons recovering Turkish nationality through exercise of the right of choice in accordance with the provisions of article 12.

(B) *Children of a woman who chooses Turkish nationality :*

Art. 18. A minor child who loses Turkish nationality by reason of his relationship to his mother if she relinquishes Turkish nationality in consequence of marriage shall become a Turkish national by reason of his relationship to her if she recovers Turkish nationality through exercise of the right of choice as provided for in article 13.

A minor child born of a marriage through which his mother has lost Turkish nationality shall, in the circumstances specified in the second paragraph of article 16, become a Turkish national by reason of his relationship to his mother if she recovers Turkish nationality through exercise of the right of choice.

Part Two

Loss of Turkish Nationality

I. LOSS THROUGH THE OPERATION OF LAW

Through marriage :

Art. 19. A Turkish woman who marries an alien shall lose Turkish nationality if her husband's national law grants her his nationality through marriage and she gives notice of her choice of her husband's nationality in the manner prescribed in article 42.

If the woman acquires her husband's nationality by reason of the specified circumstances, she shall lose Turkish nationality on the same date.

II. LOSS BY DECISION OF A COMPETENT AUTHORITY

1. Renunciation of Nationality

(A) *Conditions governing renunciation :*

Art. 20. Renunciation of Turkish nationality shall be subject to authorization by the Council of Ministers, in the conditions stipulated below.

(*a*) The applicant must have the power of judgement and must have attained his majority.

(*b*) The applicant must have completed his active military service or be deemed to have completed it.

In the case of persons with respect to whom it is deemed necessary to make an exception to the rule that active military service must have been completed, authorization may be granted by the Ministry of National Defence. However, if a person who has renounced Turkish nationality in this way recovers Turkish nationality he must perform his military service.

(*c*) The applicant must be involuntarily a national of another State or there must be convincing evidence that he will involuntarily acquire the nationality of another State for such a reason.

(B) *Authority to whom application shall be made :*

Art. 21. The application for renunciation of Turkish nationality shall be submitted in the form of a petition to the highest civil authority of the locality in which the applicant resides if he is in Turkey or to a Turkish consulate if he is abroad.

The documents completed by these authorities shall be transmitted to the Ministry of the Interior for the necessary action.

(C) *Renunciation certificate :*

Art. 22. If a person desiring to renounce Turkish nationality possesses the nationality of another State at the time, a renunciation certificate shall be issued to him immediately.

If a person desiring to renounce Turkish nationality does not possess the nationality of another State, the renunciation certificate shall be issued to him when he produces a certificate attesting that he has acquired the nationality of the foreign State concerned.

(D) *Effective date of renunciation :*

Art. 23. When the renunciation certificate is issued, as provided in article 22, the loss of Turkish nationality shall take effect.

If such certificate is not received within three years from the date of the authorization granted in accordance with the provisions of article 20, the loss of Turkish nationality shall thereupon take final effect.

2. Revocation of Naturalization

Art. 24. If naturalization has resulted from a false statement or the concealing of important circumstances by the person concerned, the naturalization decree shall be revoked by the Council of Ministers.

If five years have elapsed since the person concerned was naturalized, the naturalization may not be revoked.

3. Acts Incompatible with Allegiance to Turkey

(A) *Forfeiture :*

Art. 25. The Council of Ministers may rule that the following persons have forfeited Turkish nationality :

(*a*) Persons who have voluntarily acquired the nationality of a foreign State without obtaining authorization to renounce Turkish nationality;

(*b*) Persons who are performing any service for a foreign State which is not in conformity with the interests of Turkey and who do not voluntarily cease to perform such service within a suitable time limit fixed by the Government, which shall be not less than three months, although they have been instructed to do so by a Turkish Embassy or Consulate if they are abroad or by the local civil authorities if they are in Turkey;

(*c*) Persons who, voluntarily and without authorization from the Government, continue to perform any service for a State which is at war with Turkey;

(*d*) Persons outside Turkey who, without justification, fail to respond within three months to a notice duly issued by the competent authorities calling upon them to perform their active military service or, in the event of the declaration in Turkey of a state of war, to join in the defence of the country;

(*e*) Persons who, while they are en route to the places where they are to perform their military service or after they have joined the ranks, flee from Turkey and do not return within the period specified by law;

(*f*) Members of the Armed Forces and persons performing their military service who are abroad on mission, on leave, for a change of climate or for medical tratment and who, without justification, fail to return within three months after the expiry of the time allotted them;

(*g*) Persons who, after acquiring Turkish nationality by decision of a competent authority, live outside Turkey for an uninterrupted period of not less than seven years and maintain no official contact and carry out no official procedure indicating that they have not terminated their connexion with or renounced their allegiance to Turkey and that they have retained Turkish nationality.

Decisions under paragraphs (*d*), (*e*) and (*f*) may be taken only at the proposal of the Ministry of National Defence.

(B) *Deprivation :*

Art. 26. Persons who, having acquired Turkish nationality after their birth, engage outside Turkey in activities prejudicial to the internal and external security of the Turkish Republic, there being no possibility of prosecuting them in Turkey, and who, without justification, fail to respond within three months to an invitation to return to Turkey, may be deprived of Turkish nationality by decision of the Council of Ministers.

When Turkey is in a state of war, this provision may also be applied in respect of persons who are Turkish nationals by birth.

III. LOSS OF NATIONALITY THROUGH EXERCISE OF THE RIGHT OF CHOICE

1. Persons who possess Turkish Nationality as Minors

Art. 27. The following Turkish nationals may relinquish Turkish nationality within two years from the date on which they attain their majority :

(*a*) a person who, although he was a Turkish national at birth by reason of his relationship to his mother, subsequently acquired the nationality of his alien father;

(*b*) a person who is a Turkish national by reason of adoption;

(*c*) a person who, although he was a Turkish national by reason of his place of birth, subsequently acquired the nationality of his mother or father;

(*d*) a person who is a Turkish national by reason of his relationship to his father or mother where the father or mother has acquired Turkish nationality in any manner.

If relinquishing Turkish nationality in accordance with the above provisions would render such person stateless, this right shall not be exercised.

2. Women who acquire Turkish Nationality through Marriage

Art. 28. A woman who has acquired Turkish nationality through marriage as provided in article 5 may, within three years from the date of the dissolution of the marriage, relinquish Turkish nationality if she has retained or is able to recover the nationality which she possessed prior to the marriage.

IV. EFFECTS OF LOSS OF NATIONALITY

1. Common Provision concerning Treatment as Aliens

Art. 29. Persons who lose Turkish nationality under the provisions of this Act shall be treated as aliens from the date on which the loss takes effect. In respect of such matters as residence, acquisition and transfer of immovable property, inheritance and work, they shall enjoy only such rights as are recognized to aliens by Turkish laws. The provisions of articles 33 and 35 shall be reserved.

2. EFFECTS ON CHILDREN OF LOSS THROUGH MARRIAGE

Art. 30. If under the provisions of article 19 a woman loses Turkish nationality in consequence of marriage to an alien, a minor child born to her prior to such marriage shall lose the Turkish nationality which he possesses by reason of his relationship to her in the following cases :

(*a*) if the father is deceased;

(*b*) if the father is unknown;

(*c*) if the father is stateless.

If such child is over fifteen years of age, the loss of Turkish nationality under this paragraph shall be subject to his written consent.

If loss of Turkish nationality under the preceding paragraph would render such child stateless, he shall remain a Turkish national.

3. EFFECTS OF LOSS THROUGH RENUNCIATION

(A) *Spouse :*

Art. 31. Renunciation of nationality shall not affect the nationality of the spouse.

(B) *Children :*

Art. 32. A minor child shall lose the Turkish nationality which he possesses by reason of his relationship to his father if the father renounces Turkish nationality.

Renunciation of Turkish nationality by the mother shall not affect the nationality of a minor child. However, in the following circumstances a minor child of a woman who renounces Turkish nationality shall lose the Turkish nationality which he possesses by reason of his relationship to her :

(*a*) if the father is deceased;

(*b*) if the father is unknown;

(*c*) if the father is an alien;

(*d*) if the mother has custody of the child.

If such child is over fifteen years of age, the loss of the Turkish nationality which he possesses by reason of this relationship to his father or mother shall be subject to his written consent.

If loss of nationality under the above provisions would render such child stateless, he shall remain a Turkish national.

4. EFFECTS OF LOSS THROUGH REVOCATION OF NATURALIZATION

Art. 33. The effects of revocation shall extend to the spouse and children of the person concerned if they have become Turkish nationals by reason of their relationship to him.

The provisions of the revocation decree shall not be retroactive.

If it is deemed necessary that the property of persons whose naturalization is revoked should be liquidated and that such persons should be expelled, the revocation decree shall so indicate. Such persons must liquidate their property in Turkey, transfer their domiciles and business offices abroad and leave the country within a period not exceeding one year. If they fail to comply with this provision, their property shall be sold by the Treasury, the proceeds shall be deposited in their names and to their accounts in a Turkish bank, and they shall be expelled. If such persons appeal the revocation decree to the Council of State, the liquidation of their property and their expulsion shall be deferred pending the hearing of the appeal.

5. EFFECTS OF LOSS THROUGH FORFEITURE AND DEPRIVATION

(A) *Common provision :*

Art. 34. Forfeiture and deprivation decrees shall be personal. They shall not affect the spouse and children of the person concerned.

(B) *Deprivation :*

Art. 35. The property in Turkey of persons deprived of Turkish nationality in accordance with the provisions of article 26 shall be liquidated by the Treasury and the proceeds shall be deposited in their names and to their accounts in a Turkish bank. If such persons appeal the deprivation decree to the Council of State, the liquidation of their property shall be deferred pending the hearing of the appeal.

Such persons may come to Turkey provided that they do not settle in Turkey and that they comply with the relevant general provisions.

The procedure of deprivation of nationality shall not be applied to persons returning to Turkey until they have been notified of the deprivation decree or it has been published in the Official Gazette.

Persons deprived of Turkish nationality may in no way recover Turkish nationality.

6. EFFECTS OF LOSS THROUGH EXERCISE OF THE RIGHT OF CHOICE

(A) *Spouse and children of a person who relinquishes Turkish nationality through exercise of the right of choice :*

Art. 36. Articles 31 and 32 of this Act, concerning the effects of renunciation of nationality, shall also apply, respectively, to the spouse and the minor children of persons who, in accordance with the provisions of article 27, relinquish Turkish nationality through exercise of the right of choice.

(B) *Children of a woman who relinquishes Turkish nationality by exercise of the right of choice :*

Art. 37. A minor child who has acquired Turkish nationality by reason of his relationship to his mother where she has acquired such nationality through marriage shall lose Turkish nationality by reason of his relationship to her if she relinquishes Turkish nationality by exercise of the right of choice as provided in article 28.

A minor child born of a marriage through which his mother has acquired Turkish nationality shall, in the circumstances set forth in the second paragraph of article 32, lose Turkish nationality by reason of his relationship to his mother if she relinquishes Turkish nationality by exercise of the right of choice.

...

UKRAINIAN SOVIET SOCIALIST REPUBLIC

NOTE[1]

The Constitution of the Ukrainian SSR not only proclaims the basic rights and democratic freedoms of the citizens, but also provides for the creation of the conditions actually needed for realization of these rights and freedoms in practice. The socialist economic system, socialist ownership of the instruments and means of production and the political organization of society are the material basis and the most important guarantees that the broad democratic rights and freedoms of citizens of the Republic will be realized in practice.

A concrete example of the practical application of basic rights and freedoms in the Republic is to be found in the ever increasing possibility of making use of such rights as the right to work, to social security, to education and to health protection. Extracts from the report of the Central Statistical Board of the Council of Ministers of the Ukrainian SSR on the (results of) fulfilment of the state plan for development of the national economy of the Republic in 1964 provide conclusive evidence of this :

The rise in the material well-being and cultural level of the people in 1964 is characterized by an increase of 7 per cent in social output (production of all kinds of material goods) as compared with 1963.

The mid-year figure of workers and employees in the national economy of the Ukrainian SSR in 1964 amounted to 12.65 million and increased during the year by more than 500,000. In industry, construction, agriculture, transport and enterprises the number of workers, counting in engineering-technical and other specialists, rose during the year by almost 300,000 persons. The number of workers in schools, educational establishments and scientific research, pre-school and medical institutions rose by 120,000 persons and workers in commerce, public catering and communal housing by more than 60,000 persons.

In the fourth quarter of 1964 the pay of more than 1.8 million educational and health workers was raised.

Payments and privileges received by the population from public consumption funds reached 64,000 million rubles and rose by 6.7 per cent as compared with 1963.

These funds provided for free training and medical services, payment during illness, leave during pregnancy, family and regular leave, payment of allowances to the elderly and to unmarried mothers and payment of pensions as well as other payments and privileges.

Popular education, science and culture were further developed.

Over 13.3 million persons, or one-third of the population of the Republic (not counting children of pre-school age), were covered by various kinds of training. In public schools alone 8.5 million persons were studying.

Seven hundred and thirty-seven thousand persons finished the eight-year school and 169,000 were studying in the secondary public schools.

Over 1.2 million persons were studying in higher and middle specialized educational institutions; of this number 644,000 were in higher educational institutions and more than 593,000 in junior colleges. In addition more than 386,000 persons were studying in higher educational establishments without separation from production and 386,000 in junior colleges.

In 1964 the national economy of the Republic acquired nearly 187,000 specialists with higher and secondary specialized education; of this number 66,000 had a higher education, among them 25,000 engineers, and nearly 121,000 had a medium-specialized education.

Three hundred and thirty thousand persons were admitted during the past year to higher and secondary specialized educational institutions, 145,000 to higher educational establishments and 185,000 to junior colleges.

During the year more than 143,000 young workers were prepared for study in schools for professional-technical education. Moreover, to a large extent the preparation and improvement of the qualifications of the cadres were carried out directly in the factories.

At the end of 1964 the number of scientific workers amounted to nearly 85,000.

With the help of government funds and also of the workers' and employees' resources, and with the assistance of government credits, housing with an overall space of nearly 12.7 million square metres, or more than 330,000 apartments, was brought into use. Of that total, housing with an overall space of 0.65 million square metres was built by house-building co-operatives. Besides that, collective farms, collective farmers and the rural intelligentsia built nearly 100,000 dwellings.

Through the years not only have over 1.8 million persons in the rural districts been moved into new apartments and houses, but living conditions in existing houses have been improved.

[1] Note furnished by the Government of the Ukrainian Soviet Socialist Republic.

With the help of government resources, and also of the resources of collective farms, schools for general education with 230,000 classrooms, hospitals with almost 13,000 beds, pre-school children's institutions with 13,000 places and many other cultural-living facilities have been begun.

In the past year medical help for the people has been improved. The number of hospital beds has increased, while the number of doctors rose by more than 5,000.

The death rate continued to decline. On 1 January 1965 the population of the Ukrainian SSR was 45,1 million (*Pravda Ukraine* No. 25/6959 of 2 February 1965).

In 1964 a number of legislative and regulatory measures affecting the implementation and defence of human rights was taken in the Ukrainian SSR. Some of them are cited below.

On 17 February 1964 the Council of Ministers of the Ukrainian SSR adopted decree No. 169. Under this it was decided that, " after ten years and subject to the availability of established medical evidence, persons disabled in the civil war and others disabled by war service shall, when on special government assignments, be given free a *Zaporozhets* motor car, with manual control and guaranteed major repairs " (AP USSR 1964, No. 2, p. 22).

With a view to protecting the rights of inventors, (the Council of Ministers of the Ukrainian SSR on 31 March 1964 decided) by order No. 331-r that, in the case of inventions realized in the course of official duties, the inventor's remuneration shall be paid to the inventor named in the certificate provided by the enterprise (organization) where the invention was realized (AP/USSR/1964, No. 3, p. 43).

On 5 June 1964 the Central Committee of the Communist Party of the Ukraine and the Council of Ministers of the Ukrainian SSR adopted decree No. 596 on " Measures for further intensification of the campaign against oncological diseases among the people of the Ukrainian SSR ". This decree takes account of the strengthening and development of the material and technical resources of the medico-prophylactic and scientific research institutions and projects a series of concrete steps for further intensification of the campaign against oncological diseases. In particular, the decree draws the special attention of the Ministry of Health of the Republic to the necessity to intensify prophylactic work and to maintain regular follow-up of mass prophylactic examinations with a view to early discovery of oncological diseases (AP Ukrainskay SSR, 1964, No. 6, p. 68).

At a meeting on 25 June 1964 the Supreme Soviet of the Ukrainian SSR considered the question of " the present situation and measures for the further improvement of living conditions of the people of the Ukrainian SSR " and adopted a resolution on the subject. The resolution provides in particular that securing a further improvement in the cultural-living conditions of the people must be counted as " one of the basic tasks of the Soviet, its executive committees, its standing commissions and all governmental and economic organizations " (*Vedomosti Verkhovnova Soveta Ukrainskay SSR*, 1964, No. 29, p. 377).

With a view to preventing the preparation and sale of narcotic substances harmful to the people's health, the Presidium of the Supreme Soviet of the Ukrainian SSR on 9 July 1964 decreed that the cultivation of Southern Manchurian and Southern Chuisk hemp was a criminal offence, with a view to corrective action within a period of one year by confiscation of the crops (*Vedomosti Verkhovnova Soveta Ukrainskay SSR*, 1964, No. 29, p. 397).

UNION OF SOVIET SOCIALIST REPUBLICS

ACT OF THE UNION OF SOVIET SOCIALIST REPUBLICS ON RAISING THE WAGES OF WORKERS IN EDUCATION, HEALTH SERVICES, COMMUNAL DWELLING MANAGEMENT, COMMERCE AND PUBLIC CATERING AND OTHER BRANCHES OF THE NATIONAL ECONOMY DIRECTLY SERVING THE PEOPLE

Adopted by the Supreme Soviet on 15 July 1964

With a view to fulfilment of the tasks laid down in the programme of the Soviet Union in the fields of social-cultural development, further raising of the material well-being of teachers and workers in health services, culture and other branches of the national economy directly serving the people, the Supreme Soviet of the Union of Soviet Socialist Republics resolves :

Art. 1. To endorse the measures, worked out by the Central Committee of the Communist Party of the Soviet Union, the Council of Ministers of the USSR and the All-Union Central Council of Professional Unions, for raising the wages of workers in education, health services, communal dwelling management, commerce and public catering — and other branches of the national economy directly serving the people, and for raising and regulating the wages of workers in productive branches of the national economy.

Art. 2. To raise the wages of the workers specified in article 1 of this Act by an average of 21 per cent during 1964-1965 : of educational workers by an average of 25 per cent; of workers in health services by 23 per cent; of workers in commerce and public catering by 18 per cent, and of workers in communal dwelling management by 15 per cent.

Art. 3. To complete the general minimum increase in wages of workers and employees by as much as 40-45 rubles a month along with the rise in the wages of workers in the branches of the national economy specified in this decree.

[1] Texts furnished by the Government of the Union of Soviet Socialist Republics.

ACT OF THE UNION OF SOVIET SOCIALIST REPUBLICS ON PENSIONS AND ALLOWANCES FOR MEMBERS OF COLLECTIVE FARMS

Adopted by the Supreme Soviet on 15 July 1964

Under the guidance of the Communist Party of the Soviet Union, the Soviet people has achieved enormous successes in communist construction and development of the productive strength of the country and has created a powerful, all-round development of the economy. This allows the Soviet State systematically to raise the standard of living of the people and fully to meet their growing needs.

It is now possible to introduce a more stable system of social security in collective farms by way of establishing pensions for old age and disability and those who have lost the breadwinner, and allowances for women members of collective farms in time of pregnancy and confinement.

There should not be a single approach to the question of pensions for members of collective farms. The higher the productivity of the farm members' work, the more the collective farm produces and sells to the State per hectare of tilled land, the higher its income and the level of its contributions to the pension fund, then the greater should be the pensions of members of the collective farm. Members who work well and bring a greater investment to public production should be better secured.

Establishment of a State system of social security for collective farm workers appears to be a new and important stimulus to a further rise in the working activity of the collective farm peasantry and to an increase in the output of agricultural products.

The amounts of the pensions provided under this Act will in the future, in accordance with the increase of the national income, and particularly collective farm income, gradually rise to the level of the state pensions of workers and employees.

The Supreme Soviet of the Union of Soviet Socialist Republics resolves :

I. General Provisions

Art. 1. Members of a collective farm have the right to a pension in case of old age or disability. Family dependents of deceased collective farm workers who are unable to work have the right to a pension in case of loss of the breadwinner.

Art. 2. Women members of collective farms have the right to an allowance in pregnancy and confinement.

Art. 3. Collective farm workers and members of their families who have at one and the same time the right to various pensions are granted one pension of their choice.

Art. 4. Pensions paid in accordance with this Act are secured by collective farm state funds without any deduction from the income of members of the collective farm.

Art. 5. Pensions are not subject to taxation.

II. Pensions

Art. 6. Members of collective farms have the right to an old-age pension as follows :

Men who have reached the age of 65 and have not less than 25 years of qualifying employment; and women who have reached the age of 60 and have not less than 20 years of qualifying employment.

Art. 7. Women members of collective farms who have given birth to five or more children and have brought them up to the age of eight have the right to an old-age pension on reaching the age of 55 and completing not less than 15 years of qualifying employment.

Art. 8. Old-age pensions are granted to members of collective farms at the rate of 50 per cent of their earnings up to 50 rubles a month and, in addition, 25 per cent of the remainder.

The minimum rate of an old-age pension is 12 rubles a month.

The maximum rate of old-age pensions is 102 rubles a month, that is, the equivalent of the maximum rate of old-age pensions provided for under the Act governing state old-age pensions for workers and employees living permanently in rural areas and engaged in agriculture.

Art. 9. Members of collective farms have the right to disability pensions in case of the onset of group I or group II disability.

Art. 10. Members of collective farms are granted disability pensions in case of accidents at work or of occupational disease, irrespective of their length of service.

Members of collective farms are granted disability pensions in case of common diseases or accidents unconnected with their work, subject to completion of the following periods of qualifying employment at the time of application for the pension :

Age	*Period of qualifying employment (in years)*	
	Men	*Women*
up to 20	1	1
20-22 inclusive	2	1
23-25 "	3	2
26-30 "	5	3
31-35 "	7	5
36-40 "	10	7
41-45 "	12	9
46-50 "	14	11
51-55 "	16	13
56-60 "	18	14
61 and over	20	15

Art. 11. Members of collective farms are granted disability pensions at the following rates :

Disabled persons in group I — 50 per cent — of earnings up to 50 rubles a month and, in addition, 25 per cent of the remainder

Disabled persons in group II — 40 per cent — of earnings up to 50 rubles a month and, in addition, 25 per cent of the remainder.

The minimum rate of disability pensions in group I is 15 rubles a month and in group II 12 rubles a month.

In cases where the disability is due to an accident at work or occupational disease the pension calculated according to the above rules (including the minimum) is increased by 20 per cent.

The maximum rate of disability pensions is equivalent to the maximum rate of disability pensions under the Act governing state pensions of workers and employees living permanently in rural areas and engaged in agriculture.

Art. 12. Dependent members of a deceased collective farm worker's family who are unable to work have the right to a pension in case of loss of the breadwinner.

Members of a family regarded as unable to work are :

(1) Children, brothers, sisters and grandchildren up to the age of 16 (or 18 in the case of students) or above that age if they became disabled in group I or group II before reaching the age of 16 (or 18 in the case of students); the foregoing applies to brothers, sisters and grandchildren provided they do not have parents able to work;

(2) fathers, mothers, wives or husbands if they have reached the age of 65 in the case of men or 60 in the case of women or are reckoned as disabled in group I or group II; and

(3) grandfathers and grandmothers who have reached the ages respectively of 65 or 60 years or are reckoned as disabled in group I or group II, in the absence of any persons legally obliged to maintain them.

When the children and parents of a deceased person are unable to work, but were not dependent on the deceased, they have the right to a pension if they are subsequently deprived of the means of subsistence.

Adoptive parents have the right to a pension in the same way as parents and adopted children in the same way as natural children.

Art. 13. The families of collective farm workers who die as the result of an accident at work or occupational disease are granted pensions, irrespective of the worker's period of qualifying employment.

The families of collective farm workers who die as the result of a common disease or an accident unconnected with their work are granted pensions if the worker had completed the necessary period of qualifying employment for the grant of a disability pension.

Art. 14. Pensions in case of loss of the breadwinner are granted at the following rates :

When there are three or more members of the family unable to work	50 per cent	of the breadwinner's earnings up to 50 rubles a month and, in addition, 25 per cent of the remainder
When there are two members of the family unable to work	40 per cent	
When there is one member of the family unable to work	30 per cent	of the breadwinner's earnings up to 50 rubles a month, and, in addition, 10 per cent of the remainder

The minimum rates of these pensions are set at 15 rubles a month when there are three or more members of the family unable to work, at 12 rubles when there are two and at 9 rubles when there is one.

In cases where the loss of the breadwinner is due to an accident at work or occupational disease, the pensions calculated in accordance with the above rules (including the minimum) are increased by 20 per cent.

The maximum rates of pensions in case of the loss of the breadwinner are equal to those provided for in the Act on governing state pensions for the families of workers and employees living permanently in rural areas and engaged in agriculture.

Art. 15. The following are counted for qualifying employment for the grant of a pension:

(1) work as a member of a collective farm; and

(2) work as a worker or employee, service in the Armed Forces of the USSR and in partisan detachments and any other periods counted in the period of qualifying employment for the grant of pensions.

Art. 16. Pensions are calculated on the average actual monthly earnings for work on a collective farm over any successive 5 years (to be chosen by applicants for pensions) out of the last 15 years before the application for a pension.

In the case of members of collective farms who have worked on the farm for less than 5 years, and of the members of their family if they are deceased, pensions are calculated on the average actual earnings during the time worked on the farm.

Art. 17. The pensions of members of collective farms who continue to work on the farm at a much higher rate of earnings for not less than two years after the grant of a pension are reassessed at a new rate based on the higher earnings.

III. Allowances for Women Members of Collective Farms during Pregnancy and Confinement

Art. 18. Women members of collective farms, irrespective of their period of qualifying employment, have the right to receive allowances during leave on account of pregnancy and confinement.

Leave on account of pregnancy or confinement is given for 56 calendar days before and 56 calendar days after confinement and, in the case of abnormal confinement or the birth of two or more children, for 70 calendar days after confinement.

Art. 19. Allowances for women members of collective farms on account of pregnancy or confinement are determined in accordance with the procedure and rules established for women workers and women employees.

IV. Means of Paying Pensions and Allowances

Art. 20. A central, all-union social security fund for collective farm workers, financed by deductions from the incomes of collective farms and by annual allocations from the USSR state budget, is established to pay the pensions and allowances provided for under this Act.

Art. 21. From 1964 all collective farms shall make financial contributions to the central, all-union social security fund for collective farm workers, at rates determined by the Council of Ministers of the USSR.

The sums collective farms are required to contribute to the central all-union social security fund for collective farm workers are excluded from their income for income tax purposes.

V. Concluding Provisions

Art. 22. Collective farms where the pensions payable to members exceed the rates laid down in this Act may maintain the higher rate by making corresponding additional payments out of their own funds.

Art. 23. The Council of Ministers of the USSR is charged with the issuance of regulations under this Act on:

(1) the procedure for the grant and payment of pensions to members of collective farms;

(2) the procedure for the grant and payment of allowances to women members of collective farms during pregnancy and confinement; and

(3) the central all-union social security fund for collective farm workers.

The procedure for the grant and payment of pensions to members of collective farms shall provide in particular for the conditions for granting pensions to:

Members of collective farms in republics and regions where such farms were established later than in other parts of the country; and members of collective farms who joined such farms in the early years of collectivization, but who, because of old age or disability, stopped working on the farms before they had the period of qualifying employment needed for the grant of a pension.

Art. 24. This Act shall come into force on 1 January 1965.

ACT OF THE UNION OF SOVIET SOCIALIST REPUBLICS CONCERNING THE STATE PLAN FOR DEVELOPMENT OF THE NATIONAL ECONOMY OF THE USSR IN 1965 *(EXTRACTS)*

Adopted by the Supreme Soviet on 11 December 1964

The Supreme Soviet of the Union of Soviet Socialist Republics resolves:

Art. 3. To approve the proposals of the Council of Ministers of the USSR for further raising the material level of living of the Soviet people and to carry out the following measures in 1965:

To raise from 1 January 1965 (instead of from the second half of the year 1965 as in the resolution previously adopted) the minimum wages of workers and employees by as much as 40-45 rubles a month in all branches of the national economy where that has not already been done;

To carry out by 1 May 1965 (instead of in the second half of the year 1965 as in the resolution previously adopted) the planned raising of wages for workers in communal living economy, enterprises and organizations providing living services for the people, cultural-educational and art establishments, publishing houses, commerce and public catering, provisionary undertakings and organizations, material-technical supply and sale and guards in the national and local organs of state and economic administrations;

To reduce the retail prices of various kinds of medicines, and to raise the average expenditure on medicines provided free for treatment of the sick and for patients in hospitals and homes for invalids and the aged, and also to provide complementary free medicines for some categories of the sick;

To ensure an increase by comparison with 1964 of:

Thirteen per cent in the general area of dwelling houses through government construction;

Eighteen and seven-tenths per cent in the volume of work on living services;

Fourteen and one-tenth per cent in the number of places in children's pre-school establishments on the state budget; and twenty-seven and one half per cent in the number of students in schools and groups with a longer working day.

ACT OF THE UNION OF SOVIET SOCIALIST REPUBLICS CONCERNING THE STATE BUDGET OF THE UNION OF SOVIET SOCIALIST REPUBLICS FOR 1965 *(EXTRACTS)*

Adopted by the Supreme Soviet on 11 December 1964

The Supreme Soviet of the Union of Soviet Socialist Republics resolves:

Art. 4. To make grants in the state budget of the USSR for 1965 for social-cultural measures — schools for general education, technical schools, higher educational institutions, scientific research establishments, professional-technical educational establishments, libraries, clubs, theatres, printing, radio broadcasting, and other educational and cultural activities; for hospitals, children's cribs, sanatoria and other institutions for health protection and physical culture. Out of the total of 37,453,505 thousands of rubles in the budget 10,449,083 thousands of rubles are allocated to state social insurance.

Art. 5. To maintain in the state budget of the USSR for 1965 expenditures amounting to a total of 988,000 thousands of rubles in order to increase the wages of workers and employees by as much as 40-45 rubles a month from 1 January 1965; to complete by 1 May 1965 the measures to raise the wages of workers in branches of the national economy directly serving the people; to raise the average expenditures on medicines for treatment of the sick in hospitals and in homes for invalids and the aged; to provide complementary free medicines for some categories of the sick; and also to reduce the retail prices of medicines.

FACTUAL DATA ON THE SAFEGUARDING OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE USSR IN 1964

In 1964, as in preceding years, there was no unemployment in the country.

In the fourth quarter of 1964 there was an increase in wages for more than 9 million workers in education and health services in all regions, as well as for workers and employees in branches serving the people of the northern areas.

Payments and allowances received by the people from public funds amounted to 96.6 million rubles and increased by 6.7 per cent as compared with 1963. These funds provided free education and medical services; payments in time of sickness; leave in pregnancy and childbirth and regular leave; relief for the elderly and unmarried mothers; pension payments; and other payments and allowances.

Successes in development of the country's economy and the rise in retail commodity exchanges and services ensured the stability of the monetary circulation.

There was a further development of national education, science and culture.

More than 68 million persons, or one-third of the population of the country (not counting children of pre-school age), were reached by various forms of education. In general schools alone 46.7 million persons were studying.

Four million pupils completed the eight-year school course and 1.4 million the secondary general school.

In higher and secondary specialized educational establishments, there were more than 6.9 million students. Of this number 3.6 million were in higher educational establishments and more than 3.3 million in technical institutions; more than 2 million in higher educational establishments and 1.7 million in technical institutions were studying without separation from production.

In 1964 the national economy took more than 900,000 specialists from higher and secondary specialized education; of this number more than 350,000, including 133,000 engineers, were from higher education and more than 550,000 were from secondary specialized education.

In the past year more than 1.8 million persons were taken into higher and secondary specialized educational establishments; of this number more than 800,000 were in higher educational establishments and more than a million in technical institutions.

During the year 900,000 young workers were prepared for colleges and schools of professional-technical education. In addition, preparations were made on a large scale for raising the qualifications of cadres directly for industry.

At the end of 1964 the number of scientific workers amounted to more than 600,000.

Nearly 75 million square metres of public living space, or more than 1.9 million new apartments, were brought into use in the towns and rural areas as a result of state, workers' and employees' investments and with the help of state credits. Housing construction co-operatives built houses with an over-all area of 4.8 million square metres. In addition, nearly 375,000 houses were built on collective farms by the members of the collective farms and the rural intelligentsia.

In the past year more than 10 million persons in the towns and rural areas moved to new apartments and houses and also to better living conditions than in their former homes.

With state help, as well as that of the collective farms, general education schools with places for 1.6 million pupils were built, hospitals with about 55,000 beds, kindergartens with places for 546,000 children and other cultural-living facilities.

There was a further improvement in medical services. During the year the number of specialist doctors of all kinds rose by more than 22,000. The number of beds in hospitals, sanatoria, rest homes and boarding-schools increased.

The death rate among the population continued to decline. On 1 January 1965 the population of the Soviet Union reached 229 million.

UNITED ARAB REPUBLIC

NOTE[1]

1. *Act No. 9 of 1964* concerning part of the benefits enjoyed by the employees of public organizations, co-operative societies and public companies and institutions (*Journal Officiel*, No. 5 of 6 January 1964).

2. *Act No. 32 of 1964* concerning private associations and foundations (*Journal Officiel*, No. 37 of 12 February 1964).

3. *Act No. 46 of 1964* instituting regulations for civil servants (*Journal Officiel*, No. 39 of 18 February 1964).

4. *Constitution of 25 March 1964* (*Journal Officiel*, No. 69 *bis* of 24 March 1964).

5. *Act No. 62 of 1964* amending certain provisions of Act No. 91 of 1959 : Labour Code (*Journal Officiel*, No. 67 of 22 March 1964).

6. *Act No. 63 of 1964* promulgating the Social Insurance Act (*Journal Officiel*, No. 67 of 22 March 1964).

7. *Act No. 75 of 1964* concerning medical insurance for Government employees and for employees of the various local government departments and of public establishments and organizations (*Journal Officiel*, No. 98 of 24 March 1964).

8. *Act No. 133 of 1964* concerning (guaranteed) social welfare (*Journal Officiel*, No. 69 of 24 March 1964).

[1] Information furnished by Mr. Mohamed M. Hassan, Assistant Conseiller d'Etat, government-appointed correspondent of the *Yearbook on Human Rights*.

CONSTITUTION OF THE UNITED ARAB REPUBLIC[2]

Promulgated on 25 March 1964

PREAMBLE

In reliance upon the popular will which made the glorious day of July 23, and by which it has realized the start of the comprehensive revolution — political, social and national — and hoisted over the national and heroic work of the Egyptian people, since that date, the banners of freedom, socialism and unity;

And in confirmation of the Charter which was adopted by the Conference of Popular Powers, and drawn out of the heart of the battles of the struggle, and from the very exercise of the vast and deep changing of the conditions of the Egyptian society, so that it may be a thought guide to lead future steps; and which was thus able to enrich revolutionary thought by the experience of work and to repoise this thought and place it in the service of the continuous and unceasing drive towards the realization of the mighty goals of the popular struggle;

And crowning the stage of the great conversion in which, through peaceful and revolutionary evolution at the same time, the people's domination over the ownership of means of production and their administration were realized, in consolidation of social democracy — the gateway to political democracy and its true and proper prelude;

And to render possible the progress towards the stage of the great forward drive, along which the Arab people in Egypt have started their march after having been able to realize their domination over their national wealth, and having traversed the stage of conversion, advancing towards the consolidation of their political and social victories, and aiming at the further attainment of sufficiency and justice, in realization of the society of prosperity, in which equal opportunities are ensured to individuals and class differences are liquidated;

And in consolidation of the effectiveness and capability of the alliance of the forces of the working people, which has been placed by the great conversion stage at the head of the national action to lead it through the Socialist Union and by means of its democratic organizations;

In view of all that, and by the grace of God, the articles comprised in this Constitution shall become a basis for the economic and social order in the United Arab Republic until the National Assembly — which is popularly and directly elected, and which shall start its work on the morning of Thursday, the twenty-sixth of March, 1964, concludes its task of drawing up the draft of the permanent Constitution of the United Arab Republic, and until that draft Constitution is put to the people for a plebiscite so that they may vest it, from their free will, with the strength which shall render it the source of all powers.

[2] Text published by the Department of Information, Cairo, United Arab Republic.

Part One

THE STATE

Art. 1. The United Arab Republic is a democratic, socialist State based on the alliance of the working powers of the people.

The Egyptian people are part of the Arab nation.

Art. 2. Sovereignty is for the people, and its practice in the manner specified in the Constitution.

Art. 3. National unity, formed by the alliance of the people's powers, representing the working people, being the farmers, workers, soldiers, intellectuals and national capital, make up the Arab Socialist Union, as the power representative of the people, driver of the Revolution's potentialities, and protector of sound democratic values.

Art. 4. The United Arab Republic nationality is defined by the law.

Art. 5. Islam is the religion of the State and Arabic its official language.

Part Two

BASIC CONSTITUENTS OF THE SOCIETY

Art. 6. Social solidarity is the basis of the Egyptian society.

Art. 7. The family is the basis of the society founded on religion, morality and patriotism.

Art. 8. The State guarantees equality of opportunity to all Egyptians.

Art. 9. The economic foundation of the State is the socialist system which prohibits any form of exploitation in a way which ensures the building of the socialist society with its twin foundations, sufficiency and justice.

Art. 10. The entire national economy is directed in accordance with the development plan laid down by the State.

Art. 11. Natural wealth, whether subterranean or within territorial waters, as well as all their resources and energy are the property of the State which guarantees their proper exploitation.

Art. 12. The people control all the means of production, and direct their surplus in accordance with the development plan laid down by the State to increase the wealth and to continously raise the standard of living.

Art. 13. Ownership assumes the following forms:

A. *State ownership*

Or, the ownership of the people through the creation of an able and strong public sector which leads progress in all spheres and assumes the main responsibility in the development plan.

B. *Co-operative ownership*

Or, the ownership of all the members of the co-operative society.

C. *Private ownership*

A private sector which takes part in the development, within the framework of its over-all plan, without any exploitation.

The people's supervision covers the three sectors, and controls them all.

Art. 14. Capital is to be used in the service of the national economy and must not, in the ways of its use, be in conflict with the general good of the people.

Art. 15. Public funds have their sanctity and their protection is the duty of every citizen.

The people must safeguard and consolidate the ownership of the people, as the basis of the socialist system, and a source of the prosperity of the working people, and strength for the nation.

Art. 16. Private ownership is safeguarded and the law organizes its social function, and ownership is not expropriated except for the general good and against a fair compensation in accordance with the law.

Art. 17. The law fixes the maximum limit of land ownership and defines the measures of protecting small land ownerships.

Art. 18. The State encourages co-operation and looks after co-operative establishments in all their forms.

Art. 19. The State guarantees, in accordance with the law, the consolidation of the family, and the protection of motherhood and childhood.

Art. 20. The State guarantees social insurance services and Egyptians have the right to aid in cases of old-age, sickness, incapacity to work and unemployment.

Art. 21. Work in the United Arab Republic is a right, a duty and an honour for every able citizen.

Publics offices are an assignment for their occupants.

The aim of State employees, in the performance of their functions, is to serve the people.

Art. 22. The institution of civil titles is prohibited.

Art. 23. The Armed Forces of the United Arab Republic belong to the people and their function is the protection of the socialist gains of the popular struggle, the safeguarding of the country and the security and integrity of its territory.

Part Three

PUBLIC RIGHTS AND DUTIES

Art. 24. Egyptians are equal before the law. They have equal public rights and duties, without discrimination between them due to race, origin, language, religion or creed.

Art. 25. There is no crime or penalty except by virtue of the law. Penalty is inflicted only for acts committed subsequent to the promulgation of the law prescribing them.

Art. 26. Penalty is personal.

Art. 27. No person may be arrested or detained except in conformity with the provisions of the law.

Art. 28. The right of defence in person or by mandate is guaranteed by the law.

Art. 29. Every person accused of a crime must be provided with counsel for his defence.

Art. 30. No Egyptian may be deported from the country or prevented from returning to it.

Art. 31. No Egyptian may be prohibited from residing in any place and no Egyptian may be forced to reside in a particular place, except in the cases defined by the law.

Art. 32. The extradition of political refugees is prohibited.

Art. 33. Homes have their sanctity and they may not be entered, except in the cases, and in the manner, prescribed by the law.

Art. 34. Freedom of belief is absolute. The State protects the freedom of the practice of religion and creeds in accordance with custom provided this does not infringe upon public order or conflict with morality.

Art. 35. Freedom of opinion and scientific research is guaranteed. Every individual has the right to express his opinion and to publicize it verbally or in writing or by photography or by other means within the limits of the law.

Art. 36. Freedom of the press, printing and publication is guaranteed within the limits of the law.

Art. 37. Egyptians have the right to peaceable assembly, without carrying arms and without the need for prior notice.

Public meetings, processions and gatherings are allowed within the limits of the law.

Art. 38. All Egyptians are entitled to education which is guaranteed by the State through the establishment of various kinds of schools, universities, educational and cultural institutions and the expansion thereof. The State gives special care to the physical, mental and moral growth of youth.

Art 39. The State supervises public education which is regulated by law. Education, in its various stages, in State schools and universities is free of charge.

Art. 40. Just treatment of Egyptians is guaranteed by the State according to the work performed by them and through the fixation of working hours, assessment of wages, social insurance, health insurance, insurance against unemployment, and the organization of the right to rest and vacations.

Art. 41. The creation of syndicates is a guaranteed right. Syndicates have a moral personality in the manner determined by the law.

Art. 42. Health care is a right to all Egyptians, guaranteed by the State through the establishment of various kinds of hospitals and health institutions, and the expansion thereof.

Art. 43. The defence of the Fatherland is a sacred duty, military service is an honour for Egyptians and conscription is obligatory in accordance with the law.

Art. 44. Payment of taxes and public imposts is a duty, in accordance with the law.

Art. 45. Egyptians have the right to vote in the manner specified by the law. Their participation in public life is their national duty.

Part Four

SYSTEM OF GOVERNMENT

Chapter I

THE HEAD OF STATE

Art. 46. The Head of State is the President of the Republic. He exercises his powers in the manner prescribed by this Constitution.

Chapter II

THE LEGISLATURE

Art. 47. The National Assembly is the organ exercising the legislative power.

...

Art. 49. The National Assembly is composed of members elected by secret public election.

The number of elected members and the conditions of membership are determined by the law. The method and the rules of the election are defined by the law.

The President of the Republic may appoint a number of members not exceeding ten.

One half of the members of the Assembly at least must be of workers and farmers.

Art. 50. The age of the National Assembly member on election day should not be less than 30 years.

...

Art. 64. The meetings of the National Assembly are public. However, a meeting in camera may be held at the request of the President of the Republic or of the Government, or of its President or of twenty of its members. The Assembly shall then decide whether the debate on the question submitted to it shall take place in a public meeting or in a meeting in camera.

Art. 65. The National Assembly may not pass a resolution unless a majority of its members attends the meeting. In cases other than those for which a specific majority is required, the resolutions shall be taken on an absolute majority of the votes of attending members. In case of a tie vote, the question on which the debate had taken place is rejected.

...

Art. 70. The imposition, modification or abolition of general taxes cannot be effected except in the cases decreed by the law. No one may be exempted from their payment except in the cases specified by the law. No one may be asked to pay other taxes or imports except in the cases specified by the law.

...

Art. 97. No member of the National Assembly may, during the period of his mandate, be appointed in any organization or company except in the cases specified by law.

Art. 98. No member of the National Assembly may, during the period of his mandate, purchase or rent any State property, or lease or sell to the State or to barter with it any part of his property.

...

Chapter III

THE EXECUTIVE

Art. 100. The President assumes the executive power and he exercises it in the manner stipulated in the Constitution.

Section I. — The President of the Republic

Art. 101. The person to be elected President of the Republic must be an Egyptian born to Egyptian parents and enjoying civil and political rights. His age must not be less than 35 years calculated according to the Gregorian calendar.

Art. 102. The National Assembly nominates the President of the Republic. The nomination is referred to the people for a plebiscite.

The nomination to the post of President of the Republic is made in the National Assembly upon the proposal of at least one-third of its members.

The candidate who wins two-thirds of the votes of the Assembly members is referred to the people for a plebiscite.

If none of the candidates obtains the said majority, the nomination process is repeated two days after the first vote. The candidate winning the votes of an absolute majority of the Assembly members is referred to the citizens for a plebiscite.

The candidate is considered President of the Republic when he obtains an absolute majority of the votes cast in the plebiscite.

If the candidate does not obtain this majority, the Assembly nominates another candidate and the same procedure is followed.

...

Art. 106. During his term the President of the Republic may not exercise any free profession or undertake any commercial, financial or industrial activity. Nor may he require or take on lease any State property, sell to or exchange with the State any property of his whatsoever.

...

Art. 112. Any charge of high treason or disloyalty to the Republican system directed against the President of the Republic shall be made upon a proposal by at least one-third of the members of the National Assembly. No indictment shall be issued except with the approval of a majority of the Assembly members.

The President is suspended from the exercise of his function as from the issue of the indictment. The First Vice-President shall take over the Presidency temporarily.

The President of the Republic shall be tried by a special tribunal set up by law.

If he is found guilty, he shall be relieved of his post, without prejudice to other penalties.

Art. 113. The President of the Republic, in conjunction with the Government, lays down the general policy of the State in all the political, economic, social and administrative domains, and supervises its implementation.

...

Art. 129. The President of the Republic may call a referendum of the people in important matters affecting the supreme interests of the country. The manner of the referendum is determined by the law.

...

Section IV. — The Judiciary

Art. 152. Judges are independent. They are, in the administration of justice, subject to no other authority save that of the law.

...

Art. 154. The sessions of the courts are conducted in public, unless the court decides to hold them in camera, for considerations of public order or morality.

...

Part Five

GENERAL PROVISIONS

...

Art. 165. The President of the Republic as well as the National Assembly may request a revision of one or more of the articles of the Constitution. The request for revision must specify the articles to be revised and the reasons justifying such a revision.

In case the request emanates from the National Assembly, it should bear the signatures of at least one-third of its members.

In all cases, the Assembly shall discuss the revision in principle, and its decision should be issued by the majority of its members.

If the request is rejected, the revision of some articles cannot be requested once again before the expiration of one year from the date of rejection.

If the National Assembly approves the principle of revision, the articles to be revised shall be discussed by the Assembly after two months from the date of the said approval. If the modification is approved by two-thirds of the members of the Assembly, it shall come into force from the date of approval.

...

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

NOTE[1]

ARTICLE 3 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The contribution for the 1963 edition gave a brief description of the powers conferred by the Civil Authorities (Special Powers) Act (Northern Ireland) 1943-52, and of some of the regulations made under the Act enabling special measures to be taken for the preservation of the peace and the maintenance of order. The contribution ended with the sentence " These powers have not, however, been invoked since February 1962. "

The Northern Ireland authorities ask that, for the 1964 contribution, the words " and the question of the revocation of some of the more stringent provisions is at present being actively considered, " be added to the end of their 1963 contribution.

The Criminal Procedure (Right of Reply) Act 1964 removed the prosecution's right to have the last speech to the jury.

The Criminal Procedure (Insanity) Act, 1964

The Criminal Procedure (Insanity) Act, 1964, which came into force on 31 August 1964, deals with a number of issues relating to insanity in criminal proceedings. It provides that the special verdict given when a jury find that a person committed an offence but owing to insanity was not criminally responsible for it, which was hitherto commonly referred to as guilty but insane, shall be that he is not guilty by reason of insanity. The Act also deals with the situation which arises when a person indicted for a criminal offence is found unfit to stand his trial by reason of insanity, and enables the issue of his fitness to be tried to be postponed up to the opening of the defence, so as to give an opportunity to test the case for the prosecution. The Act provides for an appeal against a finding that the accused is unfit to be tried (under disability), and against a verdict of not guilty by reason of insanity.

ARTICLE 7 AND ARTICLE 10 OF THE UNIVERSAL DECLARATION

Section 48 of and the 4th Schedule to the Criminal Justice (Scotland) Act, 1963, which came into operation on 19 October 1964, made a number of amendments to the Legal Aid (Scotland) Act, 1949, in its application to criminal proceedings.

In October 1964, legal aid in criminal cases in the Scottish courts was extended to provide free legal representation to all persons in custody on their first appearance in court (except in the lowest courts which deal with minor offences only).

Free legal representation also became available in the following circumstances to persons who cannot afford to pay for their defence without undue hardship either to themselves or to their dependents:

(*a*) in all cases in the High Court of Justiciary;

(*b*) in all cases in the Sheriff Courts where the court is satisfied that it is in the interests of justice that the accused should receive legal aid; and

(*c*) in all appeals where there are substantial grounds for taking the appeal and where it is reasonable in the circumstances of the case that such assistance should be provided: these criteria are applied by committees of the Law Society of Scotland which are not subject to Government control.

ARTICLE 10 OF THE UNIVERSAL DECLARATION

Revised Judges' Rules, 1964

Revised Judges' Rules, with accompanying Administrative Directions to the police, were issued in 1964. These Rules, which relate to the admissibility of evidence in criminal trials, are based on the long-established and fundamental principle of English law that an oral answer given by a person to a question by a police officer, and any statement made by a person, shall only be admissible in evidence against that person if it was given or made voluntarily and was not obtained from him by fear of prejudice or hope of advantage or by oppression. The revised Rules involve no changes of principle but contain a number of clarifications and other improvements on points of detail.

ARTICLE 15 (1) OF THE UNIVERSAL DECLARATION

British Nationality (No. 2) Act, 1964

The British Nationality (No. 2) Act, 1964, resulted from the signature by the United Kingdom of the United Nations Convention on the Reduction of Statelessness. The main provisions of the Act for the reduction of statelessness are as follows:

The Act entitles certain classes of persons to be registered as citizens of the United Kingdom and Colonies if they satisfy the Secretary of State that they are and always have been stateless. The two most important classes are stateless children whether

[1] Note furnished by the Government of the United Kingdom.

legitimate or illegitimate born in a foreign country to a mother who is a citizen of the United Kingdom and Colonies; and any children born in the United Kingdom and Colonies who would otherwise be stateless.

The Act also provides for the acquisition of citizenship of the United Kingdom and Colonies by birth in the case of certain children born in the United Kingdom and Colonies after the passing of the Act whose mothers are citizens of the United Kingdom and Colonies but who would otherwise be stateless. It also restricts the power of the Secretary of State to deprive naturalized persons of their citizenship on certain grounds, if such deprivation would render them stateless: and enables provision to be made to avoid statelessness arising among the children of certain residual classes of British Protected Persons, who have retained that status after the territories with which they were connected have become independent.

Article 15 (2) of the Universal Declaration

British Nationality Act, 1964

The British Nationality Act, 1964, made new provision to facilitate the resumption or renunciation of citizenship of the United Kingdom and Colonies.

The Act entitles a person to resume his citizenship of the United Kingdom and Colonies by registration if (*a*) he has previously renounced his citizenship for the sole purpose of acquiring or retaining the citizenship of another Commonwealth country and (*b*) he has such a " qualifying " connection by birth, descent or otherwise, with the United Kingdom and Colonies, as is specified in the Act. Formerly such a person would only have been entitled to resume his citizenship of the United Kingdom and Colonies after a period of five years ordinary residence in the United Kingdom or a colony.

The Act also enables a person to make a declaration of renunciation of citizenship of the United Kingdom and Colonies if he satisfies the Secretary of State that he is about to acquire the citizenship of another country. The renunciation is however effective only if the other nationality is in fact acquired within six months of the renunciation, so as to avoid the possibility that a person might become stateless through failure to acquire the other nationality. Before the Act a person could renounce citizenship of the United Kingdom and Colonies only if he already possessed some other nationality, and this sometimes created difficulties, particularly for British women who wished to acquire the nationality of a foreign husband.

Article 16 (1) of the Universal Declaration

The Married Women's Property Act, 1964, enables a wife to keep half her savings out of the housekeeping money (but only if there is no express agreement about it), and tends towards equality of the sexes.

Article 17 (1) and Article 25 (1) of the Universal Declaration

The Housing Act 1964 not only strengthened local authorities powers of control over squalid conditions in multi-occupied houses, but also incorporated an entirely new and drastic power to take such a house summarily into local authority management by means of a control order. Other parts of the Act empower local authorities to enforce the improvement of existing dwellings with sub-standard amenities and extend the existing provision of financial assistance for improvements. The Act also set up a Housing Corporation with up to £100 million of Exchequer money to promote the growth of housing societies and, through them, stimulate the building of new houses and flats either for letting at cost-rents or for occupation on the basis of group ownership.

Article 22 of the Universal Declaration

Measures taken throughout the year were mainly concerned with improving the provisions for widows and dependent children.

The Family Allowances and National Insurance Act, 1964, provided increased benefits, with effect from 30 March, for the dependent children of a widow receiving national insurance widow's allowance or widowed mother's allowance or a widow's pension under the Industrial Injuries Scheme so as to bring the total benefit for each dependent child, including family allowance, up to £1 17s. 6d. a week.

The Act also extended from age 18 to 19 the age-limit up to which family allowances and dependent children's benefits under the National Insurance and Industrial Injuries Schemes are payable for children who are receiving full-time education and for certain apprentices.

The same Act relaxed still further the earnings rule so as to enable gainfully employed widow and retirement pensioners and widowed mothers to earn more without deduction from their pension or allowance.

However with effect from 21 December 1964, the National Insurance etc. Act, 1964, abolished the earnings rule entirely for widows receiving widow's pension or widowed mother's allowance.

This Act also provided for substantial increases in all National Insurance and Industrial Injuries benefits, increased flat-rate contributions and raised from £208 to £260 a year the income limit below which self-employed and non-employed persons may claim exception for liability to pay national insurance contributions, but none of these provisions became operative until 1965.

Regulations which came into force on 7 September 1964 extended the time-limit for claiming sickness benefit from three to six days (excluding Sunday).

With effect from 30 November 1964, Regulations extended insurance cover for benefits under the National Insurance and Industrial Injuries Schemes to persons engaged in the exploration and exploitation of the sea bed and subsoil in an area designated under the Continental Shelf Act.

Following an announcement made in Parliament by the Minister in June 1964, a Committee was appointed to review the tables of assessment for specified injuries in both the War Pensions and Industrial Injuries Schemes, to consider whether any modification in the assessment tables would be justified and to consider whether there is a case

for special compensation for disablement due to amputation either generally or in relation to advancing age. The Committee's terms of reference do not include consideration of the monetary level of compensation as such which must remain a matter of Government policy. The Committee's essential concern is with the relativities of compensation as between one form of disablement and another. Its findings have not yet been published.

Similar extensions in the field of social security in Northern Ireland have been made by parallel legislation in Northern Ireland.

Article 23 (1) and Article 26 (1) of the Universal Declaration

Industrial Training Act, 1964

The Act provides for the setting up of Industrial Training Boards, whose functions are to ensure the provision of adequate training facilities in the industries covered. The boards have power to impose levies on employers and to make grants or loans to persons providing courses or other facilities approved by the boards. They may also in certain circumstances pay maintenance and travelling allowances to persons attending courses.

The Act also provides for the appointment of a Central Training Council to advise the Minister of Labour on the exercise of his functions under this Act. The Council and a number of Industrial Training Boards have already been set up.

Young Persons (Employment) Act, 1964

This is a minor Act, which makes some additions to the kinds of occupations in which the hours of employment of young persons are regulated in accordance with the provisions of the Young Persons (Employment) Act, 1938. The penalty for a breach of Section I of the 1938 Act is also increased.

(This Act prohibits the employment of young persons under 18 years of age between the hours of 10 p.m. and 6 a.m. at premises in which intoxicating liquor is regularly sold or supplied after 11 p.m.)

Article 23 (4) of the Universal Declaration

Trade Union Amalgamation etc. Act, 1964

This is the latest in the series of trades union legislation; whilst it does not materially affect the workers' rights under Article 23.4, it confirms that those rights have not been adversely affected by this Act. The official press notice describing the Act says that it will make it easier for Unions to amalgamate, or to transfer their engagements from one to another. The existing law requires that a ballot must be held in each of the unions concerned; it specifies the proportion of members which must vote in the ballot and the size of the majority required to approve the proposed transaction. The new Act retains the ballot, but makes it possible for an amalgamation or transfer of engagements to be approved by a simple majority of those voting. Industrial unions, if they so wish, may choose to adopt stiffer requirements for themselves in their rules.

The Act safeguards the rights of individual members by requiring that each of them must receive a notice explaining the proposed merger before voting takes place. Individual members are also given the right of complaining to the Chief Registrar of Friendly Societies against alleged irregularities in the voting. The Act will also simplify the procedure for changes of names of trade unions, providing for these to be made in accordance with unions' rules (instead of by securing the consent of a specified proportion of unions' members).

The earlier legislation on the points covered in the new Act was contained in the Trade Union (Amendment) Act, 1876, the Trade Union (Amalgamation) Act, 1917, and the Societies (Miscellaneous Provision) Act, 1940.

Article 26 (1) of the Universal Declaration

The Education Act, 1964, enabled new county and voluntary schools to be established in England and Wales, with the approval of the Secretary of State, to provide education for both senior and junior pupils. This had not hitherto been possible under postwar legislation. It is intended to permit relatively small numbers of limited experiments in educational organisation.

The Act also empowers local education authorities in England and Wales and education authorities in Scotland to pay maintenance allowances in respect of handicapped pupils at special schools who would be over compulsory school age, or in Scotland, over school age, if they were not in special schools. This also had not been possible under existing legislation.

UNITED REPUBLIC OF TANGANYIKA AND ZANZIBAR

HUMAN RIGHTS PROVISIONS IN THE LAWS OF THE UNITED REPUBLIC OF TANGANYIKA AND ZANZIBAR[1]

1. The Preamble to the Constitution of the United Republic of Tanganyika and Zanzibar contains the following provisions:

" *Whereas* recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace:

And whereas the said rights include the right of the individual, whatever his race, tribe, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to life, liberty, security of the person, the enjoyment of property, the protection of the law, freedom of conscience, freedom of expression, freedom of assembly and association, and respect of his private and family life:

And whereas the said rights are best maintained and protected in a democratic society where the government is responsible to a freely-elected Parliament representative of the people and where the courts of law are independent and impartial:

Now therefore, this interim Constitution which makes provisions for the government of the United Republic as such a democratic society, is hereby enacted by the Constituent Assembly of the United Republic... "

2. 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* (S.27 (*a*)).

3. 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. "

4. 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 (ss. 2, 3 of Act 49 of 1963).

[1] Note furnished by the Government of the United Republic of Tanganyika and Zanzibar. This United Republic was established on 23 April 1964 and became, as of 2 November 1964, the United Republic of Tanzania.

UNITED STATES OF AMERICA

HUMAN RIGHTS IN THE UNITED STATES IN 1964

A Summary of Pertinent Actions taken by Federal, State, and Other Governmental Authorities [1]

Introductory Note

Basic guarantees of human rights and fundamental freedoms are contained in both the Constitution of the United States (the Federal Constitution), and in the Constitutions of the various States. The sections of these documents guaranteeing freedom of speech and press, religion, and assembly fair trial, equal protection of the laws, the right to vote and similar matters, are frequently known as the Bill of Rights. Official action at all levels of government is limited by and must conform to these guarantees. Remedy may be sought through the Federal Courts, initially or by appeal, for any violation of the rights guaranteed in the Federal Constitution. Primary responsibility for public order and the protection of individual rights usually rests with local authorities, pursuant to State law with enforcement through State Courts. However, the Federal Government co-operates with the States, through legislation, financial assistance and otherwise, for the realization of human rights in all fields.

The following survey is necessarily selective, confined to official acts of consequence. A more nearly complete picture of achievement would include developments regarding other basic rights guaranteed in State and Federal law, and of the many activities of government agencies, and of the co-operation of the American people themselves, in the promotion and enhancement of individual rights and freedoms for all.

Human Rights Day

As in previous years, the people of the United States honoured 10 December as the anniversary of the proclamation of the Universal Declaration of Human Rights. Since the anniversary of the Bill of Rights in the Federal Constitution falls on 15 December, the intervening period is regularly set aside as Human Rights Week. In his 1964 proclamation, President Johnson called upon the citizens of the United States to observe these anniversaries, pointing out that the Universal Declaration proclaims for the world the great rights to freedom, justice and equality guaranteed to the people of the United States in their Constitution, and continued:

" *Whereas* the worth of our Nation is measured not by the material abundance of our society but by the freedom which gives it purpose; and

" *Whereas* the strength of our liberty is measured by the respect each person accords the rights of others and by the vigor of our government in defending these rights; and

" *Whereas* the Civil Rights Act of 1964 has renewed and enlarged our commitment to honor and the principles of our Constitution, without distinction as to race, color or creed:

" *Now, therefore*, I, Lyndon B. Johnson, President of the United States of America, do hereby proclaim December 10, 1964, as Human Rights Day and December 15, 1964, 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.

" This country has survived and prospered mightily in the belief that all men are created equal, that all political power is inherent in the people, and that no man or group of men should be entitled to exclusive privilege or preferment over others. We have worked hard and long, at home and abroad, that every man may enjoy his right to security of person and of property, to freedom of conscience and of press, and to equal justice under law.

" In this week especially, let us give thanks for that love of liberty which made human justice and human dignity the foundation stones of our Republic. Let us be quick to speak when a man is threatened because he has exercised his rights, and sturdy to resist when freedom is denied or abridged through ignorance, prejudice, or abuse of power. Let us be worthy of the trust placed in our generation for the integrity of the individual and the full and faithful protection of his inalienable rights. "

The Governors of most of the States also issued proclamations and called upon their citizens, their schools and civic, patriotic and religious organizations to observe Human Rights Day and Bill of Rights Day. The Mayors of many cities did likewise.

Landmark Legislation

The year marked significant advance for human rights throughout the United States especially through two Acts of Congress — the Civil Rights Act of 1964 and the Economic Opportunity Act of 1964. Both laws strengthen equal protection of the law and further the substantive realization of human

[1] Information furnished by the Government of the United States of America.

rights in many fields through practical aid for persons who had been hampered by discrimination, geographic location, limited education, persistent unemployment, or other problems. Because of their broad impact, they are summarized as implementing the Universal Declaration as a whole.

The Civil Rights Act was signed into law on 2 July 1964. In addition to strengthening previous legislation against racial discrimination, it provided federal guarantees for the first time with regard to equality in places of public accommodation. It also set up new standards and machinery to assure equal opportunity in employment.

On public accommodation, the Civil Rights Act calls for equal access by persons of all races and religions to hotels, restaurants, theaters, and similar facilities. The coverage is broad, applying to all places affected by interstate commerce and also to all establishments in which racial segregation had previously been protected by governmental authority, through legislation, judicial decision, police action, or otherwise. While some 30 States already had laws forbidding discrimination of this type, others did not, with the result that in many areas either law or custom had deprived Negroes of equal enjoyment of accommodations claiming to serve the public. In an early test of this section of the Act the Supreme Court upheld its validity.[2] Many owners and proprietors complied voluntarily with the new law, although resort to the courts was necessary in some instances.

The Act also strengthens the capacity of the Federal Government to enforce desagregation of public schools and other governmental facilities such as parks and libraries. While racial segregation in government-operated institutions had been declared unconstitutional by the Supreme Court more than ten years earlier,[3] many individuals had found it necessary to seek court action to enforce non-discriminatory use of such facilities. Under the new law the Attorney General of the United States is authorized to institute action, thus allowing the Federal Government to initiate the court proceedings. The Act also authorizes technical and financial assistance by the Federal Government for desegregating schools.

Another section of the Act strengthens federal policy by requiring non-discrimination in federally-assisted programmes, such as housing, hospitals, health and welfare services, and authorizes federal agencies to withhold funds from responsible authorities who refuse to abandon discriminatory practices.

A later section of the Act, Title VII, deals with private employment; whereas the Federal Government had already adopted measures to prevent discrimination in jobs paid from public funds, discrimination in private employment had been prohibited only by certain States. Title VII of the Civil Rights Act prohibits employers in industries affecting interstate commerce from discriminating in their hiring practices on account of race, colour, religion, sex or national origin. It also forbids discrimination by employment agencies in job referrals, and by labour unions in their qualifications for membership or participation in training programmes. This section of the Act is to become effective 2 July 1965. Employers and unions with 100 or more workers are covered during the first year and coverage will be extended each year until 2 July 1968, when employers and unions with 25 or more workers will be covered.

A five-member bipartisan Equal Employment Opportunity Commission was created to investigate complaints by aggrieved individuals or by a Commission member; if the case is not settled through conference, conciliation and persuasion, the complainant may seek remedy through the Federal courts, without payment of fees or costs. The Attorney General may intervene in such an action and may also bring suit when he believes that a pattern of discrimination exists.

Another provision authorizes the Attorney General to intervene as a party in litigation brought to assert the right to equal protection of the laws, and to provide added protection for certain defendants in state courts who may wish to remove the action to a federal court for trial. The Act also establishes a Community Relations Service which functions in co-operation with state and local agencies to bring about voluntary compliance and to aid in solving racial problems arising in a community.

The Economic Opportunity Act, effective August 1964, was designed likewise to broaden and re-enforce the realization of human rights in many aspects. Sometimes called the Anti-Poverty Act, it seeks solutions for low-income families and represents a new approach to problems of persistent unemployment. To implement its remedial programmes it established an Office of Economic Opportunity in the Federal Government to direct and co-ordinate programmes for youth, for community action, and for rural areas, to encourage small business incentive projects, and to provide work guidance and experience for unemployed adults. Projects may be operated by the Government or by contract with private agencies, including universities and business corporations. Among the programmes for disadvantaged youth are a Job Corps with conservation camps and training centres providing vocational training and useful work experience along with elementary education as needed; a Neighborhood Youth Corps for young men and women who wish more secondary education or work experience to increase their employability, and a work-study plan combining part-time employment with aid for higher education. The Community action programmes aid welfare and other projects undertaken by local leadership with participation from groups expected to benefit, including such services as legal counselling to assure poor families full protection of the law in dealing with housing or other problems. In rural areas the effort is to combat poverty by stimulating non-agricultural enterprises. Expansion of local employment is sought also by provision for loans on favourable terms to small-business projects. Programmes of education and work experience are set up to meet the needs of persons who have long records of unemployment, particularly fathers of families, with a view to adapting and increasing skills for current job opportunities.

[2] *Atlanta Motel v. U.S.* 379 U.S. 241; *Katzenbach v. McClung* 379 U.S. 294.

[3] *Brown v. Board of Education*, 347 U.S. 483 (1954).

Equal Protection of the Law

In addition to the enactment of the historic legislation noted above, a number of actions in 1964 were designed to assure equality of treatment for women. By the end of the year Governors' Commissions on the Status of Women had been established in thirty-five States. These State Commissions were counterparts of the President's Commission on the Status of Women in the United States, which completed its report in 1964 after studying some of the most important questions relating to the lives of women — the home and community service, employment, education, and political and civil rights. A large number of States enacted laws affecting women during 1964, some of which authorized studies with a view to still further action. For example, the Wisconsin legislature adopted an act creating a State Family Council for Home and Family to study marriage and divorce laws, family support and family disintegration, with authority to conduct public hearings. The fact that Title VII of the Civil Rights Act included women in its prohibition of discrimination was a further gain; only two States — Wisconsin and Hawaii — already had such inclusive bans against sex discrimination in private employment.

Fair Trial and Hearing

The right to fair trial is guaranteed throughout the United States in both State and Federal Constitutions. The Bill of Rights, embodied in the first ten Amendments to the Federal Constitution, specifies various requirements for fair trial. The 14th Amendment, which forbids the States " to deprive any person of life, liberty or property without due process of law " has been held by the Supreme Court to extend some of these federal requirements to the States. Supreme Court decisions during 1964 reinforced the application of the due process clause in the 14th Amendment in two important cases.

In *Malloy v. Hogan* [4] the Supreme Court held that the due process clause extended protections of the Fifth Amendment to State courts. The Fifth Amendment provides that no person should be compelled in a criminal case to be a witness against himself.

The Court stated:

" The Fourteenth Amendment secures against state invasion the same privilege that the Fifth Amendment guarantees against federal infringement — the right of a person to remain silent unless he chooses to speak in the unfettered exercise of his own will, and to suffer no penalty... for such silence. "

The Supreme Court also re-enforced its previous ruling extending the provisions of the Federal Constitution's Sixth Amendment to the States. This Amendment provides that " in all criminal prosecutions the accused shall enjoy the assistance of counsel for his defense ". In 1963 in the now famous case of *Gideon v. Wainwright*, the Court held that the assistance of counsel... is so fundamental and essential to a fair trial that this right is guaranteed to persons accused of state crimes as well as federal crimes by virtue of the due process clause of the Fourteenth Amendment. [5]

In 1964 the Court held [6] that incriminating statements made by a person accused of a state crime during police interrogation and before his indictment could not be admitted as evidence against him when he had asked for and been denied the right to consult with his lawyer. The Court found that the defendant had been denied his right to the assistance of counsel guaranteed by the Sixth and Fourteenth Amendments and the evidence obtained when he was denied this right could not be used to convict him. In its opinion, the Court stated:

" It is argued that if the right to counsel is afforded prior to indictment, the number of confessions obtained by the police will diminish significantly, because most confessions are obtained during the period between arrest and indictment, and any lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to the police under any circumstances... There is necessarily a direct relationship between the importance of a stage to the police in their quest for a confession and the criticalness of that stage to the accused in his need for legal advice. Our Constitution strikes the balance in favor of the right of the accused to be advised by his lawyer of his privilege against self-incrimination. "

New legislation adopted in 1964 provides further that in federal criminal cases, other than petty offences, where an indigent defendent appears without counsel, the court will appoint counsel to defend him at every stage of the proceedings from his initial appearance through appeal.

Freedom of Movement

In 1964 the Supreme Court held [7] unconstitutional the Subversive Activities Control Act of 1950, under which it was unlawful for a member of a Communist organization to apply for or to use a United States passport. The Court stated that the right to travel abroad is an important aspect of the citizen's " liberty " guaranteed in the due process clause of the Fifth Amendment of the United States Constitution, and that the statute too broadly and indiscriminately transgressed the liberty, since it applied to every member of a " Communist-action " or " Communist-front " organization whether or not the individual in question believed or knew the pertinent circumstances. The Court pointed out that though the underlying purpose of the statute is the protection of national security, the attainment of that end cannot be realized by unduly infringing upon constitutional freedoms.

Nationality and Asylum

In a case affecting thousands of naturalized Americans residing abroad, [8] the United States Supreme Court declared unconstitutional, and therefore invalid, section 352(a)(1) of the Immigration and Nationality Act which provided with certain exceptions for loss of nationality by a naturalized citizen who had resided continuously for three years in the country of his former nationality. The

[4] 378 U.S. 1.

[5] 372 U.S. 335.

[6] *Escobedo v. Illinois* 378 U.S. 478.

[7] *Aptheker v. Secretary of State*, 378 U.S. 500.

[8] *Schneider v. Rusk*, 377 U.S. 163.

Court pointed out that the only difference made in the federal Constitution between the native-born and the naturalized citizen is that only native-born citizens are eligible to be President. The Court held that the provision discriminated against naturalized citizens and was therefore contrary to the Fifth Amendment, which provides that no one may be " deprived of life, liberty or property, without due process of law ".

In another nationality case,[9] the United States Supreme Court held that conviction for a crime involving moral turpitude is not ground for deportation of a naturalized citizen, even though he was later denaturalized on the ground that his citizenship had been acquired by wilful misrepresentation.

The United States continued to provide asylum for refugees, and to administer three major programmes: for Cuban refugees; for Chinese refugees in Hong Kong who have escaped from the mainland; and for refugee-escapees from certain European and Middle East Countries.

During 1964, approximately four thousand Cuban refugees were allowed to enter the United States until such time as circumstances permit their return, and almost ten thousand were admitted for permanent residence, bringing the total since January 1, 1959, close to 275,000. Federal, State and local governments co-operate in providing emergency aid to these refugees, including necessary financial assistance, medical care, relocation opportunities, English instruction, and vocational and professional training and retraining. By the end of the year new homes and job opportunities had been located in over 1,900 communities throughout the country for approximately 85,000 of these refugees.

Over 3,000 refugees from Hong Kong also arrived during the year, bringing to over 12,000 the total received since the President's directive in 1962. Under the Act of 14 July 1960, close to 3,300 refugees from countries in Europe and the Middle East were also paroled into the United States under special legislation, 649 aliens who would ordinarily have been subject to deportation were allowed to remain on the ground that they might be subject to physical persecution in the country of their proposed return.

In accordance with long established recognition by the United States of the right to a nationality and a national homeland, over 100,000 immigrants were granted United States citizenship through naturalization. In addition over 30,000 children were given certificates of citizenship.

Freedom of Speech and of the Press

In *New York Times Co. v. Sullivan*, the United States Supreme Court considered whether the First Amendment to the Federal Constitution, which provides that Congress shall make no law abridging freedom of speech or of the press, is a bar to the award of damages in a libel action brought by a public official against persons who criticized his official conduct.

In this case a City Commissioner of Montgomery, Alabama, whose duties included supervision of the police department, brought an action in an Alabama court alleging that he had been libelled by an advertisement published in the *New York Times* newspaper. The advertisement contained statements, some of which were false, regarding police action directed against civil rights demonstrators. The Alabama court ordered the *New York Times* and four individuals whose names were listed as having signed the advertisement to pay the Montgomery official a half million dollars damages for libel. Under Alabama law malice on the part of the publishers was presumed since the statements were regarded as libellous *per se*.

The decision was affirmed by the Alabama Supreme Court. However, the United States Supreme Court reversed the judgement, stating:

" The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with ' actual malice ' — that is, with knowledge that it was false or with reckless disregard of whether it was false or not. "

The Court also pointed out that it considered the case " against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials[10]."

In *Garrison v. Louisiana*, the Supreme Court held that its rule in the *New York Times* case also limits state power to impose criminal penalties for criticism of official conduct of public officials.[11]

Government by the Will of the People

As a step in the promotion of self-government, the Congress of Micronesia was established as the legislative body of the Trust Territory of the Pacific Islands, to consist of two chambers, a twelve-member House of Delegates, two elected from each of the six districts in the Territory, and a 21-member House of Delegates elected on the basis of population. The first meeting of the Congress will be in 1965.

The Twenty-Fourth Amendment to the federal Constitution, which became effective in 1964, provides that the right of citizens to vote in any federal election shall not be denied or abridged by reason of failure to pay any poll tax or other tax. Its ratification removed another obstacle to the realization of universal suffrage, without distinction as to race, colour or sex, as provided in earlier amendments.

During 1964 the Supreme Court extended the " one-person, one-vote " principle, enunciated in 1963 with respect to state elections,[12] to cover elections for Representatives to the national Congress.[13] This means that Congressional districts must henceforth contain substantially the same number of people in order that one person's vote may not have more political weight than another's. In a related case the Court held that the equal protection clause of the Constitution requires both

[9] *Costello v. Immigration Service*, 376 U.S. 120.

[10] 376 U.S. 254.

[11] 379 U.S. 64.

[12] *Gray v. Sanders*, 372 U.S. 368.

[13] *Wesberry v. Sanders*, 376 U.S. 1.

houses of a bicameral state legislature to be apportioned substantially on a population basis [14] or, in other words, that each representative in both houses of every state legislature must represent approximately as many persons as every other representative. In its opinion the Court states:

" Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests... And, if a State should provide that the votes in one part of the State should be given two times, or five times, or ten times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. "

The Civil Rights Act of 1964 strengthened existing law against racial discrimination in voting by providing for accelerated treatment of voting cases in the courts. It also prohibited use of literacy tests as prerequisites for voting. The Act further provides for compilation of registration and voting statistics on a racial basis, in order to obtain information on possibly discriminatory practices.

In another important case [15] the Supreme Court held unconstitutional a Louisiana law which required that the race of candidates for office be designated on election ballots. The Court stated:

" ... by placing a racial label on a candidate at the most crucial stage in the electoral process — the instant before the vote is cast — the State furnishes a vehicle by which racial prejudice may be so aroused as to operate against one group because of race and for another... The vice lies not in the resulting injury but in the placing of the power of the State behind a racial classification that induces racial prejudice at the polls. "

Fair Employment and Conditions of Work

In addition to the legislation noted above, government policies for fair and equal employment were given further effect through administrative and judicial action. In January, the Secretary of Labor issued regulations regarding apprenticeship and training programmes to assure that applicants would be selected solely on merit, without regard to race, colour, creed, national origin, sex, or irrelevant physical requirements, and that equal employment standards would apply throughout with periodic review to enforce them. In February, the President established a national policy against discrimination based on age by private employers working on federal contracts.

The annual minority census in June showed a major increase in the number and proportion of Negroes in upper and middle grade jobs in the Federal Civil Service.

As the result of a complaint by a Negro employee in Texas that an Independent Metal Workers Local committed an unfair labour practice when it refused to process a grievance for him, the National Labor Relations Board unanimously decided to rescind the union's certification, holding that whenever a union causes discrimination based on racial lines it has committed an unfair labour practice. [16]

State and federal authorities continued alert to possible improvements in working conditions. For example, Michigan enacted a minimum wage law for the first time and other States increased their statutory rate. By the end of 1964, minimum wage laws were in effect in thirty States, the District of Columbia and Puerto Rico, some with rates higher than the minimum established by federal law for workers producing goods for interstate commerce. Where the State standard is higher, it takes precedence. In the area of workmen's compensation, seven States raised benefits, six extended coverage to additional groups of public employees, and four provided for studies reviewing their laws. Six States adopted legislation protecting workers exposed to hazards from the peaceful use of atomic energy; 46 of the 50 States now have legislation for this purpose. The President appointed a study Commission on Technology, Automation and Economic Progress to survey the nation's technological advancement and to assess the impact of such changes on production, employment and communities.

In the agricultural sector, new legislation established a system of federal registration for interstate farm labour contractors for the purpose of preventing abuse and exploitation of migrant farm workers. Under this law, should a contractor misrepresent the terms and conditions of work to migrant workers or fail to carry out agreed working arrangements, he is subject to revocation of his registration. To protect agricultural wage earners, regulations were issued forbidding admission of immigrants under circumstances which would have an adverse effect upon domestic wage levels, or upon the working conditions of domestic workers. The new Michigan minimum wage law covered certain agricultural workers, and a California law authorized guidance services to aid improved housing for farm labourers.

The trend toward bargaining rights for public employees continued, with Louisiana recognizing such rights for workers in certain public transportation facilities, Massachusetts strengthening similar rights for its State employees and Delaware authorizing study of necessary protective arrangements, including collective bargaining agreements, for employees of privately owned transportation systems before any such system is acquired by any State authority.

In the important areas of collective bargaining, trade unionism and job security, the United States Supreme Court handed down a number of decisions. In *John Wiley & Sons v. David Livingston* [17] the Court held that while owners of private businesses have the right to reorganize, and even to eliminate themselves as employers, the right must be balanced by some protection to employees affected by a sudden change in the employment relationship. This means that the disappearance, by merger, of a corporate employer which has entered into a collective bargaining agreement with a union does not automatically terminate all rights of employees covered by the

[14] *Reynolds v. Sims*, 377 U.S. 533.

[15] *Anderson v. Martin*, 375 U.S. 399.

[16] NLRB Cases 23 CB-429 and 23-RC-1758, July 1, 1964, 147 NLRB No. 166.

[17] 376 U.S. 543.

agreement. In appropriate circumstances, the successor employer may be required to arbitrate with the union. In *National Labor Relations Board v. Exchange Parts Co.*[18] the Court held that the employer's conferral of economic benefits on employees while a representation election is pending (for the purpose of inducing them to vote against the union), interferes with the employee's protected right to organize, and thus constitutes an unfair labour practice.

Housing

The supply of good housing continued to increase. Construction was begun in 1964 on approximately 1,640,000 new dwelling units. Over 38,000 of these were designed for rental to low-income families. Federal funds aided development of this low-income housing and, under a new programme in 1964, also of additional units for families of somewhat higher income who are unable to pay normal rents. As in previous years, a substantial portion of the new homes were financed through private mortgage loans insured by the Federal Government.

Equal opportunity in housing was a major concern at all levels of government, with co-operation in many areas from active citizen groups interested in overcoming discrimination in the sale and rental of real estate. Federal authorities continued to give effect to the policy initiated by President Kennedy in his Executive Order of 1962, and reaffirmed by President Johnson, prohibiting discrimination in most housing built with financial assistance from the federal government. In 1964 this Order already applied to more than a million housing units throughout the United States. The Civil Rights Act of 1964, which in Title VI prohibits discrimination in Fedeally-assisted programmes, made this policy a legislative requirement. Regulations were issued promptly under this Act to require assurance of compliance from each recipient of federal housing assistance. Because of the scope of federal housing programmes, including promotion of housing for the elderly, this aspect of the Civil Rights Act was expected to have wide impact.

A number of State and city governments have also taken steps to insure equal housing opportunity. By the end of 1964, 18 States had enacted fair housing laws and 12 of these covered private as well as Government assisted housing. At least 10 cities enacted similar ordinances during 1964, bringing the total of municipalities with such laws to 34.

The attack upon urban decay continued at all levels of government. A growing awareness of the problems of slum and blighted areas, particularly among people in the cities, was apparent in urban renewal programmes initiated by 53 new communities with the aid of the Federal Government, and approval of 86 additional projects for localities with programmes already under way. By the end of the year, 765 cities in 42 States, the District of Columbia, Puerto Rico and the Virgin Islands were working on urban renewal.

The Federal Housing Act of 1964 continued existing programmes and expanded certain activities. For example, previous legislation to assist housing for the elderly was amended to provide equivalent benefits for America's physically handicapped.

Standard of Living and Social Security

Productivity continued to rise; output per man-hour was about 3.6% greater in 1964 than in 1963. Output per worker was about $8,500, also an increase over the previous year.

To facilitate informed choice among the wide range of goods and services available, the President established a new office in the White House of Special Assistant on Consumer Affairs. He also established two advisory bodies — a President's Committee on Consumer Interests, to consider ways to improve federal programmes of primary importance to consumers; and a Consumer Advisory Council to advise the government on issues of broad economic policy and programmes to meet consumer needs, including a better flow of consumer research material to the public.

For persons or families whose income has been reduced through old-age, disability or death of the family bread-winner, a comprehensive system of federal social security insurance provides continuing support. The amount of monthly payments under this system is related to the average monthly earnings of the insured person during his working years. During 1964 the Advisory Council on Social Security Financing, appointed the previous year to review the social security system and keep it abreast of changes in the economy, completed its report. It recommended an increase in average benefits together with liberalization of eligibility requirements for certain groups. It further recommended the introduction of government-paid hospital insurance to supplement existing programmes for older people and the disabled. To maintain its wage related character the Council recommended an increase in the amount of workers' earnings that would be covered by the programme.

Employment insurance, workman's compensation, and related forms of assistance are provided under state laws. In addition, many businessess provide retirement payments, disability and hospital plans for their employees; for example, pension plans and hospital benefits are usually among the " fringe benefits " included in labour union contracts with employers. Such payments supplement the social security benefits supplied by the Federal Government. Large numbers of Americans also purchase private insurance against accident, illness or other disability or to provide retirement income.

For needy persons, State and local authorities provide social services and money payments for subsistence. A wide variety of assistance is available on a community and on a nationwide basis, by private foundations and by voluntary social agencies financed from annual public contribution campaign drives. In addition, as noted above, the Economic Opportunity Act of 1964 is specifically designed to help low-income families and individuals improve their situation.

Health, Medical Care and Child Welfare

The health problems posed by a highly industrialized, mobile, and increasingly urban society with an ever lengthening life span continued to challenge

[18] 375 U.S. 405.

the Federal, State and local governments in their combined efforts to prevent disease and attain healthy individual and family development for all.

A major objective in 1964 was to improve national health resources, particularly the supply of trained health personnel. In line with implementation of the Health Professions Educational Assistance Act adopted in 1963, Congress approved a Nurse Training Act and expanded opportunities for graduate public health training through loans to students in dentistry, medicine, optometry, osteopathy, and professional nursing, and construction grants for medical schools. Amendments to earlier legislation increased financial assistance to States and communities for health facilities, construction of chronic disease hospitals, nursing homes and other institutions for long-term health care. The National Library of Medicine placed in operation new computer systems for indexing and processing the world's biomedical information. Designed to deal with the biomedical " information explosion ", these resources provide faster and more effective aid to health scientists, teachers and practitioners, and in turn improve their services to the public.

Bureaux or agencies for child health and child welfare are active in all the States as well as in the Federal Government, with continuing programmes of service and protection for mothers and children throughout the country. These agencies are watchful to co-ordinate and make the most of all available resources. In recent years it has been possible to give greater attention to the problems of retarded, crippled, and other groups of handicapped children. In 1964 funds became available to expand these and other aid programmes still further, including genetic counselling for families.

Among newer developments was the rapid expansion in day-care services for young children, due to continuing increase in the number of working mothers and the drive, in connection with the war on poverty, to improve the educational experiences of children from low-income homes. To assure proper conditions in such children's centres, local authorities were active in developing and up-grading licensing standards.

New legislation for the protection of children was adopted, supplementing the extensive provisions already in effect punishing abuse or neglect and prohibiting child labour. The purpose of the new legislation was to identify situations where children had been or might be abused, physically or otherwise, by those caring for them and to provide measures to prevent further harm, including social services to help the family. For example, doctors and hospitals are required to report all cases in which they suspect hazards, and special centres are set up to assist the police in emergencies. Advocates of the legislation pointed to the increasing danger to children in the fast-moving, ever-changing conditions of society, and the difficulty of reaching children in homes and other situations where they might be alone with an adult who was mentally ill or incompetent or in need of assistance. To facilitate prompt action, the United States Children's Bureau developed draft provisions which States might use as models in enacting laws. By the end of the year 21 States had completed legislation and others were preparing action.

The Civil Rights Act of 1964 strengthened the administration of social security and welfare programmes, along with all others in the Federal Government, by providing in its Title VI :

" No person in the United States shall, on the ground of race, color, or national origin, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. "

Education

In the fall of 1964 enrolment in educational institutions increased for the 20th consecutive year and reached another all-time high. A portion of this increase reflected the growth in population, since most children are required to attend school, usually up to 16 years. However, the largest increase — 10 per cent — was in higher education, where attendance is voluntary. The quality of education was also improving; for example, in elementary and secondary schools the pupil teacher ratio decreased over a five-year period from 26.0 to 25.1 despite an 18 per cent increase in enrolment. Expenditure for education was also at an all-time high, approximately $33.7 billion for the 1963-4 school year, an amount equal to about 5.8 per cent of the gross national product.

Because in the United States State and local governments have primary responsibility for the provision of public schools, much of the cost is borne by local authorities. However, in order to promote uniformly high standards of education, in recent years State governments have assumed an increasingly larger proportion of operating costs, and the Federal Government has also provided support for education at all levels through a variety of specific programmes. For example, the Federal Government has long assisted in providing vocational education.

New federal programmes have been added in such fields as science, where curriculum revision, refresher programmes for teachers and the financing of laboratory equipment and materials are necessary to keep up with rapid technical advance.

As in other fields, the Civil Rights Act of 1964 was a major legislative achievement. Title VI has immediate implications for education, because its prohibition on the use of federal funds extends to any programme where there is discrimination, including separation, on the ground of race, colour, or national origin, and is applicable to private as well as public institutions. By a regulation issued at the end of 1964, with Presidential approval, public secondary and elementary educational systems are authorized to meet this " no discrimination " requirement through compliance with a court order or through submission of a voluntary plan for desegregation which the Commissioner of Education determines to be adequate. Title IV of the Civil Rights Act of 1964 also speeds the pace of desegregation by requiring assignment of students to public schools without regard to race, colour, or national origin.

The Act authorizes the federal Office of Education to give technical and financial assistance, if requested, to local public schools systems planning or carrying out desegregation programmes. The assistance may

include such technical aids as information or expert personnel, the establishment of special institutes to deal with desegregation problems, and grants to school boards to pay for training programmes or the employment of specialists.

It is significant, however, that even before the Civil Rights Act could become effective, areas where separate schools for Negroes and whites had once been the rule were moving more rapidly toward desegregation. Due in some cases to voluntary action, and in others to court orders, the number of Negroes attending schools with whites almost doubled in 1964. For the first time every State of the Union had some desegregation at the public school level. The Supreme Court indicated in two significant opinions that its original formula requiring " all deliberate speed " [19] in the process of school desegregation must be re-examined and applied in the light of present conditions and the years which have passed since that decision. In December 1964, an appellate court struck down the use of tuition grants from public funds to send children to local private schools in Prince Edward County and Surry County, Virginia, especially set up to permit white students to attend all-white schools. This followed the court-ordered reopening of public schools in Prince Edward County — five years after they had been closed to escape the impact of court-ordered desegregation.

Court rulings extended the desegregation decisions to cover the assignment of teachers and other school personnel on the basis of race. The Supreme Court refused to review — and thus left standing — a Florida ruling [20] prohibiting teacher assignment "based upon race or color, in whole or in part, with respect to the operation of the public school system; or any of its components. " In a jury trial in Texas a State Court ruled [21] that Rice University could disregard a racial restriction placed by the founder in his bequest to the school.

Culture and Science

In 1964 Congress enacted the National Art and Cultural Development Act establishing a National Council of the Arts in the Executive Office of the President, to foster artistic and cultural endeavour both nationally and internationally and to promote greater appreciation and enjoyment of the arts. The Council will be composed of twenty-four private citizens widely recognized for their broad knowledge or experience, including practicing artists, civic cultural leaders, museum experts and others similarly engaged. The declaration of policy underlying the Act recognizes that while encouragement of the arts is primarily a matter for private and local initiative, it is also a matter of concern to the Federal Government, and that the " arts and the creative spirit which motivates them " are a valued and essential part of the nation's resources. The broad provisions of this Act, and especially its declaration of policy, reflect the rapid expansion of cultural interest in the United States in recent years.

For example, in 1920 there were about 100 symphony orchestras in the United States, centered in larger cities; by 1940 the number had increased to 500 and today there are more than 1400, many in smaller communities. School and college orchestras encourage musical interest among young people; it was estimated that in 1964 there were 37 million amateur musicians in the United States compared to 19 million in 1950. The growth of museums has been equally notable, from 1,000 in 1920 to 3,500 in 1964. Many of these offer educational programmes, including arts and crafts. The annual museum attendance in the United States in recent years has been well over 200 million people. While such cultural activities have usually been organized through private initiative, Government bodies, especially at the local level, are constantly increasing their support for museums, libraries, concerts and other presentations in the public parks, historical celebrations and similar events. Official agencies are also being established for co-ordination and community planning in the arts. One step has been the formation of State Arts Councils; there were twenty-six State Councils in 1964, the majority of them established since 1960. A special Arts and Humanities Branch in the Federal Office of Education also promotes education in the arts and humanities at all levels, including both in-school and out-of-school programmes.

The benefits of scientific advancement continued freely available to all through improvements in materials and services offered private industry as well as through government programmes, which operate in every field of scientific endeavour. For example, in 1964 in science an intensified research programme to increase the supply of fresh water by desalination was undertaken by Government agencies using electricity developed from nuclear reactors. The use of pictures taken from weather satellites facilitated long-range weather forecasting through study of cloud formations for indications of gathering storms. Ranger-7's clear photographs of the moon were made available through news media so that all might share in the new knowledge of the lunar surface. Syncom 3 transmitted live pictures of the Olympic games in Tokyo televised into homes throughout the United States.

International Co-operation

The United States maintained its strong support for the various activities and programmes of the United Nations which 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, the Special Fund and UNICEF, and 33 1/3 per cent of the funds supporting the United Nations High Commissioner for Refugees voluntary programme.

The United States continued its bilateral co-operation with other countries, at the request of their governments, in sharing the benefits of technical and scientific advances in agriculture, public administration, social welfare, housing, and many other

[19] *Brown v. Board of Education*, 349 U.S. 294, 301 (1955).

[20] *Braxton v. Duval County.*

[21] *Rice v. Carr.*

fields. Programme were in operation in 1964 with over 80 countries, under the ægis of the United States Agency for International Development, designed to help create the human resources needed to initiate and carry forward social and economic development. As in previous years, projects were concentrated in the fields of most urgent need : education, food and agriculture, health and sanitation. As a result of educational assistance alone, in-service training was provided for 182,000 teachers in developing countries and an additional 92,000 teachers were graduated from training institutions. Many projects were carried through under contracts with non-governmental institutions, business firms, universities, individuals and corporations. The increasingly important role American universities are playing in development programmes at home and abroad, particularly in the critical areas of research and rural development was recognized during the year in a comprehensive review of university relationships undertaken by government agencies.

By paying the cost of overseas freight, the government assists a number of voluntary groups in sending supplies for their work, including agricultural tools, implements, educational materials, vocational equipment, drugs, health supplies, and self-help equipment. Government agencies also co-operate in providing emergency relief for overseas disasters; during 1964 such relief, involving clothing, blankets, tents, medicine, and technical assistance, was extended to the victims of natural and man-made disasters in more than 24 countries, usually with the aid of local and voluntary organizations.

8,175 persons received United States Government travel grants in 1964 for the purpose of study, teaching, university lecturing, advanced research, and consultation and observation in specialized fields outside their own countries. Some 5,889 of these were foreign citizens who came to the United States from 130 countries and territories and 2,286 were Americans who went abroad. Fields of specialization included science and engineering, social sciences, humanities and education. New exchange agreements were signed with Liberia and Yugoslavia, making a total of 48 countries with which such agreements were in effect.

The Center for Cultural and Technical Interchange Between East and West (East-West Center), in affiliation with the University of Hawaii, continued to provide specialized training and opportunities for graduate study with some 600 Asian-Pacific and United States students in attendance. Government agencies continued informal and facilitative assistance as requested for the many thousands of students and visitors coming to the United States at their own expense or through the aid of universities, foundations, and civic organizations.

URUGUAY

NOTE

During 1964, the Ministry of Industry and Labour adopted the following legislation:

1. Act No. 13,283 of 11 August 1964, which made provision for insurance against illness and disability and assistance and other medical and pharmaceutical benefits for manual and non-manual workers in the metallurgical and related industries. [1]

2. Decree No. 369/964 of 24 September 1964, which laid down regulations for the handling of Wage Board decisions received by the Ministry of Industry and Labour. [2]

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[1] *Diario Oficial*, No. 16983, of 13 October 1964.

[2] *Ibid.*, No. 16982, of 9 October 1964.

VENEZUELA

NOTE[1]

1. *In connexion with the right of every person to profess his religious faith and to practise his religion*, which is enunciated in article 65 of the 1961 Constitution, and with a view to regulating relations between Church and State as prescribed by article 130 of the Constitution, the Act approving the Agreement concluded between the Republic of Venezuela and the Holy See was published in *Gaceta Oficial* No. 27478, of 30 June 1964. In addition to providing for the legal regulation of relations between the Catholic Church and the State, the Act lays down general rules governing the freedom of religion in Venezuela.

2. Article 64 of the 1961 Constitution provides that "*Every person shall have the right to travel freely through the national territory*, change his domicile or residence, *leave the Republic and return thereto*, bring his property into the country or take it out, with no other limitations than those established by law". It adds that "Venezuelans *may enter the country without the necessity of any authorization whatever*".

The same article also expressly provides that "*No act of the Public Power may establish against Venezuelans the penalty of banishment from the national territory, except as commutation of some other penalty and at the request of the guilty party himself*". It was precisely because of this provision in the Constitution that the Act concerning the commutation of penalties through the grant of a pardon or through banishment from the national territory, published in *Gaceta Oficial* No. 27619, of 15 December 1964, was adopted.

3. In articles 84 to 94, the Constitution establishes and guarantees *freedom of work and the right to work*. The legislation enacted in this regard during 1965 provided for the approval of two relevant international conventions. (See the Act approving the Convention (No. 105) concerning the abolition of forced labour, published in *Gaceta Oficial* No. 27572, of 21 October 1964, and the Act approving the Convention (No. 111) concerning discrimination in respect of employment and occupation, published in *Gaceta Oficial* No. 27609, of 3 December 1964.)

4. Article 114 of the 1961 Constitution provides that "*All Venezuelans qualified to vote have the right to associate together in political parties* in order to participate, by democratic methods, in the guidance of national policy". The same article provides that "The Legislature shall regulate the organization and activities of political parties in order to safeguard their democratic character and to guarantee their equality before the law"; this provision was given effect by the National Congress when it adopted the Act concerning political parties, public meetings and demonstrations, published in *Gaceta Oficial* No. 27610, of 16 December 1964.

5. Article 115 of the 1961 Constitution provides that "Citizens have the right to *demonstrate peacefully and without arms, subject only to the conditions established by law*". The above-mentioned Act concerning political parties, public meetings and demonstrations lays down the legal conditions governing such public demonstrations.

6. Lastly, article 71 of the 1961 Constitution provides that "Every person shall have the right to *meet with other persons, publicly or privately without previous permission, for lawful ends and without arms*" and that "Meetings in public places shall be governed by law". The above-mentioned Act concerning political parties, public meetings and demonstrations lays down the conditions governing such meetings.

In addition to the enactment of the legislation referred to above, amendments were made in certain legal provisions, including the Electoral Act. However, since no substantive changes were made in the actual text of the Act, the right to vote was not affected.

7. In order to extend the benefits of the existing Act respecting compulsory social insurance to all inhabitants of the Republic covered by the system, apart from other administrative measures for the reorganization and improvement of such services, the National Executive has promulgated Decrees Nos. 29, 30 and 31, dated 29 April 1964, initiated by the President of the Republic, which, pursuant to article 3 of the Organic Act respecting compulsory social insurance and articles 154 and 155 of its regulations, state that it is the duty of the National Executive to insure that the action of its social policy should benefit the greatest possible number of workers and that in consequence it was resolved to carry out studies relating to the extension of compulsory social insurance to the cities of Cumaná, Carúpano and the area between Los Teques and Valencia. It was also resolved to extend the application of compulsory social insurance to various districts and municipalities in the States of Portuguesa, Monagas, Táchira, Anzoátegui and Trujillo. The Decrees are published in the *Gaceta Oficial* of the Republic of Venezuela No. 27.427, dated 29 April 1964.

[1] Note furnished by the Government of Venezuela.

Extension of compulsory social insurance to other States of the Republic are also planned and the studies have been carefully carried out in the respective territorial areas by the Venezuelan Social Insurance Institution.

In conclusion, it should be noted that in the Special Message which Dr. Raúl Leoni, President of the Republic, sent to the National Congress at its regular sessions during 1964, he said : " One of the basic aspects of governmental policy in recent years has been an intensification of educational and health and welfare plans because of the part that the efforts made to develop the country must go hand in hand with the physical and cultural improvement of the human element. This is important because the human resources of the nation will thus be used more efficiently and will be able to participate in a more competent way within the productive process at the same time as higher levels of social well-being are being obtained. The total resources required for this sector for the entire year 1964 amount to 101 million bolivars. "

YEMEN

THE CONSTITUTION OF YEMEN

Adopted on 27 April 1964[1]

Art. 32. Freedom and secrecy of correspondence is guaranteed within the framework of the law.

Art. 33. Freedom of opinion and of scientific research is guaranteed. Every person shall have the right to express his opinion and to circulate it in speaking, writing, pictures or in any other form within the framework of the law.

Art. 34. Freedom of the press, printing and publication is guaranteed in accordance with the people's interests and within the framework of the law.

Art. 35. Education is free within the framework of the law, public discipline and ethics.

Art. 36. Education is the right of all Yemenis and it shall be guaranteed by the State through the establishment of all various forms of schools and cultural institutions and by gradually expanding them. The State shall pay special attention to the physical, mental and moral growth of youths.

...

[1] The articles of the Constitution appearing under this heading taken from the Secretary-General's *Annual Report on Freedom of Information, 1963-1964.*

YUGOSLAVIA

DEVELOPMENTS IN THE FIELD OF HUMAN RIGHTS IN THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA IN 1964[1]

After the adoption of the new Constitution of the Socialist Federal Republic of Yugoslavia in 1963, the task of bringing all the laws into conformity with the Constitution was undertaken. It was necessary to adopt regulations designed not only to adapt every sphere of social relations to the new organizational structure of the State and society, but to work out in detail and to give concrete form to constitutional principles and provisions. In the course of 1964, a number of laws was passed. We have singled out the laws which are of great interest with regard to the promotion of human rights, in particular those dealing with social self-administration. They deserve special attention as they regulate certain problems of self-administration, which forms the basis of the socio-economic structure and is characteristic for the development of human rights in Yugoslavia.

I. SOCIAL SELF-ADMINISTRATION

1. BASIC ACT ON THE ELECTION OF WORKERS' COUNCILS AND OTHER ORGANS OF MANAGEMENT IN WORK ORGANIZATIONS *(Official Gazette of the Socialist Federal Republic of Yugoslavia,* No. 15/64*)*

The Act constitutes a significant measure for the application of constitutional principles regarding self-management in work organizations (work organizations are economic enterprises, shops, co-operatives, organizations and institutions in the fields of culture, health, social welfare and other social public services, and other similar organizations). The basic principles are contained in the Constitution of 7 April 1963, [2] and in the constitutions of the socialist republics adopted in the same year. According to the Constitution, self-management by workpeople in work organizations represents one of the foundations of Yugoslavia's socio-economic organization. Workers' councils have become the basic feature of the entire socio-political structure. Since its inception in 1950, the system of workers' self-management has continued to develop and has expanded to new areas of social activity embracing all spheres of social life and economic development. The adoption of the new Constitution and the passing of this Act amount to a new and higher level of development in the system of workers' self-management. The texts of these laws are based on the results and experiences gained with respect to the election and functioning of self-management bodies.

The present Act introduces uniform principles governing the system of elections. The principles applicable in the elections of political and representative bodies have now been extended, on the basis of legal provisions, to the election of all bodies of management in work organizations (principles regarding nominations, the right of recall, rotation in office, etc.). Moreover, this election system is applied not only in the economy, but in social and public services (institutions) as well.

In order to ensure respect for the constitutional principles guaranteeing the equal socio-economic position of workpeople employed in different work organizations, the afore-mentioned Act lays down uniform fundamental principles. In some specific types of work organisations, self-management will be governed by special regulations. By its character, this act is a Basic Federal Law. With a view to establishing a uniform election system throughout Yugoslavia and with a view to guaranteeing equal conditions for the realization of self-management by working people, the Act provides for a uniform election system and, in so far as electoral rights are concerned, forms an integral part of the federal legislation. However, in all other matters, the Act lays down basic principles only and the socialist republics shall enact further laws regulating matters not covered by the Federal Law. Thus, the rights of the republics have been further extended in this field.

The Act determines and protects the right to management. However, it provides, at the same time, for the exercise of certain influence on the part of the community, especially through special procedures applied with regard to the appointment and replacement of directors and through the election or delegation of representatives of the community to individual bodies of self-administration.

The Act regulates, first and foremost, the right to vote, which is based on the principle that this right belongs to all those who, through their labour, contribute towards the creation of income of a work organization, and not merely to those who have established an employment relationship only formally. Hence, all members of the collective of a work organization have the right to elect and be elected to bodies of management. This right belongs not

[1] Note prepared by Dr. Bosko Jakovljević, Research Fellow of the Institute for International Politics and Economy, Belgrade, government-appointed correspondent of the *Yearbook on Human Rights.*

[2] See *Yearbook on Human Rights for 1963*, pp. 369-377.

only to persons who have established an employment relationship for an indefinite period of time, but even to persons who have established such a relationship for a specific period of time, and even with shorter hours of work, provided the work they are doing is their sole occupation. Furthermore, the Act provides that this right is enjoyed not only by citizens employed permanently, but also by citizens working part-time, provided that they have been employed for at least a year, or under a one-year contract.

In keeping with the principle, according to which all persons who contribute substantially to income formation should participate in management, the Act grants the right to vote to seasonal workers, if they have established an employment relationship for at least three months. On the other hand, the statute of a work organization may provide that seasonal workers employed for less than three months should also be eligible to vote.

In addition to persons who are parties to an employment relationship, the Act grants the right to vote to some other categories of persons engaged by work organizations, such as persons attending courses or undergoing practical training in an organization for a determined job; persons using their own means of work and co-operating permanently with the work organizations (when engaged in co-operation, etc.); and persons independently engaged in cultural, professional or other similar activities, under specific conditions (i.e. that they take part in the execution of the programme of a work organization, with the provision that their share in the distribution of income should depend upon the results of their work and the performance of the work organization, etc.).

The right to elect and be elected to a co-operative council is enjoyed by the members of the work community of a co-operative and by the members of a co-operative.

The right to vote is enjoyed by foreign citizens and stateless persons who are parties to an employment relationship, provided that they reside in Yugoslavia and have been employed on the basis of full working hours for at least a year. However, if such persons do not wish to avail themselves of their right, they may state so and, in that case their names shall not be incorporated in the list of voters.

In order to establish the right to vote, a list of voters is drawn up by an election commission appointed by the workers' council. The list of voters is posted on a billboard seven days prior to elections. Every person, having the right to vote, may object if his name or that of another person has not been inscribed, or if the name of a person not eligible to vote has been inscribed. The commission, which has drawn up the list, must take action within twenty-four hours after having received such a complaint. However, if the commission finds that the complaint is unsubstantiated, an appeal against such a decision may be lodged with the municipal court, which is under obligation to bring a decision on the case in point within 24 hours; such a decision is final.

The aforementioned provisions on voting rights constitute an integral part of federal legislation. The Act lays down only the basic principles of the electoral system, which are to be further elaborated by the provisions of the respective republics.

Members of workers' councils are elected for a two-year term of office, while members of management boards for one year. One-half of the membership of the council is renewed every year. The Act also introduces the principle of rotation so that no one may be elected twice in succession to the workers' council and no one may be elected more than twice in succession to the board of management.

The election and recall of members of the workers' council and managing board are effected on the basis of universal suffrage and by secret ballot. The electoral body which has elected the members of the management body may recall them, under the conditions and procedures fixed by law.

A person inscribed in the list of voters cannot be deprived of his right to vote, nor prevented from voting. The freedom and secrecy of voting are guaranteed. A voter cannot be called to account for his actions, nor can he be asked to reveal for whom he has cast his vote or why he did not vote, i.e. whether he has voted in favour or against the recall.

The election of members to the workers' council is announced by the council 30 days prior to the election. Should the workers' council fail to announce the holding of elections or the date of holding elections, the president of the municipal assembly, within whose territory the seat of a given work organization is located, announces the holding of elections and fixes the date.

The organs in charge of elections are the electoral commission and the voters' committee.

The electoral commission comprises a chairman and two members, appointed by the workers' council. The commission ensures that the elections are held in conformity with the law; it confirms the list of voters, appoints voters' committees, approves nominations, establishes polling stations, ascertains and announces the results of elections, and attends to other matters prescribed by the law.

Voters' committees are in charge of voting for the election and recall of members of the workers' council; they ensure correct procedures and the secrecy of voting.

Elections may take place (1) for the work organization as a whole, or (2) for electoral units. Elections in electoral units have been introduced in order to enable shops and larger units within a work organization to be represented in the central body of management as well as to ensure workers' management within such units. The statute of work organizations stipulates whether elections are to be held for a work organization as a whole or in electoral units. The workers' council, on the other hand, determines what organizational units (shops, services, etc.) are to form a special electoral unit and determines also the number of members of the workers' council to be elected by each electoral unit.

Every person, except when he is the director of a work organization, having acquired the right to vote in such an organization, can be elected member of the workers' council. Nominations are made by way of lists of candidates. A list of candidates

may be submitted by: (*a*) the meeting of working people and (*b*) a specified number of voters. The meeting of workpeople must present a list of candidates containing at least as many names as the number of members to be elected to the workers' council. The meeting is called by the president of the workers' council. One-third of the total number of voters constitutes a quorum under the law. Every voter may nominate one candidate at the meeting. If such a proposal is supported by at least three voters present at the meeting, the name of the proposed person is entered into the list of candidates. The meeting of voters then takes a vote on every proposed name, and he who obtains the majority of votes of those present is considered to be a candidate.

A list of candidates may also be submitted by a specific number of voters; they must constitute at least one-tenth of the total electorate but may not be less than five voters.

Thus, as early as the nomination process it is possible to nominate a larger number of candidates, among whom the voters make their final choice.

Lists of candidates are confirmed and publicly announced by the election commission, not later than five days prior to the holding of an election.

Voting takes place by means of ballot papers containing the names of all the candidates.

The results of voting are confirmed by the electoral commission.

The law regulates the system of election for workers' councils in newly established work organizations. Decisions to this effect are passed by the municipal assembly. The municipal assembly also passes decisions in cases of merger of work organizations. By-elections for members of the workers' council must be held, if the number of members of a workers' council has decreased by at least one-third. By-elections can also be held, if the number of members of a workers' council has decreased by less than one-third and nevertheless the by-elections are considered essential for the proper functioning of the organization.

Members of managing boards are elected by workers' councils from among the voters. Only the chairman of a workers' council, owing to his function, cannot be elected a member of a managing board. It has thus been ensured that the members of the managing boards are elected from among all the members of a collective, upon proposal of any member of the workers' councils.

Work organizations composed of larger units may introduce, in these units, a system of workers' management analogous to the one applying in the organization as a whole; thus, such units may elect their own bodies of management (councils of work units, etc.). In such a case, the election of bodies of management of work units is carried out in conformity with the procedures applying in the case of election of bodies of management of the work organization as a whole.

The law regulates specifically the recall of members of the bodies of management. Proposals to this effect must be initiated by a group of voters constituting at least one-tenth of the total electorate and by at least ten voters. On the basis of such a proposal, a meeting of workpeople is convened. One-fifth of the total number of voters constitutes a quorum at such a meeting. The proposal for recall shall be considered adopted if the majority of those present has voted in favour of it. Moreover, the proposal for initiating procedures for such action may also be submitted by a group of voters constituting one-fifth of the total electorate at least.

The workers' council shall order voting on the recall on the basis of these proposals. A member of the workers' council shall be considered recalled if a majority of voters has voted in that sense.

The recall of a member of the board of management is decided by the body which has elected it, i.e. the workers' council. A proposal for recall may be submitted by at least one-third of members, and a member of the board of management shall be considered recalled if at least two-thirds of members of the workers' council have so voted.

In this way a possibility has been created for representatives of work collectives to be recalled, provided, however that the majority of the electorate expresses such a wish. Thus, elected representatives are protected from any unjustified institution of proceedings and recall originating from a minor portion of the members of a workers' council, or of a work collective only.

A section of the Act contains a provision on the election and the recall of bodies of management of co-operatives; it is concerned with both members of the work collective of the co-operative and with members of the co-operative. The Act prescribes basic regulations for the submission of lists of candidates, for voting procedures for the election of members of the co-operative councils as well as rules governing the election of the boards of management and the recall of elected members of the bodies of management.

In order to ensure proper procedures for the election of bodies of management, the Act contains special provisions on the protection of the right to vote. With a view to safeguarding against improper procedures at meetings of voters, where nominations are made or where proposals for instituting proceedings for recall as well as for preventing irregularities in the work of electoral commissions are considered, all (*a*) candidates, (*b*) voters, (*c*) proposers of lists of candidates and (*d*) trade union organizations have the right to make objections to the electoral commission within three days from the date when the meeting or elections are held, or a vote on recall taken. Should the election commission find, on the basis of an objection, that irregularities have occurred and that this has or could have substantially affected the establishment of lists of candidates, or the result of the election, the commission shall annul the decision of the meeting of voters, the election or the vote on recall, respectively.

However, the procedure for the protection of the right to vote is not exhausted thereby. If the electoral commission does not accept the objection, the proposers of the list of candidates, the candidate concerned and the local trade union have the right to appeal to the municipal court within forty-eight hours from the date of the taking of the disputed decision by the electoral commission. The court shall bring a decision within forty-eight hours.

Besides, another means is provided for the protection of the right to vote, namely, against acts of the workers' council when verifying or refusing to verify the mandate of a member of the workers' council. Not only a candidate, but also every voter has the right of appeal. The appeal is submitted to the municipal court within eight days from the date the workers' council has taken the decision with which the person concerned is not satisfied. Thus, in addition to the right to lodge complaints within the work organization, a legal protection of the right to vote is provided as well.

A special section of the Act contains detailed provisions concerning the appointment and release from duty of directors of work organizations. These provisions are of specific importance and are designed to secure proper procedures in regard to the appointment of directors and their release from duty and the providing of opportunities to all qualified persons to compete for the job of a director. At the same time, a certain influence of the socio-political communities concerned (commune, district, republic, Federation) is ensured through the machinery of appointment and release from duty of directors. The procedure for the appointment of a director has been changed by the Act. The competence to appoint a director has been transferred from the municipal or other organ of government to the workers' council. However, a determined influence of the municipal assembly or other organ has been ensured through the appointments commission.

A director is appointed, on the basis of public competition, by the workers' council. This is the general rule; however, the procedure for the appointment of a director of a work organization, whose activity is of particular significance for the community, may be regulated by special law.

A director is appointed for a four-year term of office; he may be reappointed upon the expiry of his term on the basis of a new competition.

The appointments commission plays an important part in the procedure. It is a joint commission composed of 6 members; half of its membership is appointed by the workers' council and the other half by the assembly of the municipality within whose territory the headquarters of a work organization is located. However, in the case of individual organizations — in view of their activity as well as invested capital and revenue — the assembly of a republic may decide to have only one member out of the other half of membership appointed by the municipal assembly, while the other two members may be appointed by a district assembly or the executive council of a respective republic. The same principle applies to institutions that have been either established or sponsored by a district, republic or federal organ; instead of three members, the municipal assembly appoints one, while the other two are appointed by the competent district, republic or federal body.

The submitted applications are examined by the appointments commission; only candidates fulfilling the conditions prescribed by the law and the statute of the work organization are taken into consideration. Thereupon, the commission proposes to the workers' council the candidate fulfilling the prescribed conditions and the best suited for the post of director. Exceptionally, the commission may propose three candidates, if all of them fulfil, to the same extent, the prescribed conditions and are eligible to the post of director. The commission is under obligation to elaborate its proposal and, before submitting it, bring it to the notice of all the participants in the competition, who may, within eight days, submit observations with respect to the commissions' proposal. The proposal and observations are forwarded to the workers' council. The decisions of the appointments commission are adopted by majority. On the basis of the commission's proposal, the decision on the appointment of a director is taken by the workers' council by majority vote. However, if the proposal of the appointments commission is not endorsed by the workers' council, the post is advertised once again and, if the commission's proposal is not accepted even after the new competition, a new commission is appointed. Consequently, the commission cannot be by-passed with regard to the appointment of a director. Thus, the proper organization of the competition is ensured and all candidates have equal opportunities.

The appointments commission is under obligation to inform all participants in the competition about the decision of the workers' council concerning the appointment of a director and, if they consider that the competition has not been organized in conformity with the prescribed procedures or that the person to be appointed director does not fulfil the prescribed conditions, they may lodge a complaint to the municipal assembly. The complaint should be lodged within a period of 8 days.

The release of a director from duty before the expiry of his term of office is also regulated by the Act. The workers' council decides on such release upon the proposal of the commission for the evaluation of the request for the release of a director from duty. The said commission is established in the same way as the appointments commission.

The Act stipulates that a competent body may also decide to release a director from duty, after having obtained the opinion of the workers' council, which is, however, not obligatory. Such a body may release a director from duty, if it establishes that serious irregularities have occurred in the work of the work organization, or for similar reasons.

A request for the release of a director from duty may also be submitted to the workers' council by one-third of the voters, one-third of the members of the workers' council and by the competent authorities (for example the municipal assembly, district assembly, republic assembly, Federal Assembly or the competent parliamentary body).

The demand for the release of a director from duty is considered by the above-mentioned commission. If the commission finds that the demand is justified, the workers' council may, but is not under obligation, to adopt a decision on the release of the director from duty. If the commission considers that the request is not justified, the workers' council cannot adopt a decision on his release. This also ensures respect for legal provisions and provides protection against arbitrary actions by the workers' council, when there are not sufficient reasons and when the prescribed procedures have not been

observed. If a director considers that the decision of the workers' council concerning his release is not justified and not in conformity with the regulations he may, within sixty days, appeal to the municipal court against that decision.

A director may be released from duty at his request and with his consent.

Finally, under the law a director may also be released from duty in specific cases, for example, if he has been sentenced for certain acts.

The Act provides for fines or imprisonment of up to one year for certain acts infringing the right to vote, for instance, the taking of a voter to task in connection with his voting; his ordering to state for whom he has voted or why he has not voted; the destruction, concealing, damaging or taking away of election documents or objects; the interference with the work of bodies carrying out elections; the infringement in any way of the secrecy of the ballot by members of such bodies; and other similar actions. Such actions are qualified as criminal acts.

The Act prescribes general rules for the election of bodies of management in work organizations. Under these rules, members of the work collectives of these organizations are elected to these bodies. However, (*a*) interested citizens, (*b*) representatives of organizations and (*c*) representatives of the social community also participate in the management of institutions and various economic organizations. The election, delegation or appointment of persons who represent the community and participate in the work of the bodies of management on an equal footing with the persons elected by the work collective, is regulated by special provisions.

In smaller work organizations with a relatively small work collective, no bodies of management are elected and the function of these bodies is exercized by the work collective as a whole. Thus, in work organizations with not more than thirty members, no workers' councils are elected and there is only a board of management. In work organizations numbering from thirty to seventy members, it may also be decided not to elect a workers' council. In work collectives having not more than ten members, neither a workers' council nor a managing board are elected, and the rights and duties of these bodies are discharged by all the members of the work collective.

The provisions concerning the election and revocation of management bodies, contained in the first Law on Self-Administration in Economic Enterprises of 1950, have been cancelled by this Act. In the course of fourteen years of development, the system of self-administration has been considerably developed and expanded so that the new Act reflects the present phase of development in this field.

2. Basic Act on Management Bodies in Institutions *(Official Gazette of the Socialist Federal Republic of Yugoslavia,* No. 22/64*)*

The Act contains only basic provisions on management bodies in institutions, leaving it to the republics to regulate these matters in greater detail by their laws.

The Act stipulates that councils (workers' councils or other corresponding bodies) and managing boards be established in institutions. In institutions where the work collective numbers less than thirty members, the function of the workers' council is exercized by all the members of the collective. The statute of an institution may lay down that the function of the council be exercized by all the members of the collective, even if the work collective numbers less than seventy members.

The director directs the work of an institution.

Work collectives elect from among themselves the members of the council, while the latter elect the managing board from among the members of the work collective.

The council numbers at least fifteen members and the managing board at least five members.

Of particular importance is the provision according to which (*a*) interested citizens, (*b*) representatives of interested organizations and (*c*) representatives of the community participate in the management of institutions engaged in activities of particular interest to the community. Federal and republic laws determine which institutions are of such a character.

The Act stipulates, with regard to institutions in whose management representatives of the community, i.e. persons who are not members of the work collective also participate, that such representatives may only be members of the council, whereas the managing board, as an operative body, consists only of elected members of the work collective. The Act further differentiates between the full council, which consists of all the members of the council (both representatives of the community and of the work collective) and the more restricted council, consisting only of elected members of the work collective. It lays down criteria for the division of competences between these two councils. On the basis of this, questions relating to internal matters, such as the internal organization of work, the distribution of income and the election of members of the managing board, fall within the competence of the more restricted council. This enables the working people to manage autonomously the affairs which are of direct concern to them and which do not need the intervention of the community.

3. General Act on the Self-Administration of Working People in Administrative Bodies (*Official Gazette of the Socialist Federal Republic of Yugoslavia,* No. 46/64)

The new Constitution, adopted in 1963, stipulates that self-administration should be also introduced in the bodies of state administration. This has been achieved under this Act. On the basis of the Act, the position of workpeople in the bodies of administration has been changed substantially. They have obtained specific self-governing rights that had already been exercized by the workpeople in work organizations. However, these rights are more restricted than those enjoyed by workers in work organizations, since the establishment and closing down activity and tasks of government bodies are determined by the socio-political community, so that the self-administration cannot englobe matters

which are settled by other organs. However, within the limits prescribed by the Act, working people in the bodies of administration have the right and the duty to settle — in implementing self-administration — internal relations within their organ and, in particular, to take decisions concerning the distribution of funds and personal incomes, the internal organization and the solving of questions relating to the improvement of their living standards.

Workpeople realize their rights of self-administration : (1) autonomously, (2) in agreement with departmental heads, or (3) through the decision of departmental heads; they can voice their opinions and make their proposals. Separate regulations determine the matters to be settled by them independently or in agreement with departmental heads, and those to be settled by departmental heads.

Self-administration is implemented directly and through the workers' councils, elected by workpeople from among their ranks. The statute of the organ may stipulate that self-administration should be introduced into work units as well.

The Act introduces a new, more equitable system of remuneration providing persons employed in these organs of administration with the possibility to participate in self-management. This system has been tried out in practice in a certain number of bodies of administration since 1962 and, as it has proved to be satisfactory, it is now being introduced into all bodies.

The present Act is a federal law laying down the general principles only; it is not applied directly, but in conformity with it special federal and republic laws will be adopted. They will regulate in detail self-administration in the bodies of various socio-political communities.

II. CITIZENSHIP

ACT ON YUGOSLAV CITIZENSHIP (*Official Gazette of the Socialist Federal Republic of Yugoslavia*, No. 38/64)

This Act replaces the law passed as early as in 1946, amended subsequently in 1947 and 1948. The Act regulates Yugoslav citizenship, thereby introducing certain new elements which were not contained in the previous law. It brings citizenship into harmony with the provisions of the new Constitution of the Socialist Federal Republic of Yugoslavia and elaborates these provisions still further. The Act reflects more adequately the present norms of international law; thus, it embodies the principles of the United Nations Convention on the Reduction of Statelesness.

Yugoslav citizenship is uniform for all citizens of the S.F.R.Y. Only a Yugoslav citizen can have republic citizenship.

Yugoslav citizenship may be acquired :

(1) By descent;

(2) By birth in the territory of the Socialist Federal Republic of Yugoslavia;

(3) By naturalization; and

(4) By virtue of an international agreement.

The Act regulates in detail the acquisition of Yugoslav citizenship through naturalization and provides for more favourable conditions for the acquisition of Yugoslav citizenship by Yugoslav emigrants.

Under the Act, Yugoslav citizenship ceases :

(1) Through release from citizenship;

(2) Through renunciation;

(3) Through deprivation; and

(4) By virtue of an international agreement.

As a rule, citizenship ceases at the request of the person concerned and, exceptionally, on the initiative of the competent authorities; the precondition for the cessation of citizenship is that the person concerned possesses or has acquired foreign citizenship.

The right of release from citizenship has been introduced; it is granted if there are no obstacles.

The right of renunciation of Yugoslav citizenship has been provided for also and extended to Yugoslavs living abroad.

The Act acknowledges and respects the will of persons who have emigrated and acquired other citizenship.

III. SOCIAL INSURANCE

BASIC ACT ON PENSION INSURANCE (*Official Gazette of the Socialist Federal Republic of Yugoslavia*, No. 51/64)

The development of social insurance in the course of the past years, the introduction of a new system of organization and financing of social insurance in 1962 and the general changes in social and economic relations and, in particular, in the field of distribution, have made it imperative to carry out significant reforms within the system of pension insurance, which was regulated by the Law of 1957.[3] That is the reason why the new Act was adopted. The Act places the pension system on an economic basis, both with respect to the insured person's relation to the funds and with respect to society. Under the new Act, the position and functions of communities of social insurance have been strengthened, the administration of funds has become autonomous and the competences of self-administration bodies in the solving of matters in the field of pension and disablement insurance have been strengthened. Closer interdependence between the duration and length of contribution to the funds and the amount of pension has been established. The reform concerning the conditions for eligibility to a pension is being carried into effect and the material position of pensioners, within the framework of the general economic development of the country is being improved. The new system lays greater emphasis on the link between contributions to the pension funds and the amount of pension.

The Act has been adopted after prolonged public discussions, in which the Socialist Alliance of Working People of Yugoslavia, the trade unions, social insurance bodies, women's organizations, youth organizations, the Veterans' Federation, the Association of Pensioners, labour relations bodies, etc., took a particularly active part.

The share of expenditure on pensions in the national income has increased, in the course of the past years, from 1.7 per cent in 1958 to 3.2 per cent in 1963, due to the growth of the number of

[3] See *Yearbook on Human Rights for 1957*, p. 261.

pensioners and increase of the amount of pensions. Possibilities for the improvement of the material position of pensioners have been created by the new pension system.

The present Act is a basic federal law ensuring a uniform regulation of the right to pension; guaranteeing that all the insured will enjoy equal rights with regard to the enjoyment of these benefits; and laying down uniform principles with respect to economic relations and security regarding the sources of pension funds. Republic laws will regulate specific questions that have not been regulated by this Act.

The Act establishes, within the framework of this scheme, the right of workpeople to pension; it is compulsory for all categories of persons who are entitled to pension insurance under the law or under contract.

Pensions insurance is based on the principles of mutuality and solidarity of the insured in the securing of resources and rights under the pension insurance scheme. An insured person becomes eligible to an old-age pension after a prescribed period of service and after the attainment of the prescribed age. The amount of the old-age pension depends on the duration and the amount of contributions to the pension funds. However, a minimum pension is guaranteed.

A significant new provision is that the amount of the pension is determined in accordance with the personal income realized in the course of a number of years before retirement. However, personal income realized in individual years is valorized, i.e. adjusted to the level of the general average of personal income until the year of retirement. The pensions of already retired persons are also adapted to the cost of living and increased standard of living of employed persons. This is achieved by increasing them by a specific percentage corresponding to the general trend of average personal incomes. This is done in the republics.

The right to pension is a personal right and cannot lapse.

Pension insurance is organised and implemented in conformity with the principles of self-administration of insured persons within the framework of republic communities of social insurance, where the funds of pension insurance are formed.

In addition to obligatory pension insurance, the republic communities can also introduce voluntary pension insurance.

The rights deriving from pension insurance are realized through the social insurance offices. [4] Social insurance communities and offices are under obligation on the basis of this Act, to ensure, in their relations with insured persons, full respect for the personality of the latter and protection of their lawful interests, as well as give them the necesary expert assistance with regard to the realization of rights deriving from this insurance.

Persons in employment relationship and other persons who have been assimilated with them in this respect (members of representative bodies, members of handicraft and fishing co-operatives and others) are entitled to old age pensions. Similarly, under specific conditions, foreign citizens, if living in the territory of Yugoslavia, are entitled to old-age pensions.

A man is eligible to an old-age pension when he has attained the age of sixty and completed a pension period of at least twenty years and a woman is eligible when she has attained the age of fifty-five years of age and completed a pension period of at least twenty years.

A man of sixty-five and a woman of sixty, who have been employed for less than twinty years, are eligible to a pension, provided that they have completed a pension period of fifteen years, of which at least forty months during the last five years or eighty months during the last ten years have been spent in active service.

A man who has completed a pension period of forty years and a woman who has completed a pension period of thirty-five years, are entitled to a pension irrespective of their age.

A premature pension can be acquired even before the age of sixty (men) or fifty-five (women), in the case of a man, when he has completed a pension period of at least thirty-five years and attained the age of fifty-five and in that of a woman, when she has completed a pension period of at least thirty years and attained the age of fifty.

The pension scale of a person is fixed in accordance with his average monthly personal income, for which he has been insured for any five consecutive years in the course of the last ten years or for any ten consecutive years.

The amount of the pension is fixed in terms of percentages of the pension basis. In the case of men who have completed a pension period of fifteen years, it starts from 35 per cent of the pension basis and is increased by 2 per cent for every completed year, finally reaching 85 per cent, which is the highest pension paid to insured persons who have completed a pension period of forty years.

The amount of the pension for women is 40 per cent of the pension basis in the case of women who have completed a pension period of fifteen years; it is increased by 3 per cent until the completion of a pension period of twenty years and then by 2 per cent for every year, so that it amounts to 85 per cent (the highest pension) after thirty-five years of pension insurance.

Percentages for the realization of a premature pension are stipulated separately, in such a way that the percentages are deducted for every year of earlier retirement.

The beneficiary of a pension, if his pension is lower than the amount of the lowest pension benefit and if he or his dependants do not have any other income sufficient for living, receives an additional allowance, representing the difference between the amount of pension to which the beneficiary is entitled under the law and the minimum amount of pension.

Furthermore, the Act regulates, among other things, the eligibility to pension on the basis of employment period which is calculated with increased duration (workers in diving-bells, pilots, divers, etc.), as well as family pensions and the way

[4] In Serbo-Croatian the word " institute " is used.

of adjusting pensions to economic trends of average living costs at the beginning of every calendar year.

The pension insurance of self-employed persons, which is dealt with only in principle, covers artists, film workers, lawyers, priests and persons employed in religious institutions and, as a novelty, independent artisans, caterers and others. The implementation of this insurance is regulated by republic laws or contracts concluded between republic communities of social insurance and a corresponding organization representing individual activities.

The Act prescribes in detail the way of determining the pension period.

Voluntary pension insurance makes it possible for citizens to secure for themselves and their dependants, through the payment of separate contributions, pension rights over and above those secured by obligatory insurance, and enables those citizens, who are not insured, to obtain pensions for themselves and their dependants.

A separate chapter prescribes the procedure for the realization of the rights of the insured. Decisions on the rights of insured persons are made by the municipal social insurance offices. The insured may submit a complaint against such decisions to the republic social insurance office. In addition, these decisions are subject to revision carried out by the republic office *ex officio*. Against the decision of the republic office one can institute administrative proceedings at the republic supreme court. The conditions for re-opening proceedings are also prescribed.

A considerable part of the Act deals with the adjustment of pensions fixed in accordance with previous regulations. These pensions are adjusted to new amounts, with a view to aligning them with the new pensions which will be fixed on the basis of the new Act. The Act provides for the application of new principles and new decisions to earlier pensions and for the adjustment of these pensions.

The Act will come into force on 1 January 1965, when the Act of 1957 and other regulations enacted in this connection will cease to be valid.

The reform of the pension system was effected by the new Act. The age limit was extended by five years, and the amount of pension considerably increased, so that a full pension amounts to 85 per cent of the salary. Furthermore, by introducing the principle of valorization, by adjusting earlier pensions and other measures, conditions have been created for improving the material position of the beneficiaries of pensions. The autonomous organizations of pension insurance have been developed still further so that they can settle autonomously questions of vital material interest to the insured, such as the adjustment of pensions to economic trends, the fixing of the amount of additional allowances, etc.

IV. HEALTH

1. Basic Act on the Prevention and Suppression of Infectious Diseases (*Official Gazette of the Socialist Federal Republic of Yugoslavia*, No. 17/64)

The Act of 1948 has been in force until now. Since then considerable socio-political and organizational changes have taken place in the country and a new Constitution has been enacted. It was, therefore, necessary to adjust legal provisions in this field to these changes. Moreover, the advancement of medical science has made it possible to undertake new measures for the discovery, prevention and suppression of infectious diseases. For all these reasons a new Act was adopted.

The Act came into force after the adoption of the Act on the Organization of the Health Service, which makes possible to determine the obligations of individual institutions entrusted with the task of carrying out health measures.

The Act prescribes measures for the health protection from infectious diseases, the prevention and suppression of which is in the interest of the country as a whole. In addition, the republics will adopt their regulations for the adoption of measures not covered by this Act.

The commune (municipality) plays the main role with regard to the taking and carrying out of measures for health protection from infectious diseases. These measures are financed from social funds (in particular, by social insurance and socio-political communities), while the work organizations and citizens bear only the costs explicitly determined by an Act.

As compared with the previous Act, certain changes have been introduced in the field of sanitary-epidemiological measures. Thus, the obligation to report infectious diseases has been extended to a number of new diseases; the reporting on germ-carriers of certain diseases has become compulsory; the insurance against damage to health caused by obligatory vaccination has been introduced; the obligation of isolation has been extended with regard to some diseases, and the number of persons, to be brought under constant health supervision as germ-carriers or with the aim of discovering diseases in time, has been enlarged.

The Act, in particular, regulates the rights and duties of socio-political communities, health institutions and work organizations in connexion with the measures of health protection against infectious diseases. It is particularly significant that the Act determines the rights and duties of citizens, stipulating that every person has the right to avail himself of the measures for health protection against infectious diseases envisaged by this Act, while persons suffering from these diseases are entitled to medical care and under obligation to make use of it.

2. The Act on Narcotic Drugs (*Official Gazette of the Socialist Federal Republic of Yugoslavia*, No. 18/64)

With the aim of protecting health and preventing the unauthorized use of narcotic drugs and raw materials from which they are manufactured, the Act regulates the production, manufacture and sale of narcotic drugs. The production and manufacture of narcotic drugs are allowed only for medical and scientific purposes. The Act prescribes the measures to be taken in order to attain the above-mentioned objectives and limit the use of narcotic drugs, both on the national and international plane, to medical and scientific purposes. The provisions of the Act were adopted in keeping with the Single Convention on Narcotic Drugs, 1961, ratified by Yugoslavia in 1963.

This Act replaces the Act of 1950 and introduces a number of changes into this field in conformity with the new international regulations and the new Constitution. Among the changes, one should mention the penalties for ensuring the observance of regulations on narcotic drugs which have been rendered more severe. In addition to the previous incriminating acts of individuals, the Act provides for penalties for infringements and offences committed by work organizations.

V. EDUCATION

THE ACT ON AMENDMENTS AND SUPPLEMENTS TO THE GENERAL ACT ON EDUCATION (*Official Gazette of the Socialist Federal Republic of Yugoslavia*, No. 1/64)

The General Act on Education, enacted in 1958, and supplemented in 1960, was amended and supplemented in order to adjust education to the new Constitution.

Consequently, the new Act reflects further developments in the process of reducing centralized State control over schools and other educational institutions and the consolidation of their autonomy, in order that they can become public institutions to a greater extent. Greater powers have been transferred from the commune to the school and self-administration has been extended. Instead of the school committee, the school is managed by the council. One part of the members of the council is delegated by the interested organizations and citizens, while the other part, i.e. the majority of the council, is composed of representatives of the work communities (work collectives). The powers of direct management have been transferred to the latter part of the council. In this way, the collective itself is endowed with greater rights, tasks and responsibilities.

The Act lays emphasis on the internationalist character of education, which is based, among other things, on the historical and cultural achievements of the Yugoslav and other peoples.

The legislation of school certificates obtained abroad is to be regulated by a separate federal law.

ZAMBIA

THE CONSTITUTION OF ZAMBIA[1]

Chapter I
THE REPUBLIC

1. Zambia is a sovereign Republic.

...

Chapter II
CITIZENSHIP

3. (1) Every person who, having been born in the former Protectorate of Northern Rhodesia, is on 23rd October 1964 a British protected person shall become a citizen of Zambia on 24th October 1964.

(2) Every person who, having been born outside the former Protectorate of Northern Rhodesia, is on 23rd October 1964 a British protected person shall, if his father becomes, or would but for his death have become, a citizen of Zambia in accordance with the provisions of subsection (1) of this section, become a citizen of Zambia on 24th October 1964.

4. (1) Subject to the provisions of this section, any woman who, on 23rd October 1964, is or has been married to a person:

(*a*) who becomes a citizen of Zambia by virtue of section 3 of this Constitution; or

(*b*) who, having died before 24th October 1964 would, but for his death, have become a citizen of Zambia by virtue of that section,

shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia.

...

5. Every person born in Zambia after 23rd October 1964 shall become a citizen of Zambia at the date of his birth:

Provided that a person shall not become a citizen of Zambia by virtue of this section if at the time of his birth:

(*a*) neither of his parents is a citizen of Zambia and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Zambia; or

(*b*) his father is a citizen of a country with which Zambia is at war and the birth occurs in a place then under occupation by that country.

6. A person born outside Zambia after 23rd October 1964 shall become a citizen of Zambia at the date of his birth if at the date of his birth his father is a citizen of Zambia otherwise than by virtue of this section or section 3 (2) of this Constitution.

7. Any woman who is or has been married to a citizen of Zambia (the marriage having occurred after 23rd October 1964) shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia.

8. (1) Subject to the provisions of this section, any person who:

(*a*) has attained the age of twenty-one years or is a woman who is or has been married;

(*b*) is a Commonwealth citizen or a citizen of the Republic of Ireland or a citizen of any country in Africa to which this subsection applies; and

(*c*) has been ordinarily resident in Zambia for the prescribed period,

shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia.

...

11. (1) Parliament may make provision for the acquisition of citizenship of Zambia by persons who are not eligible or who are no longer eligible to become citizens of Zambia under the provisions of this Chapter.

(2) Parliament may make provision for depriving any person of his citizenship of Zambia:

Provided that a person who is a citizen by virtue of section 3 (1), 5 or 6 of this Constitution shall not be deprived of his citizenship except upon the ground that he is a citizen of another country.

(3) Parliament may make provision for the renunciation by any person of his citizenship of Zambia.

(4) Parliament may provide that any period during which a person:

(*a*) has been detained in execution of a sentence of imprisonment imposed by any court in Zambia or in the former Protectorate of Northern Rhodesia;

(*b*) has been a patient in a hospital or other institution for the care or treatment of persons of unsound mind; or

(*c*) has the right to reside in Zambia or in the former Protectorate of Northern Rhodesia by virtue only of a temporary permit issued under the authority of any law relating to immigration,

[1] Text appears in Schedule 2 to the Zambia Independence Order 1964, published as Government Notice No. 496 of 1964 in the *Supplement to the Northern Rhodesia Government Gazette*, of 21 October 1964. Zambia, the former Northern Rhodesia, became an independent State on 24 October 1964.

shall not be taken into account in computing the prescribed period, for the purposes of section 8 of this Constitution, in relation to that person.

...

Chapter III

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

13. Whereas every person in Zambia is entitled to the fundamental rights and freedoms of the individual, that is to say the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following, namely:

(*a*) life, liberty, security of the person and the protection of the law;

(*b*) freedom of conscience, of expression and of assembly and association; and

(*c*) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

14. (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 in force in Zambia 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.

15. (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 Zambia 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 of record punishing him for contempt of that court or of a court inferior to it;

(*c*) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(*d*) for the purpose of bringing him before a court in execution of the order of a court;

(*e*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;

(*f*) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;

(*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 Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Zambia or for the purpose of restricting that person while he is being conveyed through Zambia 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 Zambia 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 Zambia in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained:

(*a*) for the purpose of bringing him before a court in execution of the order of a court; or

(*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia,

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (*b*) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

16. (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 the Republic is at war or a declaration under section 29 of this Constitution is in force or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(*e*) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

17. (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in the former Protectorate of Northern Rhodesia immediately before the coming into operation of this Constitution.

18. (1) No property of any description shall be compulsory 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 or expedient :

(i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement; or

(ii) in order to secure the development or utilisation of that, or other, property for a purpose beneficial to the community; and

(*b*) provision is made by a law applicable to that taking of possession or acquisition :

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right over the property a right of access to a court or other authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) 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 Zambia.

...

19. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision :

(*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 in order to secure the development or utilisation of any property for a purpose beneficial to the community;

(*b*) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(*c*) that authorises an officer or agent of the Government, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, 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 search of any person or property by order of a court or entry upon any premises by such order,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

20. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence :

(*a*) shall be presumed to be innocent until he is proved or has pleaded guilty;

(*b*) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(*c*) shall be given adequate time and facilities for the preparation of his defence;

(*d*) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice;

(*e*) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of

witnesses to testify on his behalf before the court on the came 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.

...

21. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his 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.

22. (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, regulating educational institutions in the interests of persons receiving instruction therein, 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.

23. (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;

(*c*) that imposes restrictions upon public officers; or

(*d*) for the registration of trades unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such a register (including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration),

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) 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 Zambia, the right to reside in any part of Zambia, the right to enter Zambia and immunity from expulsion from Zambia.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with

or in contravention of this section to the extent that the law in question makes provision :

(*a*) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality, or public health or the imposition of restrictions on the acquisition or use by any person of land or other property in Zambia, 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 imposition of restrictions on the freedom of movement of any person who is not a citizen of Zambia;

(*c*) for the imposition of restrictions upon the movement or residence within Zambia of public officers; or

(*d*) for the removal of a person from Zambia to be tried outside Zambia for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia 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 sub-section (3) (*a*) of this section so requests at any time during the period of that restriction not earlier than six months after the order was made or six months after he last made such request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person, qualified to be enrolled as an advocate in Zambia, appointed by the Chief Justice :

Provided that a person whose freedom of movement has been restricted by virtue of a restriction which is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the High Court.

(5) On any review by a tribunal in pursuance of this section of the case of a person whose freedom of movement has been restricted, the tribunal may make recommendations, concerning the necessity or expediency of continuing the restriction 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.

25. (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression " discriminatory " means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision :

(*a*) for the appropriation of the general revenues of the Republic;

(*b*) with respect to persons who are not citizens of Zambia;

(*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; or

(*e*) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage 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 reasonable 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) 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 19, 21, 22, 23 and 24 of this Constitution, being such a restriction as is authorised by section 19 (2), 21 (5), 22 (2), 23 (2) or 24 (3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with the provisions of this section :

(*a*) if that law was in force immediately before the coming into operation of this Constitution and has continued in force at all times since the coming into operation of this Constitution; or

(*b*) to the extent that the law repeals and re-enacts any provision which has been contained in any enactment at all times since immediately before the coming into operation of this Constitution.

26. (1) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 15 or 25 of this Constitution to the extent that the Act authorizes the taking, during any period when the Republic is at war or any period when a declaration under section 29 of this Constitution is in force, of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period.

(2) Where a person is detained by virtue of such an authorisation as is referred to in subsection (1) of this section the following provisions shall apply:

(*a*) he shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(*b*) not more than fourteen days after the commencement of his detention, a notification shall be published in the *Gazette* stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(*c*) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;

(*d*) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person;

(*e*) at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations, concerning the necessity or expediency of continuing his detention, to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(4) Nothing contained in subsection (2) (*d*) or (2) (*e*) of this section shall be construed as entitling a person to legal representation at the public expense.

. . .

28. (1) Subject to the provisions of subsection (6) of this section, if any person alleges that any of the provisions of sections 13 to 26 (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;

(*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 13 to 26 (inclusive) of this Constitution.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 13 to 26 (inclusive) of this Constitution, 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:

Provided that no appeal shall lie from a determination of the High Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(5) No application shall be brought under subsection (1) of this section on the grounds that the provisions of sections 13 to 26 (inclusive) of this Constitution are likely to be contravened by reason of proposals contained in any bill which, at the date of the application, has not become a law.

(6) Parliament may confer upon the Court of Appeal or the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(7) Rules of court making provision with respect to the practice and procedure of the High Court for the purpose of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of that court generally.

29. (1) The President may, at any time, by Proclamation published in the *Gazette*, declare that:

(*a*) a state of public emergency exists; or

(*b*) a situation exists which, if it is allowed to continue, may lead to a state of public emergency.

(2) A declaration under subsection (1) of this section, if not sooner revoked, shall cease to have effect:

(*a*) in the case of a declaration made when Parliament is sitting or has been summoned to meet within five days, at the expiration of a period of five days beginning with the date of publication of the declaration;

(*b*) in any other case, at the expiration of a period of twenty-one 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 the National Assembly.

(3) Subject to the provisions of subsection (4) of this section, a declaration 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, extend its approval of the declaration for periods of not more than six months at a time.

(4) The National Assembly may by resolution at any time revoke a declaration approved by the Assembly under this section.

...

(2) In relation to any person who is a member of a disciplined force raised under the law of Zambia, 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 Chapter other than sections 14, 16 and 17.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Zambia, 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 Chapter.

Chapter IV

THE EXECUTIVE

Part I

The President and the Vice-President

31. There shall be a President of the Republic of Zambia who shall be the Head of State.

...

33. (1) Whenever Parliament is dissolved an election shall be held to the office of President in such manner as is prescribed by this section and, subject thereto, by or under an Act of Parliament.

(2) A person shall be qualified for election as President if, and shall not be so qualified unless, he:

(*a*) is a citizen of Zambia;

(*b*) has attained the age of thirty years; and

(*c*) is qualified as a voter for the purposes of elections to the National Assembly.

...

Chapter V

PARLIAMENT

Part I

Composition

57. The legislative power of the Republic shall vest in the Parliament of Zambia which shall consist of the President and a National Assembly.

58. (1) The National Assembly shall consist of:

(*a*) seventy-five elected members;

(*b*) such nominated members as may be appointed under section 60 of this Constitution.

(2) If a person who is not a member of the National Assembly is elected to the office of Speaker of the Assembly that person shall, by virtue of holding that office, be a member of the Assembly in addition to the members referred to in subsection (1) of this section.

59. Subject to the provisions of this Constitution, the elected members of the National Assembly shall be elected in such manner as may be prescribed by or under an Act of Parliament.

60. The President may appoint as nominated members of the National Assembly such persons, not exceeding five in number, as he considers desirable in the public interest in order to enhance the representative character of the Assembly or to obtain the service as a member of the Assembly of any person who, by reason of his special qualifications, would be of special value as such a member.

61. Subject to the provisions of section 62 of this Constitution, a person shall be qualified to be elected as a member of the National Assembly if, and shall not be qualified to be so elected unless:

(*a*) he is a citizen of Zambia; and

(*b*) he has attained the age of twenty-one years.

62. (1) No person shall be qualified to be elected as a member of the National Assembly who:

(*a*) is under a declaration of allegiance to some country other than Zambia;

(*b*) is, under any law in force in Zambia, adjudged or otherwise declared to be of unsound mind;

(*c*) is under sentence of death imposed on him by any court in Zambia or the former Protectorate of Northern Rhodesia or a sentence of imprisonment (by whatever name called) imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or

(*d*) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Zambia.

(2) No person who holds the office of President shall be qualified for election as a member of the National Assembly.

(3) Parliament may provide that a person who holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connexion with, the conduct of any election to the National Assembly or the compilation of any register of voters for the purposes of such an election shall not be qualified to be elected as a member of the Assembly.

(4) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with elections of the members of the National Assembly or who is reported guilty of such an offence by the court trying an election petition shall not be qualified to be nominated for election as a member of the Assembly for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed.

(5) Parliament may provide that, subject to such exceptions and limitations (if any) as may be pre-

scribed, a person shall be disqualified for membership of the National Assembly by virtue of:

(*a*) his holding or acting in any office or appointment that may be prescribed;

(*b*) his belonging to any of the armed forces of Zambia that may be prescribed; or

(*c*) his belonging to any police force.

(6) In this section the reference to a sentence of imprisonment shall be construed as not including a sentence of imprisonment the execution of which is suspended or a sentence of imprisonment imposed in default of payment of a fine.

...

PART II

TRUST AND NON-SELF-GOVERNING TERRITORIES

A. Trust Territories

AUSTRALIA

NOTE[1]

Trust Territory of Nauru

SOCIAL SERVICES
(Universal Declaration, Article 25)

The Social Services Ordinance 1964 (No. 5 of 1964) amends the Social Services Ordinance 1956. Its principal effects are (1) to provide, for the first time, sickness benefits and (2) to make child endowment payable in respect of all children (formerly endowment had been payable only in respect of children of persons in receipt of old-age, invalid or widows' pensions) and to increase the rate of endowment where the endowee has the custody, care and control of more than two children.

[1] Note furnished by Mr. J. O. Clark, Principal Legal Officer (Executive), Attorney-General's Department, Canberra, government-appointed correspondent of the *Yearbook on Human Rights*.

Trust Territory of New Guinea

I. LEGISLATION

A. THE PRINCIPLE OF EQUAL TREATMENT
(Universal Declaration, Articles 2 and 7)

The Jury Ordinances (Repeal) Ordinance 1964 (No. 49 of 1964) repealed the laws relating to trial by jury. These laws had provided for trial by jury only in a case where a European was charged with a capital offence. In such a case, the jury was to consist of Europeans only. These provisions were discriminatory and they have now been repealed. The making of the repealing Ordinance has also resulted in the abolition of the right to trial by jury in any case. A committee set up by the Administrator of the Territory recommended this step, as it considered that the jury system was not suitable for the Territory in its present state of development.

B. FREEDOM OF MOVEMENT
(Universal Declaration, Article 13)

The Migration Ordinance 1963 (No. 60 of 1963) unifies the law on the subject of migration and repeals and replaces the separate migration laws of the individual Territories of New Guinea and Papua. One important result is that for the purposes of migration the Territories of Papua and New Guinea are now treated as one country and there are thus no longer any formalities to be observed in travelling from one Territory to the other. The Ordinance abolishes the 'dictation test' as a method for regulating entry and substitutes for it an entry permit system. An entry permit may allow a person to enter the Territory and reside permanently there or it may be expressed to allow the immigrant to remain for a certain time only (section 6).

Whilst the power to deport undesirable immigrants is retained, this is now made subject to various conditions and restrictions. Thus, for an offence to render a person liable to deportation it must have been committed within five years of his entry into the Territory (section 12). Before a person can be deported, a notice must be served on him informing him that it is intended to order his deportation and he must be given an opportunity of having his case considered by an independent Commissioner (section 12).

Division I of Part III of the Ordinance re-enacts the provisions of the Native Emigration Restriction Ordinance 1955-1958 and retains the controls on emigration set up for the welfare of the indigenous people. Provision is made for the exemption of indigenous persons from the provisions of this Division (section 56).

C. RIGHTS AS TO MARRIAGE, DURING MARRIAGE AND AT ITS DISSOLUTION
(Universal Declaration, Article 16)

The Marriage Ordinance 1963 (No. 8 of 1964) repeals earlier Ordinances dealing with this subject and replaces them with legislation that follows generally the uniform legislation on the subject

passed by the Commonwealth Parliament in 1961 (the Marriage Act 1961). Although marriages by native custom are not brought completely within the ambit of the Ordinance, it provides for uniform recognition of native customary marriages and provides also that they shall be as valid and effectual as marriages celebrated under the Ordinance (Part V of the Ordinance).

The Matrimonial Causes Ordinance 1963 (No. 18 of 1964) repeals earlier Ordinances dealing with the subject of dissolution of marriage and allied matters and replaces them with legislation that follows generally the uniform legislation on the subject passed by the Commonwealth Parliament in 1959 (the Matrimonial Causes Act 1959).

The principal point to be noted in comparing the Territory Ordinance and the Commonwealth Act is that the Ordinance does not apply to native customary marriages although marriages of this kind are specifically recognized by the Marriage Ordinance 1963 referred to above.

D. Right to Own Property
(Universal Declaration, Article 17)

The Land (Tenure Conversion) Ordinance 1963 (No. 15 of 1964) provides a method whereby guaranteed individual titles to land held by native peoples in accordance with native custom may be given to the owners of the land. The rights of natives to land held by them in accordance with native custom are assured to them, whether or not they choose to apply for the registration of the land under this Ordinance. An independent judicial tribunal, known as the Lands Titles Commission, is charged with the duty of ensuring that the rights of natives to their land are safeguarded in each case where registration is applied for and that any persons who might otherwise be injuriously affected are given adequate and proper recompense or other compensation. Land registered in accordance with the Ordinance can be transferred or leased only to the Administration or to a native but this limitation on the right of dealing with the land may be removed at any time by the Lands Titles Commission if it is satisfied that the registered proprietor no longer needs the protection of this limitation.

E. Right of Equal Access to Public Service
(Universal Declaration, Article 21 (2))

The Public Service (Papua and New Guinea) Ordinance 1963 (No. 20 of 1964) provides for the reconstruction of the Public Service of the Territory of Papua and New Guinea. The Ordinance provides for a unified public service recruited, so far as possible, in the Territory. As it will be necessary for some time to come to employ expatriate officers, the Ordinance provides separate conditions and rates of pay for local officers on the one hand and expatriate officers on the other.

F. Conditions of Work
(Universal Declaration, Articles 23, 24)

The Workers' Compensation Ordinance 1963 (No. 11 of 1964) is an amending Ordinance designed to give a worker employed by the Administration a right of action for compensation even though the injury occurs when he is outside the Territory.

G. Social Protection of the Child
(Universal Declaration, Article 25 (2))

The Migration Ordinance 1963 (No. 60 of 1963) provides that where there is a court order in force relating to the custody of a child or where proceedings to seek such an order have been begun, the child shall not be removed from the Territory without the consent of the person in whose favour the order was made or the person who seeks the order, as the case may be (section 59).

II. COURT DECISIONS

Nil.

UNITED STATES OF AMERICA

DEVELOPMENTS IN TRUST TERRITORIES

See p. 286 concerning the Trust Territory of the Pacific Islands.

B. Non-Self-Governing Territories

AUSTRALIA

NOTE[1]

Territory of Papua[2]

Jury Ordinances (Repeal) Ordinance 1964 (No. 49 of 1964),
Migration Ordinance 1963 (No. 60 of 1963),
Marriage Ordinance 1963 (No. 8 of 1964),
Matrimonial Causes Ordinance 1963 (No. 18 of 1964),
Land (Tenure Conversion) Ordinance 1963 (No. 15 of 1964),
Public Service (Papua and New Guinea) Ordinance 1963 (No. 20 of 1964),
Workers' Compensation Ordinance 1963 (No. 11 of 1964).

These enactments are described in the note on the Trust Territory of New Guinea.

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[1] Note furnished by Mr. J. O. Clark, Principal Legal Officer (Executive), Attorney-General's Department, Canberra, government-appointed Correspondent of the *Yearbook on Human Rights*.

[2] 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.

Territory of Norfolk Island

Right to Take Part in Government
(Universal Declaration, Article 21)

The Norfolk Island Act 1957, made by the Commonwealth Parliament, created a council for the Territory, to be known as the Norfolk Island Council. The Norfolk Island Act 1963 amends the Act of 1957 so as to enable the Council to consider and tender advice to the Administrator concerning any matter affecting the peace, order and good government of the Territory. The Act also enables the Council to consider, as well as proposed Ordinances for the Territory, regulations proposed to be made under Ordinances and to make representations to the Minister for Territories on regulations as well as Ordinances.

The Suffrage
(Universal Declaration, Article 21)

The Referendum Ordinance 1964 (No. 5 of 1964) provides for the ascertaining of the opinion of the electors, on any question affecting the peace, order and good government of the Island, by means of a referendum. A referendum may be initiated by the Minister for Territories (section 4). With relation to certain questions, the Administrator may, if so advised by the Norfolk Island Council, direct a referendum to be held (section 5). In addition, a referendum must be held, on any question relating to a matter affecting the peace, order and good government of the Island, if one third or more of the electors so request (section 6).

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

MAURITIUS

THE CONSTITUTION OF MAURITIUS[1]

Chapter I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

1. It is hereby recognized and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of 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, each and all of the following human rights and fundamental freedoms, namely:

(*a*) the right of the individual to 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*) the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation,

and the provisions of this Chapter shall have effect for the purpose of affording protection to the said rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

2. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence 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 in Mauritius or elsewhere, in respect of a criminal offence of which he has been convicted;

(*b*) in execution of the order of a court punishing him for contempt of that court or of a court inferior to it;

(*c*) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(*d*) for the purpose of bringing him before a court in execution of the order of a court;

(*e*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;

(*f*) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

(*g*) for the purpose of preventing the spread of an infectious or contagious disease;

(*h*) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, 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 Mauritius, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Mauritius or the taking of proceedings relating thereto.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained:

(*a*) for the purpose of bringing him before a court in execution of the order of a court; or

(*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (*b*) of this subsection is not tried within a reasonable time, then, without prejudice to any further pro-

[1] Text appears in Schedule 2 to The Mauritius (Constitution) Order 1964, published as Government Notice No. 24 of 1964 in the *Government Gazette of the Colony of Mauritius*, Legal Supplement, No. 14, of 11 March 1964.

ceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

4. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression " forced labour " does not include:

(*a*) any labour required in consequence of the sentence or order of a court;

(*b*) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(*c*) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service; or

(*d*) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community.

5. No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

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 and utilization of any property in such a manner as to promote the public benefit; and

(*b*) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(*c*) provision is made by 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.

(2) 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 Mauritius.

...

7. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required:

(*a*) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilization of mineral resources, or the development and utilization of any other property in such a manner as to promote the public benefit;

(*b*) for the purpose of protecting the rights or freedoms of other persons; or

(*c*) to enable an officer or agent of the government of Mauritius or a local government authority, or a body corporate established by law for a public purpose, to enter on the premises of any person in order to value those premises for the purpose of any tax, rate or due, or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that government, that authority, or that body corporate, as the case may be;

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

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 in person or, at his own expense, by a legal representative of his own choice or, where so provided by or under any law of Mauritius, by a legal representative at the public expense;

(*e*) shall be afforded facilities to examine in person or by his legal representative the witness called by the prosecution before any court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that court on the same conditions as those applying to witnesses called by the prosecution; and

(*f*) shall be permitted to have without payment the assistance of an interpreter if he cannot under-

stand 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 adjucating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in the last foregoing subsection shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority:

(*a*) may consider necessary or expedient in circumstances where publicity would prejudice the interest of justice; or

(*b*) may be empowered by law to do so in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of:

(*a*) paragraph (*a*) of subsection (2) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(*b*) paragraph (*e*) of the said subsection (2) to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(*c*) subsection (5) of this section to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In this section "criminal offence" means a crime, misdemeanour or contravention punishable under the law of Mauritius; "legal representative" means a person entitled to practise in Mauritius as a barrister or, except in relation to proceedings before a court in which an Attorney-at-Law has no right of audience, an Attorney-at-Law who is so entitled.

9. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) No religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required:

(*a*) in the interests of defence, public safety, public order, public morality or public health; or

(*b*) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion;

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

10. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(*a*) that is reasonably required:

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or

(*b*) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

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:

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the rights or freedoms of other persons; or

(*b*) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

12. (1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Mauritius, the right to reside in any part of Mauritius, the right to enter Mauritius, the right to leave Mauritius and immunity from expulsion from Mauritius.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(*a*) for the imposition of restrictions, by order of a court, on the movements or residence within Mauritius of any person either in consequence of his having been found guilty of a criminal offence under the law of Mauritius or for the purpose of ensuring that he appears before a court at a later date for trial of such criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or other lawful removal from Mauritius;

(*b*) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or public health on the movement or residence within Mauritius of persons generally, or any class of persons, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(*c*) for the imposition of restrictions on the movement or residence within Mauritius of any person who does not belong to Mauritius or the exclusion or expulsion from Mauritius of any such person;

(*d*) for the imposition of restrictions on the acquisition or use by any person of land or other property in Mauritius;

(*e*) for the imposition of restrictions upon the movement or residence within Mauritius of public officers; or

(*f*) for the removal of a person from Mauritius to be tried outside Mauritius for a criminal offence or to undergo imprisonment outside Mauritius in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

13. (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) in this section, the expression " discriminatory " means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, 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 Mauritius; or

(*b*) with respect to persons who do not belong to Mauritius; or

(*c*) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes

provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 9, 10, 11 and 12 of this Constitution, being such a restriction as is authorized by subsection (2) of section 7, subsection (5) of section 9, subsection (2) of section 10, subsection (2) of section 11 or subsection (3) of section 12, 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.

14. (1) Subject to the provisions of subsection (5) of this section, if any person alleges that any of the provisions of sections 1 to 13 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 1 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 for the contravention alleged are or have been available to the person concerned under any other law.

(3) No law enacted under this Constitution shall make provision with respect to rights of appeal from any determination of the Supreme Court made in proceedings brought in the Supreme Court in pursuance of this 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 proceedings in that Court sitting as a court of original jurisdiction.

(4) No appeal shall lie from any determination under this section that any application is merely frivolous or vexatious.

(5) A law enacted under this Constitution may make provision, or may authorize the making of provision, with respect to the practice and procedure of any court for the purposes of this section and may confer upon that court such powers, or may authorize the conferment thereon of such powers, in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

15. (1) Nothing contained in or done under the authority of any regulation made under the Emergency Powers Order in Council 1939, as amended, shall be held to be inconsistent with or in contravention of section 3, subsection (2) of section 4, or any provision of sections 7, 9, 10, 11, 12 or 13 of this Constitution to the extent that the regulation in question makes in relation to any period of public emergency provision, or authorizes the doing during any such period of anything, that is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

(2) Where any person who is lawfully detained in pursuance only of such a regulation as is referred to in subsection (1) of this section so requests at any time during the period of that detention not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person, entitled to practise as a barrister in Mauritius, appointed by the Chief Justice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

...

(3) For the purposes of this Chapter a person shall be deemed to belong to Mauritius if he is a British subject and:

(*a*) was born in Mauritius or of parents who at the time of his birth were ordinarily resident in Mauritius; or

(*b*) has been ordinarily resident in Mauritius continuously for a period of seven years or more and since the completion of such period of residence has not been ordinarily resident continuously for a period of seven years or more in any other part of the Commonwealth; or

(*c*) has obtained the status of a British subject under the British Nationality Act 1948 by virtue of his having been naturalized in Mauritius before that Act came into force or by virtue of his having been naturalized or registered as a citizen of the United Kingdom and Colonies in Mauritius under that Act; or

(*d*) is the wife of a person to whom any of the foregoing paragraphs applies not living apart from such person under a decree of court or a deed of separation; or

(*e*) is the child, stepchild, or child adopted in a manner recognised by law under the age of eighteen years of a person to whom any of the foregoing paragraphs applies.

(4) In relation to any person who is a member of a disciplined force raised under a law enacted under this Constitution, 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 Chapter other than sections 2, 3 and 5.

(5) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Mauritius, 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 Chapter.

...

Chapter III

THE LEGISLATURE

Part I

The Legislative Assembly

27. (1) There shall be a Legislative Assembly for Mauritius.

(2) The Legislative Assembly shall consist of:

(*a*) the Speaker;

(*b*) the Chief Secretary ex officio;

(*c*) forty elected members; and

(*d*) such nominated members not exceeding fifteen in number as the Governor may appoint.

...

30. (1) The members of the Legislative Assembly shall be British subjects of not less than 21 years of age and:

(*a*) in the case of elected members, shall be qualified for election, and elected, in accordance with the provisions of this Constitution and any law for the time being in force;

(*b*) in the case of nominated members, shall be appointed by the Governor, acting in his discretion, by Instrument under the Public Seal.

(2) Subject to the provisions of section 31 of this Constitution, a person shall be qualified to be an elected member of the Legislative Assembly if, and shall not be so qualified unless, he:

(*a*) has resided in Mauritius for a period of, or periods amounting in the aggregate to, not less than two years before the date of his nomination for election;

(*b*) has resided in Mauritius for a period of not less than six months immediately before the date of his nomination for election; and

(*c*) is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Assembly.

31. No person shall be qualified to be an elected or nominated member of the Legislative Assembly who:

(*a*) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state;

(*b*) holds, or is acting in, any public office;

(*c*) (i) in the case of an elected member, 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 of Mauritius for or on account of the public service, and has not, within one month before the day of election, published in the English language in the Gazette and in a newspaper circulating in the electoral district for which he is a candidate a notice setting out the nature of such contract and his interest, or the interest of any such firm or company, therein;

(ii) in the case of a nominated member, 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 of Mauritius for or on account of the public service, and has not disclosed to the Governor the nature of such contract and his interest, or the interest of any such firm or company, theirein; or

(*d*) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged or has obtained the benefit of a *cessio bonorum* in Mauritius;

(*e*) is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in Mauritius;

(*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:

(*g*) in the case of an elected member, is disqualified for election by any law in force in Mauritius by reason of his holding, or acting in, any office the functions of which involve:

(i) any responsibility for, or in connection with, the conduct of any election; or

(ii) any responsibility for the compilation or revision of any electoral register; or

(*h*) is disqualified for membership of the Assembly by any law in force in Mauritius relating to offences connected with elections.

...

37. (1) Subject to the provisions of section 38 of this Constitution, a person shall be entitled to be registered as an elector if, and shall not be so entitled unless he:

(*a*) is a British subject of the age of twenty-one years or upwards; and

(*b*) has resided in Mauritius for a period of at least two years immediately before the prescribed date or is domiciled in Mauritius and is resident therein on the prescribed date.

(2) No person shall be entitled to be registered as an elector:

(*a*) in more than one electoral district; or

(*b*) in any electoral district in which he has not been resident for a period of six months immediately before the prescribed date.

(3) In this section "the prescribed date" means such date as may for the time being be prescribed for the purposes of any law in force in Mauritius relating to the registration of electors.

38. No person shall be entitled to be registered as an elector in any electoral district who:

(*a*) has been sentenced by a court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term exceeding twelve months, and has not either suffered the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted therefore or received a free pardon;

(*b*) is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in Mauritius; or

(*c*) is disqualified for registration as an elector by any law in force in Mauritius relating to offences connected with elections.

...

PART III

INTERNATIONAL AGREEMENTS

INTERNATIONAL LABOUR ORGANISATION

CONVENTION CONCERNING EMPLOYMENT POLICY, 1964

Convention No. 122, adopted on 9 July 1964 by the International Labour Conference at its Forty-eighth 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-eighth Session on 17 June 1964, and

Considering that the Declaration of Philadelphia recognises the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve full employment and the raising of standards of living, and that the Preamble to the Constitution of the International Labour Organisation provides for the prevention of unemployment and the provision of an adequate living wage, and

Considering further that under the terms of the Declaration of Philadelphia it is the responsibility of the International Labour Organisation to examine and consider the bearing of economic and financial policies upon employment policy in the light of the fundamental objective that " all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity ", and

Considering that the Universal Declaration of Human Rights provides that " everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment ", and

Noting the terms of existing international labour Conventions and Recommendations of direct relevance to employment policy, and in particular of the Employment Service Convention and Recommendation, 1948, the Vocational Guidance Recommendation, 1949, the Vocational Training Recommendation, 1962, and the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and

Considering that these instruments should be placed in the wider framework of an international programme for economic expansion on the basis of full, productive and freely chosen employment, and

Having decided upon the adoption of certain proposals with regard to employment policy, which are included in the eighth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this ninth day of July of the year one thousand nine hundred and sixty-four the following Convention, which may be cited as the Employment Policy Convention, 1964:

Article 1

1. With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.

2. The said policy shall aim at ensuring that:

(*a*) there is work for all who are available for and seeking work;

(*b*) such work is as productive as possible;

(*c*) there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

3. The said policy shall take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices.

Article 2

Each Member shall, by such methods and to such extent as may be appropriate under national conditions:

(*a*) decide on and keep under review, within the framework of a co-ordinated economic and social policy, the measures to be adopted for attaining the objectives specified in Article 1;

(*b*) take such steps as may be needed, including when appropriate the establishment of programmes, for the application of these measures.

Article 3

In the application of this Convention, representatives of the persons affected by the measures to be taken, and in particular representatives of em-

[1] Text furnished by the International Labour Office.

ployers and workers, shall be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their full co-operation in formulating and enlisting support for such policies.

Article 4

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 5

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 6

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 7

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 8

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 9

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 10

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 6 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 11

The English and French versions of the text of this Convention are equally authoritative.

COUNCIL OF EUROPE

EUROPEAN CODE OF SOCIAL SECURITY

Done at Strasbourg on 16 April 1964 [1]

PREAMBLE

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members for the purpose, among others, of facilitating their social progress:

Considering that one of the objects of the social programme of the Council of Europe is to encourage all Members to develop further their systems of social security;

Recognising the desirability of harmonising social charges in member countries;

Convinced that it is desirable to establish a European Code of Social Security at a higher level than the minimum standards embodied in International Labour Convention No. 102 concerning Minimum Standards of Social Security,

Have agreed on the following provisions, which have been prepared with the collaboration of the International Labour Office:

Part I

General Provisions

...

Article 2

1. Each Contracting Party shall comply with:

(*a*) Part I;

(*b*) at least six of Parts II to X, provided that Part II shall count as two Parts and Part V as three Parts;

(*c*) the relevant provisions of Parts XI and XII; and

(*d*) Part XIII.

2. The terms of sub-paragraph (*b*) of the foregoing paragraph can be regarded as fulfilled if:

(*a*) at least three of Parts II to X, including at least one of Parts IV, V, VI, IX and X are complied with; and

(*b*) in addition, proof is furnished that the social security legislation in force is equivalent to one of the combinations provided for in that sub-paragraph, taking into account:

(i) the fact that certain branches covered by sub-paragraph (*a*) of this paragraph exceed the standards of the Code in respect of their scope of protection or their level of benefits, or both;

(ii) the fact that certain branches covered by sub-paragraph (*a*) of this paragraph exceed the standards of the Code by granting supplementary services of advantages listed in *Addendum* 2; and

(iii) branches which do not attain the standards of the Code.

3. A Signatory desiring to avail itself of the provisions of paragraph 2 (*b*) of this Article shall make a request to this effect in the report to the Secretary-General submitted in accordance with the provisions of Article 78. The Committee, basing itself on the principle of equivalence of cost, shall lay down rules co-ordinating and defining the conditions for taking into account the provisions of paragraph 2 (*b*) of this Article. These provisions may only be taken into account in each case with the approval of the Committee, the decision to be taken by a two-thirds majority.

Article 3

Each Contracting Party shall specify in its instrument of ratification those Parts of Parts II to X in respect of which it accepts the obligations of this Code, and shall also state whether and to what extent it avails itself of the provisions of Article 2, paragraph 2.

Article 4

1. Each Contracting Party may subsequently notify the Secretary-General that it accepts the obligations of the Code in respect of one or more of Parts II to X not already specified in its ratification.

2. The undertakings referred to in paragraph 1 of this Article shall be deemed to be an integral part of the ratification and to have the force of ratification as from the date of notification.

Article 5

Where, for the purpose of compliance with any of the Parts II to X of this Code which are to be covered by its ratification, a Contracting Party is required to protect prescribed classes of persons constituting not less than a specified percentage of employees or residents, that Contracting Party shall satisfy itself, before undertaking to comply with any such Part, that the relevant percentage is attained.

Article 6

For the purpose of compliance with Parts II, III, IV, V, VIII (in so far as it relates to medical care), IX or X of this Code, a Contracting Party may

[1] *European Treaty Series*, No. 48.

take account of protection effected by means of insurance which, although not made compulsory by national laws or regulations for the persons to be protected,

(*a*) is subsidised by the public authorities or, where such insurance is complementary only, is supervised by the public authorities or administered, in accordance with prescribed standards, by joint operation of employers and workers;

(*b*) covers a substantial part of the persons whose earnings do not exceed those of the skilled manual male employee, determined in accordance with Article 65; and

(*c*) complies, in conjunction with other forms of protection, where appropriate, with the relevant provisions of the Code.

Part II

MEDICAL CARE

Article 7

Each Contracting Party for which this Part of this Code is in force shall secure to the persons protected the provision of benefit in respect of a condition requiring medical care of a preventive or curative nature in accordance with the following Articles of this Part.

...

Part III

SICKNESS BENEFIT

Article 13

Each Contracting Party for which this Part of the Code is in force shall secure to the persons protected the provision of sickness benefit in accordance with the following Articles of this Part.

...

Part V

OLD-AGE BENEFIT

Article 25

Each Contracting Party for which this Part of the Code is in force shall secure to the persons protected the provision of old-age benefit in accordance with the following Articles of this Part.

...

Part VI

EMPLOYMENT INJURY BENEFIT

Article 31

Each Contracting Party for which this Part of the Code is in force shall secure to the persons protected the provision of employment injury benefit in accordance with the following Articles of this Part.

...

Part VII

FAMILY BENEFIT

Article 39

Each Contracting Party for which this Part of the Code is in force shall secure to the persons protected the provision of family benefit in accordance with the following Articles of this Part.

...

Part VIII

MATERNITY BENEFIT

Article 46

Each Contracting Party for which this Part of the Code is in force shall secure to the persons protected the provision of maternity benefit in accordance with the following Articles of this Part.

...

Part IX

INVALIDITY BENEFIT

Article 53

Each Contracting Party for which this Part of the Code is in force shall secure to the persons protected the provision of invalidity benefit in accordance with the following Articles of this Part.

...

Part X

SURVIVORS' BENEFIT

Article 59

Each Contracting Party for which this Part of the Code is in force shall secure to the persons protected the provision of survivors' benefit in accordance with the following Articles of this Part.

...

Part XII

COMMON PROVISIONS

Article 68

A benefit to which a person protected would otherwise be entitled in compliance with any of Parts II to X of this Code may be suspended to such extent as may be prescribed :

(*a*) as long as the person concerned is absent from the territory of the Contracting Party concerned;

(*b*) as long as the person concerned is maintained at public expense, or at the expense of a social security institution or service, subject to a portion of the benefit being granted to the dependants of the beneficiary;

(*c*) as long as the person concerned is in receipt of another social security cash benefit, other than a family benefit, and during any period in respect of which he is indemnified for the contingency by a third party, subject to the part of the benefit which is suspended not exceeding the other benefit or the indemnity by a third party;

(*d*) where the person concerned has made a fraudulent claim;

(*e*) where the contingency has been caused by a criminal offence committed by the person concerned;

(*f*) where the contingency has been caused by the wilful misconduct of the person concerned;

(*g*) in appropriate cases, where the person concerned neglects to make use of the medical or rehabilitation services placed at his disposal or fails to comply with rules prescribed for verifying the occurrence or continuance of the contingency or for the conduct of the beneficiaries;

(*h*) in the case of unemployment benefit, where the person concerned has failed to make use of the employment services placed at his disposal;

(*i*) in the case of unemployment benefit, where the person concerned has lost his employment as a direct result of a stoppage of work due to a trade dispute, or has left it voluntarily without just cause; and

(*j*) in the case of survivors' benefit, as long as the widow is living with a man as his wife.

Article 69

1. Every claimant shall have a right of appeal in case of refusal of the benefit or complaint as to its quality or quantity.

2. Where in the application of this Code a Government department responsible to a legislature is entrusted with the administration of medical care, the right of appeal provided for in paragraph 1 of this Article may be replaced by a right to have a complaint concerning the refusal of medical care or the quality of the care received investigated by the appropriate authority.

3. Where a claim is settled by a special tribunal established to deal with social security questions and on which the persons protected are represented, no right of appeal shall be required.

Article 70

1. The cost of the benefits provided in compliance with this Code and the cost of the administration of such benefits shall be borne collectively by way of insurance contributions or taxation or both in a manner which avoids hardship to persons of small means and takes into account the economic situation of the Contracting Party concerned and of the classes of persons protected.

2. The total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the total of the financial resources allocated to the protection of employees and their wives and children. For the purpose of ascertaining whether this condition is fulfilled, all the benefits provided by the Contracting Party concerned in compliance with this Code, except family benefit and, if provided by a special branch, employment injury benefit, may be taken together.

3. The Contracting Party concerned shall accept general responsibility for the due provision of the benefits provided in compliance with this Code, and shall take all measures required for this purpose; it shall ensure, where appropriate, that the necessary actuarial studies and calculations concerning financial equilibrium are made periodically and, in any event, prior to any change in benefits, the rate of insurance contributions, or the taxes allocated to covering the contingencies in question.

Article 71

1. Where the administration is not entrusted to a Government department responsible to a legislature, representatives of the persons protected shall participate in the management, or be associated therewith in a consultative capacity, under prescribed conditions; national laws or regulations may likewise decide as to the participation of representatives of employers and of the public authorities.

2. The Contracting Party concerned shall accept general responsibility for the proper administration of the institutions and services concerned in the application of this Code.

Part XIII

MISCELLANEOUS PROVISIONS

Article 72

This Code shall not apply to :

(*a*) contingencies which occurred before the coming into force of the relevant Part of the Code for the Contracting Party concerned;

(*b*) benefits in contingencies occurring after the coming into force of the relevant Part of the Code for the Contracting Party concerned in so far as the rights to such benefits are derived from periods preceding that date.

Article 73

The Contracting Parties shall endeavour to conclude a special instrument governing questions relating to social security for foreigners and migrants, particularly with regard to equality of treatment with their own nationals and to the maintenance of acquired rights and rights in course of acquisition.

Article 74

1. Each Contracting Party shall submit to the Secretary-General an annual report concerning the application of this Code....

2. Each Contracting Party shall furnish to the Secretary-General, if so requested by him, further information of the manner in which it has implemented the provisions of the Code covered by its ratification.

3. The Committee of Ministers may authorise the Secretary-General to transmit to the Consultative Assembly copies of the report and further information submitted in accordance with paragraphs 1 and 2 of this Article respectively.

4. The Secretary-General shall send to the Director-General of the International Labour Office the report and further information submitted in accordance with paragraphs 1 and 2 of this Article respectively, and shall request the latter to consult the appropriate body of the International Labour Organisation with regard to the said report and further information and to transmit to the Secretary-General the conclusions reached by such body.

5. Such report and further information and the conclusions of the body of the International Labour Organisation referred to in paragraph 4 of this Article shall be examined by the Committee which shall submit to the Committee of Ministers a report containing its conclusions.

Article 75

1. After consulting the Consultative Assembly, if it considers it appropriate, the Committee of Ministers shall, by a two-thirds majority in accordance with Article 20, paragraph (*d*) of the Statute of the Council of Europe, decide whether each

Contracting Party has complied with the obligations of this Code which it has accepted.

2. If the Committee of Ministers considers that a Contracting Party is not complying with its obligations under this Code, it shall invite the said Contracting Party to take such measures as the Committee of Ministers considers necessary to ensure such compliance.

Article 76

Each Contracting Party shall report every two years to the Secretary-General on the state of its law and practice in regard to any of Parts II to X of the Code which such Contracting Party has not specified in its ratification of the Code pursuant to Article 3 or in a notification made subsequently pursuant to Article 4.

Part XIV

Final Provisions

Article 77

1. This Code shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification. Instruments of ratification shall be deposited with the Secretary-General, provided that the Committee of Ministers in appropriate cases has previously given an affirmative decision as provided for in Article 78, paragraph 4.

2. This Code shall enter into force one year after the date of the deposit of the third instrument of ratification.

3. As regards any Signatory ratifying subsequently, this Code shall enter into force one year after the date of deposit of its instruments of ratification.

Article 78

1. Any Signatory wishing to avail itself of the provisions of Article 2, paragraph 2, shall, before ratification, submit to the Secretary-General a report showing to what extent its system of Social Security is in conformity with the provisions of this Code.

...

Article 79

1. After the entry into force of this Code, the Committee of Ministers may invite any non-member State of the Council of Europe to accede to the Code. The accession of such State shall be subject to the same conditions and procedure as laid down in the Code with regard to ratification.

2. A State shall accede to this Code by depositing an instrument of accession with the Secretary-General. The Code shall come into force for any State so acceding one year after the date of deposit of its instrument of accession.

3. The obligations and rights of an acceding State shall be the same as those provided for in this Code for a Signatory which has ratified the Code.

Article 80

1. This Code shall apply to the metropolitan territory of each Contracting Party. Each Contracting Party may, at the time of signature or of the deposit of its instrument of ratification or accession, specify, by declaration addressed to the Secretary-General, the territory which shall be considered to be its metropolitan territory for this purpose.

2. Each Contracting Party ratifying the Code or each acceding State may, at the time of deposit of its instrument of ratification or accession, or at any time thereafter, notify the Secretary-General that this Code shall, in whole or in part and subject to any modifications specified in the notification, extend to any part of its metropolitan territory not specified under paragraph 1 of this Article or to any of the other territories for whose international relations it is responsible. Modifications specified in such notification may be cancelled or amended by subsequent notification.

3. Any Contracting Party may, at such time as it can denounce the Code in accordance with Article 81, notify the Secretary-General that the Code shall cease to apply to any part of its metropolitan territory or to any of the other territories to which the Code has been extended by it in accordance with paragraph 2 of this Article.

Article 81

Each Contracting Party may denounce the Code or any one or more of Parts II to X thereof only at the end of a period of five years from the date on which the Code entered into force for such Contracting Party, or at the end of any successive period of five years, and in each case after giving one year's notice to the Secretary-General. Such denunciation shall not affect the validity of the Code in respect of the other Contracting Parties, provided that at all times there are not less than three such Contracting Parties.

Article 82

The Secretary-General shall notify the member States of the Council of Europe, the Government of any acceding State and the Director-General of the International Labour Office :

(i) of the date of entry into force of this Code and the names of any Members who ratify it;

(ii) of the deposit of any instrument of accession in accordance with Article 79 and of such notifications as are received with it;

(iii) of any notification received in accordance with Article 4 and 80; or

(iv) of any notice received in accordance with Article 81.

...

PROTOCOL TO THE EUROPEAN CODE OF SOCIAL SECURITY [2]

PREAMBLE

The member States of the Council of Europe, signatory hereto,

Being resolved to establish a higher level of social security than that provided for in the provisions of the European Code of Social Security signed at Strasbourg on the 16th April 1964 (hereinafter referred to as "the Code");

Desirous that all member States of the Council should strive to achieve such higher level, with due regard to economic considerations in their respective countries,

Have agreed on the following provisions which have been prepared with the collaboration of the International Labour Office :

SECTION I

In respect of any member State of the Council of Europe which has ratified the Code and the Protocol thereto, and in respect of any State which has acceded to both these Acts, the following provisions shall replace the corresponding articles, paragraphs and sub-paragraphs of the Code :

[The provisions, which replace the corresponding articles, paragraphs and sub-paragraphs of the Code, relate to article 1, paragraph 1, sub-paragraph (*h*); article 2, paragraph 1, sub-paragraph (*b*); article 2, paragraph 2; article 9; article 10, paragraphs 1 and 2; article 12; article 15, paragraphs (*a*) and (*b*); article 21, paragraph (*a*); article 24; article 26, paragraphs 2 and 3; article 27, paragraphs (*a*) and (*b*); article 28, paragraph (*d*); article 41; article 44; article 48; article 49, paragraph 2; article 54; article 55, paragraphs (*a*) and (*b*); article 56; article 61, paragraphs (*a*) and (*b*); article 62, paragraph (*b*); article 74, paragraphs 1 and 2; article 75; article 76; article 79; article 80; article 81; and article 82].

SECTION II

1. No member State of the Council of Europe shall sign or ratify this Protocol without having simultaneously or previously signed or ratified the European Code of Social Security.

2. No State shall accede to this Protocol without having simultaneously or previously acceded to the European Code of Social Security.

[2] *Ibid.*

SECTION III

1. This Protocol shall be open to signature by the member States. It shall be subject to ratification. Instruments of ratification shall be deposited with the Secretary-General, provided that the Committee of Ministers in appropriate cases has previously given an affirmative decision as provided for in Section IV, paragraph 4.

2. This Protocol shall enter into force one year after the date of the deposit of the third instrument of ratification.

3. As regards any Signatory ratifying subsequently, this Protocol shall enter into force one year after the date of deposit of its instrument of ratification.

SECTION IV

1. Any Signatory wishing to avail itself of the provisions of Article 2, paragraph 2 of the Code as amended by the Protocol shall, before ratification, submit to the Secretary-General a report showing to what extent its system of social security is in conformity with the provisions of this Protocol.

...

2. The Signatory shall furnish to the Secretary-General, if so requested by him, further information on the manner in which its system of social security is in conformity with the provisions of this Protocol.

3. Such report and further information shall be examined by the Committee which shall take into account the provisions of Article 2, paragraph 3 of the Code. The Committee shall submit to the Committee of Ministers a report containing its conclusions.

4. The Committee of Ministers shall, by a two-thirds majority in accordance with Article 20, paragraph (*d*) of the Statute of the Council of Europe, decide whether the system of social security of such Signatory is in conformity with the requirements of this Protocol.

5. If the Committee of Ministers decides that the said social security scheme is not in conformity with the provisions of this Protocol, it shall so inform the Signatory concerned and may make recommendations as to how such conformity may be effected.

...

OTHER AGREEMENTS

THE CAIRO DECLARATION OF 10 OCTOBER 1964[1]

(Extracts)

INTRODUCTION

...

The Conference notes with satisfaction that the movements of national liberation are engaged in different regions of the world, in a heroic struggle against neo-colonialism, and the practices of apartheid and racial discrimination. This struggle forms part of the common striving towards freedom, justice and peace.

The Conference reaffirms that interference by economically developed foreign States in the internal affairs of newly independent, developing countries and the existence of territories which are still dependent constitute a standing threat to peace and security.

...

I. CONCERTED ACTION FOR THE LIBERATION OF THE COUNTRIES STILL DEPENDENT, ELIMINATION OF COLONIALISM, NEO-COLONIALISM AND IMPERIALISM

The Heads of State or Government of the Non-Aligned Countries declare that lasting world peace cannot be realized so long as unjust conditions prevail and peoples under foreign domination continue to be deprived of their fundamental right to freedom, independence and self-determination.

Imperialism, colonialism and neo-colonialism constitute a basic source of international tension and conflict because they endanger world peace and security. The participants in the Conference deplore that the Declaration of the United Nations on the granting of independence to colonial countries and peoples has not been implemented everywhere and call for the unconditional, complete and final abolition of colonialism now.

At present a particular cause of concern is the military or other assistance extended to certain countries to enable them to perpetuate by force colonialist and neo-colonialist situations which are contrary to the spirit of the Charter of the United Nations.

The exploitation by colonialist forces of the difficulties and problems of recently liberated or developing countries, interference in the internal affairs of these States, and colonialist attempts to maintain unequal relationships, particularly in the economic field, constitute serious dangers to these young countries. Colonialism and neo-colonialism have many forms and manifestations.

Imperialism uses many devices to impose its will on independent nations. Economic pressure and domination, interference, racial discrimination, subversion, intervention and the threat of force are neo-colonialist devices against which the newly independent nations have to defend themselves. The Conference condemns all colonialist, neo-colonialist and imperialist policies applied in various parts of the world.

...

The newly independent countries have, like all other countries, the right of sovereign disposal in regard to their natural resources, and the right to utilize these resources as they deem appropriate in the interest of their peoples, without outside interference.

The process of liberation is irresistible and irreversible. Colonized peoples may legitimately resort to arms to secure the full exercise of their right to self-determination and independence if the colonial powers persist in opposing their natural aspirations.

The participants in the Conference undertake to work unremittingly to eradicate all vestiges of colonialism, and to combine all their efforts to render all necessary aid and support, whether moral, political or material, to the peoples struggling against colonialism and neo-colonialism. The participating countries recognize the nationalist movements of the peoples which are struggling to free themselves from colonial domination as being authentic representatives of the colonial peoples, and urgently call upon the colonial Powers to negotiate with their leaders.

...

The Conference recommends that all necessary political, moral and material assistance be rendered to the liberation movements of these territories in their struggle against colonial rule.

...

II. RESPECT FOR THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND CONDEMNATION OF THE USE OF FORCE AGAINST THE EXERCISE OF THIS RIGHT

The Conference solemnly reaffirms the right of peoples to self-determination and to make their own destiny.

---

[1] Text contained in document NAC-II/Heads/5, of 10 October 1964, of the Conference of Heads of State of Government of non-aligned countries, entitled "Programme for Peace and International Co-operation". Extracts from this text have been published in United Nations document A/C.6/L.537/Rev.1/Add.1 of 20 October 1965.

It stresses that this right constitutes one of the essential principles of the United Nations Charter, that it was laid down also in the Charter of the Organization of African Unity, and that the Conferences of Bandung and Belgrade demanded that it should be respected, and in particular insisted that it should be effectively exercised.

The Conference notes that this right is still violated or its exercise denied in many regions of the world and results in a continued increase of tension and the extension of the areas of war.

The Conference denounces the attitude of those Powers which oppose the exercise of the right of peoples to self-determination.

It condemns the use of force, and all forms of intimidation, interference and intervention which are aimed at preventing the exercise of this right.

III. Racial Discrimination and the Policy of Apartheid

The Heads of State or Government declare that racial discrimination — and particularly its most odious manifestation, apartheid — constitutes a violation of the Universal Declaration of Human Rights and of the principle of the equality of peoples. Accordingly, all Governments still persisting in the practice of racial discrimination should be completely ostracized until they have abandoned their unjust and inhuman policies.

...

IV. Peaceful Coexistence and the Codification of the Principles by the United Nations

...

Reaffirming their deep conviction that, in present circumstances, mankind must regard peaceful coexistence as the only way to strengthen world peace, which must be based on freedom, equality and justice between peoples within a new framework of peaceful and harmonious relations between the States and nations of the world;

Considering the fact that the principle of peaceful coexistence is based on the right of all peoples to be free and to choose their own political, economic and social systems according to their own national identity and their ideals, and is opposed to any form of foreign domination;

Convinced also that peaceful coexistence cannot be fully achieved throughout the world without the abolition of imperialism, colonialism and neo-colonialism;

...

The Heads of State or Government solemnly proclaim the following fundamental principles of peaceful coexistence :

1. The right to complete independence, which is an inalienable right, must be recognized immediately and unconditionally as pertaining to all peoples, in conformity with the Charter and resolutions of the United Nations General Assembly; it is incumbent upon all States to respect this right and facilitate its exercise.

2. The right to self-determination, which is an inalienable right, must be recognized as pertaining to all peoples, accordingly, all nations and peoples have the right to determine their political status and freely pursue their economic, social and cultural development without intimidation or hindrance.

3. Peaceful coexistence between States with different social and political systems is both possible and necessary; it favours the creation of good-neighbourly relations between States with a view to the establishment of lasting peace and general well being, free from domination and exploitation.

4. The sovereign equality of States must be recognized and respected. It includes the right of all peoples to the free exploitation of their natural resources.

...

6. All States shall respect the fundamental rights and freedoms of the human person and the equality of all nations and races.

...

(3) The Conference solemnly reaffirms the right of all peoples to adopt the form of government they consider best suited to their development.

...

IX. The United Nations : Its Role in International Affairs, Implementation of its Resolutions and Amendment of its Charter

The participating countries declare :

The United Nations Organization was established to promote international peace and security, to develop international understanding and co-operation, to safeguard human rights and fundamental freedom and to achieve all the purposes of the Charter. In order to be an effective instrument, the United Nations Organization must be open to all the States of the world. It is particularly necessary that countries still under colonial domination should attain independence without delay and take their rightful place in the community of nations.

It is essential for the effective functioning of the United Nations that all nations should observe its fundamental principles of peaceful coexistence, co-operation, renunciation of the threat or the use of force, freedom and equality without discrimination on grounds of race, sex, language or religion.

...

The Conference recognizes the paramount importance of the United Nations and the necessity of enabling it to carry out the functions entrusted to it to preserve international co-operation among States.

...

XI. Cultural, Scientific and Educational Co-operation and Consolidation of the International and Regional Organizations Working for this Purpose

The Heads of State or Government participating in the Conference :

Considering that the political, economic, social and cultural problems of mankind are so interrelated as to demand concerted action;

Considering that co-operation in the fields of culture, education and science is necessary for the deepening of human understanding, for the consolidation of freedom, justice and peace, and for progress and development;

...

Appreciating the work of the international and regional organizations in the promotion of educational, scientific and cultural co-operation among nations;

Believing that such co-operation among nations in the educational, scientific and cultural fields should be strengthened and expanded;

Recommend that international co-operation in education should be promoted in order to secure a fair opportunity for education to every person in every part of the world, to extend educational assistance to develop mutual understanding and appreciation of the different cultures and ways of life through the proper teaching of civics, and to promote international understanding through the teaching of the principles of the United Nations at various levels of education;

Propose that a free and more systematic exchange of scientific information be encouraged and intensified and, in particular, call on the advanced countries to share with developing countries their scientific knowledge and technical knowledge so that the advantages of scientific and technological advance can be applied to the promotion of economic development.

Urge all States to adopt in their legislation the principles embodied in the United Nations Declaration of Human Rights.

Agree that participating countries should adopt measures to strengthen their ties with one another in the fields of education, science and culture.

Express their determination to help, consolidate and strengthen the international and regional organizations working in this direction.

...

GENERAL CONVENTION BETWEEN THE FEDERAL REPUBLIC OF CAMEROON AND THE REPUBLIC OF MALI FOR CO-OPERATION IN THE ADMINISTRATION OF JUSTICE

Done at Bamako on 6 May 1964

GENERAL

1. The High Contracting Parties shall initiate an exchange of information on their judicial systems, their legislation and the decisions of their Courts.

2. Except where the question is raised incidentally, jurisdiction to decide whether or not any person is a national of either State shall belong to the judicial Courts of that State.

Part I

ACCESS TO THE COURTS

3. (1) Any subject of either High Contracting Party shall have free and unfettered access to the Courts of the other, whether administrative or judicial and whether for the assertion or for the defence of his rights; and in particular no security or deposit, howsoever described, shall be required of him either on the ground of his being a subject of the other State or for want of permanent address or residence in the country where proceedings are taken.

(2) Subject to any provision of public policy in the country where proceedings are taken, the foregoing paragraph shall apply equally to juridical persons created by or under the laws of either signatory.

4. (1) Counsel authorized to practise in either State may practise freely in the Courts of the other, subject to the laws of the latter and to the traditions of their profession.

(2) Provided that counsel of one country availing himself of the right to appear for any party in a Court of the other shall be bound to adopt an address for service of all lawful process with counsel of the latter country.

5. The subjects of either High Contracting Party shall enjoy in the other State the advantage of Free Legal Aid in like manner as its own nationals on condition of compliance with the law of the country where such aid is sought.

6. (1) The poverty certificate shall be issued to an applicant resident in either of the two States by the authorities of his permanent residence.

(2) Where the applicant resides in a third country, the certificate shall be issued by the consular authorities of his own country in that country.

(3) Where the applicant resides in the country where application is made, information may be sought from the authorities of the country to which he belongs.

...

Part IV

WITNESSES AND EXPERT REFEREES IN CRIMINAL PROCEEDINGS

15. (1) Where in criminal matter the personal attendance of a witness or of an expert referee is necessary, the Government of the State where the witness or expert resides shall bind him over to comply with any summons which may be addressed to him:

Provided that travelling and subsistance allowance computed from the residence of the witness or expert referee shall be at least equal to that granted under the rules and regulations in force in the State where he is to be heard. And provided further that he shall receive at his request from the consular representatives of the requesting authority an advance of the whole or a part of his travelling expenses.

(2) No witness summoned in one State and attending voluntarily in a Court of the other may be there prosecuted or taken into custody for any act or conviction prior to his departure from the territory of the requested State: provided that such immunity shall lapse thirty days after the conclusion of his evidence and after his return was possible.

16. (1) Requests for despatch of witnesses who are in custody shall be addressed directly to the Procurator at the Court having jurisdiction.

(2) Such request shall be granted in the absence of any special reason to the contrary, but on condition of the speedy return of the prisoner.

...

Part VIII

SIMPLIFIED EXTRADITION

38. The High Contracting Parties undertake to surrender to each other, under the procedure and in the circumstances set forth in this Convention, such persons as are to be prosecuted or have been convicted by the authorities of one State and are present within the territory of the other.

39. Neither High Contracting Party will extradite its own nationals, the character of national relating to the moment of commission of the offence for which extradition is requested: provided that the State requested shall be bound, in so far as it has jurisdiction to try them, to prosecute its own nationals for offences committed by them within the territory of the other, where the offence is punishable by its own law as a felony or misdemeanour, and where the other State has addressed to it a request for prosecution accompanied by all files, papers, things and information in its possession, and shall keep the requesting State informed of the action taken on the said request.

40. The following shall be liable to extradition:

(1) persons to be prosecuted for felonies or misdemeanours punishable under the law of the State requested with at least two years of imprisonment;

(2) persons who have been sentenced, whether in their presence or in their absence, by the Courts of the requesting State to at least two months of imprisonment for a felony or misdemeanour which constitutes an offence by the law of the State requested.

41. For an offence in relation to direct or indirect taxation, to customs, or to exchange control, extradition may be granted under this Convention in so far as agreed by simple exchange of notes for each offence or class of offences specifically named.

42. (1) Extradition shall be refused:

(i) where the offence for which it is requested was committed within the State requested;

(ii) where final judgment has been delivered in the State requested in respect of the offence;

(iii) where at the moment of receipt of the request by the State requested prosecution is barred or the penalty extinguished by lapse of time by the law either of the requesting State or of the State requested;

(iv) where the offence was committed without the territory of the requesting State and by a foreigner to that State, and is an offence for which by the law of the State requested no prosecution will lie against a foreigner committing it abroad;

(v) where an amnesty has followed the offence either in the requesting State or in the State requested: provided, in the latter case, that the offence is among those in respect of which a prosecution will lie notwithstanding their commissions by a foreigner abroad.

(2) Extradition may be refused:

(i) where the offence is under prosecution in the State requested, or judgment has been delivered in a third State;

(ii) where the offence is regarded by the State requested as a political offence or an offence connected with such an offence.

...

CONVENTION OF ESTABLISHMENT AND MOVEMENT OF PERSONS BETWEEN THE REPUBLIC OF MALI AND THE FEDERAL REPUBLIC OF CAMEROON

Done at Bamako on 6 May 1964

Article 1

The nationals of each of the contracting parties shall enjoy in the territory of the other contracting party public liberties under the same conditions as its nationals. In particular, there shall be guaranteed, in accordance with the Universal Declaration of Human Rights, the free exercise of cultural, religious, economic, professional and social activities, personal and public liberties, such as the freedom of thought, conscience, religion and worship; the liberty of opinion of expression, the right of public meetings, associations and trade unions.

Such rights and liberties shall be exercised in accordance with the laws and regulations in force in the territory of each of the contracting parties.

Article 2

Each of the contracting parties shall determine by its own legislation the scope and conditions for the exercise in its territory of political rights by the nationals of the other contracting party.

Article 3

Provided that they possess the prescribed identity cards of their State, any national from one of the contracting parties may freely enter the territory of the other State, travel therein, establish his residence in the place of his choice and depart therefrom without being compelled to obtain a visa or any residence permit.

Such measures shall not prejudice the right of each State to take the necessary measures for the maintenance of law and order, health protection, public morals and security.

Article 4

The nationals originating in one or the other State shall be the subject of a census in their place of residence after one year of residence. Such census shall only be for taxation purposes and shall have no effect upon the nationality.

Article 5

Any national of one of the contracting parties shall enjoy in the territory of the other State full

protection of the law and the courts for his person, property and other interests.

He shall have access to all courts under the same conditions as the nationals of the other State. In this respect, no security for costs or damages nor any deposit whatever may be imposed on him by virtue either of his status of alien of the State of residence or of the inadequacy of his property in the territory of the said State.

He shall benefit from legal aid under the same conditions as the nationals of the State.

Article 6

Without prejudice to existing or future conventions between the contracting parties, the nationals of either of the parties may hold office in the other State, subject to the conditions laid down by the laws and regulations of that State.

Article 7

With regard to the problem of security, the security forces of one of the contracting parties shall make no incursion into neighbouring territory without the express and prior authorization of the responsible authority.

Article 8

With regard to the opening of a business, the setting up of an enterprise or establishment of an industrial, commercial, agricultural or artisanal nature, the exercise of the corresponding activities, and the exercise of professional salaried activities and the liberal professions, the nationals of one of the contracting parties shall rank as nationals of the other contracting party, unless the economic and social situation of the said party prescribes otherwise.

Such derogations shall not have for effect the impairment of the basic rights recognized under this article as acquired by the nationals of either of the contracting parties in the territory of the other.

Article 9

Any national of one of the contracting parties shall have the right to obtain in the territory of the other party concessions, authorizations and administrative permits as well as to be awarded contracts under the same conditions as nationals of that party.

Article 10

The nationals of each of the contracting parties shall benefit in the territory of the other party from the labour, social welfare and social security legislation under the same conditions as the nationals of that party.

Both contracting parties undertake not to discriminate between their respective nationals in ensuring for them the benefit of and access to the social and health services and establishments.

Article 11

Any national of one of the contracting parties shall benefit in the territory of the other party under the same conditions as the nationals of that party from all provisions relative to the responsibility of the State or a public collectivity for the redress of damages sustained by persons and property.

Article 12

Any national of one of the contracting parties shall enjoy in the territory of the other contracting party the same civil rights as the nationals of the said party. They shall exercise such rights under the law applicable according to the rules governing the conflict of laws.

In particular, the personal status of Malians in the territory of the Federal Republic of Cameroon shall be governed by Mali law, the personal status of Cameroonians in the territory of the Republic of Mali shall be governed by Cameroon law.

Article 13

Any national of one of the contracting parties residing in the territory of the other contracting party may participate in trade union activities and be members of bodies for the defence of professional interests and of commercial assemblies under the same conditions as the nationals of that party.

The required period of residence shall be fixed by each State.

Article 14

The nationals of one of the contracting parties possessing an identity card issued by their State of origin shall not be liable in the territory of the other contracting party to duties, taxes or contributions of whatever nature other than or higher than those paid by the nationals of that party.

The contracting parties shall agree as and when necessary upon measures for the repression of tax evasion and the avoidance of double taxation.

The provisions of this article shall apply both to bodies corporate and to natural persons.

Article 15

The nationals of one of the two contracting parties may not be the subject of any arbitrary and discriminatory measure likely to jeopardize their property or interests, especially when the latter constitute a direct or indirect participation in the assets of a company or other corporate body. Their property may not be the subject of expropriation for public purpose and of nationalization, save under the same conditions as those laid down for nationals of the expropriating State.

Article 16

Where the Government of one of the contracting parties proposes to take measures to expel a national of the other contracting party, the activity of whom constitutes a danger to public security and the prestige of the State, it shall inform the Government of the other party thereof. If the latter fails to present its observations within a time-limit of thirty days from the receipt of the notification, or if such observations are overruled, expulsion may be pronounced. Such expulsion shall be effected by virtue of a personal decision and shall be justified by the Head of Government. Adequate delay shall be accorded to the person concerned to enable him to make the necessary arrangements for his departure.

Notwithstanding these provisions, in the case of absolute urgency which is recognized by a well-

founded decision, a measure of expulsion having immediate effect may be taken. Such measure shall be forthwith notified to the Government of the State having authority over the expelled person.

Article 17

Each of the contracting parties undertakes to respect the rights acquired in its territory by natural persons and bodies corporate who are nationals of the other party.

The Malians established in the Federal Republic of Cameroon and the Cameroonians established in the Republic of Mali at the date of entry into force of this agreement may continue to freely exercise their profession under the same conditions as the nationals of the State of residence.

Article 18

Each of the contracting parties shall reserve for the nationals of the other party the privileged status defined under this convention by virtue of the specific nature of the relations between both States.

The benefit of such special provisions may not be extended to the nationals of a State unless a prior convention has been concluded with the said State.

If one of the contracting parties should grant to the nationals of a third State, not entertaining specific relations with the Republic of Mali or the Federal Republic of Cameroon, a more favourable status than that defined by the present convention, the other party shall be entitled to claim such benefits for its nationals.

Article 19

Civil associations and commercial companies constituted under the laws and regulations of one contracting party and having their registered office within its territory shall rank as the nationals of this contracting party for the enjoyment in the territory of the other contracting party of all rights laid down under this agreement and to which a corporate body may be entitled.

The right to establish sea and air transport companies shall form the subject of special provisions within the framework of a special agreement on sea and air transport.

Article 20

Each of the contracting parties shall notify the other of the completion of the procedures constitutionally required for the entry into force of the present convention. This convention shall take effect from the date of completion of such obligations and may be revised by mutual agreement between the parties.

The present convention shall remain in force until one year has elapsed from the date on which one of the contracting parties has declared its desire to terminate it.

AGREEMENT ON CULTURAL CO-OPERATION BETWEEN THE FEDERAL REPUBLIC OF CAMEROON AND THE CZECHOSLOVAK SOCIALIST REPUBLIC

Done at Paris on 20 April 1964

Article 1

On the basis of mutual friendship and understanding and according to the principles of respect of sovereignty, non-interference and equality, the Contracting Parties shall encourage cultural relations between the two States and contribute to mutual knowledge of cultural values of the peoples of both States as well as of progress achieved by them in the field of education, culture and sports.

Article 2

Both Contracting Parties shall endeavour to foster in particular:

— co-operation between schools, institutes of science and research, cultural and educational establishments and organizations;

— exchange of information in the fields of education, science, culture, cinematography and the organization of lectures bearing on those spheres;

— exhibitions and exchange of literary, scientific and artistic works;

— the organization of concerts, performances, theatres, sporting events and visits of experts working in one of the spheres enumerated in the present article.

Article 3

Each Contracting Party, within the limits of its possibilities, shall facilitate research and study for experts of the other in schools, institutes, archives, libraries and museums of the respective country in conformity with the statutes of the said establishments.

Article 4

Each Contracting Party shall facilitate within the limits of its possibilities the granting of scholarships and shall contribute to material aid in order to permit studies, scientific research and specialized training to students, technicians, engineers, scientists and artists of the other Contracting Party.

Article 5

Both Contracting Parties shall facilitate, within the limits of their possibilities, co-operation between the respective broadcasting and television organizations, press agencies and film companies, in conformity to their respective legislation.

...

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 1964, no States became parties to the Convention.

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 1964, the following States became parties to the Convention, by instruments of ratification or accession deposited on the dates indicated : Gabon (27 April), Jamaica (30 July),[2] Liberia (15 October), Peru (21 December) and the United Republic of Tanzania (12 May).

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 1964, Belgium and Madagascar became parties to the Convention, by instruments of ratification or accession deposited on 20 May and 12 February 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 1964, no States became parties to the Convention.

5. *Slavery Convention of 1926 as amended by the Protocol of December 1953* (signed in New York; as amended entered into force on 7 July 1955) (see *Yearbook on Human Rights for 1953*, pp. 345-346).

During 1964, Jamaica[2], Madagascar and Uganda became parties to the Convention, by instruments of ratification or accession deposited on 30 July, 12 February and 12 August 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 1964, Algeria and Liberia became parties to the Convention, by instruments of ratification or accession deposited on 15 July and 11 September respectively.

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 1964, the following States became parties to the Convention, by instruments of ratification or accession deposited on the dates indicated : Argentina (13 August), France (26 May), Jamaica (30 July)[2], the Philippines (17 November), Switzerland (28 July), Turkey (17 July) and Uganda (12 August).

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 1964, Jamaica[2] became a party to the Convention, by instrument of ratification deposited on 30 July.

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 1964, no States became parties to the Convention.

10. *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* (New York, 1962; entered into force on 9 December 1964) (see *Yearbook on Human Rights for 1962*, pp. 389-390).

During 1964, the following States became parties to the Convention, by instruments of ratification or accession deposited on the dates indicated: Denmark (8 September), Dominican Republic (8 October), Finland (18 August), Mali (19 August), Niger (1 December), Norway (10 September), Sweden (16 June), Upper Volta (8 December), Western Samoa (24 August) and Yugoslavia (19 June).

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[1] Concerning the status of these agreements at the end of 1963, see *Yearbook on Human Rights for 1963*, p. 429. 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 1964*, of the International Committee of the Red Cross. With the exception of the Agreement for Facilitating the International Circulation of Visual and Cultural Materials and the Agreement on the Importation of Educational, Scientific and Cultural Materials and Protocol thereto (for which the Secretary-General acts as depositary), the information concerning agreements under the auspices of UNESCO was furnished by the Secretariat of UNESCO.

[2] This State recognized itself as being bound by the agreement, the application of which had been extended to its territory by the State previously responsible for the conduct of its foreign relations.

II. INTERNATIONAL LABOUR ORGANISATION

1. *Social Policy (Non-Metropolitan Territories) Convention, 1947* (Convention No. 82; entered into force on 19 June 1955) (see *Yearbook on Human Rights for 1948*, pp. 420-425).

During 1964, no States became parties to the Convention.

2. *Right of Association (Non-Metropolitan Territories) Convention, 1947* (Convention No. 84; entered into force on 1 July 1953) (see *Yearbook on Human Rights for 1948*, pp. 425-427).

During 1964, the United Kingdom registered a declaration of application to non-metropolitan territories, applicable without modification, in respect of Gilbert and Ellice Islands (7 July).

3. *Freedom of Association and Protection of the Right to Organise Convention, 1948* (Convention No. 87; entered into force on 4 July 1950) (see *Yearbook on Human Rights for 1948*, pp. 427-430).

During 1964, Czechoslovakia became a party to the Convention by instrument of ratification deposited on 21 January; and the United Kingdom registered declarations of application to non-metropolitan territories, applicable without modification, in respect of Barbados (13 April), Basutoland (14 January), British Virgin Islands (12 June) and Seychelles (7 July).

4. *Right to Organise and Collective Bargaining Convention, 1949* (Convention No. 98; entered into force on 18 July 1951).

During 1964, the following States became parties to the Convention, by instruments of ratification deposited on the dates indicated: Central African Republic (9 June), Czechoslovakia (21 January), Kenya (13 January),[1] Malaysia (State of Sabah and State of Sarawak) (3 March),[1] Mali (2 March), Peru (13 March), Portugal (1 July), United Republic of Tanzania (22 June)[1] and Viet-Nam (6 January).

The United Kingdom registered declarations of application to non-metropolitan territories, applicable without modification, in respect of Barbados (13 April) and British Virgin Islands (12 June).

5. *Equal Remuneration Convention, 1951* (Convention No. 100; entered into force on 23 May 1953) (see *Yearbook on Human Rights for 1951*, pp. 469-470).

During 1964, the ratifications of the Central African Republic and Paraguay were registered on 9 June and 24 June respectively.

6. *Social Security (Minimum Standards) Convention, 1952* (Convention No. 102; entered into force on 27 April 1955) (see *Yearbook on Human Rights for 1952*, pp. 377-389).

During 1964, the ratifications of Luxembourg (Parts II to X) and the Netherlands (Part IX) were registered on 31 August and 22 January respectively.

7. *Maternity Protection Convention (Revised), 1952* (Convention No. 103; entered into force on 7 September 1955) (see *Yearbook on Human Rights for 1952*, pp. 389-392).

During 1964, no States became parties to the Convention.

8. *Abolition of Penal Sanctions Convention, 1955* (Convention No. 104; entered into force on 7 June 1958) (see *Yearbook on Human Rights for 1955*, pp. 435-437).

During 1964, the ratifications of the Central African Republic and Thailand were registered on 9 June and 29 July respectively.

9. *Abolition of Forced Labour Convention, 1957* (Convention No. 105; entered into force on 17 January 1950) (see *Yearbook on Human Rights for 1957*, pp. 303-304).

During 1964, the following States became parties to the Convention, by instruments of ratification on the dates indicated: Central African Republic (9 June), Kenya (13 January),[1] Luxembourg (24 July), Malaysia (State of Sabah and State of Sarawak) (3 March),[1] United Republic of Tanzania (22 June),[1] and Venezuela (16 November).

The United Kingdom registered a declaration of application to non-metropolitan territories, applicable without modification, in respect of Bechuanaland (11 December) and Fiji (18 February).

10. *Discrimination (Employment and Occupation) Convention, 1958* (Convention No. 111; entered into force on 15 June 1960) (see *Yearbook on Human Rights for 1958*, pp. 307-308).

During 1964, the ratifications of the following States were registered on the dates indicated: Canada (26 November), Central African Republic (9 June), Czechoslovakia (21 January), Dominican Republic (13 July), Iran (30 June), Mali (2 March), and Republic of Viet-Nam (6 January).

11. *Social Policy (Basic Aims and Standards) Convention, 1962* (Convention No. 117); entered into force on 23 April 1964) (see *Yearbook on Human Rights for 1962* pp. 391-394).

During 1964, the following States became parties to the Convention, by instruments of ratification deposited on the dates indicated: Central African Republic (9 June), China (10 December), Ghana (18 June), Israel (15 January), Malagasy Republic (1 June), Niger (23 November), Syrian Arab Republic (11 December) and Zambia (2 December).[1]

12. *Equality of Treatment (Social Security) Convention, 1962* (Convention No. 118; entered into force on 25 April 1964) (see *Yearbook on Human Rights for 1962*, pp. 394-397).

During 1964, the ratifications of the following States were registered on the dates and in respect of the branches indicated: Central African Republic (8 November, branches (c), (e), (g) and (i)), India (19 August, branches (a), (b) and (c)), Ireland (26 November, branches (a), (b), (h) and (i)), Malagasy Republic (22 November, branches (b), (c), (d) and (g)) and the Netherlands (3 July, branches (a) to (i)).

[1] 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.

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 1964, 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 1964, Cameroon and Rwanda [1] became parties to the Agreement by instruments of acceptance and ratification deposited on 15 May and 1 December respectively. New Zealand registered a notification on territorial application in respect of Cook Islands (including Niue) on 28 February.

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 1964, Guatemala, by instrument of ratification deposited on 28 July and New Zealand by instrument of acceptance deposited on 1 June became parties to the Convention and Protocols 1, 2 and 3.

4. *Convention for the Protection of Cultural Property in the Event of Armed Conflict and Protocol Thereto* (The Hague, 1954; entered into force on 7 August 1956) (see *Yearbook on Human Rights for 1954*, pp. 308-309).

During 1964, Austria became a party to the Convention and the Protocol thereto by instrument of ratification deposited on 25 March; Cyprus became a party to the Convention and the Protocol thereto by instrument of acceptance deposited on 9 September; and Mongolia became a party to the Convention by instrument of acceptance deposited on 4 November.

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).

During 1964, Brazil and Denmark became parties to the Convention, by instruments of ratification deposited on 11 August and 10 November respectively.

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).

During 1964, Denmark became a party to the Convention by instrument of ratification deposited on 10 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 1964, the following States became parties to the Convention, by the instruments and on the dates indicated: Guinea (acceptance; 11 December), Hungary (ratification; 16 January), Lebanon (ratification; 27 October), Madagascar (ratification; 21 December), Mongolia (ratification; 4 November), Philippines (acceptance; 19 November), Poland (ratification; 15 September), Romania (ratification; 9 July) and Yugoslavia (acceptance; 14 October).

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 1964, France became a party to the Protocol by instrument of ratification deposited on 24 April and the Philippines, Madagascar and the United Kingdom became parties to the Protocol by instruments of acceptance deposited on 19 November, 21 December and 9 January respectively.

IV. ORGANIZATION OF AMERICAN STATES

1. *Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works* (Washington, D.C., 1946; entered into force on 14 April 1947) (see *Pan American Union*: Law and Treaty Series, No. 19).

During 1964, 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).

During 1964, no States became parties to the Convention.

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 1964, no States became parties to the Convention.

4. *Convention on Diplomatic Asylum* (Caracas, 1954; entered into force on 29 December 1954) (see *Yearbook on Human Rights for 1955*, pp. 330-332).

During 1964, 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 1964, Brazil became a party to the Convention.

[1] 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.

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).

No ratifications were deposited in 1964.

Declarations recognizing the competence of the European Commission on Human Rights to receive individual applications were registered by Austria on 30 July 1964, for three years from 3 September 1964; Belgium on 13 July 1964, for five years from 30 June 1964; the Netherlands on 27 August 1964, for five years from 31 August 1964; and Norway on 30 November 1964, from 9 December 1964 to 29 June 1967.

Declarations recognizing the compulsory jurisdiction of the Court were registered by Austria on 30 July 1964, for three years from 3 September 1964; Iceland on 3 December 1964, for five years from 31 August 1964; the Netherlands on 27 August 1964, for five years from 31 August 1964; and Norway on 30 June 1964 for three years.

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).

No ratifications were deposited in 1964.

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; not yet in force) (see *Yearbook on Human Rights for 1963*, p. 432).

Norway and Sweden ratified the Protocol on 12 and 13 June 1964 respectively.

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; not yet in force) (see *Yearbook on Human Rights for 1963*, p. 432).

Norway and Sweden ratified the Protocol on 12 and 13 June 1964 respectively.

5. *Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms other than those already included in the Convention and in the First Protocol thereto* (Strasbourg, 1963; not yet in force) (see *Yearbook on Human Rights for 1963*, p. 432).

During 1964, Denmark, Norway and Sweden ratified the Protocol on 30 November, 12 June and 13 June respectively.

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).

Iceland ratified the Agreement and the Protocol on 4 December 1964.

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).

Iceland ratified the Agreement and the Protocol on 4 December 1964.

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. 357-358).

Iceland ratified the Agreement and the Protocol on 4 December 1964.

9. *European Convention on Establishment* (Paris, 1955; not yet in force) (see *Yearbook on Human Rights for 1956*, pp. 292-297).

No ratifications were deposited in 1964.

10. *European Social Charter* (Turin, 1961; not yet in force) (see *Yearbook on Human Rights for 1961*, pp. 442-450).

The Federal Republic of Germany and Ireland ratified the Charter on 27 January 1964 and 7 October 1964 respectively.

11. *European Code of Social Security* (Strasbourg, 1964) (see above, pp. 331-334).

12. *Protocol to the European Code of Social Security* (Strasbourg, 1964) (see above, p. 335).

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 1964, the following States became parties to the Conventions: Jamaica (by declaration of continuity, in July), Nepal (by instrument of accession, in February), Niger (by declaration of continuity, in April), Rwanda (by declaration of continuity, in May) and Uganda (by instrument of accession, in May).

2. *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* (Rome, 1961; entered into force on 18 May 1964) (see *Yearbook on Human Rights for 1961*, pp. 452-454).

During 1964, Czechoslovakia became a party to the Convention by instrument of acceptance, with declaration deposited on 13 May and Mexico by instrument of ratification deposited on 17 February.

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